

14 March 2025

To: Policy team, NSW Fair Trading
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To whom it may concern,

RE: Retirement Villages Regulation 2025 public consultation draft

Thank you for the invitation to provide a submission on the proposed Retirement Village Regulation 2025. This submission outlines our perspectives on key areas of change, including asset management plans, complaints management, document accessibility and regulatory transparency. We acknowledge the intent behind these reforms and seek to ensure they support both operators and residents in fostering a well-regulated and sustainable retirement living sector.

The retirement living sector plays a crucial role in housing and supporting older Australians. The regulatory framework must balance resident protections with operational viability, ensuring that villages remain sustainable while fostering transparency, trust and financial clarity.

Ageing Australia is the national industry association for over 1,000 aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

This submission responds to key elements of the proposed Retirement Villages Regulation 2025 with a focus on ensuring the regulatory framework remains fit for purpose, proportionate and practical in its application.

While we acknowledge the intent to improve transparency and resident protections, it is essential that new requirements do not create unnecessary complexity or compliance risks - particularly where existing industry practice already meets or exceeds regulatory intent.

Document accessibility and the NSW Government gazette *(responding to questions 3, 5 and 21 in the Discussion Paper)*

A key concern raised from our members is the movement of prescribed documents (e.g., disclosure statements, general inquiry documents and proxy forms) to the NSW Government Gazette.

While we understand the intent to increase administrative flexibility for government, the following practical implications and unintended consequences must be considered:

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Limited awareness and accessibility

Very few residents, operators or industry stakeholders subscribe to or regularly check the Government Gazette. It is not an intuitive or user-friendly platform for those seeking essential regulatory information. Unlike other government websites or dedicated aged care and retirement living portals, the Gazette is a formal publication that requires active searching, making it easy for important updates to be overlooked.

Potential compliance risks

Operators must ensure they are using the correct versions of prescribed forms. If document updates occur without clear notification, compliance risks may increase. Relying on stakeholders to monitor the Gazette could result in important updates being missed, leading to compliance failures.

Alternative approach

A dedicated online portal, managed by NSW Fair Trading, would be a preferable solution – providing accessible, centralised and up-to-date information without requiring regulatory embedding.

Having the forms contained in the Regulation allows for ready access for both operators, and residents alike. This outweighs the advantage (primarily to the regulator) of being able to update the documents from time to time by gazetting them.

Asset Management Plans and capital maintenance recording

Asset Management Plans are already widely used by operators as part of best practice. They support long-term sustainability and financial planning for retirement villages, ensuring that capital maintenance and replacement costs are adequately forecasted.

Detailed asset data serves several important functions, including:

- Supporting warranty claims that require brand, model, and serial number information.
- Enabling performance assessments across different brands and models.
- Assisting operators in negotiating better replacement terms.
- Facilitating swift responses to product recalls or safety warnings by allowing operators to quickly identify affected items within the village.

The removal of these details from asset registers risks undermining best practice, compromising safety in the event of recalls and limiting an operator's ability to effectively manage and replace capital assets. However, we support that the draft Regulation allows operators the discretion to determine whether they will continue to report this level of asset information.

Q8. Is there any other information that should be included in the asset register for the village?

Some members have questioned the rationale behind the \$1,000 threshold for recording item value and whether all capital items in a retirement village should be required to be listed in the asset register, regardless of cost.

Q9. Do you support the requirement for operators to record the “remaining effective life” of an item of capital rather than the “effective life”?

We strongly support the requirement to record the “remaining effective life” of an item of capital, as opposed to the “effective life”. This approach was seen as consistent with globally recognised best practices and standards. When combined with the proposed methodology change allowing operators to estimate this value, it enables the provision of information that is more relevant and meaningful for both residents and operators.

Q10. & 11. Do you support removing the requirements for operators to keep information about accumulated costs for each capital item? Why?

We support for removing this requirement, as the accumulated cost figures are often not easily understood or particularly helpful, especially for residents. While capital maintenance is a common discussion point, these figures were seen as having limited relevance or practical value in those conversations.

Q13. Do you support having an annual capital maintenance report instead of a 3-year capital maintenance report? Please explain why or why not.

Our members generally support replacing the three-year report with an annual capital maintenance report, as it provides residents with more relevant and timely information. While the proposed annual report simplifies some reporting requirements, the removal of projected dates for capital maintenance beyond the current year was considered appropriate, given the difficulty in making accurate forecasts beyond a 12-month timeframe.

However, the rationale for removing the estimated costs of maintenance within the reporting year was less clear. Questions were also raised about inconsistencies in the proposed reporting requirements - specifically, the requirement to include planned dates for capital maintenance within the year, while removing forward estimates for the following three years.

It was also noted that the introduction of more frequent reporting - such as replacing the three-year report with an annual one - may add complexity and potentially cause unintended confusion for residents. While transparency is important, the overarching goal should be to ensure that residents receive clear, accessible information without placing an undue administrative burden on operators.

Q16. Do you support the proposal for operators to be able to estimate the effective life for a major item of capital? Why or why not?

We generally support the proposal to allow operators to choose between using the ATO tax ruling or providing their own estimate of the effective life of a capital item. This approach enables operators to consider factors specific to the item and the village, and to better reflect the actual condition of the asset. It was noted that this flexibility may help avoid unnecessary or premature replacement costs.

Q17. 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

Our members generally have no objections to the requirement for operators to keep records of how they have estimated the effective life of an item and to provide that information to residents upon request. It has been noted that residents often raise queries about capital items, and having this information readily available supports transparency and enables operators to respond appropriately.

However, the additional requirement under proposed regulation 37(4) to demonstrate that the estimate is "reasonable" was seen as unnecessary if operators are already required to consider the factors listed in regulation 37(1)(a) when making the estimate. This additional obligation could give rise to disputes, as interpretations of what is "reasonable" may vary. It was considered that the requirement to retain and disclose the basis for the estimate - particularly when it outlines the relevant factors - should be sufficient to ensure accountability and 'reasonableness'.

Given that most operators already have AMPs in place as they have become accustomed to the existing requirements, the question remains whether further regulation is necessary or whether these should remain an industry-led standard.

Offence Provisions

Elder abuse: A complex issue often beyond operator - resident relations

Elder abuse is a significant concern in aged care and retirement living, but it is important to note that most cases involve family members, particularly children, rather than village operators.

Nature of elder abuse

Cases often revolve around financial abuse, coercion in decision-making and undue influence in property transactions or financial arrangements. This is commonly perpetrated by family members rather than retirement village staff.

Difficulties in strategy implementation

Mandating that operators develop an elder abuse prevention strategy is challenging, given that operators are rarely directly involved in these cases. Instead, the focus should be on ensuring residents have access to legal and financial advice to protect their interests.

Q27. Do you support making the following rules of conduct offence provisions?

- a) Requirement to develop a strategy for elder abuse?
- b) Requirement to keep a register of conflicts of interest?
- c) Requirement that operators not discourage residents from making complaints or pursuing internal disputes?

These provisions are already included in the existing Rules of Conduct for Operators of Retirement Villages and their elevation to offence provisions is broadly supported.

We support the requirement for operators to develop a strategy for elder abuse, recognising the importance of safeguarding residents and promoting awareness within

retirement communities. However, further information is needed on the expected scope and content of this strategy.

However, the rationale outlined in the Discussion Paper - that each requirement involves a specific task mandated of the operator - does not clearly apply to item (c). This provision instead requires operators to refrain from certain actions, as described in a non-exhaustive list within the Regulation. As with other obligations not proposed as offence provisions, compliance in such cases may be difficult to objectively assess. The case for item (c) being treated as an offence provision may be more appropriately based on its deterrent value, rather than its characterisation as a task-based obligation.

How would compliance with an elder abuse prevention strategy be measured? Elder abuse cases are often complex, situational and often occur outside the operator's direct oversight.

Tribunal

Q19. Do you support removing the provision that the Tribunal may make differential orders? Please explain your answer.

Support for the removal of this provision is based on the understanding that the Civil and Administrative Tribunal Act 2013 (NSW) would continue to allow for differential orders to be made where appropriate. However, if this is not clearly provided for under the relevant legislation, there would be merit in retaining the provision to ensure certainty and clarity in the Tribunal's powers.

Complaints and dispute resolution

While no significant changes to complaints management have been proposed, we encourage further discussion on:

- The complexity of complaints resolution within villages, particularly where disputes arise between residents and management.
- Clarification on mediation avenues to support timely and effective dispute resolution outside of tribunal processes.
- Standardisation of internal complaints procedures to ensure transparency and consistency across all retirement villages.

Q28. Are the dispute resolution processes available to retirement village residents who have a dispute with an operator adequate? Please explain your answer.

Concerns have been raised about the adequacy of current dispute resolution processes, particularly in light of an observed increase in resident-to-resident disputes. These types of disputes can significantly impact the overall harmony and wellbeing of the village community, often creating tension not only between the individuals involved but also within the broader resident group.

While there are established processes for resolving disputes between residents and operators, there is limited clarity or structured support for managing conflicts that arise between residents. These disputes often fall outside the formal responsibilities of the operator, yet residents may still expect intervention or resolution assistance, placing operators in a difficult position without a clear mandate or guidance.

The lack of accessible, neutral and informed mechanisms to address resident-to-resident disputes means that issues can escalate unnecessarily, potentially impacting the amenity of the village and creating an uncomfortable living environment. Additionally, the current system does not always encourage early or informal resolution, which can lead to entrenched positions and a breakdown in community relationships.

To improve the adequacy of the dispute resolution framework, greater attention should be given to establishing clear pathways and support structures for resident-to-resident disputes. This could include guidance for operators on their role and limitations in such matters, as well as access to external mediation services with appropriate expertise in retirement village settings. Any review of the legislation relating to dispute resolution should include appropriate support and protections for operators who are acting in good faith to resolve disputes between residents.

Q29. What could improve how operators and residents resolve disputes in retirement villages? Please explain your answer.

Improving the dispute resolution process in retirement villages requires the establishment or formal recognition of a dedicated body with a clear and express mandate to mediate disputes - particularly before matters escalate to the NSW Civil and Administrative Tribunal (NCAT). Early intervention through mediation can provide a more efficient, less adversarial and lower-cost pathway for resolving conflicts between residents and operators, or between residents themselves.

While the Tribunal may encourage informal discussions ahead of a hearing, by that stage parties have often already incurred significant time, stress and legal costs. A pre-Tribunal mediation mechanism, led by professionals with a sound understanding of the unique regulatory, contractual and interpersonal dynamics in retirement villages, would allow for more practical and timely resolutions.

Although some mediation services currently exist, they may not have the specialised expertise required to address the nuances of retirement village legislation, resident contracts and village governance. Formalising a specialised, accessible dispute resolution body - either within NSW Fair Trading or as a separate, sector-specific mediation service - could significantly enhance the effectiveness and fairness of the complaints process. This would not only help de-escalate issues early but also improve trust and confidence among residents and operators in the broader regulatory system.

If you have any further questions or would like to discuss, please contact Mark Prosser, Director Retirement Living & Seniors Housing at mark.prosser@ageingaustralia.asn.au.

Yours sincerely,



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