



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELSC:Prop:EEsh1733608

6 June 2019

Retirement Village Rules of Conduct Review
Regulatory Policy, Better Regulation Division
Department of Finance, Services and Innovation
2-24 Rawson Place
SYDNEY NSW 2000

By email: policy@finance.nsw.gov.au

Dear Sir/Madam,

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

The Law Society of NSW appreciates the opportunity to comment on the draft *Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019* ("Regulation") which will establish new Rules of Conduct for the operators of retirement villages in NSW ("Rules of Conduct").

The Law Society supports the establishment of the Rules of Conduct and we set out our specific comments below. The Law Society's Property Law and Elder Law, Capacity and Succession Committees have contributed to this submission.

1. Operators must develop an elder abuse mitigation strategy (Rule 9)

Definition of "elder abuse"

We support the inclusion in the Rules of Conduct of a definition of "elder abuse", which will provide the first NSW legislative definition of that term:

"elder abuse" means any single or repeated act, or lack of action, occurring within a relationship where there is an expectation of trust, that causes harm or distress to an older person.¹

We note that this definition is drawn from the NSW Ageing Strategy 2016-2020. It is similar, but not identical, to that included in the 2002 World Health Organisation ("WHO") Toronto Declaration on the Global Prevention of Elder Abuse,² which was adopted by the Australian Law Reform Commission in its recent report "Elder Abuse — A National Legal Response".³

Elder Abuse is 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.

¹ Rule 2(1).

² World Health Organization, "Toronto Declaration on the Global Prevention of Elder Abuse", 2002, p 4.

³ Australian Law Reform Commission, "Elder Abuse—A National Legal Response", 2017, 2.25.

Given that the WHO definition is the accepted international definition of elder abuse and has recently been endorsed at a national level, there is a question as to why it should not be adopted in New South Wales. The WHO definition is intended to provide a consistent understanding of elder abuse across a wide range of contexts. Adopting the WHO definition in the Rules of Conduct would support the development of a consistent approach to identifying and combatting elder abuse. In addition, consistency with the WHO definition would provide an international context in which to promote understanding and awareness of the issue.

Elder abuse mitigation strategy

In our view, it is reasonable and appropriate for Retirement Village operators to develop a mitigation strategy to address elder abuse. We support the proposed measures aimed at raising awareness of elder abuse in retirement villages including the requirements to:

- post copies of the strategy on notice boards;
- make staff aware of the strategy;
- provide staff and residents with accessible resources, skills and information on elder abuse; and
- include examples of common forms of elder abuse and specific examples applicable to retirement villages.

However, in our view there is insufficient focus on mechanisms for addressing incidences of elder abuse that may occur. The Rules include requirements to “provide information on ways to respond to elder abuse or concerns about suspected elder abuse including procedures for reporting abuse and response times”. Consideration should be given to requiring more specific mechanisms. By way of comparison, NSW health organisations⁴ are required to develop protocols for staff which include:

- escalation processes and training for staff in reporting elder abuse;
- guidance for escalating matters to the NSW Police;
- guidance for contacting services such as the NSW Elder Abuse Helpline and Resource Unit; and
- pathways for coordination with other local services and agencies.

In addition, elder abuse mitigation strategies should also include a range of possible outcomes for staff who commit breaches of the Code. Such outcomes could include counselling, performance improvement plans, formal disciplinary action, referral to the police in cases of suspected criminal activity or termination of employment.

2. Operators must not disclose confidential information about residents or prospective residents (Rule 8)

In our view, rather than “resident or prospective resident” it would be preferable to use broader terminology, for example “parties to negotiations, transactions or dealing”, throughout the Rule. The parties involved in the negotiations and ongoing communications may include other persons such as the relatives of the resident. The protections for non-disclosure of confidential information should also be afforded to this wider group.

⁴ NSW Department of Health, Policy Directive – Identifying and Responding to Abuse of Older People, 19 July 2018.

3. Operators must provide information to external selling agents on request (Rule 10)

We recommend that this Rule be expanded so that the obligation on the operator to provide the information extends to providing the information to a solicitor or conveyancer engaged by the resident in relation to the sale of the resident's residential premises. Expanding the obligation in this way would assist the resident and the resident's representative with the efficient drafting of the sale documentation.

If you have queries about this letter please contact Sue Hunt, Principal Policy Lawyer, by email to sue.hunt@lawsociety.com.au or by phone on (02) 9926 0218.

Yours faithfully,



Elizabeth Espinosa
President