



New South Wales

# Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019

under the

Retirement Villages Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Retirement Villages Act 1999*.

KEVIN ANDERSON, MP  
Minister for Better Regulation and Innovation

## Explanatory note

The object of this Regulation is to prescribe rules of conduct for operators of retirement villages. The rules include matters such as professionalism, training, competencies, performance and behaviour in connection with the management or operation of retirement villages.

Section 83B of the *Retirement Villages Act 1999* makes it an offence for the operator of a retirement village to contravene a provision of the rules of conduct that is identified by the rules as an offence provision. The maximum penalty for that offence is 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

This Regulation is made under the *Retirement Villages Act 1999*, including sections 83B and 203 (the general regulation-making power).

## **Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019**

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### **1 Name of Regulation**

This Regulation is the *Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019*.

### **2 Commencement**

This Regulation commences on 1 July 2019 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Retirement Villages Regulation 2017

[1] **Clause 10 Representations in promotional material**

Insert “1” after “Note” in the note to the clause.

[2] **Clause 10, note 2**

Insert after note 1:

**Note 2.** Schedule 3A sets out the rules of conduct for operators, including rules relating to representations in promotional material.

[3] **Clause 52A**

Insert after clause 52:

**52A Rules of conduct for operators**

The *Rules of Conduct for Operators of Retirement Villages* set out in Schedule 3A are prescribed as the rules of conduct for operators for the purposes of section 83B of the Act.

[4] **Schedule 3A**

Insert after Schedule 3:

### Schedule 3A Rules of Conduct for Operators of Retirement Villages

(Clause 52A)

#### Part 1 Preliminary

**1 Name of Rules**

These rules are the *Rules of Conduct for Operators of Retirement Villages*.

**2 Commencement**

- (1) These rules commence on 1 July 2019, except as provided by subrule (2).
- (2) Rules 11, 14, 15, 22, 27, 29, 30 and 34 commence on 1 January 2020.

**3 Interpretation**

- (1) In these rules:
  - elder abuse* means a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.
  - the Act* means the *Retirement Villages Act 1999*.
  - the Regulation* means the *Retirement Villages Regulation 2017*.
  - working day* means any day that is not a Saturday, Sunday or public holiday.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of these rules.
- (2) Words and expressions used in these rules that are defined in the Act have the meanings set out in the Act.

**Note.** For example, the following terms are defined in the Act: **operator**, **resident** and **retirement village**.

#### **4 Objectives**

The objectives of these rules of conduct are as follows:

- (a) to establish the standards of conduct and behaviour that are expected of operators and their staff in relation to the management and operation of a retirement village, including a knowledge of relevant laws,
- (b) to encourage higher standards of customer service to ensure that residents and prospective residents are treated with respect, dignity and fairness, and improving awareness of elder abuse,
- (c) to promote fair, honest, transparent and ethical practices for the marketing and promotion of residential premises in retirement villages,
- (d) to establish minimum standards for operators in the handling of complaints and the resolution of disputes in a retirement village,
- (e) to set minimum training and competency standards for operators and their staff and ensure the effective oversight and supervision of staff.

## **Part 2 Standards of conduct**

#### **5 Operators must know and understand all relevant laws**

- (1) An operator must have a knowledge and understanding of the Act and the Regulation, and any provisions of the following laws that are necessary to enable the operator to exercise the operator's functions lawfully:
  - (a) the *Strata Schemes Management Act 2015* and the regulations made under that Act,
  - (b) the *Corporations Act 2001* of the Commonwealth and the regulations made under that Act,
  - (c) the *Work Health and Safety Act 2011* and the regulations made under that Act,
  - (d) the *Australian Consumer Law (NSW)*,
  - (e) if residential tenancy agreements are in force at the retirement village or are available to prospective residents—the *Residential Tenancies Act 2010* and the regulations made under that Act,
  - (f) any other laws relevant to the management or operation of a retirement village (including laws relating to fair trading, trade practices, anti-discrimination and privacy).
- (2) An operator must ensure that each person involved in the management of the retirement village has a knowledge and understanding of the Act and the Regulation, and any other laws as may be necessary to enable that person to exercise the person's functions lawfully.

#### **6 Operators must have regard to the best interests of all residents**

- (1) An operator must have regard to the best interests of all residents in exercising the operator's functions as far as is practicable or appropriate.
- (2) When dealing with a prospective resident, an operator must have regard to the best interests of the prospective resident in exercising the operator's functions.
- (3) In determining what is in the best interests of all residents, or of a prospective resident, the operator is to have regard to the following matters:
  - (a) the age and health of residents or the prospective resident,
  - (b) the views expressed by residents or the prospective resident,

- (c) any requests made by residents or the prospective resident,
- (d) the impact a decision or action may have on the health, finances and well-being of residents or of the prospective resident,
- (e) past complaints, issues or concerns raised by all residents.

#### **7 Operators must exercise skill, care and diligence**

An operator must exercise reasonable skill, care and diligence when exercising the operator's functions.

#### **8 Operators must act with honesty, fairness and professionalism**

- (1) An operator must act honestly, fairly and professionally with all parties to negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (2) An operator must not misinform or otherwise mislead or deceive any parties to negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (3) An operator must not engage in high pressure tactics, harassment or harsh or unconscionable conduct in negotiations, transactions or any other dealings relating to a resident or prospective resident.
- (4) In this rule:  
*parties to negotiations, transactions or any other dealings* includes the following:
  - (a) the resident or prospective resident concerned,
  - (b) the relatives of the resident or prospective resident concerned,
  - (c) any other person acting on behalf of the resident or prospective resident concerned (including members of the Residents Committee of the retirement village).

#### **9 Operators must not disclose confidential information about residents or prospective residents**

- (1) An operator must not, at any time, use or disclose any confidential information about an interested person that was obtained in connection with the management or operation of the retirement village, unless:
  - (a) the interested person provides written authorisation for the disclosure of the information, or
  - (b) the operator is permitted or compelled by law to disclose the information, or
  - (c) the interested person was informed of the intended use of the information before providing the information.
- (2) An operator must ensure that the operator's staff:
  - (a) treats all information received in connection with the management of the retirement village in a professional manner, and
  - (b) does not disclose or seek to disclose the information outside of the requirements of the management of the retirement village.
- (3) In this rule, *interested person* means:
  - (a) a resident or prospective resident, and
  - (b) a relative of the resident or prospective resident, and

- (c) any other person acting on behalf of the resident or prospective resident.

#### **10 Operators must prepare strategy for preventing elder abuse**

- (1) An operator must:
  - (a) prepare and give effect to a strategy for the identification and prevention of any elder abuse in the retirement village, and
  - (b) ensure that a copy of the strategy is posted on the notice board of the retirement village, and
  - (c) ensure that all of the operator's staff are familiar with the strategy.
- (2) Without limiting any other matter that may be included, the strategy must include all of the following information:
  - (a) examples of common forms of elder abuse as well as specific examples in relation to retirement villages,
  - (b) information on how to identify elder abuse including signs of elder abuse, and how to prevent elder abuse,
  - (c) 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),
  - (d) 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,
  - (e) 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.
- (3) An operator must review the strategy every 2 years.

#### **11 Operators must provide information to external selling agents on request**

- (1) This rule applies to circumstances where an operator is able to confirm that an external selling agent has been engaged by a resident of the retirement village to sell the resident's residential premises, where the resident is the registered interest holder in the premises concerned.
- (2) An operator must, at the agent's request, provide the agent with any information and assistance that is reasonable and necessary to facilitate the sale of the resident's residential premises, including the following:
  - (a) a copy of the general inquiry document and disclosure statement required by section 18 of the Act,
  - (b) access to copies of the documents required to be made available to prospective residents under section 20 of the Act,
  - (c) information about the type of contract or contracts the operator may offer to a prospective purchaser of the residential premises,
  - (d) free and unrestricted access to the residential premises and to the common areas of the retirement village during its business hours (or during other hours negotiated with the operator) for the purposes of inspection of the residential premises by prospective purchasers,
  - (e) access to the common areas of the retirement village that is reasonably required to take photographs for the purposes of marketing the residential premises.
- (3) Information and assistance required by this rule must be provided to the agent within 5 working days of a written request being received.

- (4) This rule is an offence provision.

### **Part 3 Representations in marketing retirement villages and units**

#### **12 Operators must not make false or misleading representations**

- (1) An operator must not make any representations that are false or misleading in a material particular:
- (a) in any promotional material for the retirement village, or
  - (b) in relation to the marketing of the retirement village or any particular unit within the village.
- (2) Subrule (1) does not apply to any representation to which section 197A of the Act applies.
- Note.** Section 197A prohibits an operator from providing to residents information that the operator knows to be false or misleading in a material particular for the purported purpose of complying with requirements under the Act.
- (3) This rule is an offence provision.

#### **13 Representations about ownership of units**

An operator must not make any representation to a prospective resident that the prospective resident will acquire ownership of a unit within the retirement village, unless the operator intends to enter into a contract with the prospective resident following the purchase of a strata-titled, community-titled or company-titled unit in the retirement village.

#### **14 Marketing of retirement villages must include certain information**

- (1) This rule applies to written promotional material about retirement villages that contains 200 words or more.
- (2) An operator must ensure that the promotional material published or distributed by or on behalf of the operator contains the statements required by this rule, and that the statements are written in a size, style and format, and located in a position, that makes them clearly visible.
- (3) If the operator requires or intends to require the payment of a departure fee in a village contract with a prospective resident, the following statement must be included in the promotional material:
- You may have to pay a departure fee when you leave this village.**
- (4) If the operator requires or intends to require a prospective resident to share a percentage of capital gain, the following statement must be included in the promotional material:
- You may have to share any capital gains received with the operator of this village.**
- (5) This rule is an offence provision.

#### **15 Marketing of units must include certain information**

- (1) This rule applies to written promotional material about a particular unit within a retirement village that contains 100 words or more.
- (2) An operator must ensure that any residence-specific promotional material published or distributed by or on behalf of the operator contains the statements

required by this rule, and that the statements are written in a size, style and format, and located in a position, that makes them clearly visible.

- (3) If the operator requires or intends to require the payment of a departure fee in a retirement village contract with a prospective resident, the following statement must be included in the promotional material:

**You will have to pay a departure fee when you leave this village.**

- (4) If the operator requires or intends to require payment of a departure fee in a retirement village contract with a prospective resident of an amount to be calculated on the selling price of the resident's unit, and this amount will impact the capital gains received when leaving the village, the following statement must be included in the promotional material:

**You will have to pay a departure fee when you leave this village, which will impact on the capital gains received when leaving the village.**

- (5) If the operator requires or intends to require a prospective resident to share a percentage of capital gain, the following statement must be included in the promotional material:

**You will have to share any capital gains received with the operator of this village.**

- (6) This rule is an offence provision.

## **Part 4 Avoiding conflicts of interest**

### **16 Operators must avoid conflicts of interest**

- (1) An operator must avoid acting or continuing to act in a function connected to the management or operation of the retirement village if:
- the operator has a private interest in respect of the function, and
  - the private interest has the potential to come into conflict with, or does come into conflict with, and affects the ability of the operator to carry out the operator's role impartially and in the interests of residents.
- (2) An operator must ensure that each of the operator's staff avoids acting or continuing to act in a function connected to the management or operation of the retirement village if:
- the staff member concerned has a private interest in respect of the function, and
  - the private interest has the potential to come into conflict with, or does come into conflict with, and affects the ability of the staff member concerned to carry out the person's role impartially and in the interests of residents.
- (3) Without limiting the operation of this rule, a person has a *private interest* in respect of a function connected to the management or operation of a retirement village if there is a reasonable likelihood or expectation of an appreciable financial or other benefit or loss to the person or to an associate of the person.

### **17 Operators must disclose conflicts of interest**

As soon as is practicable after an operator becomes aware of any conflict of interest of the operator or of the operator's staff of a type referred to in rule 16, the operator must give written notice of the conflict to each resident of the retirement village.



**18 Operators to manage and resolve conflicts of interest**

- (1) If a conflict of interest of a type referred to in rule 16 arises, an operator has a duty to manage and resolve the conflict of the operator or of the operator's staff.
- (2) Depending on the nature of the conflict, this may include, but is not limited to, any of the following:
  - (a) restricting the conflicted staff's involvement in a matter,
  - (b) engaging an independent party to oversee the matter,
  - (c) relinquishing or requiring staff to relinquish the personal interest that has caused the conflict.

**19 Operators must not carry out functions without disclosing conflicts of interest**

- (1) An operator must not carry out a function in connection with the management or operation of a retirement village if the operator has a conflict of interest that has not been disclosed in accordance with rule 17.
- (2) An operator must ensure that the operator's staff does not carry out a function in connection with the management or operation of a retirement village if the staff member concerned has a conflict of interest that has not been disclosed in accordance with rule 17.
- (3) This rule does not apply if it is not practicable or reasonable for the operator or the operator's staff to have no further involvement in a function where:
  - (a) there is no other person with an equivalent level of authority or skill to carry out the function, or
  - (b) it would not be in the best interests of the residents or prospective residents of the retirement village if the function was carried out by another person.
- (4) This rule is an offence provision.

**20 Operators must disclose previously undisclosed conflicts of interest**

As soon as is practicable after becoming aware of a conflict of interest that has not been disclosed in accordance with rule 17, the operator must notify all residents in writing of the following:

- (a) the conflict of interest and the function connected with the management or operation of the retirement village to which the conflict of interest relates,
- (b) the reasons why the conflict of interest was not disclosed, if known,
- (c) an outline of the action that will be taken by the operator as a result of becoming aware of the conflict of interest.

**21 Operators must review policies where conflicts of interest have been undisclosed**

As soon as is practicable after becoming aware of a conflict of interest that has not been disclosed in accordance with rule 17, the operator must review all relevant internal policies and procedures to ensure that future conflicts of interest are properly disclosed, and ensure all staff are made aware of the policies and procedures.

## **22 Operators must keep records of conflicts of interest**

- (1) An operator must keep records of the following information relating to conflicts of interest of the operator and any of the operator's staff:
  - (a) the name, contact details and title of the person with the conflict of interest,
  - (b) the date the conflict of interest was disclosed to residents,
  - (c) the function connected with the management or operation of a retirement village to which the conflict of interest relates and the date on which the function was carried out,
  - (d) the nature of the private interest giving rise to the conflict of interest,
  - (e) details of any measures implemented to mitigate any effects of the conflict of interest.
- (2) The records must be kept for the duration of the employment of the operator or the operator's staff member concerned, and for an additional 5 years in respect of each employment term.
- (3) This rule is an offence provision.

## **23 Operators must provide residents and prospective residents with access to records of conflicts of interest**

An operator must provide a resident or prospective resident of the retirement village with access to the records required to be kept under rule 22 within 5 working days of a request for access being received by the operator.

# **Part 5 Complaint handling and internal dispute resolution scheme**

## **Division 1 Objectives and principles**

### **24 Operators must ensure residents are encouraged to raise concerns**

An operator must ensure that the retirement village promotes a culture that values and encourages residents to raise concerns and supports the effective resolution of any complaints.

### **25 Operators must not discourage residents from making complaints or pursuing internal disputes**

- (1) An operator must not discourage a resident or a person acting on behalf of a resident (including members of the Residents Committee of the retirement village) from making a complaint or pursuing an internal dispute.
- (2) Examples of discouragement, include:
  - (a) imposing any fee or charge for making a complaint or pursuing an internal dispute,
  - (b) providing a reward, rebate, incentive or other benefit if the resident does not make a complaint or pursue an internal dispute,
  - (c) not accepting a complaint or internal dispute from a person acting on behalf of a resident,
  - (d) employing high pressure tactics, harassing the resident or undertaking any other form of harsh or unconscionable conduct,

- (e) engaging in conduct that prejudices, harasses or intimidates the resident or exercising retribution against the resident as a result of the complaint being made or the internal dispute being pursued.

**26 Operators must not prevent residents from consulting the Residents Committee**

- (1) An operator must not prevent a resident from seeking assistance, support or representation from the Residents Committee of the retirement village to make a complaint or pursue an internal dispute, or resolve a complaint or internal dispute.
- (2) Nothing in this rule requires a resident to involve the Residents Committee or any other resident in the resolution of a complaint or an internal dispute.

**Division 2 Complaint and internal dispute resolution processes**

**27 Operators must ensure complaint and internal dispute resolution processes are prepared and maintained**

- (1) An operator must ensure that each of the following is prepared and maintained for the retirement village in accordance with this Part:
  - (a) a process for the resolution of complaints made by residents, including complaints made by persons acting on behalf of residents,
  - (b) a process for the resolution of internal disputes between a resident and the operator, or between 2 or more residents.
- (2) Both processes must be:
  - (a) written in plain English, taking into consideration the age-specific needs of current and prospective residents of the retirement village, and
  - (b) made publicly available on the operator's website and posted on the notice board of the retirement village, and
  - (c) provided to all residents for free either in hard copy form or electronically, but only if the resident agrees to receiving an electronic version.
- (3) Both processes must also set out the following maximum time-frames:
  - (a) no longer than 5 working days for the acknowledgement of complaints or internal disputes,
  - (b) no longer than 60 days for the management of the complaint or internal dispute (and setting out an expected resolution date, where possible).
- (4) This rule is an offence provision.

**28 Complaint and internal dispute resolution processes must outline certain matters**

- (1) The complaint and internal dispute resolution processes must outline the following matters:
  - (a) the types of complaints and internal disputes that are covered and not covered by each of the processes,
  - (b) the resolution options available for each type of complaint and internal dispute.
- (2) Both processes must also:
  - (a) clearly explain the process, including the roles and contact details of relevant staff, and

- (b) include a clear and understandable visual representation of the process, and
  - (c) outline the roles and responsibilities of relevant staff in receiving, reviewing, responding to, and resolving complaints or internal disputes, and
  - (d) outline the steps involved in each stage of the complaint or internal dispute resolution process and the expected actions that are generally involved at each stage of the process, and
  - (e) include information on the management and escalation of complaints, internal disputes, and the types of complaints and internal disputes that are not covered by either of the processes under subrule (1) (a), in the retirement village (through levels of village management) and to external organisations or authorities (for example, for a third party investigation, NSW Fair Trading or the Tribunal), and
  - (f) include measures to ensure the privacy of residents is maintained, and
  - (g) include measures for the review of organisational processes arising from the analysis of data about complaints and internal disputes and the continual monitoring of the process.
- (3) An operator must review each of the processes every 2 years.

**29 Operators must keep records of complaints and internal disputes**

- (1) An operator must keep a record of the following information about complaints and internal disputes that have been raised in the retirement village:
- (a) details of each complaint or internal dispute, including the name and contact details of each resident concerned, and the date the complaint or dispute was raised,
  - (b) details of actions taken in response to each complaint or internal dispute, including the names and contact details of any staff involved in the handling of the complaint or internal dispute, and the date the action was taken,
  - (c) whether the complaint or internal dispute was resolved, withdrawn, referred or escalated or another outcome was achieved,
  - (d) the number of complaints or internal disputes handled each calendar year.
- (2) The records must be kept for at least 5 years.
- (3) This rule is an offence provision.

**Part 6 Training and competencies**

**30 Operators must prepare and implement policies and procedures for training and competencies**

- (1) An operator must prepare and implement written policies and procedures for the selection, training and ongoing supervision of the operator's staff, in accordance with this rule.
- (2) This rule is an offence provision.

**31 Policies and procedures for training and competencies must include certain information**

- (1) The policies and procedures must include the following information in relation to each role in which staff is employed or otherwise engaged:
  - (a) the key responsibilities of the role,
  - (b) the qualifications or experience required, if any,
  - (c) the performance standards for the role,
  - (d) details of how performance will be assessed and managed, and how any instances of under-performance will be handled,
  - (e) guidance and information on any relevant matter that is reasonably required to allow a person to carry out the functions of the person's role effectively, professionally and in the best interests of residents and prospective residents.
- (2) When determining the guidance to be provided under subrule (1) (e), an operator must have regard to the following matters (and any other matter the operator considers to be relevant):
  - (a) the amount of time the role will require engaging with residents, including the frequency and purpose of the engagement,
  - (b) whether the role will involve the handling of disputes,
  - (c) any responsibilities assigned to the role for the purposes of responding to emergencies or the carrying out of evacuations,
  - (d) whether the role will be responsible for meeting with residents or prospective residents on behalf of the operator to explain a resident's current village contract information as provided by section 69A of the Act,
  - (e) whether knowledge of first aid is required to carry out the role,
  - (f) whether the role will have any involvement in, or the control or responsibility over, the finances of the retirement village,
  - (g) the expectations of residents or prospective residents around standards of behaviour, service and conduct,
  - (h) the type of recruitment, assessment and hiring method for the role,
  - (i) whether any third-party checks or verifications are required (for example, criminal record checks).

**32 Operators must ensure staff are trained in complaint handling and internal dispute resolution**

An operator must ensure that all relevant staff:

- (a) are aware of policies and procedures about the handling of complaints and resolving internal disputes, and
- (b) are aware of their responsibilities for managing complaints or resolving internal disputes under the policies and procedures, and
- (c) know how to deal with unreasonable conduct by people making complaints or raising internal disputes, and
- (d) receive ongoing training in the effective handling of complaints or disputes under the policies and procedures, and
- (e) have clear delegations of authority and guidance about their discretion to respond to issues raised with them in the course of managing complaints or resolving internal disputes, and

- (f) are alert to identifying complaints or internal disputes and are aware of where or to whom they can refer a complaint that they are aware of, or an internal dispute that they have been given notice of, if unable to directly respond themselves.

**33 Operators must ensure staff involved in internal dispute resolution receive additional training**

An operator must ensure that the operator's staff who have responsibilities under the internal dispute resolution process:

- (a) are aware of their responsibilities for resolving disputes under the internal dispute resolution process, and
- (b) receive ongoing training in the handling of disputes, and
- (c) have clear delegations of authority and guidance about their discretion to respond to issues raised with them in the course of managing an internal dispute, and
- (d) know how to deal with unreasonable conduct by people raising internal disputes.

**34 Operators must keep records of staff training and professional development**

- (1) An operator must keep a written record of the training and professional development provided to the operator's staff to ensure that they are familiar with, and able to comply with, the following:
  - (a) all of their functions as a staff member,
  - (b) all of the policies, procedures and processes required by these rules of conduct.
- (2) The records must be kept for at least 5 years.
- (3) This rule is an offence provision.

**35 Operators must monitor staff compliance with policies and procedures**

- (1) An operator must oversee and manage the operator's staff, or have a structure in place to ensure the oversight and management of the operator's staff, to ensure compliance with all relevant policies, procedures or processes required by these rules of conduct.
- (2) An operator must monitor staff compliance, or review any structure in place for the monitoring of staff compliance, every 2 years.

**[5] Schedule 5 Penalty notice offences**

Insert in appropriate order in **Offences under the Act**:

Section 83C, in relation to a contravention of rule 11, 14, 15, 22, 27, 29, 30 or 34 under the *Rules of Conduct for Operators of Retirement Villages* set out in Schedule 3A to this Regulation 2,200 (in the case of a corporation) or 1,100 (in any other case)