

Retirement Villages (Closure, Transition and Redevelopment Plans and Other Matters) Amendment Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No. 255

made under the

Retirement Villages Act 1999

General Outline

Short title

Retirement Villages (Closure, Transition and Redevelopment Plans and Other Matters) Amendment Regulation 2019

Authorising law

Sections 40C, 41E, 74, 75, 85, 113C, 113E and 228 of the *Retirement Villages Act 1999*.

Policy objectives and the reasons for them

The objective of the *Retirement Villages (Closure, Transition and Redevelopment Plans and Other Matters) Amendment Regulation 2019* (Amendment Regulation) is to amend the *Retirement Villages Regulation 2018* (RV Regulation) 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 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. 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 were commenced in stages to ensure that important consumer protections are delivered as quickly as possible while allowing for

stakeholder consultation on approved forms, notices and regulations arising out of the HLA Act.

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

Further RV Act amendments commenced on 1 February 2019, with new requirements for precontractual disclosure, reinstatement, renovation and valuing of a unit for resale, and access to village operational documents for residents and prospective residents.

On 11 April 2019, the *Health and Other Legislation Amendment Act 2019* made further amendments to RV Act which clarified the requirements for scheme operators to purchase freehold accommodation units from residents 18 months after the resident terminates their right to reside.

All remaining HLA Act amendments to the RV Act automatically commenced on 11 November 2019 in accordance with section 15DA of the *Acts Interpretation Act 1954* and section 2 of the *Housing (Building Better Futures) Amendment (Postponement) Regulation 2018*.

The Amendment Regulation will support amendments to the RV Act that commenced on 11 November 2019, relating to changes in village operations. These include new requirements that apply when retirement village scheme operators propose to close a scheme, transfer control to a new scheme operator, or redevelop a retirement village.

Under the RV Act, closure plans, transition plans and redevelopment plans must be developed when a change in village operations is proposed. The plans must be in the approved form and state the matters prescribed by regulation. The purpose of the Amendment Regulation is to prescribe the relevant matters that must be included in the plans. This will improve consistency and compliance with the approved forms and will ensure the chief executive has sufficient appropriate information to determine whether the plans provide for processes which are clear, orderly and fair when making a decision about approving or revising a plan.

Additionally, from 11 November 2019, scheme operators are required to maintain separate accounts for their general services charges fund and maintenance reserve fund contributions for the retirement village.

Further HLA Act amendments which create heads of power related to more standardised contracts and financial reporting also commenced on 11 November 2019, however these changes are not effective until further regulation amendments are made which prescribe the matters to be included in these documents. Further regulation amendments will be made in 2020 in relation to these matters.

Achievement of policy objectives

The policy objectives of this Amendment Regulation are achieved by prescribing the content of approved forms to support the provisions in the RV Act that must be complied with when a retirement village operator is proposing a change in village operations. These include the following:

- the matters to be contained in the approved forms for a closure plan, redevelopment plan and transition plan
- the definition of redevelopment to include an expansion or reduction of an area of greenspace or parkland
- new information to be included in a village comparison document about whether a village is operating under an approved closure, transition or redevelopment plan
- prescribing an approved closure plan, approved redevelopment plan and an approved transition plan as village operational documents that residents and prospective residents may access free of charge
- new information in the precontractual disclosure documents about a scheme operator's mandatory purchase of unsold freehold units.

Prescribing these matters will improve consistency and compliance with the approved forms and will ensure the chief executive has sufficient appropriate information to determine whether the plans provide for processes which are clear, orderly and fair when making a decision about approving or revising a plan.

The Amendment Regulation also amends the RV Regulation to reflect the separation of funds for the general services charges fund and maintenance reserve fund.

Consistency with policy objectives of authorising law

The Amendment 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

The Amendment Regulation is not expected to have a significant ongoing impact on the operations, capacity and funding of government institutions. The amendments are expected to have a positive impact on the Department of Housing and Public Works, which is responsible for ensuring compliance with the RV Act, by making compliance requirements and processes clearer and more streamlined.

There are clear benefits to residents in making the amendments. Residents and consumer peak bodies have strongly supported the reforms to changes in village operations and the Amendment Regulation improves consumer protection for

residents, by requiring better communication and transparency during changes in village operations, which in the past, have had negative impacts on residents.

There will be costs on retirement village operators, and industry peak bodies have acknowledged the consumer protection elements in the Amendment Regulation but oppose the amendments made to the RV Act in 2017 that established the requirement for preparation of a redevelopment, transition or closure plan. Costs to operators include administering the new processes and communication required with residents and the chief executive (and any required revisions) required for development and approval of the plans.

The Government's policy intent is to provide a clear, orderly and fair process for changes in village operations, that balances resident engagement in the planning and approval process, with operators' commercial interests. It is considered that the benefits of improved consumer protection outweigh the impacts on operators.

Inconsistency with policy objectives of other legislation

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

Consistency with fundamental legislative principles

The Amendment Regulation is broadly consistent with fundamental legislative principles.

In clause 10, the word 'minor' has not been defined and no examples of a minor impact have been provided about impacts on residents' amenity, safety, privacy or quiet enjoyment. This may raise a minor inconsistency with section 4(3)(k) of the *Legislative Standards Act 1992* which requires that legislation "is unambiguous and drafted in a sufficiently clear and precise way" as no guidance is provided on the meaning of minor. This is justified as the ordinary meaning of the word minor can be applied and the inclusion of particular examples is likely to be unhelpful as these examples may have different impacts in different villages and circumstances.

Scheme operators are expected to consider the potential impacts on residents in the specific circumstances of their retirement village and make a reasonable assessment of whether a potential impact is sufficiently likely and significant to warrant a disclosure to residents.

Consultation

A consultative group of consumer, legal and industry stakeholders was established to support implementation of the HLA Act amendments. Members of this group included the Property Council of Australia, Leading Age Services Australia, Association of Residents of Queensland Retirement Villages, Tenants Queensland, COTA, National Seniors Australia, Urban Development Institute of Australia, the Queensland Retirement Villages and Parks Advisory Service and the Queensland Law Society.

Feedback from this group on the scope of plans for the change in village operation and regulation was sought in February – March 2019. Additional consultation with the group occurred in August – September 2019 after the consultative group was provided with copies of the draft approved forms to support the closure, redevelopment and transition plans. Written feedback was sought and provided, and separate workshops were conducted for consumer groups and for industry stakeholders (including input from their legal representatives). This feedback informed the development of the draft Amendment Regulation and improvements to the draft approved forms. A further short period of consultation with the group on the draft Amendment Regulation was completed in November 2019.

Resident and consumer legal groups supported the focus and content of the draft plans and the increased disclosure and protections for consumers, who can be adversely affected by changes in village operations.

Industry stakeholders raised issues with the RV Act amendments for changes in village operations and concerns that the plans will impede village redevelopment and impeded the transition of villages. Industry had sought less disclosure of information in the approved forms, however also provided constructive feedback to support the workability and accuracy of content in the approved forms. As a result of industry feedback, requirements in the plans were altered to provide greater flexibility for scheme operators.

On 8 August 2019, the Office of Best Practice Regulation advised that the proposal for amendments to the RV Regulation relating to changes in village operations are excluded from further regulatory impact assessment on the basis that they had already undergone extensive impact assessment process. This included a Consultation and Decision Regulatory Impact Statement, and consultation as part of the Parliamentary Committee review process for the Housing Legislation (Building Better Futures) Amendment Bill 2017 to support the amendments to the RV Act.

Notes on provisions

Clause 1 sets out the short title to the Amendment Regulation.

Clause 2 establishes that the Amendment Regulation amends the *Retirement Villages Regulation 2018*.

Clause 3 provides that a closure plan must state the matters listed in schedule 1A and a transition plan must state the matters listed in schedule 1B. It also clarifies that a closure plan or a transition plan must not state matters about more than 1 retirement village scheme.

Clause 4 provides that a redevelopment plan must state the matters listed in schedule 4A and cannot state matters about more than 1 retirement village.

Clause 5 prescribes that the definition of redevelopment for section 113C of the RV Act includes an expansion or reduction (other than a minor expansion or reduction) of an area of greenspace or parkland.

Clause 6 makes a consequential amendment to schedule 1 of the regulation for consistency of language.

Clause 7 inserts schedule 1A into the regulation, which lists matters to be stated in a closure plan. This includes information about:

- the requirements for closure plans under part 2, division 4 of the RV Act, and a statement about the importance of residents obtaining legal advice
- identifying information about the retirement village, scheme operator and village manager
- accommodation units, including the number of units in the village, the tenure of units, the number of residents, and the requirements relating to reinstatement work for accommodation units vacated on or after the declaration date for the closure plan
- retirement village land, including the real property description of the land and details of community titles which already exist for the retirement village land, or will be established for the retirement village
- consultation and other communication, including what consultation has occurred and what further consultation will be carried out with residents and other affected persons
- impacts of the closure, including impacts on the amenity, privacy, safety, and the quiet enjoyment of residents
- impacts of the closure on the maintenance and repair of capital items, the availability of general services, and the use of village facilities
- any assistance the scheme operator will provide to residents in relation to closing the scheme
- village funds, including revisions to funds during wind-down, how surpluses or deficits will be dealt with, when financial statements will be given, and details of the rights and obligations of former residents relating to the payment of charges
- financial matters, including information about unpaid exit entitlements, mandatory purchases of freehold units, how residents' exit entitlements will be worked out and the source of funds for the scheme operator to meet financial obligations
- whether the closure will be permanent or temporary
- the schedule for closing the scheme
- the reason for closing the scheme
- whether the scheme operator will offer any terms or conditions which are more beneficial to residents than what is required under the RV Act
- sources of information or advice about retirement villages for residents.

Clause 7 also inserts schedule 1B which lists matters to be stated in a transition plan. This includes information about:

- the requirements for transition plans under part 2, division 5 of the RV Act
- identifying information about the retirement village, scheme operator and village manager
- accommodation units, including the number of units in the village, the tenure of units and the number of residents

- retirement village land, including the real property description, details of the land owner and any impacts on existing building management statements or community titles schemes
- consultation and other communication, including what consultation has occurred and what further consultation will be carried out with residents and other affected persons
- the transition, including an estimate of the transition day, how operational documents will be transferred to the new scheme operator, how obligations of the existing scheme operator will be transitioned to the new scheme operator, and impacts on businesses operating in the retirement village
- village funds, including when the operator will transfer control of the village funds, budgets and statements to the new operator and whether capital replacement fund contributions have been made or will be managed
- financial matters, including details of exit entitlements payable to former residents, and mandatory purchases of residents' freehold interests in accommodation units as required under section 63A of the RV Act
- the reasons for the transfer of the scheme
- impacts of the transition on residents and actions to mitigate negative impacts.

Clause 8 amends schedule 2 which lists matters to be stated in a village comparison document. Amendments to schedule 2 include:

- declaratory information about the scheme operator's obligations under section 63A of the Act in relation to freehold properties. This reflects the amendments made by the *Health and Other Legislation Amendment Act 2019*
- consequential amendments which recognise the new requirement to maintain a separate general services charges fund from 11 November 2019, and transitional details for how surplus and deficits of general service charges are included for retirement village schemes registered before 11 November 2019
- whether there is an approved redevelopment plan, closure plan or transition plan for the scheme.

Clause 9 amends schedule 3 of the RV Regulation which lists matters to be stated in a prospective costs document to include information regarding mandatory purchases of residents' freehold interests in accommodation units as required under section 63A of the RV Act. This requires the prospective costs document to include information about the effect of amendments to the RV Act made by the *Health and Other Legislation Amendment Act 2019*.

Clause 10 inserts new schedule 4A which lists matters to be stated in a redevelopment plan. This includes information about:

- the requirements for redevelopment plans, under part 5, division 10 of the RV Act, and a statement about the importance of residents obtaining legal advice.
- Identifying information about the retirement village, scheme operator and village manager
- the number of residents in the retirement village
- accommodation units, including the number of units in the retirement village before the redevelopment and after the proposed redevelopment, the tenure of units, and the number of currently vacant units

- consultation and other communication, including what consultation has occurred and what further consultation will be carried out with residents and other affected persons
- details of the redevelopment, including the types of redevelopment proposed, a detailed description of the redevelopment, disclosure of ancillary changes to the retirement village as a result of the redevelopment, an estimated schedule for carrying out the redevelopment and whether development applications have been made or will be necessary
- impacts of the redevelopment (other than minor impacts) on the amenity, privacy, safety or quiet enjoyment of residents while the redevelopment is being carried out, and once the redevelopment is completed
- impacts of the redevelopment on features related to access for people with a disability, and support (universal) design features
- impacts of the redevelopment on facilities, services and businesses in the retirement village
- estimated impacts on the value of accommodation units during and after the redevelopment
- how access for workers, vehicles, equipment and emergency services will be handled during redevelopment
- details of any relocations that may be required as part of the redevelopment and how they will be organised
- details of any changes, maintenance or repair of capital items during redevelopment
- strategies for mitigating any negative impacts disclosed in the plan, including compensation or support available to residents
- impacts on budgets and retirement village funds
- sources of information and advice about retirement villages for residents.

Clause 11 amends schedule 5 of the RV Regulation to make consequential amendments to reflect the new requirement for a scheme operator to maintain separate accounts for the general services charge fund and maintenance reserve fund. It also prescribes approved closure plans, transition plans and redevelopment plans, as operational documents which may be requested by residents under section 16 of the RV regulation.

Clause 12 amends the dictionary of the RV Regulation.