



New South Wales

Retirement Villages (Asset Management Plans and Exit Entitlements) Amendment 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 operators of retirement villages make available to residents and prospective residents the most recent report relating to capital maintenance for major items of capital over a 3-year period (**3-year report**) and to make further provision as to the matters that 3-year reports must include,
- (b) to modify the definition of a **major item of capital**,
- (c) to clarify the circumstances in which operators of retirement villages may increase recurrent charges payable by residents and to apply a cut-off date in relation to those circumstances,
- (d) to extend the time by which the first asset management plans of retirement villages must commence to the start of the village's next financial year after 1 July 2021,
- (e) to provide that operators of retirement villages must attach to proposed asset management plans an independent assessment as to whether the plan contains certain matters required to be included,
- (f) to modify the information that maintenance schedules and asset registers included in asset management plans must contain,
- (g) to make further provision as to the manner of estimating the effective life of items of capital,
- (h) to provide for savings and transitional provisions for obligations imposed on operators by this Regulation.

This Regulation is made under the *Retirement Villages Act 1999*, including sections 20(1)(k), 101A, 112(3), 152(3) and 203 (the general regulation-making power) in particular, section 203(4).

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Retirement Villages Act 1999

1 Name of Regulation

This Regulation is the *Retirement Villages (Asset Management Plans and Exit Entitlements) Amendment Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Retirement Villages Regulation 2017

[1] Clause 12, heading

Insert “residents and” after “available to”.

[2] Clause 12(j)

Insert after clause 12(i)—

- (j) the most recent 3-year report, within the meaning of clause 19A(2).

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

Omit “26A” from clause 19(1)(a)(ii). Insert instead “26AA”.

[4] Clause 19A Matters to be included in proposed annual budget—3-year report

Insert after clause 19A(3)(b)—

- (c) a list of the major items of capital—
 - (i) that have a year or less of effective life remaining, or
 - (ii) for an item other than a building—in relation to which the accumulated costs of repairs as at the date on which the 3-year report is prepared are greater than 90% of the purchase price of the item,
- (d) for each major item of capital referred to in paragraph (c)—whether it is proposed to replace or continue to maintain the item.

[5] Clause 19A(4), definition of “major item of capital”

Omit the definition. Insert instead—

major item of capital means the following, but does not include equipment that is a consumable used in the operation of an item of capital or in the day-to-day operation of the village—

- (a) an item of capital for which the operator of a retirement village is responsible that has a purchase price of \$1,000 or more,
- (b) a group of items of capital for which the operator of a retirement village is responsible—
 - (i) that are similar, and
 - (ii) have the same effective life and financial year of acquisition as each other, and
 - (ii) each of which has a purchase price of \$1,000 or more.

[6] Clause 26AA Operator may increase recurrent charges after former occupant’s liability to pay ceases

Omit clause 26AA(1)(a). Insert instead—

- (a) the increase occurs as part of the approved annual budget for the financial year immediately following the financial year in which the former occupant’s liability ceased, and
 - (a1) the former occupant’s liability ceased after 1 January 2021, and

[7] Clause 26B Operator to prepare asset management plan

Omit “the day on which this Division commences” from clause 26B(3).

Insert instead “1 July 2021”.

[8] Clause 26C Preparation of asset management plans

Omit clause 26C(1). Insert instead—

- (1) In the course of preparing an asset management plan, an operator of a retirement village must—
 - (a) obtain the written opinion of the auditor or an independent qualified quantity surveyor as to whether the plan contains the matters specified in clauses 26D and 26F (an *independent assessment*), and
 - (b) attach the independent assessment to the proposed plan, and
 - (c) notify each resident of the retirement village that a copy of the proposed plan, including the attached independent assessment, can be inspected at all reasonable times at the village or at a place of business in New South Wales nominated by the operator in the notice, and
 - (d) have a copy of the proposed plan, including the attached independent assessment, available at the village or at a place of business in New South Wales for inspection at all reasonable times by a resident or prospective resident or a person acting on behalf of a resident or prospective resident.

[9] Clause 26C(6)–(8)

Insert after clause 26C(5)—

- (6) An operator who started to prepare an asset management plan that is to commence on or before 29 August 2021 is not required to obtain and attach to the proposed plan an independent assessment.
- (7) However, an operator who is not required to attach an independent assessment to a proposed plan must, on or before the commencement of the next financial year of the retirement village, obtain and attach an independent assessment to the plan that is current at that time.
- (8) In this clause—

independent qualified quantity surveyor means a quantity surveyor who—

 - (a) is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors, and
 - (b) does not have a pecuniary or other interest that could be reasonably regarded as capable of affecting the person’s ability to assess the asset management plan of a retirement village in good faith.

the auditor means the auditor whose appointment as the auditor of a retirement village has received the consent, or is taken to have received the consent, of the residents of the retirement village under the Act, Part 7, Division 6, Subdivision 1.

[10] Clause 26D Content of asset management plan

Omit “*maintenance* schedule” from clause 26D(1).

Insert instead “*maintenance schedule*”.

[11] Clause 26D(1)

Insert after clause 26D(1)—

Note. Clause 26F sets out the information that must be contained in an asset register, being a list of major items of capital as at the commencement of an asset management plan. The maintenance schedule is prepared from the asset register.

[12] Clause 26D(3)

Omit clause 26D(3). Insert instead—

- (3) The maintenance schedule must contain, as applicable, the proposed dates of capital replacement.

[13] Clause 26F Asset management plan to include asset register

Insert “, structure or part of the infrastructure of the residential village” after “building” in clause 26F(2)(f).

[14] Clause 26F(2)(g)

Omit the paragraph. Insert instead—

- (g) if the item is a building, structure or part of the infrastructure of the residential village—
 - (i) the date on which construction of the building, structure or part of the infrastructure was completed, and
 - (ii) the costs of construction.

[15] Clause 26G Calculating effective life of items of capital

Omit “Table B” wherever occurring in clause 26G(1), except clause 26(1)(b)(i).

Insert instead “Table A or Table B”.

[16] Clause 26G(1)(b)(i)

Omit “of Table B”. Insert instead “opposite that item”.

[17] Clause 26G(1A)

Insert after subclause (1)—

- (1A) In identifying a description in Table A or Table B that corresponds to an item of capital, an operator of a retirement village is to follow the methodology of using the tables set out under the heading “How to use Tables A and B” in the Commonwealth Taxation Ruling.

[18] Clause 51A Exemption for certain village contracts

Insert “and section 152(2)(e)” after “Part 10AA” in clause 51A.

[19] Clause 53 Savings and transitional provisions

Omit clause 53(2). Insert instead—

- (2) An operator of a retirement village does not commit an offence under clause 19A for failing to comply with the requirements of that clause during the transition period.
- (3) An operator of a retirement village does not commit an offence under section 101A of the Act for failing to comply with the requirements of that section during the transition period.
- (4) Nothing in this clause affects the operation of clause 53(2) before its amendment by the amending regulation.
- (5) In this clause—

amending regulation means the *Retirement Villages (Asset Management Plans and Exit Entitlements) Amendment Regulation 2021*.

transition period means the period commencing on the date on which the amending regulation commenced and ending on 30 June 2022.