

# Retirement Villages (Exempt Schemes) and Other Legislation Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No. 180

made under the

*Residential Tenancies and Rooming Accommodation Act 2008*  
*Retirement Villages Act 1999*

## General Outline

### Short title

*Retirement Villages (Exempt Schemes) and Other Legislation Amendment Regulation 2023*

### Authorising law

Section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act).  
Sections 63A, 63, 70D and 228 of the *Retirement Villages Act 1999* (RV Act).

### Policy objectives and the reasons for them

*Residential Tenancies and Rooming Accommodation Regulation 2009 – Cross-references*

The objective of Part 2 of the *Retirement Villages (Exempt Schemes) and Other Legislation Amendment Regulation 2023* (Amendment Regulation) is to amend the *Residential Tenancies and Rooming Accommodation Regulation 2009* (RTRA Regulation) to correct minor cross-referencing errors. These errors were introduced by the *Residential Tenancies and Rooming Accommodation Amendment Regulation 2022*, which inserted in the RTRA Regulation conditions for approval to keep a pet in rental premises, to give effect to changes introduced through the *Housing Legislation Amendment Act 2021* (HLA Act).

#### *Retirement Villages - Exempt Schemes*

The objective of Part 3 of the Amendment Regulation is to amend the *Retirement Villages Regulation 2018* (RV Regulation) to declare Peninsula Terraces and Haven Retirement Complex (Peninsula Terraces), Kensington Gardens Retirement Village (Kensington Gardens), Pebble Beach Retirement Village (Pebble Beach), and Seachange Retirement Village (Seachange) exempt from mandatory buyback requirements in the RV Act.

Section 63 of the RV 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 RV 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 2020, an independent review identified fundamental differences between the arrangements for resident-operated retirement villages and other retirement villages. The review recommended that resident-operated retirement villages be exempted from mandatory buyback requirements to minimise potential distress and uncertainty for residents by removing the financial burden.

On 20 October 2021, the HLA Act amended the RV Act to introduce Part 3 Division 5B, which provides a framework to exempt resident-operated retirement villages from mandatory buyback requirements in the RV Act.

Under Part 3 Division 5B of the RV 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 RV 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; and

- whether any amount is payable to the scheme operator on the sale of an accommodation unit.

On 26 May 2022, the Governor in Council made the *Retirement Villages (Exempt Schemes) Amendment Regulation 2022* to amend the RV Regulation. Under Schedule 5A of the RV Regulation, Peninsula Park Retirement Estate and Peninsula Gardens Retirement Village were made exempt from the mandatory buyback requirements in accordance with Section 70D of the RV Act.

Peninsula Terraces, Kensington Gardens, Pebble Beach, and Seachange have also requested an exemption from the mandatory buyback requirements under the RV Act. These villages are registered and also operate as community titles schemes under the *Body Corporate and Community Management Act 1997*. They do not derive significant profit from the operation of their schemes, nor do the retirement villages have sufficient operational income to fund the buybacks. The retirement villages do not directly involve themselves in the sale or marketing of accommodation units, and do not charge fees greater than is necessary to cover administrative expenses.

Following consideration of each application, the Minister for Housing recommended to the Governor in Council the making of a regulation declaring Peninsula Terraces, Kensington Gardens, Pebble Beach, and Seachange exempt from the mandatory buyback requirements.

## **Achievement of policy objectives**

### *RTRA Regulation – Cross-references*

The Amendment Regulation will correct minor cross-referencing errors in the RTRA Regulation.

### *Retirement Villages - Exempt Schemes*

To achieve its policy objectives the Amendment Regulation will declare Peninsula Terraces, Kensington Gardens, Pebble Beach, and Seachange exempt from mandatory buyback requirements.

Under section 70E of the RV Act, mandatory buyback requirements under sections 63(1)(c) and 63A of the RV 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**

### *RTRA Regulation – Cross-references*

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

### *Retirement Villages - Exempt Schemes*

The Amendment Regulation is consistent with the objectives of the RV 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 correcting the cross-references.

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

## **Benefits and costs of implementation**

### *RTRA Regulation – Cross-references*

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

The Amendment Regulation will benefit the Residential Tenancies Authority, lessors and tenants by providing clarity around the conditions for approval to keep a pet in a rental premises.

### *Retirement Villages - Exempt Schemes*

The Amendment Regulation will benefit Peninsula Terraces, Kensington Gardens, Pebble Beach, and Seachange 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 (QCAT) 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 has been drafted considering the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is consistent with these principles. Sufficient regard has been given to the rights and liberties of individuals and the institution of Parliament.

### *RTRA Regulation – Cross-references*

The amendments to the RTRA Regulation are consistent with fundamental legislative principles.

### *Retirement Villages - Exempt Schemes*

The Explanatory Notes for the HLA Act, which inserted the mandatory buybacks exempt scheme amendments into the RV Act, considered potential inconsistency with fundamental legislative principles. It noted a potential breach relating to retrospectively altering the right of a former resident who would otherwise have their unsold accommodation unit purchased by the scheme operator 18 months after they terminated their right to reside (subject to any exemption being granted by QCAT), where that retirement village is granted an exemption from the mandatory buyback.

Retrospective application of these provisions is justified to address the significant stress and uncertainty for residents of resident-operated villages arising from the prospect of having to potentially raise significant amounts of money to fund the scheme operator to buyback unsold units or risk the village becoming insolvent.

The *Community Support and Services Committee Report No. 7, 57<sup>th</sup> Parliament – Housing Legislation Amendment Bill 2021* commented that the Committee was satisfied that any retrospective impact on individual rights is justified in the circumstances, having regard to the overall objective of the amendments to the RV Act.

The scheme operators for the retirement villages seeking an exemption declaration under the RV Regulation have not advised of any unsold accommodation units subject to a mandatory buyback at their respective villages.

## **Consultation**

### *RTRA Regulation – Cross-references*

Consultation was not required in relation to these amendments.

### *Retirement Villages - Exempt Schemes*

In October 2021, the then 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 to assess whether an exemption would be appropriate for the retirement village.

Peninsula Terraces, Kensington Gardens, Pebble Beach, and Seachange have requested an exemption from the mandatory buyback requirements under the RV Act.

## Notes on provisions

*Section 1* provides the short title of the regulation.

*Section 2* provides that this regulation amends the *Residential Tenancies and Rooming Accommodation Regulation 2009*.

*Section 3* amends Schedule 2, part 2, clause 48(2)(b)(ii) to correct a cross referencing error.

*Section 4* amends Schedule 3, part 2, clause 40(2)(b)(ii) to correct a cross referencing error.

*Section 5* amends Schedule 3A, part 2, clause 39(2)(b)(ii) to correct a cross referencing error.

*Section 6* provides that this regulation amends the *Retirement Villages Regulation 2018*.

*Section 7* amends Schedule 5A of the *Retirement Villages Regulation 2018* to add Peninsula Terraces and Haven Retirement Complex, Kensington Gardens Retirement Village, Pebble Beach Retirement Village, and Seachange Retirement Village as exempt schemes and provides the address and the name of the scheme operator for each village.