



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Property:PWgl1385297

19 July 2017

Retirement Villages Regulation 2017
Better Regulation Division, Department of Finance, Services and Innovation
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: rvregulation2017@finance.nsw.gov.au

Dear Sir/Madam,

Retirement Villages Regulation 2017 ("Draft Regulation")

The Law Society of NSW appreciates the opportunity to comment on the Draft Regulation. The Law Society's Property Law and Elder Law, Capacity and Succession Committees have contributed to this submission.

The Law Society has considered the Regulatory Impact Statement and responds to the questions raised in the attached table.

We also note that following recent media in relation to the operation of the retirement village industry, there have been calls for a review and reform of the sector. The Law Society would be pleased to participate in any relevant consultations that may be conducted by NSW Fair Trading where appropriate.

Any questions regarding this letter should be directed to Gabrielle Lea, Policy Lawyer on 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

Pauline Wright
President

Submission of the Law Society of NSW

Regulatory Impact Statement question	Law Society response
<p>1. Should the repainting of external surfaces be defined as capital maintenance? Why/why not?</p>	<p>Yes, repainting is done to preserve the structure and appearance of the building.</p>
<p>2. Are there other types of work that should be included or excluded from the definition of capital maintenance?</p>	<ul style="list-style-type: none"> • We note that the definition of capital maintenance in s 4 of the <i>Retirement Villages Act 1999</i> states: <ul style="list-style-type: none"> capital maintenance means works carried out for the purpose of repairing or maintaining an item of capital and includes works prescribed by the regulations as being capital maintenance, but does not include works that are prescribed by the regulations as not being capital maintenance. • Clause 4 of the Retirement Villages Regulation 2017 (“Draft Regulation”) could be expanded to prescribe that capital maintenance also includes: <ul style="list-style-type: none"> ○ reinstating the physical condition of a building, ○ preventing deterioration, ○ restoring the correct operation of machinery, ○ replacing component parts at the end of their economic or useful life, ○ temporary repairs for safety and security and ○ assessing building maintenance programmes.
<p>3. Are there any other common optional services that should be</p>	<p>Personal hygiene and medical services should be added to the list of</p>

Submission of the Law Society of NSW

Regulatory Impact Statement question	Law Society response
included in this clause?	optional services.
4. Is the proposed standard table of fees and charges easy to understand?	Yes.
5. Do you agree with the introduction of the 'average resident comparison figure'?	Yes, provided the assumptions behind the tool are clearly stated and that it is made very clear that it is for comparison purposes only.
6. Will 'the average resident comparison figure' assist prospective village residents and their families to understand and compare the financial implications of village contracts?	Yes.
7. Do you agree with the proposed changes to the general inquiry document aimed at improving disclosure around village rules?	Yes, it should be made clear that a copy of the village rules will be provided at no cost to residents.
8. Should any other changes be made to the general inquiry document (i.e. deleted or added), keeping in mind its purpose?	No.
9. Are there any reasons why a village's insurance policy documents should not be made available by the operator?	No.
10. Should the Regulation require any other documents be made available by the operator?	No.

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Regulatory Impact Statement question	Law Society response
11. Is it reasonable for the operator to provide a copy of the safety inspection report upon request? Why or why not?	Yes, and it should be provided at no cost to the resident.
12. Is \$50 a reasonable amount for residents to contribute towards legal fees incurred when preparing a village contract? Why or why not?	<ul style="list-style-type: none"> • If the Government proceeds with the proposal to reduce the maximum contribution from a proposed resident towards the legal costs incurred by the operator when preparing a village contract to \$50, the Law Society suggests that it would be simpler to have no contribution at all. It is not worth the administrative costs to raise an invoice, collect and then deposit payment of \$50. • As the membership body for NSW solicitors, we are disappointed at the statements on pages 37 and 38 in the Regulatory Impact Statement that appear to devalue the work done by the solicitors for the operator in issuing draft documentation for each new resident.
13. Will the new condition report make it easier for residents and operators?	Yes, and photos should be taken of the premises before the resident moves in and after the resident leaves the premises. Any promised improvements or repairs should also be properly documented.
14. Do you agree with the new matters that have been included as village rules?	Yes.
15. Should any other matters be included in Regulation to help clarify what village rules can relate to?	No, not at this stage.

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Regulatory Impact Statement question	Law Society response
16. Are the new requirements around head office costs fair and reasonable? Why or why not?	Yes.
17. Should the Regulation prescribe any other matters that must be dealt with in a proposed annual budget?	We have no additional suggestions.
18. Is this change to the notice accompanying a proposed annual budget appropriate?	Yes.
19. Should the notice accompanying the proposed annual budget include any other statements?	We have no additional suggestions.
20. Is lowering the amount that an annual budget may allocate for contingencies to \$1 appropriate? Why or why not?	The concept of a maximum amount of \$1 being allocated for contingencies in the annual budget appears very unusual. However from the same perspective, a maximum amount of \$100 is also unusual. We would prefer that this item in the annual budget reflected actual contingencies.
21. Is there any reason why the model budget should not be removed from the Regulation?	Making the model budget available on NSW Fair Trading's website instead appears to be a satisfactory alternative.
22. Are there any concerns with the separation of 'workers compensation' and 'public liability insurance' in this clause?	No.

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Regulatory Impact Statement question	Law Society response
23. Is there any reason why the minimum public liability insurance cover amount should not be removed from the Regulation?	Yes, in the Law Society's view there should be a mandatory minimum level of public liability insurance specified in the Draft Regulation to avoid the prospect that a village operator may underestimate the risk.
24. Are the changes to the notice of variation requirements appropriate?	Yes.
25. Is the information required in the notices of variation in clauses 23 and 24 sufficient?	Yes.
26. Do you agree with the proposed change in clause 26(d) regarding payroll tax?	Yes.
27. Is it reasonable to require head office expenses to be detailed in accordance with clause 19(2) of the Regulation where they are funded by recurrent charges?	Yes.
28. Should land tax be prohibited from being funded by recurrent charges?	Yes.
29. Is it necessary to include gifts and donations in clause 26?	If the operator chooses to make a gift or donation, this should not be funded by the residents through recurrent charges. On that basis it is appropriate to include gifts and donations in clause 26.

Submission of the Law Society of NSW

Regulatory Impact Statement question	Law Society response
<p>30. Is it reasonable to prohibit any increase in the workers compensation experience premium component from being financed by way of recurrent charges?</p>	<p>Yes, it is not appropriate to allow an operator to pass on an increase in the experience premium component through recurrent charges to residents. The operator must ensure a safe workplace. We agree that allowing such increases to be passed on to residents means the operator has no financial incentive to improve their work health and safety or return to work performance.</p>
<p>31. Should an operator's strata costs be prohibited from being funded by recurrent charges?</p>	<ul style="list-style-type: none"> • The Regulatory Impact Statement describes the effect of clauses 26(i) and 26(j) of the Draft Regulation as prohibiting the use of recurrent charges for any work which is the responsibility of the owners corporation or community association, as well as any levies the operator is required to pay because they are also an owner in the strata or community scheme. We support clauses 26(i) and 26(j) of the Draft Regulation. • We also note that usually the operator (or an associated entity as defined in the <i>Corporations Act 2001</i>) has a degree of influence in the setting of such levies.
<p>32. Is there any reason why the notice requirement specific to smoke alarms should not be removed from the Regulation?</p>	<ul style="list-style-type: none"> • No.
<p>33. Are the methods for service of documents in the proposed Regulation appropriate? Why or why not?</p>	<ul style="list-style-type: none"> • We support the broadening of acceptable service methods for notices other than termination notices. • We support an opt-in approach for the giving of notices by email, except for termination notices.

Submission of the Law Society of NSW

Regulatory Impact Statement question	Law Society response
	<ul style="list-style-type: none"> Consideration should be given to extending the operation of clause 50(2)(a) in the Draft Regulation to an attorney, who has been appointed by a resident under a power of attorney, where a copy of that power of attorney has been provided to the operator. However we suggest that in this circumstance, the service on the attorney should be in addition to, not in substitution for, service on the principal (i.e. the resident.)
34. blank	
35. Are the changes to the circumstances in which a person can hold the same office on the residents committee for more than 3 years reasonable?	<ul style="list-style-type: none"> Yes. We also note that under s 71 of the <i>Retirement Villages Act 1999</i> the regulations may make provision for the procedures of residents committees. Neither the <i>Retirement Villages Regulation 2009</i> or the Draft Regulation makes provision for the procedures of residents committees, but in our view this guidance should be provided in the regulations.