

Residential Services (Accreditation) (Retirement Village Schemes) Amendment Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Sam O'Connor, Minister for Housing and Public Works and Minister for Youth, provide this human rights certificate with respect to the *Residential Services (Accreditation) (Retirement Village Schemes) Amendment Regulation 2025* made under the *Residential Services (Accreditation) Act 2002* (RSA Act).

In my opinion, the *Residential Services (Accreditation) (Retirement Village Schemes) Amendment Regulation 2025* (Amendment Regulation), as tabled in the Legislative Assembly, is compatible with human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Residential Services (Accreditation) Regulation 2018* (RSA Regulation) to exclude retirement village schemes from being captured within the definition of 'residential service'.

The Amendment Regulation responds to expiry on 30 June 2025 of transitional provisions in the RSA Regulation which provided retirement villages with a temporary exemption from being captured under the RSA Act. The Amendment Regulation is intended to:

1. Provide on-going certainty to stakeholders about the application of the RSA Act to retirement village schemes.
2. Provide an appropriate and proportionate response to issues associated with food and personal care services in retirement villages.
3. Contribute to delivering a legislative and regulatory environment built on stability and certainty (including for retirement villages) which will deliver strong investor confidence in Queensland.

Following the making of the Amendment Regulation, the department will monitor retirement villages that provide food and personal care services to identify if significant issues emerge that would warrant a further policy response.

Retirement villages in Queensland are primarily regulated under the *Retirement Villages Act 1999* (RV Act). The RV Act requires retirement village schemes to be registered and aims to promote consumer protection and fair trading practices in operating retirement villages.

The RSA Act regulates the conduct of residential services to:

1. Protect the health, safety and basic freedoms of residents.
2. Encourage service providers to continually improve the way they conduct residential service.
3. Support fair trading in the residential service industry.

The objects of the RSA Act are achieved mainly by establishing a registration system, under which a residential service is registered only if the service provider and associates are suitable and the premises in which the service is conducted are safe. The RSA Act also establishes an accreditation system, under which a residential service is accredited to provide a type of service only if that service is provided in a way that meets minimum standards.

Some retirement village schemes, particularly those providing food or personal care services to residents that have the right to reside in a retirement village scheme under a lease or licence, may also be a residential service as defined in the RSA Act.

Retirement village schemes have been exempt from the RSA Act since the regulatory framework commenced in 2002 based on an industry accreditation scheme providing an alternative standards framework. A temporary exemption was established for retirement village schemes without requiring industry accreditation for the period specified in the Residential Services (Accreditation) Regulation 2018 (RSA Regulation). This period was initially specified as two years after commencement and was extended by subsequent regulations in 2020 for a further four years and in 2022 to the end of the day on 30 June 2025.

The temporary exemption ensured retirement village schemes would not be subject to dual regulation that would impose costs on operators that are likely be passed on to consumers. It also allowed emerging matters and their interactions with Queensland's regulatory environment for the oversight of privately funded care provided in retirement village schemes to be assessed, including:

- changes to industry-led accreditation schemes
- outcomes of the Royal Commission into Aged Care Quality and Safety and Royal Commission into *Violence, Abuse, Neglect and Exploitation of People with Disability*.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion the following human rights are engaged by the Amendment Regulation:

- Right to equality before the law (section 15 of the HR Act)
- Right to health services (section 37 of the HR Act)

Nature of the rights:

The right to equality before the law

Section 15(3) of the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. This section ensures that all laws and policies are applied equally, and do not have a discriminatory effect. Public entities, as well as

courts and tribunals, are required to treat all people equally when applying the law. It also requires that the laws themselves provide equal protection for everyone.

The right to health services

Section 37(1) of the HR Act provides every person has the right to access health services without discrimination. This section is not intended however to encompass rights in relation to underlying determinants of health, such as food and water, social security, housing and environmental factors.

Nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The right to equality before the law and the right to health services are arguably engaged by the Amendment Regulation.

The Amendment Regulation's permanent exemption for retirement village schemes that meet the definition of a 'residential service' will mean that residents of these villages will not have the potential of the RSA Act applying to their village.

This will place them in a different position to residents of residential services who will continue to have RSA Act protections, including RSA Act requirements about the nutritional content of food and mandated qualifications for those assisting residents with taking medication.

It is noted that retirement village provided personal care and food services, especially when provided through Commonwealth funded in-home aged care schemes, may be considered health services.

The Amendment Regulation permanently exempts retirement villages from the RSA Act. This effectively maintains the status quo as a temporary exemption has been in place since 2018 through transitional provisions in the RSA Regulation. There is not an impact on the right to equality before the law and the right to health services because:

- issues regarding retirement village provided food and care that would warrant a legislative policy response have not become prevalent while the temporary exemption has been in place
- the RSA Act is inappropriate for regulating retirement villages as it focuses on the residential services sector, a different form of housing with a different cohort of residents
- if the exemption was lifted, the RSA Act would only apply to some retirement village schemes providing food or personal care services - specifically to schemes where residence contracts grant a leasehold or licence-based right to reside in the village and not to contracts granting residents a freehold interest, which is arguably an existing limitation on the right to equality before the law in s15 of the HR Act
- there are existing protections and remedies that apply to anyone receiving food or personal care services, including those under general contract law, under the *Health Ombudsman Act 2013*, the *Food Act 2006*, and the *Australian Consumer Law* and, for people receiving food or care through the in-home aged care system, under regulation of these services by the Commonwealth.

A previous exemption framework exempted retirement villages that were members of an industry-based accreditation scheme. While an accreditation scheme was developed (Australian Retirement Village Accreditation Scheme (ARVAS)) in 2019, exempting

retirement villages from the RSA Act on the basis of ARVAS accreditation is not appropriate. Few issues with food and personal care services in retirement villages have been identified, and significant and disproportionate costs would be imposed on operators if the RSA Act also applied to them. These costs would be passed onto residents. Only 10 per cent (approximately) of Queensland retirement village schemes have become ARVAS accredited. Further, resident stakeholders have raised concerns about the effectiveness of industry accreditation schemes generally.

The Amendment Regulation will also support residents' access to in-home support services, improving their capacity to age in place with dignity and security as it will allow operators providing food or personal care services to apply resources to maintain and improve the quality food and personal care services needed by residents rather than redirecting resourcing to RSA Act compliance. This is consistent with promoting and protecting retirement village residents' right to property under s24 of the HR Act and is also consistent with promotion of residents' rights to health services under s37 of the HR Act.

The Amendment Regulation will be supported by ongoing monitoring of any significant food and personal care services issues raised. This is consistent with the promotion of residents' right to health services under s37 of the HR Act as this monitoring will identify if a further policy response is required in the future.

Relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The amendments achieve their purpose by providing an appropriate and proportionate regulatory response to issues associated with food and personal care services in retirement villages. The amendments and any subsequent limitations provide on-going certainty to operators about their regulatory requirements allowing them to focus on running the retirement village under the framework of the RV Act. This contributes to delivering a legislative and regulatory environment built on stability and certainty which will deliver strong investor confidence in Queensland.

Any less restrictive and reasonably available ways to achieve the purpose

The changes to the regulatory framework are consistent with consultation feedback by industry and resident stakeholders. The only alternative way of continuing to exempt retirement villages from the RSA Act is through an extension of the existing temporary exemption which would be inappropriate, given that the current temporary exemption has been in place for seven years. The transitional provisions sought to provide sufficient time for stakeholders to obtain ARVAS accreditation and to determine if ARVAS should be recognised by the chief executive as an entity that accredits retirement village schemes against standards for health, safety and wellbeing of residents of retirement villages under s4(3) of the RSA Regulation. However, for the reasons set out above, an ARVAS exemption approach is now no longer appropriate.

The existing safeguards in place under other legislation (as noted above) ameliorate the impact of any potential limitation on the human right to health services. In addition, the department will monitor if issues with respect to the provision of food or personal care services emerge that would warrant a further policy response.

Balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Amendment Regulation potentially limits the right to equality before the law and the right to health services. These are only potential limitations as retirement villages have been exempted from the RSA Act, including without requiring industry accreditation since 2018. The amendments are proportionate regarding the purpose of the potential limitation and preserving the identified human rights.

The Amendment Regulation (in addition to potentially limiting it) promotes the right to health services and directly addresses an existing limitation on the right to equality before the law as a result of the RSA Act application to some retirement villages providing food or personal care services. Given issues regarding retirement village provided food and care that would warrant a legislative policy response have not become prevalent while the temporary exemption has been in place, it prevents unnecessary administrative and financial burden, which in turn facilitates provision of better services to residents, who are covered by protections under other applicable legislation.

Conclusion

I consider that the *Residential Services (Accreditation) (Retirement Village Schemes) Amendment Regulation 2025* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE SAM O’CONNOR MP
MINISTER FOR HOUSING AND PUBLIC WORKS
AND MINISTER FOR YOUTH

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