

Australian Capital Territory

# Retirement Villages (Capital maintenance and replacement) Guidelines 2019

Notifiable instrument NI2019–405

made under the

Retirement Villages Act 2012, s136A (Capital maintenance and replacement guidelines)

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## 1 Name of instrument

This instrument is the *Retirement Villages (Capital maintenance and replacement) Guidelines 2019*.

## 2 Commencement

This instrument commences on 1 July 2019.

## 3 Declaration

I make the attached guidelines about capital maintenance and replacement.

Shane Rattenbury  
Minister for Justice, Consumer Affairs and Road Safety  
24 June 2019

## Retirement Villages (Capital maintenance and replacement) Guidelines 2019

### Introduction

A common issue in the interpretation and application of the *Retirement Villages Act 2012* (the Act) is the distinction between capital maintenance and capital replacement. Division 7.2 of the Act has the effect that residents are generally responsible for the cost of capital maintenance (which includes repairs), and operators are generally responsible for the costs of replacing capital items (capital replacement).

There are exceptions to these general provisions, such that operators are not responsible for replacing capital items that are owned by a resident (for which the resident is responsible), items that are common property in a units plan or items in newly constructed villages where some responsibility may remain with the builder for a period of time.

The classification of works as capital maintenance or capital replacement depends on the nature of the item being maintained, repaired or replaced as well as the extent to which those works improve, alter or add to the item. The purpose of these Guidelines is to provide scenario-based information for residents about the distinction between capital maintenance and replacement. The Guidelines provide examples of commonly encountered capital maintenance and capital replacement issues to assist residents, village operators and other industry participants with the interpretation of Division 7.2 of the Act.

### Relevant definitions

The following terms are defined in the Act and are replicated here for convenience.

<p><b>capital item</b>, for which the operator of a retirement village is responsible</p>	<p>(a) means—</p> <ul style="list-style-type: none"> <li>(i) a building or structure in the village; and</li> <li>(ii) plant, machinery or equipment used in the village’s operation; and</li> <li>(iii) any part of a building or structure in the village, including any part of a building or structure in a community area, amenity area, service area or access area; and;</li> <li>(iv) any other item prescribed by regulation; but</li> </ul> <p>(b) does not include a capital item that is—</p> <ul style="list-style-type: none"> <li>(i) owned by a resident of the village; or</li> <li>(ii) common property under a community title scheme or units plan; or</li> <li>(iii) prescribed by regulation.</li> </ul>
<p><b>capital maintenance</b></p>	<p>(a) means works carried out for repairing or maintaining a capital item; and</p> <p>(b) includes works prescribed by regulation as being capital maintenance; but</p>

	(c) does not include works prescribed by regulation as not being capital maintenance.
<b>capital replacement</b>	(a) means works carried out for replacing a capital item; but (b) does not include – (i) capital maintenance; or (ii) replacing a part of a capital item (unless replacing the part substantially improves, adds to or alters the capital item).

### **Examples of capital maintenance and capital replacement**

The table below provides examples only. It is not intended to provide definitive advice on every possible item requiring clarification. In each case the specific circumstances should be objectively considered in light of the provisions of Division 7.2 of the Act. The provisions of the Act will override the Guidelines to the extent of any inconsistency.

The table below provides examples of works that will constitute capital replacement and works that will constitute capital maintenance, payable either from the capital works fund or recurrent charges.

The table also contains examples of operator expense improvements. These improvements are not capital replacement or maintenance. The Act does not use the term “operator expense improvements”. The examples are included here for guidance. The operator must bear the cost of improvement of a capital item for which the operator is responsible. The funding for such an improvement is not to come from the recurrent charges or the Capital Works Fund.

The table has been prepared for use with a typical loan and licence or lease arrangement and does not relate to capital items owned by individual residents, nor does it relate to common property under a Community Title Scheme or Units Plan.

The division of items at residents’ expense into items funded from the capital works fund and items funded from recurrent charges is illustrative of common practice only. Under the Act, retirement villages are not required to have a capital works fund. Items listed in the table below under the capital works fund column may be funded from recurrent charges (whether or not a capital works fund exists).

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<b>External items</b>			
<b>Roads, paths and paved areas</b>			
<p>Construction of new road, path or paved area and replacement of existing road, path or paved area with one of a superior construction.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>• Construction of path to new community building or other building/s.</li> <li>• Replacing existing concrete road with new higher strength, concrete road to prevent ongoing damage by heavy vehicles</li> </ul>	<p><b>Replacement of</b> (or replacement of discrete, independent lengths of) roads, paths and paved areas of similar construction.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>• Replacing damaged pavers, building new sand bed and relaying 100% of the damaged section of pathway.</li> <li>• Removal of existing bitumen road, rebuilding the road base and applying new road surface. <i>(to full length of driveway)</i></li> </ul>	<p>Repairing or resurfacing the village roads, paths and paved areas to original condition. (Where the repair involves the complete reconstruction of the paved area, it must be to less than the total length of any roadway, path or paved area.)</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>• Repair of potholes in the road</li> <li>• Relaying existing path pavers that have subsided (can be to total length of an independent path)</li> <li>• Removal of existing bitumen road surface and reapplying new road surface to a percentage of the roadway that requires repair.</li> </ul>	<p>Regular maintenance done on a short time cycle, minor cost repairs.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>• Regular high-pressure cleaning of a concrete BBQ surround</li> <li>• Replacing a single damaged paver</li> <li>• Line marking on roads and car parks</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<b>Village bus</b>			
<p>Purchase of initial bus for the village or upgrade of the bus.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing bus motor with more powerful motor</li> <li>Converting the bus from petrol to diesel or gas</li> </ul>	<p>Purchase of replacement bus (regardless of reasons for replacements) or leasing cost for bus acquired on long-term lease.</p> <p><b>Or</b></p> <p>Replacement of a full engine with a rebuilt one.</p>	<p>Repair and maintenance of bus.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Regular service (3,6 or 12 months)</li> <li>Purchase of new tyres</li> <li>Repairing the transmission</li> <li>Replacing the head gasket on an engine.</li> <li>Regular inspections</li> </ul>	<p>Regular maintenance done on a short time cycle, minor cost repairs and provision of consumable items <sup>1</sup>.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Running costs such as fuel/diesel costs</li> <li>Checking and replacing the water and oil</li> <li>Replacing a headlight fuse or bulb</li> <li>Cleaning and polishing the bus</li> </ul>
<p><sup>1</sup> If usage of the bus is shared with another village or a residential care facility, expenditure from either the Capital Works Fund or Recurrent Charges is to be justified by Management producing time sheets showing the usage of the bus by each facility on each occasion.</p>			
<b>Swimming pool</b>			
<b>Pool generally</b>			
<p>Upgrading the pool surface finish or changing the structure of the pool.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Removing an existing pebblecrete finish and upgrading it with a tiled finish that has a longer life cycle and is easier to keep clean</li> <li>Adding depth marker signs</li> </ul>	<p>Replacing all of the pool finish with a similar surface finish.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacement and retiling of all of the tiles on the pool surface, rather than just an area of damaged tiles, when matching replacement tiles are not available and the operator wishes for aesthetic reasons to retain a</li> </ul>	<p>Repairing damaged pool finish, provided that the work is limited to what is required to reinstate the surface finish.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Re-grouting the tiled surface</li> <li>Replacement of part of the pool surface to repair physically damaged areas</li> </ul>	<p>Regular upkeep done on a short time cycle or minor cost repairs.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Cleaning down the exposed tiling once a week</li> <li>Repair of a small area of grouting</li> <li>Weekly cleaning of pool and testing of pool water</li> <li>Supply of pool chemicals</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<p>around the exposed edge of the pool to meet safety standards</p> <ul style="list-style-type: none"> <li>Building in steps or a ramped entry to the pool</li> </ul>	<p>uniform tiled appearance</p>		
<b>Pool equipment and furniture</b>			
<p>Purchase of first pool cleaner or furniture items or upgrading existing equipment or furniture.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Installing a pool heater for the first time</li> <li>Upgrading to a solar powered pool heater to reduce the operating costs</li> </ul>	<p>Replacement of pool equipment &amp; furniture with similar items.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Purchase of replacement pool cleaner, pool pumps, pool filtration pump, pool umbrella or deck chairs</li> </ul>	<p>Maintenance and repairs of existing pool equipment and furniture, including routine servicing of equipment as preventative maintenance.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Scheduled servicing / maintenance of filtration equipment done every four months</li> <li>Replacing motor in pool pump.</li> <li>Mending tears/rips in the fabric of pool umbrella or replacement of umbrella pole</li> </ul>	<p>Regular maintenance / servicing done on a short time cycle, minor cost repairs and provision of consumable items.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Scheduled servicing / maintenance of filtration equipment done once a month</li> <li>Wiping down pool furniture</li> <li>Replacing the filter in filtration equipment</li> </ul>
<b>Telephone / television cabling</b>			
<p>Purchase and installation of the cabling system for the first time or upgrading of existing system.</p> <p><b>Example:</b></p>	<p>Replacement of (or replacement of discrete independent sections of) cabling or major equipment.</p> <p><b>Example:</b></p>	<p>Repair and maintenance of the cabling system and related equipment. (Where the repair involves the replacement of</p>	<p>Regular maintenance done on a short time cycle, minor cost repairs and provision of consumable items.</p> <p><b>Example:</b></p>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<ul style="list-style-type: none"> <li>Replacement of the total cabling system throughout the village, or some of its components, to take advantage of better technology or enable compatibility with other systems</li> <li>Installation of booster on TV cabling</li> <li>Installing new antenna or phone point</li> </ul>	<ul style="list-style-type: none"> <li>Total replacement of the phone cabling between the central PABX and an accommodation unit</li> <li>Replacement of satellite dish</li> <li>Replacement of phone handsets</li> </ul>	<p>cabling, it must be to less than the total length of any discrete, independent cable run.)</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacement of part of phone cabling between the central PABX and accommodation unit</li> <li>Replacement of component in satellite dish</li> </ul>	<ul style="list-style-type: none"> <li>Replacing a connector on the end of a cable</li> <li>Adjusting an antenna's orientation to improve reception</li> </ul>
Storm water or sewerage pipes			
<p>Installation of new storm water and sewerage pipes and replacement with pipes of a superior quality.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing existing pipes with new higher strength pipe materials</li> </ul>	<p>Replacement (or replacement of discrete independent sections of) storm water or sewerage pipes.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing all storm water or sewerage pipes</li> <li>Replacement of whole length of sewerage pipe between an accommodation unit and sewer main</li> </ul>	<p>Repairing the village storm water or sewerage pipes to original condition. (Where the repair involves the complete <b>replacement</b> of the storm water or sewerage pipe, it must be to less than the total length of any section of storm water or sewerage pipe.)</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Repair of a storm water or sewerage pipe that is leaking at a joint in the piping</li> </ul>	<p>Regular maintenance done on a short time cycle and <b>minor cost repairs.</b></p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Cleaning of storm water pipes</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<b>Landscaping / gardens</b>			
<p>The initial creation of a new garden bed or lawn or the significant improvement of an existing garden bed.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>the installation of a new feature plant/tree</li> <li>the installation of a new water feature or garden statue; or the substantial alteration of an existing garden bed to one having improved features</li> <li>Replacing older fencing around garden with higher fences or fences made from stronger or more aesthetically pleasing material</li> </ul>	<p>Re-establishment of a substantial component of the overall gardens and grounds in the village.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing all fences with identical fences or replacing a whole length of fence</li> <li>In a large garden bed, all the existing plants are removed, and the bed is completely replanted with new flowers (that are different but need not substantially change the life or use of the gardens)</li> <li>Re-turfing an existing lawn with similar grass after the existing grass dies.</li> </ul>	<p>Maintenance of the existing plants, trees and lawns and one-off replacement of individual small / non-feature plants.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Irregular replacement of individual plants forming part of a larger garden bed (with the same plant or a plant filling a similar function in the bed)</li> <li>Re-turfing of a minor lawn area</li> <li>Tree lopping carried out on a systematic basis during the year</li> <li>Systematic fertilization of garden beds and lawns</li> <li>Replacing less than a whole length of fence (ie replacing individual panels or palings) where the whole length of fence does not otherwise require replacement.</li> </ul>	<p>Regular gardening activities done on a short time cycle, replacement of individual low-cost plants and provision of consumable items used on an on-going basis.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Regular mowing, edging and trimming of lawn.</li> <li>Pruning of small trees and shrubs as part of the routine maintenance of the village gardens and grounds</li> <li>Spot application of fertilizer around existing plants</li> <li>Minor repair/maintenance to fencing such as re-nailing individual palings that have come loose or tightening screws holding fencing panels together.</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<b>Internal – Common areas</b>			
<b>Furniture, fixtures &amp; equipment in community buildings and office / service provision</b>			
<b>Computer systems</b>			
Purchase of upgraded or superior computer hardware and software.	Replacement of computer system components. <b>Example:</b> <ul style="list-style-type: none"> <li>Replacement of malfunctioning hard drive (including any associated technician service fees)</li> </ul>	Computer system maintenance and support. <b>Example:</b> Virus protections and software updates.	Computer system maintenance and support. <b>Example:</b> <ul style="list-style-type: none"> <li>Computer technician services fees for resolving identified system issue</li> </ul>
<b>Kitchen equipment &amp; utensils</b>			
Purchase of the kitchen equipment for the first time or upgrading of existing equipment. <b>Example:</b> <ul style="list-style-type: none"> <li>Initial purchase of a deep fryer</li> <li>Purchase of a new attachment for a multi-function dough-mixing machine</li> <li>Replacement of a standard microwave with a convection microwave</li> </ul>	Replacement of equipment costing more than \$200 per item <b>Example:</b> <ul style="list-style-type: none"> <li>Replacement of a microwave</li> <li>Replacement of commercial toaster</li> <li>Replacement of a full setting of crockery when it is no longer possible to replace individual small cost items from an older setting.</li> </ul>	Maintenance and repairs of existing kitchen equipment, utensils and cold rooms including routine servicing of equipment as preventative maintenance and replacement components of the equipment. <b>Example:</b> <ul style="list-style-type: none"> <li>Replacement of blades for the 'in-sink-erator'</li> </ul>	Regular maintenance / servicing done on a short time cycle, minor cost repairs and replacements. <b>Example:</b> <ul style="list-style-type: none"> <li><b>Replacement</b> of stove element including contractor fees</li> <li><b>Replacement</b> of a toaster</li> <li><b>Replacement</b> of jug from crockery setting</li> <li>Microbiological testing to cool room and or equipment</li> </ul>
<b>Furniture and drapes in community building</b>			
Purchase of furniture or drapes for the first time or upgrading of	Replacement of furniture and drapes. <b>Example:</b>	Maintenance and repairs of existing furniture and drapes, including preventative	Regular maintenance / servicing done on a short time cycle, minor cost repairs and replacements.

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<p>existing furniture or drapes</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing existing curtains</li> <li>Initial purchase of a display case</li> </ul>	<ul style="list-style-type: none"> <li>Replacement of lounge sofa</li> <li>Replacement of a set of French curtains</li> </ul>	<p>maintenance and <b>replacement</b> of components of the furniture and drapes</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Dry cleaning of window furnishings done every 6 months</li> <li>Recovering upholstered chairs.</li> </ul>	<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Stitching / minor repairs</li> <li>Cleaning Venetian blinds every 3 months.</li> </ul>
<b>Carpet and vinyl floor coverings</b>			
<p>Initial purchase of carpet or replacement of carpet with a superior surface</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Carpet is laid over what was previously polished timber flooring</li> </ul>	<p>Replacement of all of (or a discrete area of) the existing carpet with similar carpet.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing the carpet in one room that is damaged beyond spot patching, but leaving the existing matching main corridor carpet unchanged</li> </ul>	<p>Cleaning and repairs to carpet or vinyl flooring in common area.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Steam cleaning of carpet</li> <li>Spot patching of carpet to repair small area of stain or damage</li> </ul>	<p>General maintenance and cleaning of carpet in common area.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Daily vacuuming of carpet</li> <li>Simple spot stain removal</li> </ul>
<b>Windows / doors and other glazing</b>			
<p>Purchase and installation of glazing for the first time or upgrading of existing glazing.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing timber framed windows with aluminium framed windows that require less maintenance</li> </ul>	<p>Replacement of doors or windows or glazing (where the glazing is a discrete, independent element) with similar items</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacement of glazing forming a shop front or feature wall (where not part of an insurance claim)</li> </ul>	<p>Maintenance and repairs of windows and doors and other glazing elements, including preventative maintenance and replacement of components.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Repair to window or door glass where old glass has been damaged or</li> </ul>	<p>Regular maintenance / servicing done on a short time cycle, minor cost repairs and replacements.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacement of the putty in a timber framed window</li> <li>Lubrication of hinges</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<ul style="list-style-type: none"> <li>Upgrading to double glazing or UV protection glazing</li> <li>Replacing clear glazed feature wall with frosted glazing</li> </ul>	<ul style="list-style-type: none"> <li>Replacement of timber window with similar window due to deterioration of timberwork</li> <li>Replacement of timber entry door</li> </ul>	<p>smashed (where not part of an insurance claim)</p> <ul style="list-style-type: none"> <li>Patching &amp; repainting of damaged door</li> <li>Annual cleaning of exterior of glazing in non-operable windows on a high-rise building.</li> </ul>	
<b>Residence unrelated – Internal and external</b>			
<b>Painting</b>			
<p>Painting on new additions to the village, repainting of existing paintwork with a higher quality finish and repainting of existing paintwork as an incidental part of other improvement works.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>When a wall is due for painting, replacing the existing standard paint finish with a suede finish paint</li> </ul>	<p>Repainting of accommodation unit on termination as part of reinstatement costs only if the operator is responsible for the cost (refer to individual resident's contract).</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>A determination of the requirement to repaint the walls will be made on re-instatement and responsibility for these costs is in accordance with the resident's contract.</li> </ul>	<p>Repainting of interior or exterior of accommodation unit during period of resident's occupancy</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>The resident has occupied the unit for a number of years and the normal life of the painting has been reached</li> </ul>	<p>Minor touch-up / spot painting.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Touching up scratches on stair balustrades or door frames</li> </ul>
<b>Guttering and Roofing</b>			
<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing tiled roof with colour bond roof.</li> </ul>	<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing a whole roof with a new roof.</li> </ul>	<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing a section (but not the whole roof) of an existing tiled</li> </ul>	<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>Replacing a small number of broken tiles on a tiled roof</li> </ul>

OPERATOR EXPENSE		RESIDENTS EXPENSE	
Operator expense Improvements	Capital Replacement	Capital Works Fund	Recurrent Charges
<ul style="list-style-type: none"> <li>Installing gutter guard.</li> </ul>	<ul style="list-style-type: none"> <li>Replacing a whole length of downpipe with an identical length of downpipe.</li> </ul>	<ul style="list-style-type: none"> <li>roof with roof tiles</li> <li>Replacing less than a whole length of downpipe where the whole length of the downpipe does not otherwise require replacement</li> </ul>	<ul style="list-style-type: none"> <li>Repairing a leaking gutter.</li> </ul>

It is acknowledged that these Guidelines are based on a document that was originally developed by Aged Care Queensland Inc. and subsequently revised and republished by organisations including the Association of Residents of Queensland Retirement Villages Inc. (ARQRV). The material drawn from that document is used here with the permission of the ARQRV.