

Retirement Villages (Transitional) Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No. 256

made under the

Retirement Villages Act 1999

General Outline

Short title

Retirement Villages (Transitional) Regulation 2019

Authorising law

Sections 228 and 237P of the *Retirement Villages Act 1999*

Policy objectives and the reasons for them

The objective of the *Retirement Villages (Transitional) Regulation 2019* (Transitional Regulation) is to support amendments to the RV Act made by the *Housing Legislation (Building Better Futures) Amendment Act 2017* (HLA Act) by facilitating the transition from the operation of the pre-amended RV Act to the operation of the amended RV 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 outlined in the explanatory notes that accompanied the introduction of 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.

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

From commencement of part 2, division 5 of the RV Act, a scheme operator must prepare a transition plan when it proposes to transfer control of a retirement village scheme to a new scheme operator. This plan must be provided to the chief executive who considers whether the plan provides for a process which is clear, orderly and fair. The chief executive may approve the transition plan or direct the scheme operator to revise the transition plan.

If the chief executive approves a transition plan, it must provide a *QCAT information notice* to residents about the decision to approve. If the chief executive gives the scheme operator a direction to revise the transition plan, it must provide a *QCAT information notice* to the scheme operator. However, division 5 of part 2 of the RV Act which deals with transfer of control of a retirement village scheme's operation to a new owner does not state that a person given a *QCAT information notice* may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the relevant decision.

The Transitional Regulation will support amendments by temporarily resolving the insufficiency in the RV Act which does not declare that people who receive a *QCAT information notice* in these circumstances can make an application to QCAT for a review of the relevant decision.

In accordance with section 237P of the RV Act, this Transitional Regulation expires on 11 November 2020 and will ensure residents and scheme operators can appeal decisions by the chief executive until an amendment to the RV Act can be made to permanently resolve the drafting insufficiency.

Achievement of policy objectives

The policy objectives of this Transitional Regulation are achieved by making provisions of a transitional nature which ensures that a person who has been given a *QCAT information notice* under part 2, division 5 of the RV Act may apply, as provided under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), to QCAT for a review of the decision.

Consistency with policy objectives of authorising law

The Transitional 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 ensuring procedural fairness for scheme operators and residents who are subject to a decision by the chief executive in relation to a transition plan.

Benefits and costs of implementation

This Transitional Regulation provides the benefit of overcoming a drafting insufficiency in the RV Act by declaring that a person who is given a *QCAT information notice* can make an application to QCAT for a review of the relevant

decision by the chief executive. This Transitional Regulation has no financial implications or other costs.

Inconsistency with policy objectives of other legislation

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

Consistency with fundamental legislative principles

The Transitional Regulation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Section 4(2)(b) *Legislative Standards Act 1992* – Whether subordinate legislation has sufficient regard to the institution of Parliament

The Transitional Regulation may be considered a breach of the fundamental legislative principles that legislation has sufficient regard to the institution of Parliament as it seeks to temporarily address an insufficiency in the RV Act.

Inconsistency with section 4(2)(b) is justified for the following reasons:

- The Transitional Regulation will expire one year after the commencement of section 237P
- The Transitional Regulation will be subject to potential disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*
- The head of power under section 237P of the RV Act received appropriate scrutiny during parliamentary processes for the passage of the HLA Act
- The Transitional Regulation ensures the policy intent of HLA Act is achieved by ensuring fairness for residents and scheme operators by allowing them to apply to QCAT to review decisions by the chief executive in relation to transition plans
- The Transitional Regulation is necessary to ensure the application of the RV Act is consistent with section 157 of the QCAT Act
- the Transitional Regulation is necessary to facilitate the transition from the pre-amended RV Act to the amended RV Act.

Consultation

A consultative group of resident, community 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 (formerly the Park and Village Information Link) and the Queensland Law Society.

The consultative group was not consulted on the Transitional Regulation, but broader consultation about the change of village operation plans, and the associated regulation has indicated an understanding from consumer and industry groups that decisions by the chief executive about transition plans will be reviewable by QCAT and give effect to the RV Act's requirement that such people be given a *QCAT information notice*. This Transitional Regulation ensures the RV Act operates in a way which is consistent with that shared understanding.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category e – Regulatory Proposals that are of a transitional nature).

Notes on provisions

Clause 1 sets out the title to the Transitional Regulation.

Clause 2 declares that the regulation is a transitional regulation that expires on 11 November 2020.

Clause 3 provides that a person who receives a *QCAT information notice* in relation to a transition plan under part 2, division 5 of the RV Act, may apply to QCAT as provided under the QCAT Act for a review of the decision.