



Submission

Rules of Conduct for operators of retirement villages

June 2019

COTA NSW

COTA NSW is the peak body representing people over 50 in NSW. We're an independent, non-partisan, consumer-based non-government organisation. We work with politicians, policy makers, service and product providers as well as media representatives to make sure our constituents' views are heard and their needs met.

For more information contact:

Karen Appleby
Senior Policy Officer COTA NSW
Email: karen.appleby@cotansw.com.au

The focus of the COTA NSW submission

COTA NSW supports the introduction of mandatory *Rules of Conduct* for retirement village operators. The proposed *Rules* will establish a necessary baseline of conduct between operator and residents in retirement villages. Data from the *2017 COTA NSW Housing Survey* suggests that while the majority of survey respondents who live in retirement villages are happy with their decision, a small proportion of respondents are not and have experience negative interactions with management or staff. It is the introduction of these *Rules of Conduct* that will endeavour to address the issues raised by these residents.

The success of these new regulations will be determined by ongoing support and enforcement by the NSW Office of Fair Trading and the Retirement Village Ambassador program. COTA NSW reaffirms our call for a multifaceted education program be developed for consumers to ensure that they are well informed about the *Rules of Conduct* and other topics such as understanding different types of tenure, fees and charges and retirement village contracts.

It is also essential, that an adjunct guidelines document be produced and promoted to residents of retirement villages. This document must be in easy English and include practical examples and case studies that will enable residents to apply the *Rules of Conduct* to their own circumstances.

In preparing this submission, COTA NSW developed a survey for its members and supporters to provide feedback on the draft *Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019 (NSW)*. The survey provided respondents with summaries of each part of the regulation and asked for open ended responses to the questions as outlined in the Office of Fair Trading's consultation paper.

COTA NSW received a total of 289 unique responses, with 24% of respondents current residents of a retirement village. Their feedback forms the basis of this submission and is outlined under each relevant part of the draft guidelines.

Provision - Standards of conduct

- **Are there any other knowledge requirements for operators managing retirement villages that should be listed in the Rules?**

It was suggested that a knowledge of state and federal anti-discrimination laws was also necessary for Residential Village (RV) staff and be explicitly listed under 2.4. Furthermore, given the age of residents and possible mobility issues, some respondents felt that senior management should also be aware of the *Building Code of Australia* and *Australian Standards* to ensure that facilities are compliant and provide the necessary access to residents of all abilities.

- **Are there additional ways (other than those mentioned) that an operator should behave towards a resident?**

The importance of respect towards the resident featured prominently in the responses to this question. Operators should respect residents regardless of gender, ethnicity, socio-economic and mental health circumstances. It was suggested that 2.7 should list respect in conjunction with honesty, fairness and professionalism.

'Respect, respect, respect. These residents are not children and should not be treated as such.' Survey comment.

'Management should treat ALL residents with respect and courtesy at all times without favour.' Survey comment.

Many comments emphasised the need for operators to treat residents with dignity and compassion. Other respondents felt that operators were patronising towards them, not recognising individual's life experiences and knowledge. Additionally, operators should also have due regard to specific disabilities such as poor mobility, reduced hearing, reduced visual acuity and modify their mode of communication if required.

Although it is laudable that these behaviours are listed in the *Rules*, by their very nature they are subjective. Inclusion of examples that outline behaviours that do not conform to these values within a guidelines document will enable residents and operators with different interpretations of these principles to have a greater chance of finding common ground.

Other

It is recommended that in rule 5 (3) that the best interests of the resident and prospective residents be separated. Feedback from respondents and the Retirement Villages Residents Association (RVRA) argued that in some circumstances the best interests of these two distinct groups may be very different and the operator must have due consideration of this difference.

- **Is it reasonable to require an operator to prepare a mitigation strategy to address elder abuse and be responsible for staff and residents' awareness? If you believe so, are the proposed measures sufficient?**

COTA NSW and the respondents to the survey were broadly supportive of this section of the regulations, with some caveats. Elder abuse is something that should be recognised and mitigated against throughout society - retirement villages are no exception to this. COTA NSW recognises that some smaller operators without experience in this area may find it difficult to understand their roles and responsibilities and the skills to develop a strategy for the village. It is suggested that the *Rules* clearly articulate what the roles and responsibilities of operators are in relation to mitigating elder abuse in their village.

Additionally, it is suggested that a standard strategy be developed by the Retirement Village Ambassador Program, with input from the Elder Abuse Hotline and Older Person's Advocacy Network (OPAN) or based on the *Preventing and responding to abuse of older people (Elder Abuse) NSW Interagency Policy*.

It is also essential that operator staff and management are provided with training in identifying and responding to elder abuse. There was also a suggestion, that bodies such as the Residents Committee, should also be trained in this area. As one respondent noted, it is also vital that resident's privacy is also recognised and respected in this area.

- **Is there any specific information, operators should be required to provide or grant access to, to facilitate the sale of a premise by external selling agents?**

As stipulated in section 18 of the *Retirement Villages Act 1999* NSW, operators must provide a disclosure document that outlines all fees and charges payable by the resident of the village. In addition, section 20 of the *Act* requires operators to provide additional documents relating to financial probity of the village, rules and regulations of the site, example contracts and a site plan. These requirements were highlighted as essential from survey respondents.

In addition, it was suggested that the following information also be made available to the external selling agents:

- Formula for payments and services which are imposed after a resident leaves the property should be clearly provided at an early stage of selling negotiations, such as capital gains;
- Services the village offers to residents;
- Future plans for development;
- Sales data of other premises
- Full and open disclosure of real cost of repair and restoration of the property.

Emphasis on the importance of free and unrestricted access to the residential premises and common areas of the village was also articulated by many respondents.

Provision - Representations in marketing retirement villages and units

- **Is it reasonable to include the proposed statements in promotional material? If not, why?**

There was overwhelming support for the inclusion of the proposed statements in the promotional material. The use of a word count rule allows for a range of marketing materials and avenues to be covered by the regulation without providing specifics. However, some concerns were raised by the use of the word 'may'. It was felt that all materials need to specifically state whether fees would be payable on departure or share of capital gains. The use of 'may' will continue to create uncertainty for residents entering a village.

Additional feedback, reiterated the need for promotional material to be in easy English, set out in an accessible and clear format.

Provision - Avoiding conflicts of interest

- **Should any of the requirements be removed or new requirements added to the Rules of Conduct, in order to better manage conflicts of interest? Why/why not?**

The draft *Rules* provides an adequate framework for the avoidance and resolution of conflicts of interest by retirement village operators and staff. Respondents to this question were broadly in favour of the provisions with consideration of the following items:

- There was concern on the existing definition of 'conflict of interest' and that it was unclear to residents. Others felt that it should be widened to include extended family of the staff member or where the staff member has an interest in a 3rd party company receiving financial benefit through dealings with the village. It was suggested that easy English guidelines be developed to provide clear examples of 'typical' conflict of interest situations.
- Extend the period for keeping records of conflict of records to 10 years. There is often a high turnover of staff, so continuity of information is necessary.
- Notice of conflict to be tabled at annual general meeting.
- That rule 16 be an offence provision.

Provision - Complaint handling and internal dispute resolution

- **Are the requirements proposed in the Rules of Conduct suitable for the handling and resolution of complaints? If not, why?**

The proposed process of complaint handling and internal dispute resolution was supported by the majority of responses. The predominate concern was the need for protection from negative consequences - if a complaint was made. COTA NSW acknowledges that 24.2 (d) clearly stipulates that harassing or undertaking any other form of harsh or unconscionable conduct is prohibited, although it does not state the consequences for an operator. This rule would be strengthened by the inclusion of an additional example relating to availability, or access to management. For example, 'that the operator must allow reasonable availability to allow residents to make a complaint'.

Again, the feedback indicated that the sixty (60) day resolution period was too lenient. A period of thirty (30) days was strongly argued for, with the option to extend the resolution to sixty days (60) for complex cases and when both parties agree and signed off by an independent mediator.

Residents also wanted the option of nominating a relative or their Power of Attorney to handle complaints on their behalf if they were unable to represent themselves, or to have the option of a support person attending any mediation proceedings.

As stated in relation to *Conflict of Interests*, the length of record keeping for complaints should be extended to 10 years (from the date of resolution) for the reasons stated previously.

- **Are the requirements for making the dispute process publicly available achievable/reasonable?**

The importance of providing information in an easy English or graphical format of the dispute process was emphasised. It is not enough for it to be on a website or for the onus of the resident to request a hard copy. A copy of the process should be displayed in a common area for all residents to have easy access to. Furthermore, a copy should be included in any new resident prospectus. The avenues for escalation of a complaint, particularly outside the village should also be clearly listed on the document.

It is suggested adherence to this requirement would be difficult to monitor, without the introduction of spot checks by an independent body such as the Department of Fair Trading.

Provision - Training and competencies

- **Are there any further requirements that operators should implement for staff training and competency? If so, what should they be?**

There was broad consensus that the provisions relating to training and competencies were thorough. A number of suggestions were made for particular areas of focus, such as:

- Cultural diversity training;
- An overview and understanding of relevant legislation;
- Dispute and complaint handling including conflict resolution skills;
- Mandatory police checks;
- For those in senior positions, management training.

Induction training for all staff should also acknowledge that in many cases there is an inherent power imbalance between residents and management/staff. This should be considered in staffs' interactions with residents and the impacts that this dynamic might produce on behaviours or perceptions.

As mentioned previously, training must also be available for staff to support the introduction and implementation of an elder abuse strategy.

- **Are there any specific qualifications that operators or staff should be required to possess?**

COTA NSW asserts that the specification of qualifications for operators or staff is outside the remit of the *Rules of Conduct*. However, respondents recommend that as a business, operators may see value in managers or other senior staff possessing qualifications in areas such as business management, governance, finance and human resources.

The *Work Health and Safety Regulation 2017* NSW requires all workplaces to nominate a first aid and WHS officer. The organisation must ensure that a staff member/s is nominated to these roles and appropriately trained.

It is also suggested that in a situation where a lead mediator is appointed to become involved in a dispute or complaint within the village, then accreditation of the National Mediator Accreditation Scheme (NMAS) should be a minimum requirement.