

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

RETIREMENT VILLAGES AMENDMENT REGULATION 2016 (No 1)

SL2016-27

EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA
Minister for Justice and Consumer Affairs**

RETIREMENT VILLAGES AMENDMENT REGULATION 2016 (No 1)

Introduction

This explanatory statement relates to the *Retirement Villages Amendment Regulation 2016 (No 1)* (the Amending Regulation). It has been prepared in order to assist the reader of the Amending Regulation.

The statement is to be read in conjunction with the Amending Regulation. It is not, and is not meant to be, a comprehensive description of the Amending Regulation.

Outline

Purpose of the Regulation

The Amending Regulation makes consequential amendments to the *Retirement Villages Regulation 2013* so that it is consistent with the *Retirement Villages Amendment Act 2016*.

The Amending Regulation updates the Retirement Villages Regulation to reflect recent changes made in the following areas:

- operator and residents agreeing to change the timeframe for preparation of an annual budget;
- removal of the Consumer Price Index (CPI) measurement for increases in recurrent charges;
- requiring separate resident consent to the proposed annual budget expenditure and increases in recurrent charges; and
- the introduction of an internal dispute resolution process for retirement villages.

The Amending Regulation also makes some editorial changes to the Retirement Villages Regulation to update cross-references and reflect renumbering of sections.

Regulatory impact statement

A regulatory impact statement is not required for this regulation as it does not impose any appreciable costs on the community, or a part of the community.

Human Rights Implications

The Amending Regulation does not engage the *Human Rights Act 2004*.

Clause Notes

Clause 1 Name of regulation

This clause provides that the name of this regulation is the *Retirement Villages Amendment Regulation 2016 (No 1)*.

Clause 2 Commencement

This clause provides that this regulation commences on the commencement of section 3 of the *Retirement Villages Amendment Act 2016*. This provides that the amendments made in the Amendment Act and Amending Regulation will be effective at the same time.

Clause 3 Legislation amended

This clause provides that this regulation amends the *Retirement Villages Regulation 2013*.

Clause 4 Section 31

This clause omits section 31 of the Retirement Villages Regulation.

Section 31 refers to notices of amendment of recurrent charges provided to village residents where the amendment was not made by fixed formula and did not exceed CPI. This clause removes this section in response to amendments made by sections 32 to 36 of the Retirement Villages Amendment Act, which removed the CPI measurement for increases in recurrent charges.

Clause 5 Section 32

This clause amends section 32 of the Retirement Villages Regulation.

Section 32 applies to notices of amendment of recurrent charges provided to village residents where the amendment was not made by fixed formula and was greater than CPI. This clause updates the section in response to amendments made by sections 32 to 36 of the Retirement Villages Amendment Act, which removed the CPI measurement for increases in recurrent charges.

Clause 6 Section 32(c)(x)

This clause substitutes section 32(c)(x) of the Retirement Villages Regulation.

This editorial amendment adds the words “on any grounds” to section 32(c)(x), which refers to the ability of residents to apply to the ACAT for an order directing the refund of overpaid recurrent charges. This makes section 32(c)(x) consistent with the wording of section 155(1) of the Retirement Villages Act.

Clause 7 Section 37

This clause substitutes section 37 of the Retirement Villages Regulation.

Section 37 applies to a notice accompanying a proposed annual budget. This section refers to the CPI measurement of increases in recurrent charges. This section also refers to circumstances in which residents were taken to have consented to proposed budget spending, including if recurrent charges had not been increased since the previous annual budget, recurrent charges were increased in accordance with a fixed formula and the increase in recurrent charges was not greater than the increase in CPI.

This clause amends section 37 to reflect amendments made in clauses 32 to 36 of the Retirement Villages Amendment Act, which removed the CPI measurement for increases in recurrent charges. This clause also refers to amendments made in sections 39 and 40 of the Retirement Villages Amendment Act, which amended the Retirement Villages Act to allow residents and the operator to agree to change the timeframe for preparation of a proposed annual budget and provided that separate resident consent was required to budget spending. This clause clarifies in the notice that consent by residents to amendment of recurrent charges does not constitute consent to spending stated in the proposed budget.

Clause 8 Section 41

This clause amends section 41 of the Retirement Villages Regulation to update the reference to the heading of section 176 of the Retirement Villages Act.

The heading of section 176 of the Act, headed “Disputes between operator and resident” was changed in section 46 of the Retirement Villages Amendment Act to state “Disputes between operator and resident—application to ACAT”. This amendment was made in response to the insertion of a new internal dispute resolution process for residents and operators in section 44 of the Amendment Act. This clause makes the section 41 reference consistent with the Amendment Act.

Clause 9 – Section 57 heading

This clause substitutes the heading of section 57 of the Retirement Villages Regulation.

Section 57 refers to the prescribed rate of interest. This clause updates the numbering of the reference to the regulation-making power in the Retirement Villages Act to refer to section 238(7)(b) of the Act. This amendment reflects changes made to the section numbering of the Act in amendment 1.57 in the *Justice and Community Safety Legislation Amendment Act 2013* (A2013-7).

Clause 10 Schedule 3, items 19 and 20

This clause amends items 19 and 20 in schedule 3 of the Retirement Villages Regulation.

Schedule 3 outlines the time during which applications to the ACAT may be made. This clause updates the section references in items 19 and 20 of the Schedule to reflect section numbering changes made to section 238 and section 240 in sections 50 and 51 of the Retirement Villages Amendment Act.