



New South Wales

# Retirement Villages Amendment (Exit Entitlement) Regulation 2021

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 objects of this Regulation are as follows—

- (a) to provide that an operator of a retirement village (an *operator*) may increase the recurrent charges payable by residents of the retirement village in certain circumstances,
- (b) to provide definitions relating to the payment that must be made to a former occupant by an operator following the sale of a former occupant's residential premises, or in other circumstances (an *exit entitlement*),
- (c) to further provide for the information that an order for an exit entitlement must contain,
- (d) to provide for the matters that the Secretary of the Department of Customer Service must consider, in relation to an order for an exit entitlement, when determining whether or not to an operator has unreasonably delayed the sale of a former occupant's residential premises,
- (e) to require an operator who makes payments on behalf of a former occupant to an aged care facility to keep, and provide to the former occupant, certain records,
- (f) to enable an operator or other persons to enter the residential premises of a former occupant in certain circumstances relating to the sale of the premises,
- (g) to exempt certain village contracts from the provisions of Part 10AA of the *Retirement Villages Act 1999*,
- (h) to make other minor and consequential amendments.

This Regulation is made under the *Retirement Villages Act 1999*, including sections 18(2) and (3A), 43(1), 67(2)(g), 69A(7)(a)(viii), 112(3)(a), 152(3), 182AA (definition of *prescribed component*), 182AB(9) (paragraph (a) of the definition of *prescribed period*), 182AC(3), 182AD(1)(f), 182AG(5)(a) and (b), 182AK(3)(b), 184(2) and 203 (the general regulation-making power).

## **Retirement Villages Amendment (Exit Entitlement) Regulation 2021**

under the

Retirement Villages Act 1999

### **1 Name of Regulation**

This Regulation is the *Retirement Villages Amendment (Exit Entitlement) Regulation 2021*.

### **2 Commencement**

This Regulation commences on 4 February 2021 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Retirement Villages Regulation 2017

### [1] Clause 11 General inquiry document and disclosure statement

Omit clause 11(1) and (2). Insert instead—

- (1) For the purposes of section 18(2)(a) and (b) of the Act, a general inquiry document must—
  - (a) be in the form, and contain the information, set out in Schedule 1, Part 1, and
  - (b) contain a copy of the village rules, and
  - (c) contain a copy of the document *Moving into a retirement village?* prepared by the Department and published on a website of the Department.
- (2) For the purposes of section 18(3A)(a) and (b) of the Act, a disclosure statement must—
  - (a) be in the form, and contain the information, set out in Schedule 1, Part 2, and
  - (b) contain a copy of the village rules.

### [2] Clause 11(6)

Insert after clause 11(5)—

- (6) In this clause—  
*Department* means the Department of Customer Service.

### [3] Clause 17A

Insert after clause 17—

#### 17A Current village contract information

For the purposes of section 69A(7)(a)(viii) of the Act, the following information concerning the rights and obligations of a resident who is a registered interest holder referred to in section 7(1)(c) of the Act is prescribed—

- (a) the rights of the resident under Part 10AA of the Act in relation to the payment of the resident's exit entitlement, within the meaning of that Part, by the operator of the retirement village before the resident's residential premises are sold,
- (b) the cessation of the resident's liability to pay recurrent charges under section 152(2)(e) of the Act.

### [4] Clause 19 Matters that must be dealt with in proposed annual budget

Omit "(including any expected increases in those charges in line with a fixed formula)," from clause 19(1)(a).

Insert instead—

, including—

- (i) the expected increases in the recurrent charges in line with a fixed formula, and
- (ii) the expected increases in the recurrent charges as a result of clause 26A,

**[5] Clause 26AA**

Insert after clause 26—

**26AA Operator may increase recurrent charges after former occupant's liability to pay ceases**

- (1) For the purposes of section 152(3) of the Act, an operator of a retirement village may increase the recurrent charges payable by residents of the retirement village as a result of the liability incurred by the operator once a former occupant's liability to pay the charges ceases under section 152(2) of the Act only if—
  - (a) the increase occurs as part of an approved annual budget for the next financial year after the former occupant's liability is ceased, and
  - (b) the approved annual budget, including the proposed annual budget, for the financial year specifies—
    - (i) the manner in which the increase was calculated, including the total number of former occupants whose liability was ceased in the financial year, and
    - (ii) that the increase occurred for the purposes of this clause.
- (2) To avoid doubt, Part 7, Division 4 of the Act continues to apply to an increase in the recurrent charges payable by residents of a retirement village under this clause.

**[6] Clause 27 Interest**

Omit “and 181 (7) (b)”. Insert instead “, 181(7)(b) and 182AK(3)(b)”.

**[7] Part 5A**

Insert after Part 5—

## **Part 5A Payments if certain residential premises not sold**

### **Division 1 Preliminary**

**33A Interpretation**

Words and expressions used in this Part have the same meanings as in Part 10AA of the Act.

### **Division 2 Exit entitlement orders**

**33B Definition of “prescribed component”**

For the purposes of the definition of *prescribed component* of an exit entitlement in section 182AA of the Act, the components of an exit entitlement, except for the following, are prescribed—

- (a) the former occupant's share of capital gain under the village contract,
- (b) the former occupant's share of capital loss under the village contract.

**33C Definition of “prescribed period”**

For the purposes of paragraph (a) of the definition of *prescribed period* in section 182AB(9) of the Act, the following period is prescribed—

- (a) for a retirement village located in a local government area specified in Schedule 5A—6 months,

- (b) for a retirement village located in another local government area—12 months.

**33D Secretary must consider matters relating to unreasonable delay of sale of residential premises**

- (1) For the purposes of section 182AC(3) of the Act, the Secretary must consider the following matters when determining whether or not an operator of a retirement village has unreasonably delayed the sale of a former occupant's residential premises—
  - (a) whether the operator has taken reasonable steps to facilitate the sale of the premises and the time in which the steps were taken, including in relation to—
    - (i) the carrying out of an inspection of the premises, whether by the operator or on the operator's behalf, and
    - (ii) refurbishment of the premises,
  - (b) if the operator is appointed by the former occupant as a selling agent of the premises under section 168 of the Act—
    - (i) whether the operator complied with the operator's requirements under that section within a reasonable time, and
    - (ii) whether the operator arranged for an inspection of the premises for the purposes of the sale of the premises within a reasonable time,
  - (c) whether the actions of the operator delayed the provision or use of services of an Australian legal practitioner, licensed conveyancer or selling agent, as applicable, in relation to the sale of the premises,
  - (d) whether the operator complied with other requirements imposed by or under the Act or this Regulation in relation to the sale of the premises within a reasonable time.
- (2) In this clause—  
*refurbishment* has the same meaning as in Part 10, Division 4 of the Act.

**33E Content of exit entitlement orders**

For the purposes of section 182AD(1)(f) of the Act, an exit entitlement order must contain the following information—

- (a) the period of time for which the former occupant has occupied the former occupant's residential premises,
- (b) the ingoing contribution paid by the former occupant to the operator of the retirement village under the village contract of the former occupant,
- (c) the departure fee payable by the former occupant to the operator under the village contract,
- (d) the amount of capital gain the former occupant and the operator will each receive in relation to the premises, if any, calculated on the basis of the agreed valuation of the former occupant's exit entitlement,
- (e) if the former occupant is required to pay a share of capital loss in relation to the premises—the amount of capital loss calculated on the basis of the agreed valuation of the former occupant's exit entitlement.

### Division 3 Aged care facility payments

#### 33F Operator must keep records in relation to accommodation payments

For the purposes of section 182AG(5)(a), an operator of a retirement village who makes an accommodation payment to an approved provider of an aged care facility in which a former occupant resides or proposes to reside under section 182AG of the Act must keep a record of the following—

- (a) the amount of each accommodation payment made by the operator on behalf of the former occupant,
- (b) the date on which each accommodation payment was made,
- (c) details of the approved provider of the aged facility to whom the operator has made an accommodation payment,
- (d) if the operator is no longer required to make an accommodation payment on behalf of the former occupant—
  - (i) the date on which the final accommodation payment is made, and
  - (ii) details about the written notice given to the former occupant or the approved provider of the aged facility under section 182AG(4)(a) of the Act, including the date on which the notice was given.

#### 33G Operator must provide information in relation to accommodation payments

- (1) For the purposes of section 182AG(5)(b) of the Act, an operator of a retirement village who makes 1 or more accommodation payments to an approved provider of an aged care facility on behalf of a former occupant must provide the former occupant with a document summarising the payments made to the approved provider (the *summary document*).
- (2) The operator must provide the summary document to the former occupant—
  - (a) for the first summary document—within 6 months after the first accommodation payment is made, and
  - (b) for subsequent summary documents—every 6 months.

#### [8] Clause 46A

Insert after clause 46—

#### 46A Operator may enter residential premises in certain circumstances

- (1) This clause applies to a former occupant of residential premises in a retirement village in relation to whom an exit entitlement order has been made by the Secretary under section 182AC of the Act.
- (2) For the purposes of section 67(2)(g) of the Act, an operator of a retirement village or other person authorised by the operator may enter residential premises of a former occupant in the retirement village for the purposes of facilitating the sale of the premises.
- (3) However, the operator or other person may enter the premises of a prescribed former occupant only if the operator or other person and the prescribed former occupant agree in writing.
- (4) In this clause—

*prescribed former occupant* means a former occupant who—

  - (a) does not intend to move out of the former occupant's residential premises while the premises are for sale, and

- (b) has given written notice to the operator of that fact under section 182AB(4)(c) of the Act, and
- (c) continues to occupy the premises on the date on which the operator proposes to enter the premises.

**[9] Clause 51A**

Insert after clause 51—

**51A Exemption for certain village contracts**

For the purposes of section 203(4) of the Act, a village contract is exempt from Part 10AA of the Act if—

- (a) the retirement village to which the contract applies is held in trust by a trustee, and
- (b) the trustee also holds each unit in the retirement village in trust for the benefit of a resident in the retirement village.

**[10] Schedule 1 Forms**

Omit “If there are village rules in force in the village, a copy of the village rules can be requested from the operator of the village.” from Part 1.

Insert instead—

You can use the calculator for retirement villages published by NSW Fair Trading to calculate certain costs relating to moving into a retirement village by visiting [www.rvcalculator.fairtrading.nsw.gov.au](http://www.rvcalculator.fairtrading.nsw.gov.au).

**[11] Schedule 1, Part 2, clause 12**

Omit “• the village rules (if any)”.

**[12] Schedule 2 Standard form of village contract**

Insert “or before” after “on” in the heading to Item I “**Calculation of payment on termination of residence right**”.

**[13] Schedule 2, Item I**

Insert after “your leasehold interest.” under the heading “[*Registered interest holders except non-assignable registered long-term lessees*]”—

However, if we are required to pay you any part of your exit entitlement in accordance with an exit entitlement order under the *retirement village laws*—

- (a) we must pay you the exit entitlement before your residence right is terminated or as otherwise provided by the exit entitlement order, and
- (b) if you are required to pay us your share of any capital loss—we may set off and deduct your share of the capital loss from the exit entitlement we pay you before your residence right is terminated or as otherwise provided by the exit entitlement order.

**[14] Schedule 2, Item I**

Insert “not otherwise addressed by this Item” after “timing” under the heading “**Payment on termination calculation**”.

**[15] Schedule 2, Item I**

Insert after the matter relating to “Any non-refundable component of the *entry payment* (Item A)” under the heading “**Payment on termination calculation**”—

Any accommodation payment made by us on your behalf in accordance with the *retirement village laws* to an approved provider of an aged care facility in which you reside or propose to reside

**[16] Schedule 2, Item I**

Insert after the matter relating to “Different payment on termination calculation” under the heading “**Payment on termination calculation**”—

Despite this Item and Item J, if we are required to pay you any part of your exit entitlement in accordance with an exit entitlement order under the *retirement village laws*—

- (a) we must pay you the exit entitlement before your residence right is terminated or as otherwise provided by the exit entitlement order, and
- (b) if you are required to pay us your share of any capital loss—we may set off and deduct your share of the capital loss from the exit entitlement we pay you before your residence right is terminated or as otherwise provided by the exit entitlement order.

**[17] Schedule 2, Item I**

Omit “Items J, K, L and M below for *registered interest holders*”.

Insert instead “Items J and M below for *registered interest holders*. Items K and L below for *registered interest holders* and *non-registered interest holders*”.

**[18] Schedule 2, Item L**

Omit the Item. Insert instead—

**L Liability for recurrent charges for general services on permanent vacation of residential premises**

Except as otherwise provided by the *retirement village laws*, you must pay on and from the date you permanently vacate your residential premises—

- (a) the full rate for general services until whichever of the following occurs first—
  - (i) a new resident enters into a contract with us to occupy the premises or moves into the premises,
  - (ii) a person takes up residence in the premises with the consent of the operator,
  - (iii) you permanently vacate the premises after receiving notice of our intention to apply to the Tribunal for an order terminating this contract,
  - (iv) if we buy the premises from you—the contracts for the purchase are exchanged, or
- (b) for non-registered interest holders and registered interest holders referred to in section 7(1)(c) of the Act, the full rate for general services until whichever of the following occurs first—
  - (i) a circumstance referred to in paragraph (a)(i)–(iv) occurs,
  - (ii) 42 days immediately after the date on which you permanently vacate the premises have passed.

**Different provision** [*delete or cross out if not applicable*] [*insert full details if the liability to pay recurrent charges is to cease at a time that is earlier than that described in the above provision*]

**Note.** This provision does not affect any levies payable by you in a strata scheme, company title or community scheme [*delete or cross out if not applicable*]



**[19] Schedule 2, Item M**

Omit “Items N, O and P”. Insert instead “Item N”.

**[20] Schedule 2, Items O and P**

Omit the Items.

**[21] Schedule 2, clause 11.1(e)**

Omit “or”.

**[22] Schedule 2, clause 11.1(f)**

Omit the paragraph. Insert instead—

- (f) for non-assignable *registered long-term lessees*—if an exit entitlement order is made by the Secretary in relation to your premises, the date on which we pay you the amount required under the order,
- (g) any earlier date of termination specified in the additional terms.

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

Omit “1,100” from the matter relating to “Section 180 (2)”.

Insert instead “2,200 in the case of a corporation or 1,100 in the case of an individual”.

**[24] Schedule 5**

Insert in appropriate order—

Section 182AC(7)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 182AE(3)	2,200 in the case of a corporation or 1,100 in the case of an individual
Section 182AG(6)	2,200 in the case of a corporation or 1,100 in the case of an individual

**[25] Schedule 5A**

Insert after Schedule 5—

**Schedule 5A Local government areas**

(Clause 33C(a))

Bayside  
City of Blacktown  
City of Blue Mountains  
Burwood  
Camden  
City of Campbelltown  
Canada Bay  
Canterbury-Bankstown  
Cumberland

City of Fairfield  
Georges River  
City of Hawkesbury  
Hornsby  
Hunter's Hill  
Inner West  
Ku-ring-gai  
Lane Cove  
City of Liverpool  
Mosman  
City of Newcastle  
North Sydney  
Northern Beaches  
City of Parramatta  
City of Penrith  
City of Randwick  
City of Ryde  
Strathfield  
Sutherland Shire  
City of Sydney  
The Hills Shire  
Waverley  
City of Willoughby  
Wollondilly  
City of Wollongong  
Woollahra