Residential Services (Accreditation) (Extension of Transitional Provision for Retirement Villages) Amendment Regulation 2020

Explanatory notes for Subordinate Legislation 2020 No.134

made under the

Residential Services (Accreditation) Act 2002

General Outline

Short title

Residential Services (Accreditation) (Extension of Transitional Provision for Retirement Villages) Amendment Regulation 2020

Authorising law

Sections 4 and 184 of the *Residential Services (Accreditation) Act 2002*.

Policy objectives and the reasons for them

Retirement villages are primarily regulated under the *Retirement Villages Act 1999* (RV Act). All retirement villages in Queensland must be registered under the RV Act.

Residential services including, for example, boarding houses and aged rental schemes, are regulated under the *Residential Services (Accreditation) Act 2002* (RSA Act) and must register and be accredited under the RSA Act.

A leasehold or licence retirement village scheme, or that part of a leasehold or licence retirement village scheme, that comprises accommodation units that are:

- not self-contained; or
- self-contained where residents are provided with a food service or personal care service;

will be a residential service, unless it is an aged care service conducted under the *Aged Care Act 1997* (Cth).

Section 4 of the *Residential Services (Accreditation) Regulation 2018* (RSA Regulation) exempts a retirement village scheme from the RSA Act if the scheme is accredited by a body recognised by the Chief Executive.

To avoid unnecessary dual regulation and registration, section 4 of the RSA Regulation exempts a retirement village scheme from the RSA Act if the scheme is accredited by a body recognised by the Chief Executive. This is consistent with the 2002 Regulatory Impact Statement and the speeches made in support of the *Residential Services (Accreditation) Bill 2002*, which indicated the intention of the legislation included avoiding the potential for two different accreditation schemes with similar standards from operating in one retirement village.

Previously, under an earlier residential services regulation, a retirement village accredited by Aged Care Queensland, was exempt from registration and accreditation as a residential service under the RSA Act. However, as Aged Care Queensland no longer exists, there is no recognised industry body to accredit retirement villages.

The Australian Retirement Village Accreditation Scheme (ARVAS) is a new voluntary industry accreditation scheme for retirement villages and seniors housing which was established by the industry groups Property Council of Australia (PCA) and Leading Age Services Australia (LASA). ARVAS commenced operating in October 2019.

ARVAS includes seven quality standards that retirement villages must meet. The ARVAS standards are designed to work directly with the industry's Retirement Living Code of Conduct.

As ARVAS only commenced operations recently, it is difficult to assess the effectiveness of the scheme. Further time is required to consider the effectiveness of ARVAS, and the department will be better able to assess the scheme after ARVAS has been operating for one year. In addition, in order to meet the ARVAS criteria, many operators are now establishing policies and procedures that they may not have previously had in place. Extending the transitional provision in the RSA Regulation for two years, until 31 August 2022, will provide time for intending operators to become compliant and accredited with ARVAS.

Achievement of policy objectives

The policy objectives of this Amendment Regulation are achieved by extending the transitional provision in the RSA Regulation by two years to 31 August 2022 to ensure the following:

- retirement villages are not subject to dual regulation, which would impose costs on operators;
- adequate time for ARVAS to be implemented effectively;
- adequate time for operators to become compliant and accredited with ARVAS; and
- time for the department to assess the impact of the ARVAS.

If the extension to the transitional provisions regarding accreditation of retirement villages is not made, the undesired consequence is that retirement villages will be subject to regulation and registration under both the RV Act and the RSA Act. This would impose costs on operators which would ultimately be passed on to residents.

To date, there has been no disadvantage to residents referable to villages not having to register under the RSA Act.

Consistency with policy objectives of authorising law

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

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving the policy objectives

There are no alternative means of achieving the policy objectives.

Benefits and costs of implementation

There are no additional costs to government in implementing this Amendment Regulation. The Amendment Regulation has clear benefits for operators, residents and the department administering the legislation. If the Amendment Regulation is not made, it would mean dual regulation and costs for operators, which may be passed onto residents. In addition, there would be costs to the department to regulate and register retirement villages under the RSA Act as well as under the RV Act.

The benefits and costs of the amendment was considered when the department undertook an agency self-assessment as part of the regulatory impact assessment process. The Amendment Regulation defers a potential regulatory burden while providing time for industry to implement an accreditation scheme which has benefits for village operators and residents. These include the scheme’s requirement to maintain seven standards relating to community management, human resource management, resident entry and exit, resident engagement and feedback, community environment, services and facilities, safety and security and resident care (where applicable).

Peak bodies, including resident groups, have been consulted and support the extension of the transitional provision in the RSA Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

In February 2020, the Property Council of Australia (PCA), Leading Age Services Australia (LASA), Urban Development Institute of Australia (UDIA) and Association of Residents of Queensland Retirement Villages (ARQRV) were consulted regarding the proposal to extend the transition time. All parties indicated their support for the proposal.

The ARQRV raised concerns as to who will pay for the implementation of ARVAS in individual villages and any resulting additional costs at a village level. These costs are attributable to voluntary participation by retirement village operators in the ARVAS scheme and not to this Amendment Regulation. Any costs incurred through implementation of the ARVAS will be given attention during the department's examination of the ARVAS scheme.

In May 2020, the Ministerial Housing Council Consultative Group (with an interest in retirement villages) comprising ARQRV, Council on the Ageing, National Seniors Australia, Queensland Law Society, Caxton Legal Centre, PCA, LASA and UDIA was consulted about the draft Amendment Regulation. UDIA re-affirmed their support for the Amendment Regulation. Feedback was not received from the MHC Group however, several the individual stakeholder groups had already indicated their support for the proposal in February 2020.

Notes on provisions

Clause 1 sets out the short title to the Regulation.

Clause 2 provides that this Amendment Regulation amends the RSA Regulation.

Clause 3 inserts a new part 5, division 1, before section 13 of the RSA Regulation. Sections 13 and 14 of the RSA Regulation fall under this division. The new division deals with the transitional provisions in the RSA Regulation. Section 13 of these transitional provisions provide that a retirement village scheme is not a residential service during the period starting on the commencement of the RSA Regulation and ending 2 years after. Section 2 of the RSA Regulation provides that it commenced on 1 September 2018 and so, if this Amendment Regulation is not made, the transitional period will expire on 31 August 2020.

Clause 4 inserts a note in section 13 of the RSA Regulation which refers to new section 15 regarding the application of section 13.

Clause 5 inserts a new part 5, division 2 and new section 15, after section 14 of the RSA Regulation. The new heading relates to new section 15.

New section 15 provides that the reference to 2 years in section 13, is a reference to 4 years. This will mean that this transitional provision will expire, not on 31 August 2020, but on 31 August 2022.