

Retirement Villages (Exempt Schemes) Amendment Regulation 2022

Explanatory notes for Subordinate Legislation 2022 No. 59

made under the

Retirement Villages Act 1999

General Outline

Short title

Retirement Villages (Exempt Schemes) Amendment Regulation 2022

Authorising law

Sections 63A, 63, 70D and 228 of the *Retirement Villages Act 1999*.

Policy objectives and the reasons for them

The objective of the *Retirement Villages (Exempt Schemes) Amendment Regulation 2022* (the Amendment Regulation) is to amend the *Retirement Villages Regulation 2018* to declare Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village exempt from mandatory buyback requirements in the *Retirement Villages Act 1999* (the Act).

Section 63 of the Act requires a scheme operator to pay a resident's exit entitlement 18 months after the resident terminates their right to reside in a retirement village. Similarly, section 63A – 63I of the Act requires a scheme operator to enter into and complete a contract to purchase a former resident's freehold retirement village unit 18 months after that resident terminates their right to reside in the village. These are commonly referred to as mandatory buyback requirements.

In Queensland, there are a small number of resident-operated retirement villages where residents own and control the retirement village and operate the village as the scheme operator.

In late 2020, a statutory review by a four-member independent panel with expertise in law, gerontology, business and finance indicated that despite protections in the Act, seniors in resident-operated retirement villages were experiencing distress, insecurity and emotional impacts as a result of the buyback requirements. The panel recommended that resident-operated retirement villages should be granted an exemption from mandatory buyback requirements where they met particular criteria.

On 20 October 2021, the *Housing Legislation Amendment Act 2021* amended the Act to introduce a framework to exempt resident-operated retirement villages from mandatory buyback requirements in the Act.

Under Part 3 Division 5B of the Act, the Minister may recommend to the Governor in Council the making of a regulation which declares a retirement village scheme exempt if the Minister is satisfied that each residence contract under the scheme is based on a freehold interest in an accommodation unit that is the resident's freehold property, and the exemption would be appropriate because of the extent to which –

- each residence contract under the scheme is based on a freehold interest in an accommodation unit that is the resident's freehold property; and
- the exemption would be appropriate because of the extent to which:
 - the residents are in a position to control or influence the affairs of the scheme operator in relation to the operation of the scheme; and
 - for any of the accommodation units, the scheme operator's assets and ability to generate income are likely to be insufficient to purchase the resident's freehold property.

The Act also provides that the Minister may have regard to any relevant matter when deciding whether an exemption for a scheme would be appropriate, including—

- whether, for a scheme in which the retirement village land is land included in a community titles scheme, the common area of the retirement village is common property under the community titles scheme, or a lot owned by the body corporate under the community titles scheme
- the extent to which, other than as required by the Act, the scheme operator has any control over, or involvement in, the sale of a former resident's accommodation unit
- the extent to which, other than as required by the Act, a former resident is required to refurbish, reinstate or renovate the former resident's accommodation unit before it may be sold
- the extent to which the scheme operator makes any profit from fees or charges payable by residents
- whether any amount is payable to the scheme operator on the sale of an accommodation unit.

In October 2021, Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village requested to be declared exempt from mandatory buyback requirements under the Act.

Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village are both retirement villages where residents substantially own and are in control of the retirement village scheme. Both retirement villages are registered and operate as a community titles scheme under the *Body Corporate and Community Management Act 1997*. Neither retirement village derives significant profit from the operation of the scheme and does not have sufficient operational income to fund mandatory buybacks. These retirement villages also do not directly involve themselves in the sale or marketing of accommodation units, and do not charge exit fees greater than is necessary to cover administrative expenses.

Following consideration of each application, the Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts recommended to the Governor in Council the making of a regulation declaring Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village exempt from mandatory buyback requirements.

Achievement of policy objectives

To achieve its policy objectives, the Amendment Regulation will declare that Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village are exempt under section 70D of the Act.

Under section 70E of the Act, mandatory buyback requirements under sections 63(1)(c) and 63A of the Act do not apply to the scheme operator of an exempt scheme in relation to a former resident.

Consistency with policy objectives of authorising law

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

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives of exempting resident-operated freehold retirement villages from mandatory buyback requirements under the Act.

Benefits and costs of implementation

This Amendment Regulation will benefit Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village by ensuring these retirement villages are not required to fund mandatory buybacks of accommodation units 18 months after a resident terminates their right to reside in the village. This will reduce the amount of stress and uncertainty felt by residents in the village, and remove the administrative burden and costs associated with any future applications to the Queensland Civil and Administrative Tribunal these retirement villages may have needed to make in relation to extensions of time for mandatory buybacks.

It is anticipated that the government will not incur any costs in relation to implementing this regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

In October 2021, the Department of Communities, Housing and Digital Economy wrote to seven Queensland retirement villages that have previously identified as being resident-operated. These retirement villages were provided with a factsheet on the legislative amendments and the process for gaining an exemption and were advised to contact the department if they wished to apply for an exemption from mandatory buyback requirements. Retirement villages that expressed an interest in receiving an exemption were provided with additional information and a request for evidence that would assist the department assess whether an exemption would be appropriate for the retirement village.

In October 2021, Peninsula Park Retirement Estate and Peninsula Gardens Retirement Villages requested to be declared exempt under section 70D of the Act.

On 3 May 2022, the Office of Best Practice Regulation advised that the proposal to declare Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village exempt required no further regulatory impact analysis on the basis of exclusion category (k) of the *Queensland Government Guide to Better Regulation*: regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear that there are no significant adverse impacts.

Notes on provisions

Section 1 provides the short title of the regulation.

Section 2 provides that this regulation amends the *Retirement Villages Regulation 2018*.

Section 3 inserts new section 16B into the *Retirement Villages Regulation 2018* specifying that retirement villages listed in schedule 5A are declared exempt under section 70D of the Act.

Section 4 inserts Schedule 5A which lists Peninsula Gardens Retirement Village and Peninsula Park Retirement Estate as exempt schemes and provides the address and the name of the scheme operator for each village.