



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC/ELCS:JBgl100325

10 March 2025

Retirement Villages Regulation 2025
Policy and Delivery, NSW Fair Trading
NSW Department of Customer Services
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

By email: RVRegulationRemake@customerservice.nsw.gov.au

Dear Sir/Madam,

DRAFT RETIREMENT VILLAGES REGULATION 2025

Thank you for the opportunity to provide feedback on the Retirement Villages Regulation 2025 (NSW) (**Draft Regulation**) and the accompanying Regulatory Impact Statement. The Law Society's Property Law, and Elder Law, Capacity and Succession Committees contributed to this submission.

Our feedback on relevant questions in the Regulatory Impact Statement is provided in the attached comments table.

One of the substantive proposals in the Draft Regulation is to remove the General Inquiry Document, Disclosure Statement, Appointment of Proxy and Termination Notice from Schedule 1 to the *Retirement Villages Regulation 2017* (NSW) (**Current Regulation**), and instead provide for publication of these forms in the NSW Government Gazette. We understand from page 20 of the Regulatory Impact Statement that the rationale for this change is to provide accessibility, and flexibility for keeping the forms up to date.

In our view, such a change is unlikely to improve accessibility, nor achieve greater flexibility. Having these forms in the Current Regulation ensures that residents, operators, legal practitioners and any other interested persons can look to the Current Regulation to easily ascertain the current version of these forms. By comparison, it would decrease accessibility to have to search through the NSW Government Gazette to access these frequently used forms as navigating the NSW Government Gazette webpage is a more complex process than locating a Regulation. We suggest that this process is not something residents or operators would typically be familiar with. Residents and industry will need to be educated as to where to locate these important documents if this change is made.

We acknowledge that this issue has been partly addressed in the Draft Regulation. Sections 11(a), 12(a), 23(1) and 61(1) of the Draft Regulation all make provision for referencing the relevant date of publication in the NSW Gazette of the General Inquiry Document, Disclosure Statement, Appointment of Proxy and Termination Notice respectively. However, while this would assist in locating the particular edition of the Gazette, it also has the effect that the Regulation will need to be amended whenever a new version of a form



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is gazetted. Consequently, the flexibility sought will not in fact eventuate. It is also foreseeable that confusion may arise if a new version of a form has been published in the NSW Gazette *before* the Regulation has been updated accordingly. We suggest this new approach is creates unnecessary complexity and should be reconsidered. In our view, the General Inquiry Document, Disclosure Statement, Appointment of Proxy and Termination Notice should remain in the Draft Regulation, as it allows for a single source of truth and is more easily accessed than the NSW Gazette.

We look forward to further involvement in this consultation. Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely

Jennifer Ball

President

Attachment

Department of Customer Service

Regulatory Impact Statement – Proposed Retirement Villages Regulation 2025

Law Society of NSW Feedback



No.	Question	Law Society comments
1.	Are pharmaceutical services appropriately captured by shopping assistance? If not, please explain.	Yes, we support removing 'pharmaceutical services' from the list of prescribed 'optional services' in proposed section 7 of the Draft Regulation.
2.	What other (if any) services should be prescribed as optional services in the Regulation? Please explain why.	We have no further suggestions for prescribed 'optional services'. However, as this is important consumer legislation, we suggest the addition of a note to proposed section 7 of the Draft Regulation, to the effect that the prescribed optional services in the Regulation are examples of other services that may constitute optional services, in addition to the optional services of provision of meals, laundry services and the cleaning of the residents' residential premises, as referred to in the Note to the definition of 'optional services' in section 4(1) of the <i>Retirement Villages Act 1999 (RVA)</i> .
3.	Do you support the form of the General Inquiry Document and Disclosure Statement being prescribed by publication in the Gazette? Please explain your answer.	No, we oppose the form of the General Inquiry Document and Disclosure Statement being prescribed by publication in the Gazette for the reasons outlined in our attached letter.
4.	Do you support the inclusion of the holding deposit in the Disclosure Statement? Please explain your answer.	Yes, this is an appropriate addition, given the role of the Disclosure Statement in highlighting salient features of the arrangement for prospective residents. Retirement Village operators tend to adopt a standardised approach to holding deposits, making it capable of disclosure.
5.	Do you support the form of the Appointment of Proxy being prescribed by publication in the Gazette. Please explain your answer.	No, we oppose the form of the Appointment of Proxy being prescribed by publication in the Gazette for the reasons outlined in our attached letter.
6.	Do you agree that more guidance from NSW Fair Trading about the operation of section 34 of the proposed Regulation will assist operators and residents? If no, please explain your answer.	Yes, page 22 of the Regulatory Impact Statement provides several examples of current misunderstandings of clause 26AA of the <i>Retirement Villages Regulation 2017 (Current Regulation)</i> which will be replicated by section 34 in the Draft Regulation. Further guidance will assist operators to charge correctly, and assist residents to better understand the operation of the provision and enable them to check whether they have been charged correctly.
8.	What other information (if any) should operators record for major items of capital on the asset register? Please explain.	We have no suggestions for additional information that should be recorded for major items of capital on the asset register under proposed subsection 36(2) of the Draft Regulation. However, in practice not all major items of capital have an asset ID number as required to be specified on the register under proposed subsection 36(2)(c) of the Draft Regulation (a requirement



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		<p>carried over from the Current Regulation). For example, a retaining wall is a major item of capital, but it would not be appropriate to assign it an asset ID number. In our view, a description should be sufficient, as required under proposed subsection 36(2)(a) of the Draft Regulation. We therefore suggest adding the words 'where available' after the words 'asset ID number of the item' in proposed subsection 36(2)(c) of the Draft Regulation.</p>
9.	<p>Do you support requiring operators to record the 'remaining effective life of an item' instead of the 'effective life of an item'? Please explain your answer.</p>	<p>Yes, we agree that recording the 'remaining effective life of an item' instead of the 'effective life of an item' will likely be more meaningful to residents. We note that 'effective life' may change over time if repairs or other works are undertaken to the item of capital.</p>
11.	<p>Do you support removing the requirement for operators to keep information about accumulated costs for each capital item? Please explain your answer.</p>	<p>Yes, in our view the benefits of this requirement are not sufficient to warrant the compliance costs in keeping this information. In our members' experience, difficulties are also experienced in endeavouring to ensure the information is accurate.</p>
13.	<p>Do you support having an annual capital maintenance report instead of a 3-year capital maintenance report? Please explain why or why not.</p>	<p>Yes, this will be less of an administrative burden for operators and may be more meaningful for residents. Even though the new report will be on an annual basis, it will be informed by the longer-term asset management plans that an operator must prepare and update.</p>
16.	<p>Do you support operators being able to estimate the effective life for a major item of capital? Please explain your answer.</p>	<p>Yes, this simplified process is appropriate in our view, provided the proposed supporting information in relation to the estimate is retained.</p>
17.	<p>Do you support operators having to keep information about how they have estimated the effective life of an item, demonstrate that their estimate is reasonable and provide residents with this information if requested? Please explain your answer.</p>	<p>Yes, it is important that this supporting information is retained and made available to residents upon request.</p>
19.	<p>Do you support removing the provision that the Tribunal may make differential orders? Please explain your answer.</p>	<p>No, clause 38 of the Current Regulation expressly allows the Tribunal to make different orders for different residents when determining a matter. This is not equivalent to section 58 of the <i>Civil and Administrative Tribunal Act 2013</i> which allows the Tribunal to impose conditions when making an order. In our view, clause 38 of the Current Regulation should be retained as it is a useful clarification for both residents in retirement villages and the Tribunal.</p>



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20.	Do you support allowing NSW Fair Trading to exchange relevant village information with the Ageing and Disability Commission noting this will only occur in accordance with privacy laws? Please explain your answer.	Yes, we support the benefits this may bring for compliance activity and collaboration opportunities. In our view it is particularly important to share information to help address matters of elder abuse. We suggest consideration be given to expanding proposed section 56 of the Draft Regulation to expressly clarify that the sharing of information may include information in relation to elder abuse, including the referral of incidents of elder abuse.
21.	Do you support the Termination Notice being prescribed by publication in the Gazette to ensure it can be kept up to date more easily? Please explain your answer.	No, we oppose the form of the Termination Notice being prescribed by publication in the Gazette for the reasons outlined in our attached letter.
22.	Do you support the changes to the definitions of Relevant Village Information? Please explain your answer.	<p>There are two changes which we do not support:</p> <ul style="list-style-type: none"> • It is unclear to us why the operator should no longer provide information to the Department Secretary about convictions under the RVA. Although this information should be held by the Department, we suggest there is no harm in the operator providing this information annually to cross check with the information held by the Department. • The existing requirement for operators to provide details of the entity that owns the land where the operator does not own the land (under clause 6(k) of Schedule 7 of the Current Regulation) should be retained in our view as this is key information regarding the nature of the Retirement Village.
23.	Are the current voting procedures sufficient? If not, please explain your answer.	Yes, except as referred to in our response to question 26, the current voting procedures are sufficient, and we note they have been retained in the Draft Regulation. It is important that there continues to be different ways of voting available to a resident, and it should always be possible to attend the meeting in person to cast a vote.
24.	Would you support no longer requiring Returning Officers to initial written ballots? Please explain your answer.	No, the initialling process is an important safeguard against fraud and tampering, as referred to on page 28 of the Regulatory Impact Statement.
26.	Would you support the use of postal voting to approve general consent items? Please explain your answer.	Yes, the use of postal votes in relation to general consent items would provide a useful way to overcome possible resident coercion at meetings. Where the resident committee may hold strong views on particular matters, it may be difficult for a resident to call for a written ballot on a general consent item, or the resident may be too hesitant to attend a meeting to cast their vote. A postal vote provides another option for a resident to exercise their voting rights free from undue pressure, duress or coercion, and should be provided for both general consent items and special resolutions.



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		<p>Consideration could also be given to using a different term to 'postal vote', although we note this term has been carried over from the Current Regulation. We suggest 'postal vote' is a confusing term as it appears to be intended to cover prior written votes in a much broader sense, as referenced in section 3(1) of Schedule 6 of both the Current Regulation and the Draft Regulation.</p>
27.	<p>Do you support making the following rules of conduct offence provisions:</p> <p>(a) Section 8, which requires operators to develop a strategy for preventing elder abuse.</p> <p>(b) Section 18, which requires operators to keep records of conflicts of interest.</p> <p>(c) Section 20, which requires that operators must not discourage residents from making complaints or pursuing internal disputes.</p>	<p>Yes, in our view it is appropriate to make each of these requirements offence provisions, given their importance in maintaining best practice in the operation of retirement villages.</p>
28.	<p>Are the dispute resolution processes available to retirement village residents who have a dispute with an operator adequate? Please explain your answer.</p>	<p>Yes, in addition to the ability to apply to the NSW Civil and Administrative Tribunal, we note the complaint service, dispute resolution assistance and mediation services provided by NSW Fair Trading.</p>
29.	<p>What could improve how operators and residents resolve disputes in retirement villages? Please explain your answer.</p>	<p>Staff training and provision of appropriately targeted information to residents is key. Consideration could also be given to training members of resident committees. This could assist in reducing misconceptions and misunderstandings of the operation of the RVA, and fostering a better understanding of the rights and responsibilities of residents and operators.</p> <p>We note the importance of the provisions of Schedule 7 Part 6 of the Draft Regulation in relation to training and staff competencies. We suggest that the words 'unreasonable conduct by' should be deleted from section 27(b) and section 28(d) of Schedule 7 as these words are unnecessary and not consistent with fostering an empathetic approach.</p>