

Information sheet

Retirement Villages Act 2016 – guidance during COVID-19 pandemic

The aim of this factsheet is to provide guidance on meeting the requirements of the *Retirement Villages Act 2016* (RV Act) during this time of COVID-19 pandemic and social distancing.

As the State Coordinator has declared a major emergency under the *Emergency Management Act 2004*, that Act will prevail over any other Act to the extent of any inconsistency. This makes it clear that the instructions in relation to COVID-19 that we are receiving from the authorities will prevail over the RV Act. It follows that where compliance with the RV Act is not possible, or even advisable for safety reasons, Office for Ageing Well will not be taking compliance action against operators.

Office for Ageing Well (OFAW) encourages operators to err on the side of caution in relation to protecting the health of residents. However, OFAW expects that operators will continue to provide any information that is required to be given to residents under the RV Act, even if associated meetings cannot take place.

S39 – Mandatory consultation with residents' committee in relation to annual budget

Section 39 of the RV Act mandates that operators must consult with residents' committees (where there is one) in relation to the annual budget. The operator is obliged to convene two such budget meetings unless the residents' committee advises in writing that it does not require one or both of the meetings to occur.

Traditionally budget meetings have taken place in the village with face-to-face meetings and discussion occurring on the presented papers.

Although a physical meeting cannot be held in accordance with section 39, the consultation requirements of the section should still be complied with.

In villages that do have a residents' committee, you should send out the budget information with explanatory notes either in hard copy or via email and conduct some form of consultation. The method used will depend on the village and the technical capability of the residents involved.

You could invite committee members to submit questions in writing or by return email, or arrange a discussion via teleconference. In some cases it may be possible to hold Zoom meetings (or something similar), bearing in mind that it is possible for those without computers to join these via telephone. If the technology constraints of the committee members are such that a meeting is not possible at all, you should allow additional time for the committee to ask questions and provide feedback in writing.

Every effort should be made to comply with the requirements of section 39.



Annual meetings of residents

S33(2) The annual meeting of residents must be held within four months of the end of the financial year that applies to the retirement village.

In most cases, annual meetings must be held before 31 October. At this time, we do not know when social distancing requirements and restrictions on gatherings of people will be relaxed, so operators should be planning to meet the annual meeting requirements of the RV Act remotely.

The usual practice of providing an invitation and agenda for residents to attend the meeting held in a communal facility or room may not be able to occur. Whilst the physical component of the annual meeting may not be able to go ahead, all other requirements can still be met. Financial information should be provided to residents as usual. However, as there may not be a conventional annual meeting, operators will need to be creative in exploring alternative ways of communicating with the resident body and conducting consultation.

The method you use will depend on the number of residents involved and their technical capabilities.

- > You may be able to hold the meeting via teleconference.
- > You may be able to hold a Zoom meeting or webinar, with questions able to be taken in the sidebar.
- > You may seek all questions to be submitted in writing.
- > If there is a matter to be decided by vote, organise absentee voting slips to be distributed with the required documents.

You should send out the required audited financial and budget report information with explanatory notes as usual. You may choose to send out the documentation earlier, to provide residents with additional time to submit questions. Do not forget to build in time to allow time for responses to be drafted. If sending documents by post, allow plenty of time for them to arrive in case of postal delays. Consolidation of all the questions and answers will constitute the minutes.

S34(4) Minutes of the annual meeting

The RV Act requires that in the case of an annual meeting, a copy of the minutes of the meeting must be provided to all residents within 10 business days.

Questions and answers must be included in the minutes. Where all questions are submitted in writing, and no teleconference or other remote meeting is held, provision of all questions and answers will constitute the minutes of the meeting.

Voting

The legislation introduced the ability for a resident to cast an absentee vote for a matter to be decided at a meeting of all residents. If there is an item that requires a vote, ensure that absentee voting slips are included in the package delivered to each residence.

Regulation 12 - Residents' Committees – Annual Meetings

The RV Act requires a residents' committee to hold an annual meeting with all residents of the village at which the election of committee members must take place.

Resident committees are required to hold a meeting of all residents annually, and these fall due throughout the year. If this annual meeting is due within the next few months, it is recommended that the meeting and election be postponed until later in the year.

Consulting with residents generally

Under the *Retirement Villages Regulations 2017*, operators have an obligation to consult with residents on a number of matters including:

- > any matter that may have a significant impact on their financial affairs, the amenity of the village, or their way of life
- > any changes to the operator's dispute resolution policy
- > any changes to the residents' rules
- > any changes to the operator's remarketing policy.

Additionally, changes to a surplus and deficit policy cannot occur except where approved by a special resolution at a meeting of residents.

Where an operator is required to consult with residents or the residents' committee, they are still obliged to do so. Consultation will need to occur via alternative means, including correspondence, voting and feedback forms.

The Office for Ageing Well will support operators and committees to meet their legislative obligations.

Should you have questions, please contact the Retirement Villages Unit, preferably via email: retirementvillages@sa.gov.au or by phoning 8204 2420 and leaving a message for return call.

Disclaimer: In developing this information sheet, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best known practice. The information contained in these resources does not constitute legal advice. The Office for the Ageing recommends that you seek your own legal advice should you require interpretation of the legislation.

For more information

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