

Australian Capital Territory

Retirement Villages Amendment Regulation 2025 (No 1)

Subordinate law SL2025–1

made under the

Retirement Villages Act 2012, s 264 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Retirement Villages Amendment Regulation 2025 (No 1)* (**the regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

The regulation amends the *Retirement Villages Regulation 2013* (the **RV Regulation**) to prescribe new obligations on operators of retirement villages in the ACT to develop and administer a prevention of elder abuse strategy. The changes proposed through this regulation are based on similar provisions in NSW (discussed further below).

The regulation also amends the operational and meeting procedures of the residents committee for a retirement village to expand the circumstances in which a person can hold office on a residents committee for more than three years and to amend the process around how ballots for special resolution must be prepared and distributed. These amendments have been developed in consultation with the Retirement Villages Working Group, which consists of resident, industry and government stakeholders.

Prevention of elder abuse strategy

Elder abuse in a NSW context

The Retirement Villages Residents Association NSW (**RVRA NSW**) reported in June 2023 that 44% of female residents and 34% of male residents experienced abuse, intimidation, harassment or patronisation. Most commonly, the abuse was reported to come from other residents or staff.¹ Recent research by the Australian Institute of Family Studies (**AIFS**) has also highlighted the significant impact elder abuse can have on individuals.² The AIFS estimated 14.8% of the population aged over 65 experience abuse and found psychological abuse was the most common subtype (11.7%).

RVRA NSW's report recommended implementing strategies to mitigate the risks of elder abuse, including raising awareness of the forms of elder abuse, and the negative consequences of elder abuse (for example, residents withdrawing from activities, leaving a village, and the financial and wellbeing consequences), including through the Elder Abuse Policy each NSW retirement village is required to prepare.³ Similarly, the AIFS found a need for policy and program development to prevent, identify and assess elder abuse, and to increase awareness and education of elder abuse.⁴

NSW Retirement Villages – Requirement to prepare an elder abuse policy

In 2017, the NSW Government introduced a regulation under section 52A of the *Retirement Villages Act 1999* (NSW), introducing Rules of Conduct for Operators of Retirement Villages. The purpose of the reform was to improve the accountability of operators and impose obligations on operator conduct in a range of areas, including resident safety and wellbeing.

Rule 10 of the Rules of Conduct requires retirement village operators in NSW to prepare and give effect to a strategy for the identification and prevention of any elder abuse in the retirement village. The operator is required to post a copy of the strategy on the village's notice board, ensure all staff are familiar with the strategy, and review the strategy every two years.

Without limiting any other matter that may be included, the Strategy must include the following information:

- examples of common forms of elder abuse as well as specific examples in relation to retirement villages,

¹ Retirement Villages Residents Association, [Ageing without fear: Survey report](#), June 2023.

² Australian Institute of Family Studies, [National Elder Abuse Prevalence Study: Final Report](#), July 2021.

³ Retirement Villages Residents Association, [Ageing without fear: Survey report](#), June 2023, p. 31.

⁴ Australian Institute of Family Studies, [National Elder Abuse Prevalence Study: Final Report](#), July 2021, p. 5.

- information on how to identify elder abuse including signs of elder abuse, and how to prevent elder abuse,
- information on ways to respond to elder abuse or concerns about suspected elder abuse (including procedures for reporting abuse and escalating matters to appropriate organisations and authorities, and response times),
- an explanation of the roles and responsibilities of the operator and of the operator's staff in relation to elder abuse in the retirement village,
- guidance for accessing the services and resources of the NSW Elder Abuse Helpline and Resource Unit, the Ageing and Disability Commissioner and other relevant local services and support agencies.

ACT context

At present, it is estimated between 4,000 and 5,000 people live in retirement villages in the ACT. Several new retirement villages are set to open over the coming years.

In the ACT, the *Retirement Villages Act 2012* (the **RV Act**) regulates retirement villages. The RV Act places obligations on retirement village operators, including requiring them to ensure that the village generally is reasonably safe (section 91 (1)). Section 91 (2) (h) provides that the operator must take any action prescribed by regulation to ensure that the village generally is reasonably safe, however, to date no actions have been prescribed.

The ACT Human Rights Commission handles complaints involving retirement village residents as well as complaints about abuse, neglect and exploitation of people aged over 60 and adults with a disability.

The HRC has been raising awareness of the rights of retirement village residents and the HRC's vulnerable person jurisdiction over the preceding couple of years.

There is a significant degree of consistency between the RV Act and the *Retirement Villages Act 1999* (NSW). As such, there is benefit in maintaining this consistency to the extent possible, given a number of operators manage village in both jurisdictions, and NSW's close geographic proximity.

The ACT Government considers the introduction of a requirement for a retirement village operate to develop an elder abuse strategy will complement the HRC's retirement village and vulnerable persons jurisdictions. It will assist both retirement village operators and residents to prevent, and respond appropriately, to abuse, neglect and exploitation, and thereby promote the safety of individual residents and the village as a whole.

Maximum term for retirement village residents committee members

Section 104 (1) of the RV Act prohibits a person from holding the same office, or an office exercising the same (or substantially the same) function, on the residents committee for a retirement village for more than three consecutive years, except as provided by regulation.

Section 20 of the RV Regulation then provides that a person may hold the same office on the residents committee of a retirement village for more than three consecutive years if –

- the retirement village has fewer than 20 residents; or
- the annual budget of the retirement village is less than \$50,000, and
- (in both cases) the director general has not written to the residents committee objecting:
 - generally to any person holding the same office for more than three consecutive years; or
 - to a stated person holding the same office for more than three consecutive years; and
 - has not written to the residents committee to withdraw the objection.

In 2023, the ACT Government convened a retirement villages working group, comprising representatives from retirement village residents and operators, as well as community service providers and relevant government representatives. Through this forum, residents have told government these rules are causing confusion about how long a person may remain on a residents' committee.

There is agreement between residents and retirement village operators that the rules should be more flexible in allowing people to hold offices for more than three years, in certain circumstances. For certain offices, such as the Treasurer position, a specialised skillset is required. As a result, there may be a lack of people willing or able to take on the role, particularly in smaller villages.

At the same time, residents and operators agreed that there was benefit in allowing new people with fresh perspectives and ideas onto residents committees and ensuring that residents committees are not led by the same people for extended periods of time.

Stakeholders agreed that the current requirements in NSW were broadly appropriate. In New South Wales a member of a residents committee can hold the same office for more than three years where:

- the person is the only person standing for election to the office, or

- the residents of the retirement village consent by special resolution to the person standing for election to the office.

However, stakeholders did not agree to include both circumstances at this time. As such the provisions in this regulation expand the circumstances in which a person can hold office for longer than three years to include where the individual is the only person standing for election to the office.

Preparation of ballot papers by Returning Officers

Where a matter arises that requires a special resolution to be passed at a meeting of residents, Schedule 4.8 (4) (e) of the RV Regulation requires that 21 days written notice of the meeting must be given to each resident and that the notice of meeting must be accompanied by (amongst other things) “a ballot paper initialled by the returning officer.” The RV Regulations require that a person must be elected as returning officer by show of hands at a meeting of residents (Sch 4, s4.3).

To be eligible for election as a returning officer (RO), the person nominated must be present at the meeting at which the written ballot is to be held; must be a resident of the retirement village; must not be a member of the residents committee; and must not be standing for election to the residents committee (s.4.3). These qualifying conditions must be satisfied on the day of the meeting at which the written ballot is required. Difficulties may also arise where no one in attendance wishes to fulfil this role and the progress of the meeting can stall.

The legislation is also unclear on whether the position of RO may be an ongoing appointment or whether an election and appointment of an RO is required at each meeting at which the ballot will be held. It is possible that those villages that wish to elect someone as an ongoing RO (e.g. for a period of one year) may do so. However, some residents consider that the ongoing appointment of a RO may be problematic for a number of reasons, such as the RO being unable to attend, the RO ceasing to be a resident, or where the RO has a conflict in carrying out their duties in relation to a particular ballot or where they are otherwise disqualified under Schedule 4.3.

In circumstances where there is no ongoing appointment of an RO, retirement villages can also encounter issues in trying to comply with the requirement for initialling ballot papers prior to a meeting as no RO has been elected at the time the ballot papers need to be initialled (at least 21 before the meeting is held). This may mean that a meeting must be convened simply to elect a RO for the purpose of issuing ballot papers for a subsequent meeting. While special resolutions are not a regular occurrence, the administrative burden of the existing procedure can cause significant delays in conducting the meeting in a timely manner.

To avoid unnecessary delays at a meeting, the regulation makes changes to allow the function of preparing and initialling the ballot papers to be delegated to an office holder of the residents committee, or the operator if the operator has convened the meeting. This means the ballots can be prepared in advance of the meeting so they are ready for distribution when the ballot is called. This may assist in avoiding unnecessary delays for attendees proceeding with a special resolution. It also ensures the integrity of the RO role is retained by ensuring that the counting and reporting on votes is carried out by the elected RO (whether this person is elected on an ad hoc or ongoing basis).

Ballot paper distribution

At present, when a notice of a meeting that requires a special resolution is distributed, the notice must include matters prescribed under section 4.8 (4) as well as a ballot paper initialled by the RO. Notices are sent to all residents of the retirement village.

Residents who do not attend the meeting may cast a postal vote in accordance with section 4.9. The provision states that residents casting a postal vote must make their vote in writing and give it to either the residents committee, or if no committee, the operator of the retirement village. It is unclear whether the ballot paper that is sent out with the meeting notice is intended to be used by a resident exercising a postal vote. This is because may be interpreted from reading 4.8 (4) (c) that, without further instruction under 4.8 (4) (d), the ballot paper may not be necessary for the resident to cast their vote.

When a meeting is held, attendees and proxies are given an additional ballot paper to use for voting purposes (section 4.4 (3)). This results in an attendee or proxy having duplicate ballot papers and could therefore result in more than one ballot paper being submitted by a single voter.

To remove the administrative burden of preparing ballot papers for the notices, as well as avoiding the potential of more than one ballot paper being submitted by a resident, the amendments omit the requirement for the ballot paper to be sent out with the meeting notice. This will result in only those attending the meeting and eligible to vote receiving a ballot paper during the meeting. It is noted that meeting notices will still be required to include the details of any special resolution that will be put to a meeting so a person who is unable to attend a meeting and who wishes to appoint a proxy will still be able to direct their proxy on how to vote even without having a ballot paper.

The provisions have also been updated to allow for the circumstances where the residents committee did not convene the meeting, or there is no

committee. In these circumstances the amended provisions clarify that the operator is to carry out these functions.

HUMAN RIGHTS IMPLICATIONS

The regulation supports human rights under the *Human Rights Act 2004 (the HRA)*. In particular, the amendments which require an operator to establish a prevention of elder abuse strategy promotes section 10 of the HRA – Protection from torture and cruel, inhuman or degrading treatment etc. The requirements for all retirement villages in the ACT to have a strategy in place imposes a positive obligation on operators by ensuring sufficient procedures and practices are in place to deal and respond to reports of abuse or suspected abuse of vulnerable residents. The strategy also helps empower people to act and provides an appropriate framework for helping prevent abuse and address matters where abuse has or is suspected to have occurred.

REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required as the regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

CLAUSE NOTES

Clause 1 Name of regulation

Clause 1 provides that the name of the regulation is the *Retirement Villages Amendment Regulation 2025 (No 1)*.

Clause 2 Commencement

This clause indicates that the commencement date of the regulation is three months after the day it is notified.

Clause 3 Legislation amended

This clause indicates that the regulation amends the *Retirement Villages Regulation 2013 (the RV Regulation)*.

Clause 4 New section 18A to 18C

This clause inserts the new provisions in relation to prevention of elder abuse strategies.

New Section 18A

This new section introduces the requirement that the operator of a retirement village must prepare and administer a written prevention of elder abuse

strategy (**the strategy**) for identifying and preventing elder abuse within a retirement village.

Subsection 18A (2) sets out what the strategy must include examples and information to help identify and prevent situations where elder abuse may occur in a retirement village. The strategy must also include information about how to respond and report cases where elder abuse is suspected or may be occurring. The operator must outline how the reports can be made to them and the timeframes within which they will respond, how to make an older people service complaint with the ACT Human Rights Commission as well as how to refer the report to another suitable entity, such as law enforcement. The operator must also set out their roles and responsibility in dealing with actual or suspected elder abuse and provide information on how to access additional support services for victims and other affected parties, such as family members or caregivers.

New subsection 18A (3) defines elder abuse in a retirement village to mean any act or omission by any person that causes or allows the exploitation, mistreatment, harm or neglect of a resident of the village. The definition is deliberately broad. It is intended to encompass the broad range of behaviours which can be considered abusive, including, for example, mental, physical, and financial abuse, and coercive control. It is also intended to work harmoniously with other ACT legislation, such as the offences relating to abuse of a vulnerable person in the *Crimes Act 1900* (including the definition of abusive control), and provisions relating to vulnerable people complaints in the *Human Rights Commission Act 2005*.

The definition also provides that the abuse may be committed by any person, to reflect that the abuse or suspected abuse may be the result of the actions of a broad range of people, including, for example, a member of the operator's staff, a staff member of an entity providing services in the village, another resident, family member or caregiver.

Clause 18C also cross-references the definition of an *older people service complaint* contained in the *Human Rights Commission Act 2005*.

New Section 18B

This section prescribes for how the strategy must be published in an easily accessible manner. This includes displaying the strategy in a communal area, electronically via their website and any other manner that the operator may consider necessary to bring it to the attention of relevant parties including current and (potential) future residents as well as family members. The operator must also ensure that all staff are familiar with the strategy and if requested, must provide a person with the strategy within two business days of receiving the request.

New Section 18C

This section prescribes that the strategy must be reviewed by the operator every two years to ensure it is up to date and reflects any changes in practices or procedures by the operator for managing suspected or actual elder abuse within a retirement village. This is complemented by new section 18A (2) (f) which requires that the strategy includes the date it is finalised so that it is clear when the strategy has been made and when it is due for a review.

Once a strategy has been reviewed, the revised strategy must be published. The revised strategy must then also be reviewed again in 2 years' time.

Clause 5 Section 20 (1)

This clause makes a minor amendment to the wording from 'The residents committee *of* a retirement village' to 'The residents committee *for* a retirement village' to align with the wording used in the RV Act.

Clause 6 New section 20 (1) (c)

This clause inserts the new subsection (c) to make further provision for situations where a person may hold an office on the residents committee for more than three consecutive years. This includes where there are no other persons standing for election to the office.

Clause 7 Section 20 (3), definition of hold the same office

This clause makes a minor amendment to the wording from 'The residents committee *of* a retirement village' to 'The residents committee *for* a retirement village' to align with the wording used in the RV Act. It also inserts an example of *office* to include references to common roles such as president, treasurer, secretary.

Clause 8 Schedule 4, Section 4.1, definition of *qualified voter*

This clause omits the definition of *qualified voter* from section 4.1 so that the definition is just located in the Dictionary.

Clause 9 Schedule 4, section 4.1, definition of *returning officer*

This clause corrects a drafting error. The current provision indicates that a returning officer is a person elected as a returning officer under section 4.6. This is an incorrect section reference. This amendment corrects that error so that the provision now refers to the reader to section 4.3 which sets out the process for electing a returning officer.

Clause 10 Schedule 4, Section 4.3 (1)

This clause makes a minor amendment to the wording from 'The residents committee *of* a retirement village' to 'The residents committee *for* a retirement village' to align with the wording used in the RV Act.

Clause 11 Schedule 4, Section 4.4 (1)

This clause removes the requirement for the returning officer to prepare the ballot papers and provides that this can be undertaken by any member of the residents committee, or if the committee has not convened the meeting, or there is no committee, the operator.

Clause 12 Schedule 4, Section 4.4 (3)

This clause is consequential to the amendment in clause 11.

At present section 4.4 (3) requires the returning officer to give each qualified voter (or their proxy) a ballot paper which they have initialled. Clause 11 now provides that the ballot paper can be prepared by any member of the residents committee, or if the committee has not convened the meeting or there is no committee, the operator, rather than the returning officer.

Clause 12 now clarifies that when the returning officer gives each qualified voter (or their proxy) a ballot paper, the ballot must have been initialled by the person who prepared the ballot paper.

Clause 13 Schedule 4, Section 4.8 (2) and (3), except note

This clause amends section 4.8 (2) and (3) but retains the existing note.

New section 4.8 (2)

This new section clarifies who must give residents written notice of a meeting at which a special resolution will be put. It indicates that the notice must be given by either the residents committee or the operator. This clause retains the requirement that the amount of notice that needs to be given is 21 days.

New section 4.8 (3)

This new section clarifies that a vote under section 112 (5) of the RV Act is in relation to a special resolution and amends the sentence structure.

Clause 14 Schedule 4, Section 4.8 (4) (d) and (e)

This clause replaces subsections 4.8 (d) and (e) to clarify how a resident seeking to vote prior to a meeting requiring a special resolution can cast that vote. It indicates that the resident must ask the entity that convened the meeting (e.g., the residents committee or the operator) for a ballot paper and then cast their vote in accordance with the postal vote provisions set out in section 4.9.

Clause 15 Schedule 4, section 4.9 (1) (b)

At present section 4.9 indicates that a qualified voter can cast a postal vote by giving it in writing to either the residents committee, or, if there is no residents committee, to the operator.

However, there may be circumstances where a residents committee exists but the meeting has been convened by the operator (for example if the operator is proposing the change the village rules).

In order to reflect a circumstance where a meeting may not have been convened by the operator and not the residents committee, this clause updates section 4.9 (1) (b) so that it includes reference to the circumstances where the residents committee has not convened the meeting (i.e. it has been called by the operator).

The provision now indicates that a qualified voter can cast their vote by giving their postal vote to the residents committee or if the committee did not convene the meeting, or if there is no committee, then the vote can be given to the operator.

Clause 16 Dictionary, notes 1 and 2

This clause updates Note 1 to align with current drafting practice.

Clause 17 Dictionary, note 3

This amendment is consequential to the change in clause 16 which condenses notes 1 and 2 into a single note. This clause updates the numbering of the Notes so that note 3 becomes note 2.

Clause 18 Dictionary, new definition of prevention of elder abuse strategy

This clause inserts the definition of ***prevention of elder abuse strategy*** into the Dictionary. It refers the reader to the definition of ***prevention of elder abuse strategy*** contained at new section 18A (1).

Clause 19 Dictionary, definition of *qualified voter*

This amendment is consequential to the amendment in clause 8 which omits the definition of qualified voter from section 4.1.

This clause substitutes the definition of ***qualified voter*** in the dictionary of the RV Regulation. At present the definition of ***qualified voter*** refers the reader to the definition of ***qualified voter*** at section 4.1. As this definition is deleted from 4.1 via clause 8 the definition of qualified voter is now inserted directly into the dictionary.

qualified voter is defined to mean a resident of the retirement village where the ballot is conducted.