



New South Wales

Retirement Villages Amendment (Asset Management Plans) 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 object of this Regulation is to amend the *Retirement Villages Regulation 2017* to make provision for—

- (a) the inclusion in a proposed annual budget of a 3-year plan estimating capital maintenance costs and capital replacement costs, and
- (b) matters to be included in asset management plans, and
- (c) obligations of operators, and rights of residents, of retirement villages in relation to the preparation and revision of asset management plans.

This Regulation is made under the *Retirement Villages Act 1999*, including sections 20(1)(k), 72A(6), 97(3), 101A, 112(3) and 203 (the general regulation-making power).

Retirement Villages Amendment (Asset Management Plans) Regulation 2021

under the

Retirement Villages Act 1999

1 Name of Regulation

This Regulation is the *Retirement Villages Amendment (Asset Management Plans) 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 19A**

Insert after clause 19—

19A Matters to be included in proposed annual budget—3-year report

- (1) This clause applies only if section 98 of the Act applies to the operator of a retirement village.
- (2) In addition to the requirements under section 98 of the Act, the operator of a retirement village must include in the proposed annual budget a report relating to capital maintenance for major items of capital, including shared major items of capital, for a relevant 3-year period that is extracted from the information contained in the asset management plan current for that period (*3-year report*).
- (3) The following matters must be included in the 3-year report—
 - (a) in relation to each item of capital maintenance that is proposed to be carried out—
 - (i) an estimate of the costs of the proposed maintenance, and
 - (ii) the proposed maintenance dates, and
 - (iii) the type of maintenance that is proposed to be carried out, and
 - (iv) an estimate of the costs of any repairs that are proposed to be carried out, and
 - (v) the type of repairs that are proposed to be carried out,
 - (b) the amount of recurrent charges set aside in the capital works fund for capital maintenance.

Maximum penalty—20 penalty units.

- (4) In this clause—

effective life—see clause 26G.

major item of capital means an item of capital, other than equipment that is a consumable used in the operation of an item of capital or in the day-to-day operation of the village, for which the operator of a retirement village is responsible that—

 - (a) has a purchase price of \$1,000 or more, or
 - (b) is part of a group of similar items of capital—
 - (i) each of which has the same effective life and acquisition date, and
 - (ii) having a combined total purchase price of \$1,000 or more.

relevant 3-year period means a period of 3 years commencing on the commencement of the financial year to which the proposed annual budget relates.

shared major item of capital means a major item of capital that is also used in the operation of another retirement village or a residential aged care facility.

[2] **Part 4, Division 2A**

Insert after Part 4, Division 2—

Division 2A Asset management plans

26A Definitions

In this Division—

3-year report—see clause 19A(2).

asset register—see clause 26F(1).

effective life—see clause 26G.

maintenance schedule—see clause 26D(1).

major item of capital—see clause 19A(4).

shared major item of capital—see clause 19A(4).

26B Operator to prepare asset management plan

- (1) For the purposes of section 101A of the Act, an operator of a retirement village must prepare an asset management plan every 10 years in relation to each retirement village that the operator manages or controls.
- (2) An asset management plan expires on the date that is 10 years after the date on which the plan commenced.
- (3) The operator is to ensure that the first asset management plan prepared commences on the commencement of the next financial year of the retirement village after the day on which this Division commences.

26C Preparation of asset management plans

- (1) In the course of preparing an asset management plan, an operator of a retirement village must—
 - (a) notify each resident of the retirement village that a copy of the proposed plan 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
 - (b) have a copy of the proposed plan 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.
- (2) The requirements in subclause (1) must be complied with at least 60 days before the day on which the asset management plan is to commence.
- (3) A resident is entitled to give to the operator the resident's comments on the asset management plan.
- (4) The operator must prepare a report of all comments received.
- (5) The operator must state in the report, for each comment received—
 - (a) whether the operator revised the draft asset management plan in response to the comment and, if so, in what respect, or
 - (b) the reason why the operator did not revise the draft asset management plan in response to the comment.

26D Content of asset management plan

- (1) An asset management plan is to include—
 - (a) the information specified in this clause relating to capital maintenance and capital replacement of each major item of capital, including each

- shared major item of capital (a *maintenance* schedule), during the 10-year period to which the plan relates, and
- (b) an asset register, and
 - (c) any other information required to be included by guidelines issued by the Secretary under section 189B of the Act.
- (2) The maintenance schedule must contain the following information relating to capital maintenance that is financed, or proposed to be financed, by way of recurrent charges or from the capital works fund—
- (a) for works proposed to be carried out for the purpose of maintaining the item—
 - (i) an estimate of the costs of maintenance, and
 - (ii) the proposed frequency of maintenance or dates on which maintenance is proposed to be carried out, and
 - (iii) the type of maintenance,
 - (b) for works proposed to be carried out, or that can be foreseen will be needed, for the purpose of repairing the item—
 - (i) an estimate of the costs of the repairs, and
 - (ii) the dates on which the repairs are proposed to be carried out, and
 - (iii) a description of the repairs,
 - (c) for a shared major item of capital—an estimate of the proportion of the accumulated capital maintenance costs that can be attributed to the use of the item by the village.
- (3) The maintenance schedule must contain the following information, as applicable, relating to capital replacement—
- (a) the proposed dates of capital replacement,
 - (b) an estimate of the costs of the proposed capital replacement.

26E Currency of asset management plans

- (1) An operator of a retirement village must ensure that the asset management plan is kept up to date by revising the plan from time to time in accordance with this clause.
- (2) A major item of capital that is purchased after the plan commences must be included in the asset register within 7 days of the purchase of the item.
- (3) If the content of a 3-year report included in an annual budget approved during the currency of the asset management plan differs from the information that was included in the plan at the time the plan commenced, the operator must, within 28 days of the annual budget being approved, revise the plan to ensure it remains consistent with the 3-year report.
- (4) The plan must be revised to include the following information relating to capital maintenance and capital replacement of each major item of capital, including each shared major item of capital, as soon as reasonably practicable after each occasion that capital maintenance or capital replacement of the item has been carried out—
 - (a) in respect of maintenance—
 - (i) the actual costs of maintenance, and
 - (ii) the dates on which maintenance was carried out, and
 - (iii) the type of maintenance,

- (b) the accumulated costs of all maintenance expressed—
 - (i) in dollar amounts, rounded up or down to the nearest dollar, and
 - (ii) as a percentage of the original purchase price of the item,
- (c) in respect of repairs—
 - (i) the actual costs of the repairs, and
 - (ii) the dates on which the repairs were carried out, and
 - (iii) a description of the repairs,
- (d) the accumulated costs of all repairs expressed—
 - (i) in dollar amounts, rounded up or down to the nearest dollar, and
 - (ii) as a percentage of the original purchase price of the item,
- (e) for a shared major item of capital—the proportion of the accumulated capital maintenance costs that can be attributed to the use of the item by the village,
- (f) the actual date on which capital replacement was carried out,
- (g) the actual costs of capital replacement.

Note. To express the accumulated costs of maintenance or accumulated costs of repairs as a percentage of the purchase price, the total costs of all maintenance or repairs should be divided by the purchase price and multiplied by 100.

26F Asset management plan to include asset register

- (1) The operator of a retirement village must include in the asset management plan an *asset register*, being—
 - (a) a list of the major items of capital, including shared major items of capital, as at the commencement of the plan, and
 - (b) the information specified in subclause (2) for each item.
- (2) The asset register is to contain the following information for each major item of capital and shared major item of capital listed—
 - (a) a brief description of the item,
 - (b) the effective life of the item,
 - (c) the asset ID number,
 - (d) the brand model number, if available and applicable,
 - (e) the serial number, if available and applicable,
 - (f) for an item that is not a building—
 - (i) the date of purchase, and
 - (ii) the purchase price,
 - (g) if the item is a building—
 - (i) the date on which construction of the building commenced, and
 - (ii) the costs of construction or, if the building is under construction, an estimate of the costs of construction,
 - (h) for a shared major item of capital—the name of the retirement village or residential aged care facility also using that item.
- (3) If the item was purchased or constructed before 1 February 2021, the information is to be recorded for each item to the extent that the information is available.

- (4) The funding of capital maintenance of a major item of capital from the capital works fund or recurrent charges for the retirement village is not authorised if the item is not included in the asset register.

26G Calculating effective life of items of capital

- (1) The *effective life* of an item of capital means the period over which the item can reasonably be expected to be operational or used, being—
- (a) for an item of capital for which there is a description in Table B of the Schedule to the Commonwealth Taxation Ruling that corresponds to that item, other than a motor vehicle or trailer—the number of years specified in column 2 of Table B opposite the description that corresponds to the item, or
 - (b) for an item of capital that is a motor vehicle or trailer for which there is a description in Table B that corresponds to that item and a hash (#) symbol in the third column opposite that item—the shorter period of—
 - (i) the number of years specified in column 2 of Table B, or
 - (ii) the number of years specified in column 3 of the table to section 40-102(4) of the *Income Tax Assessment Act 1997* of the Commonwealth, or
 - (c) if there is no description in Table B that reasonably corresponds to the item of capital for which the effective life is to be estimated—the number of years estimated by the operator of a retirement village—
 - (i) having regard to the reasonable wear and tear expected to result from the circumstances of the use of the item of capital, and
 - (ii) assuming that it will be maintained in reasonably good order and condition, and
 - (iii) having regard to the period within which it is likely to be scrapped, sold for no more than scrap value or abandoned.

Note. A hash (#) symbol in the third column of Table B indicates a capped life is available for the depreciating assets under section 40-102 of the *Income Tax Assessment Act 1997* of the Commonwealth.

- (2) In this clause—

Commonwealth Taxation Ruling means *TR 2020/3 - Income tax: effective life of depreciating assets (applicable from 1 July 2020)*, being a public ruling made under section 358-5 of the *Taxation Administration Act 1953* of the Commonwealth.

26H Revised asset management plans

- (1) This clause applies if, at any time during the currency of an asset management plan, it becomes apparent to the operator of a retirement village that the total cost of capital maintenance for all major items of capital, including shared major items of capital, estimated at the commencement of the plan is likely to increase by 25% or more before the end of the 10-year period of the plan.
- (2) For the purposes of subsection (1), an increase in the cost of capital maintenance is to be calculated net of increases in the Consumer Price Index published in each relevant year of the asset management plan.
- Note.** For example, if the Consumer Price Index has risen by 2.5% each year of the first 5 years of the asset management plan, the cost of maintenance could rise by 36% (24% + 12.5%) before the plan would need to be revised under this clause.
- (3) The operator of the retirement village must, as soon as reasonably practicable after becoming aware of the likely increase in capital maintenance costs—

- (a) revise the estimates of the capital maintenance costs in the asset management plan, and
 - (b) notify each resident of the retirement village that a copy of the revised asset management plan 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
 - (c) annex to the revised plan a notice in accordance with subclause (4).
- (4) The notice to be annexed to a copy of the revised asset management plan is to contain the following information—
- (a) a list of the major items of capital and shared major items of capital in respect of which the estimate of capital maintenance costs has increased,
 - (b) the original and revised estimates of capital maintenance costs for each item,
 - (c) the reason for the change in the estimates.
- (5) For the purposes of section 20(1)(k) of the Act, a revised asset management plan is prescribed.
- (6) Clause 26C(3)–(5) applies to the revised asset management plan in the same way as it applies to the asset management plan as originally prepared.
- (7) Subclause (1) applies to the revised asset management plan in the same way as it applies to the asset management plan as originally prepared except that the total cost of capital maintenance for all major items of capital is taken to be estimated as at the date on which the plan was revised.

[3] Clause 31 Agenda at annual meeting

Omit clause 31(e). Insert instead—

- (e) the asset management plan,
- (e1) a report of the operator of the retirement village prepared under clause 26C(4),

[4] Clause 53, heading

Insert “**and transitional provisions**” after “**Savings**”.

[5] Clause 53(2)

Insert at the end of the clause—

- (2) An operator of a retirement village is not required to comply with clauses 19A, 26B(1), 26E(2) and (3) and 26F(1) before 1 September 2021.

[6] Schedule 1 Forms

Insert after “a detailed list of all currently available/vacant premises in the village” in Part 2, clause 12—

- the most recent asset management plan
- the most recent 3-year report relating to capital maintenance extracted from the most recent asset management plan and included in the most recent annual budget

[7] Schedule 5 Penalty notice offences

Insert at the end of the Schedule—

Offences under this Regulation

Clause 19A

1,100 (in the case of a
corporation) or 440 (in any
other case)