



# *Government Gazette*

of the State of

New South Wales

**Number 45–Other**  
**Friday, 5 February 2021**

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The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

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Anti-Discrimination  
New South Wales

## Anti-Discrimination Act 1977

### EXEMPTION ORDER

Under the provisions of section 126 of the *Anti-Discrimination Act 1977* (NSW), an exemption is given from sections 8 and 51 of the *Anti-Discrimination Act 1977* (NSW) to Nine to advertise, designate and recruit for the position of Indigenous Affairs Journalist for Aboriginal and/or Torres Strait Islander persons only.

This exemption will remain in force for 1 years.

Dated this 28 day of January 2021

Elizabeth Wing  
**Executive Manager**  
**Delegate of the President**  
**Anti-Discrimination NSW**

## GEOGRAPHICAL NAMES ACT 1966

PURSUANT to the provisions of Section 10 of the *Geographical Names Act 1966*, the Geographical Names Board has this day assigned the names listed hereunder as geographical names:

- *Brookside Creek* for a creek extending east from Glenbrook Lagoon, to just north of Lennox Bridge currently named Lapstone Creek.
- *Lapstone Creek* for a creek extending from just north of Lennox Bridge that runs west, adjacent to Mitchells Pass.

The position and extent for these features is recorded and shown within the Geographical Names Register of New South Wales. This information can be accessed through the Board's website at [www.gnb.nsw.gov.au](http://www.gnb.nsw.gov.au)

NARELLE UNDERWOOD  
Chair

Geographical Names Board  
346 Panorama Ave  
BATHURST NSW 2795



## Anti-Discrimination Act 1977

### EXEMPTION ORDER

Under the provisions of section 126 of the *Anti-Discrimination Act 1977* (NSW), an exemption is given from sections 8 and 51 of the *Anti-Discrimination Act 1977* (NSW) to PricewaterhouseCoopers Pty Ltd to advertise and implement a Cultural Leave Policy for Aboriginal and Torres Strait Islander persons only

This exemption will remain in force for 10 years.

Dated this 28 day of January 2020

A handwritten signature in black ink, appearing to read "Elizabeth Wing", is written over a horizontal dashed line.

Elizabeth Wing  
**Executive Manager**  
**Delegate of the President**  
**Anti-Discrimination NSW**

## **ASSOCIATIONS INCORPORATION ACT 2009**

### **Cancellation of Registration pursuant to Section 76**

TAKE NOTICE that the registration of the following associations is cancelled by this notice pursuant to section 76 of the Associations Incorporation Act 2009.

CHINESE STUDENTS ASSOCIATION INCORPORATED	INC9883031
ARMENIAN CATHOLIC COMMUNITY ASSOCIATION INCORPORATED	INC9895223
EFKS CARE AUSTRALIA INCORPORATED	Y2706913

Cancellation is effective as at the date of gazettal.

Dated this 2<sup>nd</sup> day of February 2021.

Diane Duggan  
Delegate of the Commissioner  
NSW Fair Trading

# Village contract information meeting

## Guidelines for retirement village operators

Updated January 2021

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### Introduction

Retirement village residents have the right to be informed of the estimated costs payable if they were to leave their current premises through a village contract information meeting.

These guidelines are issued under section 189B of the *Retirement Villages Act 1999* (the Act) to assist operators and residents by providing information on the process for conducting a village contract information meeting.

It should be noted that the NSW Civil and Administrative Tribunal (the Tribunal) may take these guidelines into account to determine if operators have complied with the requirements of the Act.

Any reference to an *operator* in this guideline means “the person operating a retirement village who manages or controls the village”.

## Request for a meeting

Residents may request a contract information meeting with the operator at least once a year (section 69A of the Act). The resident or a holder of their Power of Attorney needs to make the request in writing (e.g. email or letter).

The operator must:

- give the resident a written reply about the meeting;
- hold a face-to-face meeting with the resident within 30 days of receiving their request (this allows sufficient time to review contracts, calculate any figures and prepare for the meeting); and
- offer to explain the resident's current village contract information and give them a written summary of that information at the meeting. The resident can waive their right to oral explanation, however, the operator must still provide the written information.

The resident may nominate in writing one person or more to represent them at the meeting or attend it with them. Options could include a family member, friend or adviser.

The operator may nominate someone to conduct the meeting. That person must have the appropriate authority, qualifications and skills and also be capable of explaining and answering questions about the resident's contract information.

The operator should confirm that the resident (and any person accompanying the resident to a meeting) understands:

- the information provided;
- that the resident's continued right to occupy the residential premises is not affected in any way by the meeting or the information being provided; and
- that the resident's right to occupy their unit is not, and will not be, terminated.

To communicate information to the resident effectively the operator may need to consider factors such as the following:

- the resident's age and health;
- the resident's ability to understand English; and
- the resident's understanding of oral or written information.

Depending on the resident's needs, it may be appropriate to support them by ensuring that they have a nominated representative present who can better understand the discussion and relay information to them.

The operator must not charge the resident for any preparation or provision of information associated with the meeting. For example, the preparation of figures.

If the operator has already met with a resident to fulfil a request under section 69A of the Act then they are not required to agree to another request in that calendar year. However, if an operator receives multiple requests they can still agree to meet with the resident or provide them with their contract information.

## Information to provide to the resident

The information the operator needs to give the resident will depend on if they are a registered interest holder or not.

A registered interest holder is a resident who is:

- a registered proprietor of the premises;
- an owner of a lot in a strata scheme;
- a proprietor of a lot in a community land scheme;
- an owner of shares in a company title scheme for the premises; or
- entitled to at least 50 per cent of any capital gain through a registered longterm lease.

### *Registered interest holder*

The village contract information needed for these residents is:

- a summary of general requirements under the Act, Regulations and the village contract regarding terminating the contract (necessary for sale);
- the estimated departure fee (if any) payable by the resident;
- the resident's liability to pay recurrent charges (section 152)
- for residents who are registered interest holders and receive 50 percent or more of the capital gain, their liability to pay recurrent charges for 42-days after permanent vacation (section 152 (e));
- estimates of any amounts payable by the resident in relation to the sale of the residential premises;
- the estimated sale price for the residential premises;
- the estimated amount payable by the operator to the resident following the sale of the residential premises;
- a summary of processes and estimates for residents eligible for aged care daily accommodation payments (section 182AG);
- a summary of processes and estimates for those who are entitled to early access to exit entitlements (section 182AC); and
- estimates of any other amounts the resident would pay under their contract (including any capital gain shared with the operator).



Operators should also consider providing residents with information regarding the engagement of an external selling agent and whether this is likely to result in any additional costs.

### *Not a registered interest holder*

The information needed for these residents is:

- a summary of general requirements under the Act, Regulations and the village contract regarding terminating the contract (necessary for sale);
- the estimated departure fee (if any) payable by the resident;
- the resident's liability to pay recurrent charges (section 153);
- the estimated amount payable by the resident for repairs required to the residential premises (section 163);
- the estimated ingoing contribution that would be payable by an incoming resident of the residential premises, where this contribution is material to the calculation of estimates;
- the estimated amount the operator pays to the resident, should the resident vacate the residential premises; and
- estimates of any other amounts the resident would pay under their contract (including any capital gain shared with the operator).

## Providing a reasonable estimate

The operator must state the date on which the calculated amounts have been based. This date can be the date of the meeting, or no later than 30 days after the meeting.

This date should be treated as if it were the date on which the resident's right to occupy their residential premises were terminated. The operator should calculate the estimates as if the resident were leaving the village on the date of the meeting or a date no later than 30 days after the date of the meeting.

Significant penalties can apply for providing estimates that are not reasonable. A reasonable estimate will ultimately depend on the circumstances of each resident.

Operators should exercise professional skill and care in determining estimated amounts. An operator may have to provide evidence to NSW Fair Trading to support the reasonableness of the estimated amounts.

## Making a reasonable estimate

Operators should consider all relevant information before providing estimates to the resident or including estimates in any document.

The operator must make reasonable estimates for:

- the estimated departure fee (if any);

- the resident's liability to pay recurrent charges (sections 152 or 153)\*;
- estimates of other amounts the resident may be required to pay on leaving the village;
- amounts the operator would be required to pay the resident;
- and
- estimate of other amounts that may have to be paid that an operator determines should be made after careful consideration of all factors that will affect these amounts (section 69A(7)).

\* Note from 1 July 2021, residents who are registered interest holders and who receive 50 per cent or more of the capital gain, will have their recurrent charges capped at 42-days after permanent vacation of the retirement village.

When determining reasonable estimates, the operator should take into account matters such as the following:

- the specific wording of the contract the resident has entered into with the village operator;
- the method used in calculating the departure fee, including the rate of accrual and reasons for any change in that rate;
- any written summary previously provided to the resident for any purpose;
- any other records kept by the operator or former operators used in calculating estimated amounts; and
- any other requirements of the Act and Regulation.

Operators must provide residents with a realistic sale price as the estimated sale price. This should be reasonable and evidence based – it does not need to reflect the resident's expectations or their preferred sale price. The operator must not quote a price that is less than a property's estimated sale price; for example, during a future sales campaign for the property.

Operators must advise residents who are registered interest holders and receive 50 percent or more of the capital gain, of their option to request:

- from the Secretary of the Department of Customer Service an order for the early payment of their exit entitlement, if their unit has not sold within certain time periods and there has been an unreasonable delay in the sale of the property (section 182AC)
- the operator pay an aged care facility their daily accommodation payment, which will be deducted from their exit entitlement once their premises sells (section 182AG).

Operators are not expected to predict future economic conditions or market forces. Operators are expected to provide information that is applicable and relevant at the date of the meeting.

## Evidence for determining estimates

To substantiate the reasonableness of an operator's estimates the NSW Fair Trading Commissioner can request the operator for the information and file notes used to determine their estimates (section 69A(11)).

When determining estimates, operators must:

- be prepared to provide the resident with the data and rationale behind their calculations;
- record all relevant information that would allow them to show how they determined a particular amount to be a reasonable estimate; and
- keep file notes and all information relied upon to determine an estimated amount.

### *Keeping file notes*

An operator should keep file notes on information such as:

- contract information;
- any calculations used to arrive at reasonable amounts that have been communicated to the resident;
- any discussions with the resident; and
- relevant change in recurrent charges in the village or the circumstances of the resident.

## Reasonable estimate of the sale price

An operator must provide the resident with an estimated sale price for the residential premises (section 69A(7)(v)).

The estimated sale price can be used by the operator when determining estimates of any other amounts payable by the resident, including:

- any amount of capital gain shared with the operator on the sale of the property; and
- any sale costs associated with that sale as required.

When determining a reasonable estimate of the sale price of a property, an operator should take into account:

- the specific factors that will influence the expected sale price;
- the features of the village and its surrounds;
- any sales of comparable properties in the village;
- feedback from potential purchasers of those properties or other inquiries;
- any current or relevant valuations provided in respect of the property;

- the characteristics and features of the property, such as its size and location, including the existence of any ‘material facts’; and
- the methods used to market properties in the village.

For information on material facts, refer to the [Misrepresentation guidelines](#) on the NSW Fair Trading website.

### *Keeping file notes*

An operator should keep file notes on:

- comparable sales of residential properties in the village;
- market conditions;
- the property’s features;
- other relevant information that may affect the estimated price that is provided
- any discussions with the resident (optional); and
- relevant changes in local market factors, such as the operator building further new residential premises for sale in the village (optional).

## Evidence for determining an estimated sale price

As with other estimations, the NSW Fair Trading Commissioner may also request that the operator provide it with the information it used to determine a reasonable estimated sale price. Operators must similarly be prepared to inform the resident of their evidence for these, and record and keep all relevant information used to determine the estimate.

## Australian Consumer Law

The Australian Consumer Law (ACL) has other requirements an operator must follow. These requirements prohibit unfair practices and misleading or deceptive conduct. The ACL also makes it an offence to provide false or misleading representations about the price, quality or standard of a property.

The ACL prohibits an operator misrepresenting the price (or price range) they believed a property would sell for, or its market value.

For more details on false or misleading pricing under the ACL, refer to the [Australian Consumer and Competition website](#) information on false or misleading claims, and on real estate.

If an operator is a licensed real estate agent (under the *Property, Stock and Business Agents Act 2002*) and determining the sale price as an agent, they must refer to Fair Trading information on their responsibilities, including on [Underquoting](#) and the [Misrepresentation guidelines](#).

## Checklist for operators

*Use this checklist to assist in conducting contract information meetings with residents*

Meeting with the Resident	
	Has the resident received a written reply after they requested a contract information meeting?
	Has the meeting been arranged within 30 days from receiving the request?
	Is the resident aware they may nominate a person on their behalf to attend the meeting, or bring along a family member, friend or adviser?
	Have you considered any special requirements the resident may have in relation to their age, health, English proficiency, or ability to understand oral / written information?
	As the operator, do you want to nominate a person to conduct the meeting? Does the person have the required skills and knowledge to represent you? Are they capable of explaining, and answering questions about, the resident's contract information?
	<p>Have you explained the resident's current village contract information (unless waived), and provided a written summary at the meeting of the explanation of that information?</p> <p>The template provided with these guidelines can be used by operators to provide the resident with a written summary of the contract information.</p>
Gathering information	
	<p>Have reasonable estimates been made for the departure fees, recurrent charges, , other amounts paid on departure or amounts the operator would be required to pay the resident?</p> <p>Have you determined whether the resident is a registered interest holder and receives 50 or more percent of the capital gain? (if they are, you will need to tell them about their options to request an early payment of their exit entitlement or receive payments for aged care facilities)</p> <p>Have you considered the wording in the village contract, rate of accrual and reasons for any change in that rate, any written summary previously provided to the resident for any purpose or any other records used for calculating estimated amounts?</p>
	<p>Is the estimated selling price a reasonable estimate of the likely selling price for the property?</p> <p>Have you considered comparable recent sales, recent purchaser interest in similar properties, real estate market conditions, the property's features and other relevant information?</p>
	Have the reasonable estimates been calculated using the date of the meeting scheduled (or a date no later than 30 days after the meeting) with the resident?

	Do you have evidence which is sufficient to support the reasonable estimates which can be provided to the resident if necessary?
Maintaining Evidence	
	Can the estimated sale price be supported by written information from reliable sources?
	Is all the information that was used to determine the estimated sale price kept in a safe business place so it can be provided either to the resident or the Commissioner for Fair Trading if necessary?
	Have file notes been captured regarding discussions with the resident, any relevant change in recurrent charges in the village, changes in circumstances of the resident or in local market factors?

## Village Contract Information Template

*Retirement Villages Act 1999, section 69A(1)(b)*

Residents have the right to request a contract information meeting with the operator once each year. Operators are required to hold a face-to-face meeting with a resident within 30 days of receiving the request.

The operator is required to explain to the resident the current village contract information, and provide a written summary at the meeting of the explanation of that information. This document is to be used by operators to provide residents with a written summary of their current village contract information.

It is important that the resident (or a representative) understands this information and that:

- the resident's right to occupy the residential premises is not affected in any way by this meeting or the provision of the information; and
- their right to occupy is not, and will not be, terminated.

NSW Fair Trading may request operators to substantiate the reasonableness of their estimates.

Name of resident

Name of representative on behalf of resident

(if applicable)

Name of operator in attendance

--

Name of person attending on behalf of operator

(if applicable)
-----------------

Date of request (from the resident)

--

Date of meeting

--

Location where meeting held

--

**CONTRACT INFORMATION**

<b>PROPERTY DETAILS</b>	
Address:	
Title of the property: <i>[Circle only one]</i>	Loan / Licence – Non-registered interest holder
	Lease (50 years or less) – Non-registered interest holder
	Lease (50 years or more) – Registered interest holder
	Strata title – Registered interest holder
	Community title – Registered interest holder
	Company title – Registered interest holder

Date costs have been calculated in relation to

*(this is normally the meeting date)*

Amount of ingoing contribution / \$ purchase

price for the premises

Current rate of recurrent charges for \$ \_\_\_\_\_ per  
\_\_\_\_\_ the premises

Share of any capital gains payable to \_\_\_\_\_%  
you on termination



Formula for departure fee payable on termination

--

**ESTIMATED SALE PRICE**

Estimated sale price for this property is:		\$
Estimated sale price has been based on: [If used, tick the corresponding box]	Comparable recent sale prices	
	Property features	
	Recent purchaser interest in similar properties	
	Real estate market conditions	
	Other	

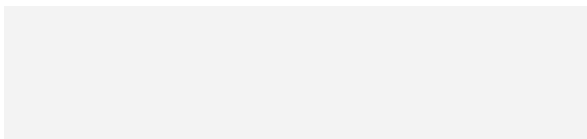
**ESTIMATED DEPARTURE FEES**

Departure fee is based on: [Select one only]	Entry payment			
	New entry payment			
Departure fee structure: [Insert additional rows as required]	<u>Years</u>		<u>Fee percentage</u>	
		to		%
		to		%
		to		%

		to		%
Administration fee: [If none, put \$0]				\$
Other exit fees: [If none, put \$0 and strikethrough]				\$
<b>CAPITAL GROWTH</b>				
Share of capital gain: (If none, put 0%)				%
Share of capital loss: (If none, put 0%)				%
<b>ONGOING FEES</b>				
General recurrent charges*:	\$		per:	week / fortnight / month
Optional services of:	\$		are included in this amount	
Strata/Community levies:	\$		per:	week / fortnight / month
<b>AMOUNT PAYABLE BY RESIDENT</b>				
Reinstatement:				\$
For the sale of the premises:	Sales Commission		\$	
	Advertising		\$	
	Other		\$	
<b>AMOUNT PAYABLE BY OPERATOR</b>				
After premises has been sold:				\$
After premises has been vacated:				\$
Incoming contribution from incoming resident:				\$

\* Reminder: For both registered interest holders who receive 50 or more percent of the capital gain and non-registered interest holders, these recurrent charges will cease 42-days after permanent vacation of the retirement village (if their premises does not sell)

The operator has provided and explained to me/my representative the contract information related to my circumstances and I understand the information that has been provided.



Signed by resident (or representative)

[Redacted signature area]

Print Name

To the best of my knowledge, the information contained in this document is true and accurate at the time it is provided and all care and diligence has been used in determining the estimated amounts.

[Redacted signature area]

Signed by operator (or representative)

[Redacted signature area]

Print Name

[Redacted signature area]

Date

## ASSOCIATIONS INCORPORATION ACT 2009

Cancellation of registration pursuant to section 80

TAKE NOTICE that **MEMBERS HEALTH FUND ALLIANCE INCORPORATED - INC9876615** became registered under the Corporations Act 2001 as **MEMBERS HEALTH FUND ALLIANCE LIMITED ACN 645 947 913**, a company limited by guarantee, on 17 November 2020, and accordingly its registration under the Associations Incorporation Act 2009 is cancelled as of that date.

Diane Duggan  
Delegate of the Commissioner,  
NSW Fair Trading  
03 February 2020



Customer  
Service

# Secretary's guidelines for retirement village asset management plans

Department of Customer Service

February 2021

These guidelines have been issued under section 189B (d) under the *Retirement Villages Act 1999* (the Act) and apply from the day in which the Regulation commences.

Rose Webb  
Commissioner for Fair Trading  
February 2021

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## Glossary

**Act** means the *Retirement Villages Act 1999*.

**Accumulated maintenance costs** mean the accumulated costs of maintenance as a percentage of the purchase price. The total costs of all maintenance or repairs should be divided by the purchase price and multiplied by 100.

**Accumulated repair costs** mean the accumulated costs of repairs as a percentage of the purchase price. The total costs of all repairs should be divided by the purchase price and multiplied by 100.

**Asset management plan** means the plan required by section 101A of the *Retirement Villages Act 1999*, being a 10-year plan, documenting how major capital items will be maintained, repaired and replaced and who will pay for them.

**Capital maintenance** means works carried out for the purpose of repairing or maintaining an item of capital but does **not** include:

- a) work done to substantially improve an item of capital beyond its original conditions, or
- b) work done to maintain or repair an item of capital in circumstances where it would have been more cost effective to replace the item of capital.

**Capital replacement** means works carried out for the purpose of replacing an item of capital but does not include capital maintenance.

**Capital Works Fund (CWF):** means a fund established under section 99 of the *Retirement Villages Act 1999*.

**Consumable** means an item associated with the day-to-day running cost of a business. Consumable items are less expensive than items of capital and are used up more frequently.

**Effective life** means the period, expressed in years, that an item of capital can reasonably be used, having regard to —

- (a) the wear and tear a person could reasonably expect from the circumstances of its use, and
- (b) the maintenance for the item of capital that a person would reasonably expect, and
- (c) the period that it is reasonably foreseeable for an item of capital to be scrapped, dismantled, or discarded because it is no longer fit for purpose.

**Guidelines** mean this document, the Secretary's Guidelines for retirement villages.

**Grouping of items of capital** mean similar items with the same function, same effective life, and purchased in the same financial year - for example items classified as 'common area furniture', 'common area soft furnishings', 'outdoor furniture and equipment', etc.

**Item of capital** means:

- (a) any building or structure in a retirement village, and
- (b) any plant, machinery or equipment used in the operation of the village, and
- (c) any part of the infrastructure of the village, and
- (d) any other item prescribed by the Regulation:
  - i. fixtures (for example, bench tops, built-in cupboards and wardrobes, floor coverings, hot water systems and stoves),
  - ii. fittings (for example, light fittings, taps and sanitary fittings),
  - iii. furnishings (for example, curtains and blinds),
  - iv. non-fixed items (for example, whitegoods, portable air conditioners, fans, tables and chairs),

but does not include any item excluded from this definition by the regulations.

**Major item of capital** means an item of capital for which the operator of a retirement village is responsible and that is:

- (a) an item of capital that has a purchase price of \$1,000 or more, and
- (b) an item of capital that is part of a group of similar items of capital of the same effective life and acquisition date having a combined total purchase price of \$1,000 or more,

but does not include equipment that is a consumable used in the operation of an item of capital or in the day-to-day operation of the retirement village.

**Operator** means the person who manages or operates a retirement village and for the purpose of these guidelines is referred to as "you".

**Regulation** means the Retirement Villages Regulation 2017.

**Secretary** means the Secretary as defined in the Act.

**Shared major item of capital** means a major item of capital that is also used in the operation of another retirement village or a residential aged care facility.

**Tribunal** is the NSW Civil and Administrative Tribunal.



## 1. Purpose of these guidelines

Under section 101A of the Retirement Villages Act 1999 (the Act), all operators of retirement villages must prepare and keep up-to-date an asset management plan that complies with the Act and Regulation.

Section 189B of the Act enables the Secretary to issue these Guidelines to assist you in complying with your obligations regarding asset management plans.

The purpose of these guidelines is to:

- explain what you need to record in an asset management plan,
- outline your asset management reporting obligations,
- explain how asset management will inform and link with the existing budget procedures under the legislation,
- suggest a process for when an item needs replacement,
- provide a template for you to use when developing your asset management plan, and
- provide general guidance (not legal, financial or taxation advice).

The Tribunal may take these Guidelines into account in determining whether there has been compliance with the Act (though will not be bound by the Guidelines). More information on the Tribunal's role is discussed at section 7 of the Guidelines.

### **Disclaimer**

Every effort has been made to ensure that the information presented in the Guidelines is accurate at the time of publication. The Guidelines may be reviewed and amended from time to time. Information about the Act and Regulation may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the Act and Regulation. In the event of any inadvertent errors or inconsistency between the Guidelines, and the Act and Regulation, the Act and Regulation prevail.

## 2. Asset management plan

### What is an asset management plan? (clauses 26B and 26D(1) of the Regulation)

Section 93 of the Act requires that you maintain each item of capital for which you are responsible, in a reasonable condition, and under section 101A of the Act, you must prepare a 10-year asset management plan for each village you manage or operate.

An asset management plan documents the costs of purchase and ongoing maintenance, repairs and replacement of a retirement village's major items of capital, including shared major items of capital. This provides transparency around the maintenance and future costs of retirement village assets, for which residents pay the maintenance for.

The plan must include the following content:

1. **an asset register** of the village's major items of capital, including information about the effective life of items of capital (section 3 of these guidelines), and
2. **a maintenance schedule** of the village's major items of capital, including information about capital replacement (section 4 of these guidelines), and

Section 98 of the Act requires you to include capital maintenance in the proposed annual budget. You must also include a **3-year report** prepared under cl 19A of the Regulation for capital maintenance extracted from the asset management plan (section 5 of these guidelines). The report will inform expenditure for major items of capital in the annual budget.

Following the expiry of the first 10-year period, you must prepare another asset management plan for each retirement village you operate every 10 years.

#### Format

You can use any format for your asset management plan, provided it includes the components set out in the Regulation and these guidelines. If you have existing asset management or accounting systems, you can also use either of these to comply with the requirements.

**Appendix 1** includes a template to help you with the development of an asset management plan.

## What do you need to do when preparing, updating or revising the plan?

### Preparing an asset management plan (clause 26C of the Regulation)

When preparing the first or a revising an asset management plan, you must:

- notify residents that a proposed asset management plan is available, at least 60 days prior to the commencement of asset management plan,
- have a copy of the proposed asset management plan at the village or at a place of business in NSW for inspection by a resident, prospective resident, or their representative,
- enable residents to provide comments on the proposed plan for your consideration,
- prepare a report of all comments received, and
- for each comment explain:
  - any revisions of the plan arising from the comments, or
  - the reasons you did not revise the plan in response to the comments.

You can prepare, revise, and keep up to date an asset management plan yourself. To assist you, you may wish to engage a suitably qualified person to prepare and/or revise your asset management plan such as an independent quantity surveyor or a tax accountant.

### Notification requirements for residents (clauses 26C and 26H of the Regulation)

While preparing or revising the asset management plan, you must notify each resident of the retirement village that:

- there is copy of the proposed plan available for their inspection,
- they can inspect it at all reasonable times,
- they get can inspect it either at the village or at a place of business nominated in the notice,

### Keeping the asset management plan up to date (clause 26E of the Regulation)

You must ensure that the asset management plan is up to date. In particular, the law requires you to update the plan:

- when purchasing major items of capital, you must record the purchase in the asset register within 7 days of the purchase date.
- if the 3-year report that you included in an annual budget was amended and approved during the budget process, within 28 days.
- as soon as reasonably practicable, after each time you undertake maintenance or replace a major item of capital:
  - as for maintenance, you must record:
    - the actual costs of maintenance, and
    - the dates you carried out maintenance, and
    - the type of maintenance,
  - the accumulated costs of all maintenance expressed:
    - in dollar amounts, rounded up or down to the nearest dollar, and
    - as a percentage of the original purchase price of the item,
  - as for repairs, you must record:
    - the actual costs of the repairs, and
    - the dates you carried out the repairs, and
    - a description of the repairs,
  - the accumulated costs of all repairs expressed:
    - in dollar amounts, rounded up or down to the nearest dollar, and
    - as a percentage of the original purchase price of the item,
  - as for replacement, you must record:
    - the actual date of replacement, and
    - the actual costs of replacement,
  - as for a shared major item of capital, you must record:
    - the proportion of the accumulated capital maintenance costs attributed to the use of the item by the village.

To express the accumulated costs of maintenance or accumulated costs of repairs as a percentage of the purchase price you must use the following formula:

Total costs of all maintenance or repairs divided by the purchase price and multiplied by 100.

In addition to these legal requirements, Operators are encouraged to undertake best practice document control. Record the date of changes and number versions, and where possible, have these changes approved by a secondary person such as the village manager or your accountant.

### **When to revise the plan (clause 26H of the Regulation)**

You must revise the current asset management plan when the total costs of capital maintenance estimated at the commencement of the plan are likely to increase by 25 percent or more (excluding CPI increases).

As soon as reasonably practicable after noticing the likely increase in capital maintenance costs, you must:

- revise the estimates in the asset management plan,
- notify residents,
- enable residents to provide comments on the proposed plan for your consideration,
- prepare a report of all comments received,
- for each comment explain:
  - any revisions of the plan arising from the comments, or
  - the reasons you did not revise the plan in response to the comments, and
- annex a notice to the revised plan.

The notice must contain the following information:

- a list of the major items of capital and shared major items of capitals for which the costs are likely to increase,
- the original and revised estimates of capital maintenance costs for each item, and
- the reason for the change in the estimates.

You are only required to notify the residents once of the likely increase. If, however, there is a further 25 percent or greater again within the 10-year plan period, then you will have to notify the residents of this further increase.

A framework is in **Appendix 2** to assist with meeting these guidelines.

### **Calculating the likely increases**

You must calculate increases in the costs of capital maintenance, net of increases in the Consumer Price Index (CPI) published in each relevant year of the asset management plan.

**Example: Likely total increases in the first 5 years of the plan: 38.0% including CPI.**

- Costs of maintenance likely to increase in the first 5 years of the plan: 25.5%
- CPI increased by 2.5% each year in the first 5 years: 12.5%

In this example, although the cost of maintenance including CPI increases results in a cost increase of 38%, only the cost of maintenance excluding CPI is taken into account for the purposes of revising the asset management plan. Here, the costs of maintenance will increase by 25.5%, which is just over the 25% threshold. A revision to the asset management plan in these circumstances is required.

## **Who must have access to the asset management plan? (sections 20(1)(g1) and 20(1)(k) of the Act)**

You must make the most up to date version of the asset management plan available at your village or at a place of business in New South Wales, for inspection by a resident or prospective resident or a person acting on their behalf. You must also make a hard copy or an electronic copy available 7 days after receiving a request from a resident or a prospective resident.

## **3. Asset register**

### **What items of capital you must include in the asset register? (clause 26F of the Regulation)**

The asset register is one component of the asset management plan. You must record all new and existing major items of capital in the asset register, including those major items of capital you share with other villages or aged care businesses.

**Note:**

New items refer to major items of capital purchased on or after the day the Regulation came into effect (February 2021, exact date will be published on the NSW Government Legislative website), and existing items are major items of capital purchased before the day the Regulation came into effect which are still in use and residents pay to maintain.

You must include the following information:

- a brief description of the item,
- the effective life of the item,
- the asset ID number,

- the brand model number (if available and applicable),
- the serial number (if available and applicable),
- for an item that is not a building:
  - the date of purchase, and
  - the purchase price, and
- if the item is a building:
  - the date on which construction of the building began, and
  - the costs of construction or, if the building is under construction, an estimate of the costs of construction,
- for a shared major item of capital:
  - the name of the retirement village also using that item.

**You cannot charge residents for maintenance or repairs of a major item of capital if the item is not in the Asset Management Plan.**

## **How are major items of capital defined? (clause 26A of the Regulation)**

Major item of capital are items of capital for which you are responsible, that have a purchase cost of \$1,000 or more, or are part of a group of similar items of the same effective life and acquisition date that has a combined total purchase price of \$1,000 or more.

An item of capital does not include consumables. Consumables are equipment that are used in the operation of an item or in the day-to-day operation of the retirement village. Examples include lawn mower blades for a lawn mower, printer ink cartridges and paper for a printer. These are not assets and are not items of capital.

### **Can you group similar items of capital?**

You may find it useful to group similar major items of capital. Similar items of capital are those with the same function, same effective life, and purchased in the same financial year. For example, you could group and record chairs as one item if they collectively are worth more than \$1,000, i.e. 'Chairs group'.

Below is a worked example of how this could be applied:

You purchase 1,000 chairs @\$100 each

- total cost of the group - \$100,000
- purchase date - 2020
- effective life - 10 years

You can record the group as the “Chairs group” in the asset management plan because they are collectively worth more than \$1,000.

If you dispose of 100 chairs from the group, you must record it in the asset management plan and adjust the maintenance costs accordingly.

For example, if 100 chairs in the group got disposed/replaced. The partly disposed/replaced will be 10% (calculated as 100/1,000). So, the remaining items will equate to 90%.

## How do you estimate and record the expected life of major items of capital? (clause 26G of the Regulation)

You must use the methods specified in clause 26G of the Regulation to estimate the effective life of major items of capital. These methods include:

1. for plant, machinery and equipment use the Australian Taxation Office (ATO) Commissioner’s determination of the effective life of depreciating assets (the Commissioner’s determination) under section 40-100 of the *Income Tax Assessment Act 1997 (Commonwealth)* (the **ITAA**). This is often amended, and you should check the ATO website for the most current version<sup>1</sup>,
2. for certain vehicles (bus, a light commercial vehicle, a truck and a truck trailer, and any other vehicle listed by the ATO) use the Commissioner's determination of effective life for vehicles (the shorter of the capped effective life (under section 40-102 of the ITAA)), or

Where there is no tax ruling for an item, you must assess the effective life of an item yourself by estimating the period (in years, including fractions of years) the asset can be used by you for a specified purpose. When doing this assessment, you must consider:

- the rate of reasonable wear and tear of the item,
- the item will be maintained in reasonably good order and condition, and

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<sup>1</sup> The ATO issues a tax ruling each year for determination of effective life, for example, see *TR2020/3 Income Tax: Effective Life of Depreciation Assets* for this financial year.



- the period the item it is likely to be disposed of (scrapped, sold for no more than scrap value, or abandoned).

Further information about calculating the effective life of assets is available from the ATO website at [ato.gov.au](http://ato.gov.au).

You must estimate and record the estimated effective life of new or existing items in the asset register:

- for existing major items of capital purchased before the day the Regulation commences (February 2021, exact date will be published on the NSW Government Legislative website) and
- for new major items of capital purchased on or after the day the Regulation commences. This will increase transparency and provide information about when an item of capital is approaching the end of its life.

## What do you need to do with items of capital not in the plan?

You are not required to record items that are worth less than \$1,000 in the asset management plan. However, you must include information about the cost of maintenance and replacement of these items of capital items through the annual budget process, as per the requirements of section 98 of the Act.

More information about the budget process for retirement villages can be found on the Fair Trading website at [fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

## 4. Maintenance Schedule

### Information you must include in the maintenance schedule (clause 26D(2) of the Regulation)

A maintenance schedule sets details for maintaining and replacing the major items of capital which is funded by recurrent charges or from the capital works fund. This includes items shared with other villages or aged care facilities. You must include the planned maintenance, repairs, and replacement activities (including estimated and actual costs) in the schedule:

- for works proposed to maintain the item:
  - an estimate of the costs of maintenance, and
  - the proposed frequency of maintenance or dates of proposed maintenance, and
  - the type of maintenance,

- for works proposed to the repair the item:
  - an estimate of the costs of the repairs, and
  - the dates of the proposed repairs, and
  - a description of the repairs,
- for the replacement of the item:
  - the proposed dates of capital replacement,
  - an estimate of the costs of the proposed capital replacement.
- for a shared major item of capital:
  - an estimate of the proportion of the accumulated capital maintenance costs attributed to the use of the item by the village.

## 5. 3-year report

### What information you must include in the 3-year report? (clause 19A of the Regulation)

Section 98 of the Act requires you to include certain information about capital maintenance for **all items of capital** in the proposed annual budget when you propose to use recurrent charges or the capital works fund to fund capital maintenance. You must:

- list each item of proposed capital maintenance, and
- for each item specify the expected cost, and
- include any quotes that the you have got, and
- include provision for urgent capital maintenance.

Clause 19A of the Regulation requires that you must prepare a report of 3 years of capital maintenance for **major items of capital**, including shared major items of capital, and include it in the proposed annual budget.

To prepare the report you must extract information from the asset management plan current for the 3-year including:

- in relation to the proposed maintenance and repairs of each major item of capital:
  - an estimate of the costs, dates, and type of proposed maintenance, and
  - an estimate of the costs and type of any proposed repairs.

- the amount of recurrent charges set aside in the capital works fund for capital maintenance of major items of capital.

**Note:** The 3-year period must start at the beginning of the financial year to correspond with the annual budget financial year.

An example of how you could record on, and extract information from the asset management plan to prepare the 3-year report and include it the annual budget is in Figure 1.



**Figure 1: Transposing information from the asset management plan to the 3-year report**

## How do asset management plans and the 3-year report fit into the existing annual budget process?

The asset management plan does not form part of the annual budget. Residents can review and provide comments on the asset management plan, but do not provide their consent on the asset management plan. Instead, you need to explain how you addressed the residents' comments in the plan or explain why not you have not addressed the comments.

The plan is for recording information and providing transparency. However, residents can apply to the Tribunal if they think the operator is not maintaining or replacing items of capital (s 96 of the Act).

Section 114 of the Act requires you to seek residents' consent of the expenditure itemised in the proposed annual budget. The 3-year report informs the annual budget itemising the proposed maintenance costs for a relevant period of 3 years.

Residents can consent or refuse to consent to the expenditure detailed in the proposed annual budget. If residents refuse to give their consent to the budget, the operator or a

resident may apply to the Tribunal to make an order regarding the proposed expenditure for that financial year (section 115 of the Act).

Figure 2 illustrates how asset management plans and the 3-year report interact with the annual budget process:

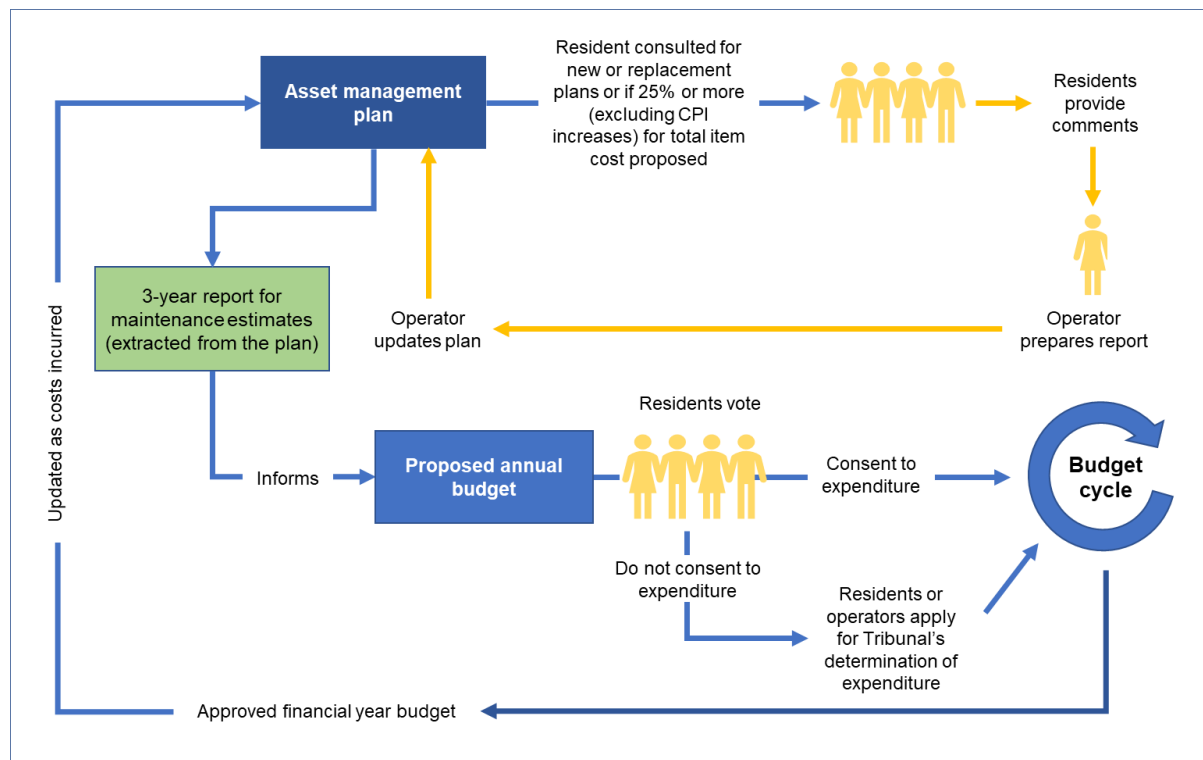


Figure 2. How asset management plans and the 3-year report interact with the annual budget process

## 6. Whether to replace or maintain an item of capital

As mentioned in section 2, under the Act you must maintain each item of capital for which you are responsible, in a reasonable condition considering the age and prospective life of the item and the money residents pay to you. If it is not practical to maintain, you may replace the item.

You must carry out maintenance or replace the item within a reasonable timeframe, once you become aware of the need to do so.

The following section will help you comply with section 93 of the Act when deciding whether to keep or replace an item. You may consider if an item needs replacement if:

1. the accumulated repair costs for a major item of capital has reached 90 percent of the original purchase cost, or
2. the major item of capital is within one year of the end of its effective life.

Below is an example of how this could work:

You purchase a ride-on mower:

- purchase cost - \$2,000
- purchase date - 2012
- effective life - 10 years

If the accumulated costs of repairs reach \$1,800 (90 percent of the purchase cost) or the item kept until 2021 (one year within the end of the item's effective life), you may decide to replace the item rather than continue to maintain it.

You may decide to keep and maintain the item if it is still functional and in a good state.

You are encouraged to discuss with residents before deciding to prolong the life of the item through maintenance or whether to replace it. Ideally, residents would agree on what to do with these items. The aim of this recommendation is to ensure transparency and good management of finances by not replacing an item of capital if it is unnecessary to do so.

Under the law, you need to update the asset management plan if there are any changes as a result of your decision and discussion with residents (see chapter 2, above).

## **7. NSW Civil and Administrative Tribunal's role**

Residents can apply to the Tribunal if you do not maintain or replace items of capital for which you are responsible (section 96 Act). The Tribunal has the power to order you to carry out repairs, maintenance, or replacement within a specified time. The Tribunal can also make an order to determine whether work is 'maintenance' or 'replacement' when there is a disagreement between you and the residents.

## **8. Penalties and penalty notice offences**

Section 101A includes offence provisions for operators who do not comply with the requirements related to asset management plans.

Section 184 of the Act empowers authorised officers to issue a penalty notice if it appears you have committed a penalty notice offence. For the purposes of section 184 of the Act, Schedule 5 of the Regulation specifies new offences against which a penalty notice may be issued. On the spot fines of up to \$1,100 may apply for a breach of an asset management plan requirement.

## 9. Rules of Conduct for Operators of Retirement Villages (Schedule 3A of the Regulation)

Schedule 3A of the Retirement Villages Regulation prescribes mandatory Rules of Conduct for Operators of Retirement Villages. Under these Rules of Conduct, you must abide by the standards of conduct and behaviour expected of operators and their staff in relation to the management and operation of a retirement village.

You must have knowledge of relevant laws and minimum standards in the handling of complaints and resolving disputes in a retirement village.

In exercising your functions, including your responsibilities for maintenance and replacement, you must:

- have regard to the best interests of all residents as is practicable or appropriate
- exercise reasonable skill, care, and diligence
- act honestly, fairly, and professionally, with all parties to negotiations, transactions or any other dealings relating to a resident or prospective resident
- not misinform or otherwise mislead or deceive any parties to negotiations, transactions or any other dealings relating to a resident or prospective resident.

You must avoid conflicts of interest and disclose conflicts of interest.

Offence provisions apply for not abiding by the Rules of Conduct for Operators of Retirement Villages.

## Appendix 1 - Retirement village asset management plan template

Retirement village name

Retirement village address

Date plan created (dd/mm/yyyy)

Authorised by

Plan last updated

### Asset register

List of major items of capital										
Asset ID number	Brand model number (if applicable and available)	Serial number (if applicable and available)	Brief description of the major item of capital	Effective life (years)	Remaining effective life (years)	Date of purchase (item not a building)	Purchase price	Date building began	Costs of construction or Estimate of costs of construction	If shared item, name of business also using the item
PEM001	X654	11122233	Gate	15	5	3/01/2010	\$2,000	3/01/2010	\$100,000	ABC

## Maintenance Schedule

Schedule of estimated maintenance and replacement costs										
Estimated costs of proposed maintenance	Proposed frequency of maintenance	Date of proposed maintenance	Type of maintenance	Estimated cost of proposed repairs	Date of proposed repairs	Description of proposed repairs	Date of proposed replacement	Estimated costs of proposed replacement	If shared item, estimate of accumulated maintenance costs	If shared item, % of accumulated maintenance costs
\$100	Annual	1/01/2021	Cyclical	\$150	01/01/2021	Fix gate	01/01/2023	\$2,500	N/A	N/A

Schedule of actual maintenance and replacement costs												
Actual costs of maintenance carried out	Actual date maintenance carried out	Type of maintenance carried out	Actual accumulated cost of maintenance (\$)	Actual accumulated cost of maintenance as a % of the purchase price	Actual costs of repairs carried out	Actual date of repairs carried out	Description of repairs carried out	Actual accumulated cost of repairs (\$)	Actual accumulated cost of repairs as a % of the purchase price	Proportion of accumulated cost of maintenance for shared item	Actual date replacement carried out	Actual cost of replacement carried out
\$100	1/01/2021	Cyclical	\$1,100	60%	\$500	01/01/2021	Change the motor	\$500	25%	N/A	N/A	N/A



## Appendix 2 - Asset management planning framework

### Prepare or replace plan

- Prepare a 10-year asset management plan for major items of capital (valued more than \$1,000). Grouping similar items is
- The asset management plan must include an asset register and a maintenance schedule.
- Notify residents that a proposed new or replacement asset management plan is available 60 days prior to the commencement of the plan.
- Enable residents to provide comments, prepare a report of all comments and explain any revisions to the plan or reasons why the plan was not revised as a result of a comment.

### Update or Revise plan

- Keep the plan up-to-date including any amendments that need to be reflected from changes to the 3-year report for capital maintenance-approved as part of the annual budget.
- Send residents a proposed asset management plan for comment when the cumulative total maintenance costs have increased by 25 percent or greater (excluding CPI increases).
- Enable residents to provide comments, prepare a report of all comments and explain any revisions to the plan or reasons why the asset management plan was not revised as a result of a comment.

### Prepare 3-year report

- Extract a 3-year report for capital maintenance of major items of capital from the asset management
- Include the 3-year report in the proposed annual budget and seek the consent of residents the proposed annual budget.
- The NSW Civil and Administrative Tribunal will decide in a case where residents do not consent to the capital maintenance included in the proposed annual budget and a resolution cannot be reached.

### Make plan available

- Make the plan available to residents, prospective residents and those acting on behalf of a resident.

## **ASSOCIATIONS INCORPORATION ACT 2009**

Cancellation of incorporation pursuant to section 74

TAKE NOTICE that the incorporation of the following associations is cancelled by this notice pursuant to section 74 of the Associations Incorporation Act, 2009.

<b>FREE WEST PAPUA PARTY AUSTRALIA ASSOCIATION NSW INC</b>	<b>INC1701459</b>
<b>BELLINGER RIVER BOAT CLUB INCORPORATED</b>	<b>INC1400797</b>
<b>TAMWORTH TECHNOLOGY GROUP INCORPORATED</b>	<b>INC1700878</b>
<b>CENTRAL COAST CARRIAGE DRIVING CLUB INCORPORATED</b>	<b>INC1601808</b>
<b>INNER WHEEL CLUB OF PENRITH INC</b>	<b>Y0278524</b>
<b>COOTAMUNDRA CREATIVE ARTS INCORPORATED</b>	<b>INC1300622</b>
<b>HUNTERS HILL RYDE COMMUNITY SERVICES INCORPORATED</b>	<b>INC9888956</b>
<b>HAY MEMORIAL PONY CLUB INC</b>	<b>INC1800311</b>
<b>HOLMESVILLE PROGRESS ASSOCIATION INC</b>	<b>Y0087239</b>

Cancellation is effective as at the date of gazettal.

Dated this 4<sup>th</sup> Day of February 2021.

Megan Green  
Delegate of the Commissioner for Fair Trading  
Department of Customer Service