

# Residential Services (Accreditation) (Exclusion of Retirement Villages) Amendment Regulation 2022

Explanatory notes for Subordinate Legislation 2022 No. 94

made under the

*Residential Services (Accreditation) Act 2002*

## General Outline

### Short title

Residential Services (Accreditation) (Exclusion of Retirement Villages) Amendment Regulation 2022

### 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.

This avoids unnecessary dual regulation and registration. 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 voluntary industry accreditation scheme for retirement villages and seniors housing which was established by the industry groups Property Council of Australia and Leading Age Services Australia.

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. These include 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).

ARVAS first commenced operating in October 2019, but industry advised that the uptake of ARVAS slowed after scheme operators deployed resources and energy to respond to the COVID-19 pandemic. Due to a lack of efficacy data, ARVAS cannot yet be adequately assessed as to whether it should be a recognised accreditation body under the RSA Act.

Further time is required to consider the effectiveness of ARVAS once more operators have become accredited and the scheme has become more established. 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 until 30 June 2025, will provide time for interested retirement village scheme operators to pursue ARVAS accreditation.

Australian Government responses to aged care and disability royal commissions may result in legislative and regulatory framework changes that may intersect with the operations of the RSA Act and RV Act in Queensland. Further time is required for the Australian Government to progress its reforms and for these to be considered in relation to accreditation of retirement villages in Queensland.

## **Achievement of policy objectives**

The policy objectives of this Amendment Regulation are achieved by extending the transitional provision in the RSA Regulation until 30 June 2025 to ensure the following:

- retirement villages are not subject to dual regulation, which would impose costs on operators
- adequate time for operators to become compliant and accredited with ARVAS

- time for the department to assess the impacts of ARVAS
- time for the consideration of the Australian Government's response to the aged care and disability royal commissions, and the intersections with Queensland legislation and ARVAS, including any gaps in the accreditation scheme and gaps in regulatory oversight of privately funded care.

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 likely be passed on to residents.

To date, there has been no identified disadvantage to residents relating to villages not being required 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 not inconsistent 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 on to residents. In addition, there would be costs to the department to register and regulate retirement villages under the RSA Act as well as under the RV Act.

The benefits and costs of the amendment were 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 a voluntary accreditation scheme.

Implementation also benefits operators and residents by allowing time for the department to assess the impacts of ARVAS and consider the Australian Government's response to aged care and disability royal commissions. The department will also have more time to examine the intersections of those changes with Queensland legislation and ARVAS, including any gaps in the accreditation scheme and gaps in regulatory oversight of privately funded care.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is broadly consistent with fundamental legislative principles.

## **Consultation**

In June 2022, the Housing Legislation Consultative Group (with an interest in retirement villages) comprising the Association of Residents of Queensland Retirement Villages, Council on the Ageing, National Seniors Australia, Queensland Law Society, Caxton Legal Centre, Property Council of Australia, Leading Age Services Australia and Urban Development Institute of Australia were consulted on the proposal to extend the transition time.

Only the Urban Development Institute of Australia provided a formal response, which confirmed its support for the extension of the transitional period and proposed review of ARVAS. Feedback was not received from other members through the consultation process however several stakeholder groups indicated their support for the extension during regular discussions with the department.

In accordance with the Queensland Government Guide to Better Regulation, the Regulation meets Category (d) – Regulatory proposals of a savings nature, an agency-assessed exclusion category and accordingly does not require consultation with the Office of Best Practice Regulation.

## **Notes on provisions**

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

*Clause 2* provides the regulation amends the RSA Regulation.

*Clause 3* inserts a new Part 5, Division 3 and new section 16, after section 15 of the RSA Regulation. The new Division relates to the new section 16.

New section 16 creates a new provision which establishes a new transitional period which extends the period during which retirement villages are not residential services until 30 June 2025.

The Amendment Regulation has been drafted to allow for the existing transitional provisions (section 13 as modified by section 15) to remain in force until 31 August 2022. At this time, the new transitional period will extend the period during which retirement villages are not residential services until 30 June 2025.