

Rules of conduct and budget obligations

Following consultation with representatives of the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) on Tuesday 29 October 2024, this submission articulates the retirement living industry's response to the second consultation paper on proposed amendments to the Retirement Villages Regulations 1992 relating to rules of conduct and budget obligations.

Preliminary comments

The Property Council has had long supported the implementation of conduct obligations for both residents and operators, recommending the existing Retirement Living Code of Conduct form the basis of any rules of conduct. As the Property Council has referenced in a previous submission to DEMIRS titled "Definitions, Budget Requirements, Conduct Obligations and Overlap between RV and Strata Laws" on 20 April 2023, the Code "is intended to provide a basis for implementing regulation in a way that creates high and consistent standards, which serve to meet the expectations of residents and the broader community, whilst recognising the rights and obligations of both operators and residents."

Rules of conduct for operators and residents

The Property Council WA membership contains many operators whose villages are signatories to the Retirement Living Code of Conduct, which has seen uptake in signatories increase over recent years. These villages are across metropolitan Perth and regional WA and represent thousands of residents.

The Property Council is broadly supportively of the proposed conduct rules for operators, but notes that several conduct rules are currently too broad. The Property Council requests some clarity regarding these rules. Further comments and amendments are listed in the Appendix below.

The Property Council notes that as more obligations and requirements are placed on operators, the cost is fundamentally passed onto the residents. As such, the Property Council recommends limiting the inclusion of unnecessary impositions on operators.

Conduct in the marketing of retirement villages

The Property Council does not support creating regulations regarding the advertising and marketing of retirement villages. The Australian Consumer Law provides significant and adequate consumer protection regarding misleading, deceptive, or unreasonable conduct.

Budget obligations

The Property Council notes that industry already has consultation processes in place as a part of the budget preparation and in accordance with the requirements set out in the Fair Trading (Retirement Villages Code) Regulations 2022. Resident committees, and by extension finance subcommittees, are consulted throughout this process. Industry notes that in villages where



resident and/or finance committees are not established, operators send a draft budget to all residents during the consultation process.

Insurance information for residents

The Property Council notes the inclusion of proposed regulations relating to insurance, and recommends that if included, they are in line with current Form 1, Item 12 disclosure documents and are limited to presenting the expected range of insurances that an operator holds. Industry notes questions relating to insurance are routinely asked at budget meetings. The Property Council suggests following the information that is provided in NSW where the available insurance options are provided to prospective residents.

Response to consultation questions

The Property Council notes the inclusion of the primary questions contained in the consultation document and has provided answers to the questions provided throughout this submission.

Next Steps

If you require further information or clarification on anything contained in this submission, please contact Andrew Thomson, WA Policy and Research Advisor, at athomson@propertycouncil.com.au or on 0409 470 336.

Yours sincerely,

A handwritten signature in black ink, appearing to read "N Brischetto".

Nicola Brischetto
WA Executive Director
Property Council of Australia

APPENDIX

Clause	Property Council response	Rationale
PROPOSED CONDUCT RULES FOR OPERATORS		
a)	Amend and clarity recommended	The Property Council recommends removing reference to “all relevant laws” and recommends referencing the Retirement Villages Act.
b)	Clarity recommended	The Property Council recommends providing more clarity regarding what is meant by “best interests”, and whether this refers to their contractual “best interests”, or something such as their health or financial interests. The Property Council recommends regard be given to the fact that operators must prudently balance interests of their residents against the obligations and duties that operators owe to their staff.
d) AND e)	Amalgamate	The Property Council recommends amalgamating these clauses as it is not aware of a situation where an operator could act in good faith and simultaneously without honesty, fairness, and professionalism.
f)	Amend, clarity recommended and amalgamate	The Property Council seeks clarification on whether this clause has any issue or confidentiality challenges with the <i>Privacy Act 1988</i> (Cth). The Property Council also recommends this clause should be amalgamated with clauses d) and e) as this behaviour requires operators to act in good faith, with honesty, fairness, and professionalism.
h)	Amend	The Property Council seeks clarification on what is meant by “managing” conflicts of interest. The Property Council recommends narrowing the wording away from “managing”.
PROPOSED CONDUCT RULES FOR RESIDENTS		
a)	Addition	The Property Council recommends adding reference to the “rights” of other residents and persons in the retirement village to more clearly outline the obligations of residents as per their village contracts.
b)	Reword	The Property Council recommends rewording this clause to: “...refrain from harassment, intimidation or disruptive behaviour towards, residents and persons in the retirement village (including the operator and any person employed in the retirement village scheme).

		<p>This includes all forms of verbal, physical or emotional actions that may cause distress.”</p> <p>The Property Council recommends this change to better align with WH&S obligations.</p>
c)	Enhance	<p>The Property Council recommends rewording this clause to:</p> <p>“Ensure the safety and well-being of all residents by avoiding behaviours that may endanger other residents and persons in the retirement village. Follow safety protocols, avoid reckless actions and promptly report any hazards to cultivate a supportive community that prioritises the health and security of other residents and persons in the retirement village.”</p>
d)	Addition	<p>The Property Council recommends amending this clause to “comply with the residence rules and obligations under the Retirement Villages Act”.</p>
PROFESSIONAL STANDARDS FOR OPERATORS		
2	Amend	<p>The Property Council recommends removing reference to the “qualifications” and referring to the “competencies” of each role in the retirement village.</p>
3	Remove	<p>The Property Council recommends removing this clause in its entirety because it implies all staff must have training in complaint handling which would be inappropriate. For example, head office staff members do not require complaint handling training. Smaller operators may struggle to ensure all staff are trained appropriately in complaint handling and dispute resolution, while larger operators already have training for the appropriate members of staff in place, to deal with such matters.</p>
4	Amend	<p>The Property Council notes the inclusion of “professional development” in this section and queries to which staff this would apply.</p>