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## Retirement Villages (COVID-19 Meeting Requirements) Order 2021

under the

Retirement Villages Act 1999

I, The Hon Kevin Anderson, the Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemption is necessary because the provisions from which the exemptions are granted require non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**

Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation may, by order published in the Gazette, exempt retirement villages, residents and operators of retirement villages from provisions of or under the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The object of this Order is to exempt the operator of a retirement village from liability for non-compliance with the following provisions of the Act –

- (a) section 41 new operator to convene meeting of residents
- (b) section 69A right to request resident's current village contract information meeting
- (c) section 72 meetings between Resident's Committee and operator

in circumstances where the operator of a retirement village is acting pursuant to a Public Health Order issued under the Public Health Act.

The exemption will have effect for the duration of the prescribed period.

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# Retirement Villages (COVID-19 Meeting Requirements) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Meeting Requirements) Order 2021*.

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**alternative meeting** includes –

- (i) audio link, being any facilities (including telephone) that enable audio communication between persons at different places,
- (ii) audio-visual link, being any facilities (including closed circuit television) that enable audio and visual communication between persons at different places.

**operator** of a retirement village has the same meaning given to it in the Act.

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020
- (c) Public Health (COVID-19 Self-Isolation) Order 2020

**nominated representative** includes a friend, relative or representative of the resident

**prescribed period** means the period –

- (a) starting on the commencement of this Order, and
- (b) ending on 30 September 2021.

**resident** has the same meaning given to it in the Act.

**Residents Committee** means a committee established under section 70 Act.

**resident's current village contract information** has the same meaning given to it in the Act.

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

**4. Relationship with Orders under the *Public Health Act 2010***

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. New operator to convene a meeting of residents

- (1) The Minister exempts the operator of a retirement village from the operation of section 41(1) of the Act subject to the conditions specified in subclauses (2) – (9) of this clause.
- (2) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) may choose not to convene a meeting of the residents in person, if during the prescribed period –
  - (a) the operator reasonably believes that such a meeting would pose a risk to the health and safety of the residents of a retirement village in relation to COVID-19, and
  - (b) the convening of a meeting in person would contravene a Public Health Order for COVID-19.
- (3) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) may convene an alternative meeting instead.
- (4) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) and who chooses to convene an alternative meeting of the residents must, at least within 28 days before the person becomes the operator, report on –
  - (a) his or her financial ability to operate the village, and
  - (b) his or her plans for the future management and operation of the village (including any changes that he or she proposes to make).
- (5) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) and who chooses not to convene a meeting of the residents or an alternative meeting of the residents must, at least within 28 days before the person becomes the operator, provide a written report on –
  - (a) his or her financial ability to operate the village, and
  - (b) his or her plans for the future management and operation of the village (including any changes that he or she proposes to make)to all residents and former occupants of the retirement village.
- (6) For the purposes of subclause (5) a written report must also include an invitation to the residents and former occupants of the retirement village to submit written questions to the proposed operator.
- (7) A proposed operator must –
  - (a) provide a written response no later than five (5) days after receiving a question from a resident or former occupant of the retirement village, and
  - (b) keep an accurate record of all interactions with a resident or former occupant of a retirement village.

- (8) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) may choose to convene a meeting of the residents in person if –
- (a) convening a meeting would not contravene a Public Health Order, and
  - (b) the person believes on reasonable grounds that minimal risk is posed to the health and safety of the residents and the operator of the retirement village, and
  - (c) appropriate health and safety measures can be applied to reduce the risk of exposure to COVID-19 during the meeting.
- (9) Nothing in this clause exempts the operation of section 41(2) of the Act if a meeting or an alternative meeting is held.

**6. Right to request resident's current village contract information meeting**

- (1) The Minister exempts the operator of a retirement village from the operation of section 69A(1) of the Act, subject to the conditions specified in subclauses (2) – (7) of this clause.
- (2) The operator of a retirement village may choose not to convene a meeting in person with a resident to explain the resident's current village contract information, notwithstanding that a request in writing has been made by a resident, if during the prescribed period –
- (a) the operator believes on reasonable grounds that such a meeting would pose a risk to the health and safety of the resident or the operator of a retirement village in relation to COVID-19, and
  - (b) convening a meeting in person would contravene a Public Health Order for COVID-19.
- (3) The operator must convene an **alternative meeting** within 30 days of the request for the meeting being received by the operator.
- (4) Notwithstanding subclauses (2) and (3) the operator of a retirement village must provide a written summary explaining the residents' current village contract information to the resident within 30 days of the request for the meeting being received by the operator.

**Note:** the *Village Contract Information Meeting Guidelines For Retirement Village Operators July 2019*, provides a template that can be completed and be provided to the resident.

- (5) An operator of a retirement village must not convene an alternative meeting unless –
- (a) the resident and any persons accompanying the resident have access to the alternative meeting, and
  - (b) the resident is given at least 7 days' notice of the alternative meeting.
- (6) An operator of a retirement village may convene a meeting in person to discuss a residents current village contract information if –
- (a) convening a meeting would not contravene a Public Health Order, and
  - (b) minimal risk is posed to the health and safety of the resident, a nominated representative and the operator of the retirement village, and

(c) appropriate health and safety measures can be applied to reduce the risk of exposure to COVID-19 during the meeting.

(7) Nothing in this clause exempts the operation of s69A(2) – (13) of the Act.

#### **7. Meetings between Residents Committee and operator**

(1) The Minister exempts the operator of a retirement village from the operation of section 72(1) of the Act subject to the conditions specified in subclauses (2) – (6) of this clause.

(2) The operator of a retirement village may choose not to convene a meeting with a Residents' Committee (or a representative of the Residents' Committee) if during the prescribed period –

(a) the operator believes on reasonable grounds that such a meeting would pose a risk to the health and safety of the Residents' Committee (or a representative of the Residents' Committee) and the operator of a retirement village in relation to COVID-19, and

(b) convening a meeting in person would contravene a Public Health Order for COVID-19.

(3) The operator may choose to convene an **alternative meeting**.

(4) For the purposes of subclause (3), the operator of a retirement village must not convene an **alternative meeting** unless –

(a) the Residents' Committee has access to an alternative meeting, and

(b) the Residents' Committee is given at least seven (7) days' notice about the **alternative meeting**.

(5) The operator may choose to convene a meeting in person with the Residents' Committee (or a representative of the Residents' Committee) if –

(a) convening a meeting would not contravene a Public Health Order, and

(b) minimal risk is posed to the health and safety of the Residents' Committee (or a Representative of the Residents' Committee) and the operator of a retirement village, and

(c) appropriate health and safety measures can be applied to reduce the risk of exposure to COVID-19 during the meeting.

(6) Nothing in this clause affects the operation of section 72(2) – (4) of the Act.

#### **8. Meetings between operator and Residents' Committee**

(1) The Minister exempts the Residents' Committee (including a representative of the Residents' Committee) from the operation of section 72(3) and 72(4) of the Act subject to the conditions specified in subclauses (2) – (5) of this clause.

(2) The Residents' Committee of a retirement village may choose not to convene a meeting with an operator, if during the prescribed period –



- (a) the Residents' Committee believes on reasonable grounds that such a meeting would pose a risk to the health and safety of the Residents' Committee (or a representative of the Residents' Committee), and
  - (b) convening a meeting in person would contravene a Public Health Order for COVID-19.
- (3) The Residents' Committee may choose to convene an **alternative meeting**.
- (4) For the purposes of subclause (3), the Residents' Committee of a retirement village must not convene an **alternative meeting** unless –
  - (a) the operator has access to an alternative meeting, and
  - (b) the operator is given at least seven (7) days' notice about the **alternative meeting**.
- (5) The Residents' Committee may choose to convene a meeting in person with the operator if –
  - (a) convening a meeting would not contravene a Public Health Order, and
  - (b) minimal risk is posed to the health and safety of the Residents' Committee (or a Representative of the Residents' Committee) and the operator of a retirement village, and
  - (c) appropriate health and safety measures can be applied to reduce the risk of exposure to COVID-19 during the meeting.
- (6) Nothing in this clause affects the operation of section 72(2) of the Act.



## Retirement Villages (COVID-19 Access to Retirement Villages) Order 2021

under the

Retirement Villages Act 1999

I, The Hon Kevin Anderson, the Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemptions are necessary because the provisions from which the exemption are granted require non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**  
Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation (the Minister), may by order published in the Gazette, exempt retirement villages, residents and operators of retirement villages from provisions of or under the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The object of this Order is to exempt the operator of a retirement village from liability for non-compliance with the following provisions of the Act –

- (a) section 169 operator not to interfere in sale
- (b) section 177 operator not to interfere in letting

in addition to the following provisions of the *Retirement Villages Regulation 2017* (the Regulation) –

- (a) clause 11(2)(d) and (e) of Schedule 3A

in circumstances where the operator of a retirement village is acting pursuant to a Public Health Order issued under the Public Health Act.

The exemption will have effect for the duration of the prescribed period.

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# Retirement Villages (COVID-19 Access to Retirement Villages) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Access to Retirement Villages) Order 2021*.

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**operator** of a retirement village has the same meaning given to it in the Act

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020
- (c) Public Health (COVID-19 Self-Isolation) Order 2020

**prescribed period** means the period –

- (a) starting on the commencement of this Order, and
- (b) ending on 30 September 2021.

**resident** has the same meaning given to it in the Act.

**residential premises** means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence.

**retirement village** has the same meaning given to it in the Act.

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

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

**vacant** means the former resident has permanently vacated the property and all of the resident's personal goods and chattels have been removed from the property

**4. Relationship with Orders under the *Public Health Act 2010***

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. Operator may introduce temporary control measures that limit or remove access to retirement villages

- (1) The Minister exempts the operator of a retirement village from the operation of sections 169 and 177 of the Act, and Clause 11(2) (d) and (e) of Schedule 3A of the Regulation, subject to the conditions specified in subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village is authorised, during the prescribed period, to introduce control measures that temporarily limit or remove access to retirement villages or parts of retirement villages by residents and non-residents, in relation to the sale, letting or subletting of premises, notwithstanding that such control measures may interfere with a resident's right to sell, let or sublet his or her residential premises in the village, if –
  - (a) a control measure is introduced pursuant to a Public Health Order for COVID-19,
  - (b) any control measure directly relates to circumstances of a sale or letting of a resident's premises,
  - (c) the operator notifies all concerned residents, in writing, of a decision to introduce a control measure that will temporarily limit or remove access to a retirement village or part of a retirement village, including residential premises within a retirement village, by a real-estate agent or prospective purchaser,
  - (d) the operator notifies all concerned real estate agents appointed to their knowledge to sell any residential premises within the retirement village, of a decision to introduce a control measure that will limit or withdraw their access to the retirement village or part of a retirement village, and
  - (e) such notice is provided within three (3) days after the decision is made.
- (3) For the purpose of subclause (2)(b) and (c) notice must include –
  - (i) the reasons for the decision including the relevant provision of the Public Health Order which necessitated the decision, and
  - (ii) the period during which a control measure will apply.
- (4) The operator of a retirement village is not authorised to –
  - (a) introduce a control measure that is inconsistent with a Public Health Order issued under the Public Health Act,
  - (b) introduce a control measure that is not in support of a Public Health Order issued under the Public Health Act,
  - (c) introduce a control measure for a period that is greater than the prescribed period,
  - (d) introduce a control measure that temporarily limits or removes access to residential premises, where such residential premises are vacant and there is a low risk to the health of other residents from prospective purchasers or real-estate agents inspecting, viewing or marketing the property.

(5) For the purposes this clause a ***control measure*** includes –

(a) an action or activity,

(b) rule or guideline

that is taken to prevent, eliminate or reduce the occurrence or spread of the COVID-19 pandemic within a retirement village.



## Retirement Villages (COVID-19 Consent of Residents) Order 2021

under the

Retirement Villages Act 1999

I, the Hon Kevin Anderson, the Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemptions are necessary because the provisions from which the exemptions are granted require non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**

Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation, may by order published in the Gazette, exempt retirement villages, residents and operators of retirement villages from provisions of or under the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The object of this Order is to exempt the residents of a retirement village from liability for non-compliance with the following provisions of the Act –

- (a) Section 9 consent of residents
- (b) Schedule 1 consent of residents

as well as the following provisions of the *Retirement Villages Regulation 2017* (the Regulation) –

- (a) Schedule 6 provisions relating to consent of residents

in circumstances where the residents of a retirement village are acting pursuant to a Public Health Order issued under the Public Health Act.

The exemptions will have effect for the duration of the prescribed period.



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# Retirement Villages (COVID-19 Consent of Residents) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Consent of Residents) Order 2021*.

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**ballot** means a ballot conducted at a meeting of residents.

**operator** of a retirement village has the same meaning given to it in the Act.

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020
- (c) Public Health (COVID-19 Self-Isolation) Order 2020

**prescribed period** means the period –

- (a) starting on the commencement of this Order, and
- (b) ending on 30 September 2021.

**qualified voter** means a resident of the retirement village.

**returning officer** means a resident (who is not a member of the Residents Committee and is not standing for election to the Residents Committee) or another person not associated with the operator of a retirement village selected by the residents of a retirement village to conduct a written ballot on a volunteer basis.

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

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

### 4. Relationship with Orders under the *Public Health Act 2010*

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. Consent of residents

- (1) The Minister exempts the residents of a retirement village from the operation of section 9 and Schedule 1 of the Act subject to the conditions specified by subclauses (2) – (7) of this clause.
- (2) If the Act provides that a particular measure or action is of no effect unless it is consented to by the residents of a retirement village, or otherwise requires the consent of the residents (other than one requiring a special resolution), the residents of the village concerned are taken to have given their consent if more than 50% of the residents who vote (whether personally or by proxy) on the measure or action (being residents who are entitled to vote) consent to it.
- (3) A vote in relation to a measure or action may be taken during the prescribed period by means of –
  - (a) written ballot,
  - (b) postal ballot,
  - (c) teleconference, video-conferencing, email or other electronic means while participating in a meeting,
  - (d) email or other electronic means before the meeting at which the matter is to be determined,
  - (e) a combination of any of the means listed in subclause (a) – (d), as decided by the residents.
- (4) Without limiting subclause 3(c) the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- (5) If a vote is to be taken by means of a written ballot, the residents of a retirement village may appoint more than one returning officer in order to comply with Schedule 6 of the Regulations.
- (6) This clause does not apply if the Minister has exempted the operator of a retirement village from a requirement to obtain the consent of the residents.
- (7) The operator of a retirement village must accept as the residents' decision in relation to a measure or action that requires their consent the decision that is reported to the operator that has been obtained by the valid use of the voting measures in subclause 3.

### 6. Provisions relating to consent of residents

- (1) The Minister exempts the residents of a retirement village from the operation of clause 6(1) and 6(4) of Schedule 6 of the Regulation subject to the conditions specified in subclauses (2) – (4) of this clause.
- (2) In order to vote on the resolution at the meeting, a qualified voter (or if the qualified voter has a proxy, the voter's proxy):

- (a) must record a vote on the ballot paper in accordance with the directions shown on it, and
  - (b) must fold the completed ballot paper so that the vote cannot be seen, and
  - (c) must place the ballot paper in an envelope supplied by the returning officer, and
  - (d) must return the envelope containing the ballot paper to the returning officer.
- (3) Nothing in this clause exempts the residents of a retirement village from the operation of clauses 2 – 4 and 7 – 9 of Schedule 6.
- (4) The returning officer must ensure that steps are taken during the conduct of any vote to reduce the incidence of the spread of COVID-19.



## Retirement Villages (COVID-19 Budget and Expenditures) Order 2021

under the

Retirement Villages Act 1999

I, the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemptions are necessary because the provisions from which the exemptions are granted require non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**

Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation, may by order published in the Gazette, exempt retirement villages, residents and operators of retirement villages, from provisions of or under, the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The objects of this Order are –

- (1) to exempt the operator of a retirement village from liability for non-compliance with the following provisions of the Act –
  - (a) section 72A Annual management meeting to be held by operator
  - (b) section 107 Residents' consent to variation
  - (c) section 114 Residents' consent to expenditure
  - (d) section 118C annual consent by residents for appointment of an auditor

in circumstances where the operator of a retirement village is acting pursuant to a Public Health Order issued under the Public Health Act.

- (2) to exempt the residents of a retirement village from liability for non-compliance with the following provisions of the Act –
  - (a) section 107 Residents' consent to variation
  - (b) section 114 Residents' consent to expenditure
  - (c) section 118C annual consent by residents for appointment of an auditor

in circumstances where the residents of a retirement village are acting pursuant to a Public Health Order issued under the Public Health Act.

These exemptions will have effect for the duration of the prescribed period.

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# Retirement Villages (COVID-19 Budget and Expenditures) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Budget and Expenditures) Order 2021*.

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**approved annual budget** means a budget taken to be an approved annual budget under section 116 of the Act.

**essential services** means emergency and home care personnel.

**operator** of a retirement village has the same meaning given to it in the Act

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020
- (c) Public Health (COVID-19 Self-Isolation) Order 2020.

**prescribed period** means the period –

- (a) starting on the commencement of this Order, and
- (b) ending on 30 September 2021.

**proposed annual budget** means a proposed annual budget referred to in section 112 of the Act.

**recurrent charges** means any amount (including rent) payable under a village contract, on a recurrent basis, by a resident of a retirement village.

**resident** of a retirement village has the same meaning given to it in the Act.

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

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

### 4. Relationship with Orders under the *Public Health Act 2010*

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. Annual management meeting to be held by operator

- (1) The Minister exempts the operator of a retirement village from the operation of section 72A(2) of the Act subject to the conditions of subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village must hold an annual management meeting of the residents of the retirement village, not more than six (6) months after the end of each financial year, if –
  - (a) the operator is unable to convene an annual management meeting in accordance with section 72(A)(2) of the Act because convening a meeting would contravene a Public Health Order for COVID-19, and
  - (b) the operator is reasonably satisfied that convening an annual management meeting would pose a risk to the health and safety of the residents of the retirement village in relation to COVID-19.
- (3) The operator may convene an annual management meeting by means of –
  - (a) a meeting of the residents in person, provided it does not contravene a Public Health Order for COVID-19, or by
  - (b) audio link, being facilities (including telephone) that enable audio communication between persons at different places, or by
  - (c) audio-visual link, being facilities (including closed circuit television) that enable audio and visual communication between persons at different.
- (4) An operator of a retirement village must not convene an alternative meeting unless the residents of a retirement village have access to the alternative meeting.
- (5) Nothing in this clause exempts the operation of section 72A(3) – (8).

### 6. Residents consent to variation of recurrent charges

- (1) The Minister exempts the operator and the residents of a retirement village from the operation of section 107(1) and 107(2) of the Act subject to the conditions specified in subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village is not authorised to make any variation to recurrent charges payable under a village contract in accordance with section 106 during the prescribed period, unless –
  - (a) the residents whose recurrent charges will be affected by the variation consent to the variation, and
  - (b) consent is given in a way that does not contravene a Public Health Order for COVID-19.
- (3) For the purposes of subclause (2) consent must be obtained in accordance with the *Retirement Villages (COVID-19 Consent of Residents) Order 2020*.



- (4) The residents concerned must, within 45 days after receiving notice under section 106-
  - (a) meet, consider and vote on the proposed variation, and
  - (b) advise the operator that they do, or do not consent (as the case may be), to the variation.
- (5) Nothing in this clause exempts the operation of sections 107(3) – (6) of the Act.

#### **7. Residents consent to expenditure**

- (1) The Minister exempts the operator and residents of a retirement village from the operation of sections 114(1) and 114(4) of the Act subject to the conditions specified in subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village is not authorised to give effect to a proposed annual budget (or an amended annual budget), unless –
  - (a) the operator seeks the consent of the residents of the retirement village to the expenditure itemised in the proposed annual budget, and
  - (b) consent is given in a way that does not contravene a Public Health Order for COVID-19.
- (3) For the purposes of subclause (2)(a) consent must be obtained in accordance with the *Retirement Villages (COVID-19 Consent of Residents) Order 2020*.
- (4) The residents concerned must within 45 days after receiving notice under section 106 –
  - (a) meet, consider and vote on the proposed variation, and
  - (b) advise the operator that they consent or do not consent (as the case may be) to the budget, and
  - (c) if they do not consent to the budget – specify the item or items in the budget to which they object.
- (5) Nothing in this clause exempts the operation of sections 114(2), 114(3) and 114(5) - (8) of the Act.

#### **8. Residents consent to appointment of auditor**

- (1) The Minister exempts the operator and residents of a retirement village from the operation of section 118C(1) – (3) of the Act subject to the conditions specified in subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village is not authorised to appoint a person who is a qualified auditor as an auditor of the accounts of the village unless –
  - (a) the operator seeks the consent of the residents,
  - (b) consent is given in a way that does not contravene a Public Health Order,

- (c) the operator provides each resident with written notice (a consent request notice) in accordance with section 118C(1)(b) of the Act.
- (3) For the purposes of subclause (2)(a) consent must be obtained in accordance with the *Retirement Villages (COVID-19 Consent of Residents) Order 2020*.
- (4) Within 45 days after receiving a consent request notice, the residents of the retirement village must –
  - (a) meet, consider and vote on –
    - (i) the proposed appointment of the person as the auditor, and
    - (ii) if the proposed period of appointment is more than 1 year – the proposed period, and
  - (b) give the operator notice in writing (a consent response notice) that the residents consent, or do not consent to –
    - (i) the appointment of the person as the auditor, and
    - (ii) if the residents consent to the appointment but not the proposed period of appointment—the period of appointment to which the residents consent.
- (5) Nothing in this clause exempts the operation of section 118C(4) of the Act.



## Retirement Villages (COVID-19 Services & Facilities) Order 2021

under the

Retirement Villages Act 1999

I, The Hon Kevin Anderson, the Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemption is necessary because the provision from which the exemption is granted requires non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**

Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation, may by order published in the Gazette, exempt retirement villages, and residents and operators of retirement villages, from provisions of, or under the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The object of this Order is to exempt the operator of a retirement village from liability for non-compliance with the following provisions of the Act –

- (a) section 60 variation in services or facilities provided at village
- (b) section 61 operator not to reduce or withdraw certain services and facilities
- (c) section 62 consequence of unlawful variation in services and facilities

in circumstances where the operator of a retirement village is acting pursuant to a Public Health Order issued under the Public Health Act.

The exemption will have effect for the duration of the prescribed period.

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# Retirement Villages (COVID-19 Services & Facilities) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Services & Facilities) Order 2021*.

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**essential services** means emergency, medical and home care personnel and the delivery of food and medication.

**operator** of a retirement village has the same meaning given to it in the Act.

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020,
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020,
- (c) Public Health (COVID-19 Self-Isolation) Order 2020.

**prescribed period** means the period –

- (a) starting on the commencement of this Order and
- (b) ending on 30 September 2021.

**resident** has the same meaning given to it in the Act.

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

**variation** in a service or facility includes the following –

- (a) a reduction in the service or facility,
- (b) the withdrawal of a service or facility,
- (c) an increase in a service or facility,
- (d) any other change in a service or facility.

### 4. Relationship with Orders under the *Public Health Act 2010*

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. Variation in the services and facilities of the village

- (1) The Minister exempts the operator of a retirement village from the operation of section 60(1), 60(3) and 60(4) of the Act subject to the conditions specified in subclauses (2) – (5) of this clause.
- (2) The operator of a retirement village is authorised to temporarily vary the services and facilities of a retirement village, without the consent of the residents, if during the prescribed period –
  - (a) the operator temporarily varies the services and facilities of a retirement village in direct pursuance of the effect of a Public Health Order for COVID-19,
  - (b) the operator notifies all residents in writing of any decision to temporarily vary the services and facilities of a retirement village, and specifies in that notice:
    - (i) the reasons for that decision including the provision of the Public Health Order which necessitated the decision, and
    - (ii) the period during which the variation to the services and facilities will apply.
  - (c) The operator must provide notice within three (3) days after a decision to vary the services and facilities.
- (3) The operator of a retirement village is not authorised to –
  - (a) make any variation for a period longer than the prescribed period under clause 3 of this order,
  - (b) make any variation to essential services,
  - (c) make any variation to maintenance services that impedes upon the operator's obligation under s58A of the Act for an Operator to provide safe premises.
- (4) For the avoidance of any doubt –
  - (a) the operator of a retirement village is not required to obtain the consent of residents prior to varying the services and facilities of a retirement village if the operator of a retirement village is acting in pursuance of a Public Health Order for COVID-19 during the prescribed period.
  - (b) The operator of a retirement village is not required to convene a meeting of the residents to propose a variation to the services and facilities, notwithstanding that a request is made under section 60(1) of the Act to vary the services and facilities only where –
    - (i) the reason for the variation is to override the earlier decision of the operator to vary the services and facilities in order to give effect to a Public Health Order for COVID-19 only, and
    - (ii) the operator reasonably believes that the variation proposed by the residents of a retirement village would contravene a Public Health Order relating to COVID-19,

(c) The operator must provide notice in writing to the residents concerned of a decision not to convene a meeting in relation to subclause 4(2)(b) of this clause.

(5) Nothing in this clause exempts the operation of section 60 of the Act in relation to a variation of the services and facilities of a retirement village that is not related to COVID-19.

**6. Operator may reduce or withdraw certain services and facilities**

(1) The Minister exempts the operator of a retirement village from the operation of section 61 of the Act subject to the conditions specified in subclauses (2) – (4) of this clause.

(2) The operator of a retirement village is authorised to temporarily vary the services and facilities of a retirement village, only during the prescribed period, notwithstanding that:

(i) some services and facilities may have been included within a development consent as services and facilities to be provided for the life of the retirement village and

(ii) no amendment to the development consent has been made to omit or vary that requirement.

(3) The operator must provide written notice to the residents, within three (3) days after the decision to reduce or withdraw any services or facilities.

(4) The notice must specify the reasons for the decision, including the provision of the Public Health Order which necessitated the decision and the period during which the services or facilities will be reduced or withdrawn.

**7. Operator not liable for breach of contract**

(1) The Minister exempts the operator of a retirement village from the operation of section 62 of the Act subject to the conditions specified in subclauses (2) – (3) of this clause.

(2) Notwithstanding the terms of any village contract or disclosure statement, the operator does not breach a village contract by varying services or facilities of a retirement village in order to give effect to a Public Health Order for COVID-19, if during the prescribed period –

(a) the operator informs all prospective residents of any temporary variation to the services and facilities of the retirement village by attaching a notice to the disclosure document, and

(b) the operator does not make any misrepresentations about the temporary variation to the services and facilities of a retirement village.

(3) For the purposes of subclause (2) any notice attached to a disclosure document must include –

(a) a list of all services and facilities that have been varied by the operator of a retirement village in order to give effect to a Public Health Order for COVID-19, and

(b) the reasons for any decision to vary the services and facilities of a retirement village including the provision of the Public Health Order which necessitated the decision, and

(c) the period during which the variation the services and facilities will apply.





## Retirement Villages (COVID-19 Village Rules) Order 2021

under the

Retirement Villages Act 1999

I, Kevin Anderson, the Minister for Better Regulation and Innovation, under section 204 of the *Retirement Villages Act 1999*, make the following Order.

I am satisfied that the exemption is necessary because the provision from which the exemption is granted requires non-compliance with a Public Health Order issued under section 7 of the *Public Health Act 2010* that relates to COVID-19.



Date: 26/03/2021

**The Hon Kevin Anderson MP**

Minister for Better Regulation and Innovation

### Explanatory note

Under section 204 of the *Retirement Villages Act 1999* (the Act), the Minister for Better Regulation and Innovation, may by order published in the Gazette, exempt retirement villages, residents and operators of retirement villages from provisions of, or under the Act that require non-compliance with an order under section 7 of the *Public Health Act 2010* (Public Health Act) relating to COVID-19.

The object of this Order is to exempt the operator of a retirement village from liability for non-compliance with the following provisions of the Act –

- (a) section 51 amendment of village rules

in circumstances where the operator of a retirement village is acting pursuant to a Public Health Order issued under the Public Health Act.

The exemption will have effect for the duration of the prescribed period.

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# Retirement Villages (COVID-19 Village Rules) Order 2021

under the

Retirement Villages Act 1999

## Part 1 Preliminary

### 1. Name of Order

This Order is the *Retirement Villages (COVID-19 Village Rules) Order 2021*

### 2. Commencement

This Order commences on the day on which it is published in the NSW Government Gazette and remains in force for the prescribed period.

### 3. Definitions

In this Order –

**essential services** means emergency, medical and home care personnel, and food, grocery and medication delivery.

**operator** of a retirement village has the same meaning given to it in the Act.

**public health order** includes –

- (a) Public Health (COVID-19 Spitting and Coughing) Order 2020,
- (b) Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020,
- (c) Public Health (COVID-19 Self-Isolation) Order 2020.

**maintenance services** means any repair or replacement work required to maintain the ordinary occupation and enjoyment of a retirement village, including residential premises.

**prescribed period** means the period –

- (a) starting on the commencement of this Order, and
- (b) ending on 30 September 2021.

**resident** has the same meaning given to it in the Act.

**residential premises** means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence.

**retirement village** has the same meaning given to it under section 5 of the Act.

**special resolution** means a resolution described in Part 3 of Schedule 1 of the Act.

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

**village rules** means the rules made and in force from time to time under Division 1 of Part 6 of the Act.

**4. Relationship with Orders under the *Public Health Act 2010***

To the extent that this Order is inconsistent with a Public Health Order issued under Part 2 of the *Public Health Act*, the Public Health Order prevails.

## Part 2 Exemptions

### 5. Amendment of village rules

- (1) The Minister exempts the operator of a retirement village from the operation of section 51 of the Act subject to the conditions specified in subclauses (2) – (8) of this clause.
- (2) The operator of a retirement village is authorised to make temporary amendments to village rules, including an amendment relating to the enforcement of village rules during the prescribed period, without the need for a special resolution of the residents or any other resident consent process, if –
  - (a) the operator makes an amendment to the village rules to give effect to a Public Health Order for COVID-19,
  - (b) the operator notifies all residents in writing of a decision to make an amendment to the village rules.
- (3) A notice issued under subclause (2)(b) must be issued prior to or within three (3) days after a decision is made to amend a village rule and include –
  - (a) the reasons for a decision to amend a village rule, including the relevant provision of the Public Health Order which necessitated the decision, and
  - (b) the period during which the amendment to the village rules will apply.
- (4) If the operator makes an amendment to the village rules in order to give effect to a Public Health Order for COVID-19, the amendment takes effect immediately.
- (5) The operator of a retirement village is not authorised to –
  - (a) amend a village rule that is inconsistent with a Public Health Order,
  - (b) amend a village rule that is not in support of a Public Health Order,
  - (c) amend a village rule to apply for a period greater than the prescribed period,
  - (d) amend a village rule that compromises the safety of village residents,
  - (e) amend a village rule that removes a resident’s access to essential services,
  - (f) amend a village rule that removes a resident’s access to maintenance services, where the maintenance compromises the safety of village residents.
- (6) For the purposes of subclause (2), an amendment to the village rules includes the following –
  - (a) a variation of a village rule,
  - (b) the addition of a new rule to the village rules,
  - (c) the omission of a village rule that is currently in force.

- (7) For the avoidance of any doubt –
- (a) The operator of a retirement village is not required to obtain the consent of residents before making an amendment to the village rules if the operator of a retirement village is acting in pursuance of a Public Health Order for COVID-19 during the prescribed period.
  - (b) The operator of a retirement village is not required to convene a meeting of the residents to propose an amendment to the village rules, notwithstanding that a request is made under section 51(1) of the Act to amend the village rules where –
    - (i) the reason for the amendment is to override the earlier decision of the operator to amend the village rules in order to give effect to a Public Health Order for COVID-19 only, and
    - (ii) the operator believes on reasonable grounds that an amendment proposed by the residents of a retirement village would contravene a Public Health Order relating to COVID-19.
  - (c) The operator must provide notice in writing to the residents concerned of a decision not to convene a meeting in relation to subclause 7(2)(b) of this clause and specify the reasons for that decision including the provision of the Public Health Order which necessitated the decision.
- (8) For the purposes of subclause (2), the operator of a retirement village is authorised to make a temporary amendment to the village rules specified in Schedule 1 of this Order.
- (9) Nothing in this clause exempts the operation of section 51 of the Act in relation to an amendment of the village rules which is not related to COVID-19.

## **Part 3 Miscellaneous**

### **Schedule 1 Village Rules**

- 1** An amendment that relates to the visitors or guests (including overnight or short stay guests) of a resident.
- 2** An amendment that relates to the compliance and enforcement of the village rules by the operator, resident, or person other than the operator or resident.
- 3** An amendment that relates to the provision of, and access to, the services and facilities and communal areas of the retirement village.
- 4** Any other amendment that the operator of a retirement village considers necessary for the safe operation of a retirement village.