

Retirement Villages Regulation 2018

Explanatory notes for Subordinate Legislation 2018 No. 207

made under the

Retirement Villages Act 1999

General Outline

Short title

Retirement Villages Regulation 2018

Authorising law

Sections 27, 35, 45, 74, 75, 76, 77, 84, 85 and 228 of the *Retirement Villages Act 1999*.

Policy objectives and the reasons for them

The objective of the *Retirement Villages Regulation 2018* (2018 Regulation) is to remake the *Retirement Villages Regulation 2010* (2010 Regulation) and to support amendments to the *Retirement Villages Act 1999* (RV Act) made by the *Housing Legislation (Building Better Futures) Amendment Act 2017* (HLA Act).

The 2010 Regulation came into effect on 6 August 2010 and is due to expire on 1 September 2020. Under section 54 of the *Statutory Instruments Act 1992*, regulations automatically expire 10 years after they are made.

The HLA Act delivered on the Government's commitment in the *Queensland Housing Strategy 2017-2027* to modernise the housing regulatory system, so consumers are protected and empowered, and the industry can supply quality services.

The policy objectives of the HLA Act are provided in the explanatory notes that accompanied the Housing Legislation (Building Better Futures) Amendment Bill 2017 (the HLA Bill). One of the overarching objectives of the HLA Act is to amend the RV Act to ensure fairness and consumer protections for people who are either living in, leaving or considering moving into retirement villages, while enabling the continued viability of the industry.

The amendments to the RV Act in the HLA Act are being commenced in stages to ensure that important consumer protections are delivered as quickly as possible while allowing for broad stakeholder consultation on approved forms, notices and regulations arising out of the HLA Act.

The HLA Act amendments to the RV Act to introduce new behavioural standards in retirement villages and new requirements for payment of exit entitlements to former residents commenced on assent on 10 November 2017.

The 2018 Regulation will support amendments to the RV Act, which under stage 1 implementation, commence on 1 February 2019. These amendments include changes to the pre-contractual disclosure process, resident and prospective resident access to village operational documents, the process for reinstatement and renovation of units following a resident's departure and valuing a unit for resale.

The 2018 Regulation also expands the existing regulatory requirements for application for registration as a retirement village and continues the existing regulation for residence contracts under the RV Act.

Stage 2 of the HLA Act amendments to the RV Act is expected to be proclaimed by mid 2019 and will commence amendments to the RV Act to address changes in village operations, such as redevelopment of a village, and new standards for retirement village contracts. Stage 3 will be proclaimed by November 2019 and will commence a new set of standard financial reports and budgets.

Achievement of policy objectives

The policy objectives of this 2018 Regulation are achieved by prescribing the content and use of the new approved forms to enable the commencement of the provisions in the RV Act required for stage 1 implementation. These include the following:

- Details of unit entry condition and exit condition inspections and reports to provide evidence for reinstatement of a unit to its pre-entry condition, apart from fair wear and tear. These reports may be used as evidence by the Queensland Civil and Administrative Tribunal in the event of a dispute.
- Details of what information is to be contained in the new pre-contractual documents – the village comparison document and prospective costs document. The 2018 Regulation will allow operators to customise the information in these documents to their village and a village unit.
- Information to be contained in a precontractual disclosure waiver regarding a person's waiver of their right to receive copies of relevant documents or non-minor changes to these 21 days before entering the residence contract.
- An expanded list of village operational documents that residents and prospective residents can inspect or request a copy of.

The 2018 Regulation requires additional information to be included in the form for application for registration of a retirement village. Because of the HLA Act amendments, some information about village operations previously contained in the Public Information Document will now be required for registration. Additional budget, financial and contract information is also required to enable the department administering the RV Act to better assess an application for registration.

The continuing sections regulating particulars for residence contracts will be reviewed in stage 2 RV Act implementation.

Consistency with policy objectives of authorising law

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

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives of prescribing the detailed requirements for the new forms and processes described above.

Benefits and costs of implementation

Information about the benefits and costs of the amendments was considered in the Regulatory Impact Statement developed to support the HLA Act amendments and were also provided in the explanatory notes accompanying the HLA Bill.

Inconsistency with policy objectives of other legislation

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

Consistency with fundamental legislative principles

The 2018 Regulation is consistent with fundamental legislative principles.

Consultation

A consultative group of resident, community and industry stakeholders has been established to support implementation of the HLA Act amendments. Members of this group include the Property Council of Australia (PCA), Leading Age Services Australia (LASA), Association of Residents of Queensland Retirement Villages (ARQRV), Tenants Queensland, COTA, National Seniors Australia, the Queensland Retirement Villages and Parks Advisory Service (QRVPAS – formerly the Park and Village Information Link) and the Queensland Law Society (QLS).

Feedback from this group was sought in June 2018 on drafts of the new approved forms that will support implementation of the 2018 Regulation. This feedback was also used in the process of finalising the 2018 Regulation.

On 26 October 2018, the consultative group was provided with a draft 2018 Regulation for consideration and feedback by 5 November 2018. Stakeholders providing feedback included the ARQRV, LASA, PCA, QLS, and QRVPAS.

The ARQRV advised they supported the information to be provided to prospective residents and said this would assist them to understand matters that were important to know about living in a retirement village. ARQRV also suggested prospective residents be informed about whether they were covered by the operator's insurance policies for any voluntary activities around the village.

QRVPAS feedback noted that the readability of the documents would be assisted if there were restrictions on operators adding other items and requiring that the information presented should be expressed clearly and in plain English.

QLS noted that within each village, there may be a variety of contract options for each unit, and the 2018 Regulation should clarify whether the prospective costs document covers each option or reflects the choice that may have already been made by the prospective resident. QLS also provided feedback about the village comparison document, and suggested changes to improve its usefulness.

The PCA and LASA held similar concerns that the detail to be provided would make it difficult for a prospective resident to navigate the precontractual documents and that the administrative burden on operators required to update these regularly will add costs for little benefit. Both the PCA and LASA sought urgent release of the finalised forms to enable business processes and systems to change and so that training of staff occurs in time for commencement of the stage 1 amendments on 1 February 2019. PCA and LASA feedback also assisted with clarifying several provisions in the draft 2018 Regulation.

Concerns raised by stakeholders were addressed by making changes to the 2018 Regulation where this was consistent with the policy articulated during Parliamentary consideration of the HLA Bill and in the materials that accompanied the HLA Bill. Some stakeholder suggestions could not be implemented because changes would be inconsistent with these policies, or not within the scope of the regulation-making powers in the Act. Some of these stakeholder suggestions, including those of ARQRV and QRVPAS, will be accommodated through the instructions for completing the approved forms pursuant to the 2018 Regulation.

In June and November 2018, the Office of Best Practice Regulation advised that the proposal for the 2018 Regulation is exempted from further regulatory impact assessment on the basis that they have already undergone an extensive impact assessment process.

Notes on provisions

Clause 1 sets out the title to the 2018 Regulation.

Clause 2 provides for commencement of the provisions of the 2018 Regulation on 1 February 2019. This provides time for industry, residents and the community to prepare for the changes.

Clause 3 inserts a section establishing the dictionary for particular words used in the 2018 Regulation located in schedule 7.

Part 2 Content of particular documents

Clause 4 provides that particulars for the application for registration of a retirement village scheme under section 27 of the RV Act are included in Schedule 1. This expands on the provisions contained in the 2010 Regulation and requires additional

information about the retirement village operations, budgets and contracts to be provided in the application for registration.

Clause 5 inserts the existing section under the 2010 Regulation which provides for details for residence contracts under section 45 of the RV Act.

Clause 6 provides that the information to be contained in a village comparison document to give general information about a retirement village to potential residents, as required under section 74 of the RV Act, is included in schedule 2. This section requires that a village comparison document must not contain information about more than one retirement village scheme.

Clause 7 provides that the information to be contained in a prospective costs document to give a prospective resident a summary of the estimated costs of moving into, living in and leaving a particular unit, as required by section 75 of the RV Act, is included in schedule 3. This section also requires that a prospective costs document may only be about one residence contract for the accommodation unit in that village the prospective resident will live in.

Clause 8 provides that the waiver that can be given under section 84 of the RV Act concerning relevant information documents to be given to a person before entering a residence contract must contain the matters included in schedule 4. The note to section 8 refers to section 84(4)(b) of the RV Act which requires that a waiver must state that the person obtained legal advice from a Queensland lawyer about entering into the residence contract.

Part 3 has two divisions establishing the requirements for entry and exit condition reports as provided for under sections 76 and 77 of the RV Act, respectively.

Division 1 deals with entry condition reports.

Clause 9 provides that this division prescribes how entry condition reports are to be completed by a scheme operator.

Clause 10 prescribes that the report must be completed by the person carrying out the inspection for the entry condition report to the best of that person's knowledge.

Clause 11 sets out the details required to be provided in the entry condition report. *Clause 11(3)* requires the scheme operator must comply with clauses 11(1) and (2) in completing the condition report, even if they include other documents, for example. photos, videos or copies of receipts, with the entry condition report.

Clause 12 provides that if a resident provides consent under the RV Act to complete the entry condition report in their absence, the operator must include that written consent in the report.

Division 2 deals with exit condition reports.

Clause 13 notes that this division sets out the requirements for an exit condition report.

Clause 14 prescribes that the report must be completed by the person carrying out the inspection for the exit condition report to the best of that person's knowledge.

Clause 15 sets out the details required to be provided in the exit condition report.

Part 4 prescribes the operational documents under the RV Act.

Clause 16 provides that schedule 5 prescribes the documents, described as 'operational documents' in section 85 of the RV Act, that may be accessed by a resident or prospective resident. This section also provides that a scheme operator's copy of a resident's residence contract and the public information document related to the contract may be accessed by the resident who entered into the contract.

Part 5 prescribes the fees payable under the RV Act.

Clause 17 provides that fees payable under the RV Act are in schedule 6 of the 2018 Regulation.

This section also lists those documents that an operator must not charge a prospective resident or resident a fee for.

This section also states that an operator must not:

- charge a resident for preparing or giving to the resident their residence contract or a public information document relating to their residence contract
- charge a prospective resident for preparing or giving to the prospective resident the proposed residence contract for the prospective resident.

Clause 18 repeals the 2010 Regulation.

Schedule 1 provides for the particulars of a scheme to accompany application for registration of a village under section 4 of the 2018 Regulation. This includes information about:

- identifying particulars, including of the scheme operator and the village manager
- retirement village land and facilities, including any restrictions on the use of land and facilities by residents, and other purposes for use of the land
- documents and forms to accompany the application
- personal services to be supplied or made available to residents
- charges, costs and fees payable by residents
- miscellaneous matters relating to development approvals and insurance for the village.

Schedule 2 provides for the particulars of a scheme to be contained in a village comparison document pursuant to section 6 of the 2018 Regulation. This includes information about:

- statements about the importance of obtaining legal advice and understanding the financial commitment and other important matters a prospective resident needs to know
- identifying information about the retirement village land owner, scheme operator and village manager

- accommodation units, including the types and tenure of units, disability access, reinstatement of units, capital gain and capital loss sharing, payment of exit entitlements, and the sales turnover of units in the village
- services, including general services, and any personal services and repair or maintenance service
- retirement village land and facilities, including any construction or redevelopment, and the types of facilities and any restrictions on their availability or use
- scheme funds including information on balances, and surplus and deficits for up to 3 financial years
- charges, costs and fees payable by residents to enter a village (ingoing contribution and other costs), the range of ongoing charges, and exit fees and other costs on leaving a village, and any options available under a residence contract in relation to these
- miscellaneous matters including age limits for residents, residential and home aged care, and information on pets, visitors, village by-laws and residents committee, accreditation, waiting list policy, and the list of operational documents that prospective residents and residents can access free of charge.

Schedule 3 provides for the information to be contained in a prospective costs document pursuant to section 7 of the 2018 Regulation. These include the following.

- statements about the importance of obtaining legal advice, understanding the financial commitment and other important matters a prospective resident needs to know.
- identifying information about the village and the prospective resident.
- information about the accommodation unit and the retirement village land.
- charges, costs and fees to become a resident, to reside in the village and exit the village and estimates of the exit entitlement payable under a residence contract.
- miscellaneous matters including insurance, capital gain or loss sharing and accessible operational documents and a signed and dated declaration by the scheme operator that the information is correct as at that date.

Schedule 4 provides for certain particulars pertaining to the scope of the legal advice to be given by a Queensland lawyer regarding the waiver pursuant to section 84 of the RV Act and section 8 of the 2018 Regulation.

Schedule 5 prescribes the operational documents as provided for by section 16(1) of the 2018 Regulation.

Schedule 6 sets out the fees payable as provided for by section 17 of the 2018 Regulation.

Schedule 7 is the Dictionary made under section 3 of the 2018 Regulation, which defines certain terms and words used in the 2018 Regulation.