

# NSW AGEING AND DISABILITY COMMISSION

## FEEDBACK ON THE PROPOSED RETIREMENT VILLAGES REGULATION 2025

March 2025

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## 1. Background

The NSW Ageing and Disability Commission (ADC) is a statutory agency that promotes and protects the rights of older people and adults with disability to live free from abuse, neglect and exploitation in their family, home, and community. Our functions include:

- responding to allegations of abuse, neglect, and exploitation of older people (65 years and over or, if Aboriginal and/or Torres Strait Islander, 50 years and over) and adults with disability (18 years and over), including by providing advice, making referrals, and conducting investigations
- raising awareness and educating the public about matters relating to the abuse, neglect, and exploitation of adults with disability and older people
- inquiring into and reporting on systemic issues relating to the protection and promotion of the rights, or the abuse, neglect, and exploitation, of adults with disability and older people
- meeting other obligations as outlined in the *Ageing and Disability Commissioner Act 2019* (the ADC Act).

## 2. Reports to the ADC about abuse of older people

Between 1 July 2019 and 30 June 2024, the ADC's Ageing and Disability Abuse Helpline received 18,896 reports, involving a two-fold increase (109%) over the five-year period. Three-quarters of the reports (14,541) were about older people, including older people with disability<sup>1</sup>.

Of the 14,541 reports about older people:

- Most (67%) were about women.
- The largest proportion (19%) related to people aged 80-84 years.
- Most reports involve more than one form of alleged abuse. The most common alleged abuse involved psychological abuse (39% of allegations), financial abuse (29%) and neglect (21%), primarily by their adult children or other relatives.
- Psychological abuse has commonly been used to enable financial abuse and exploitation, including verbal threats, pressure, blackmail, and harassment.
- 477 reports (3.3%) related to older people living in retirement villages.

The below table provides an overview of the types of alleged abuse of older people living in retirement villages in reports to the ADC in 2019-24. Psychological abuse and financial abuse accounted for almost three-quarters (73.5%) of the allegations.

**Type of alleged abuse of older people living in retirement villages in reports to the ADC, 1 July 2019 – 30 June 2024**

Type of alleged abuse	Number of allegations	% of all allegations
<b>Psychological abuse</b>	277	39.1%
Mainly verbal abuse; preventing or restricting access to the adult's family/others; and other psychological abuse		
<b>Financial abuse</b>	244	34.4%

<sup>1</sup> More data on reports to the ADC is available at: <https://ageingdisabilitycommission.nsw.gov.au/tools-and-resources/dashboard-data.html>

Mainly financial exploitation; misuse of Powers of Attorney/Enduring Powers of Attorney; and theft		
<b>Neglect</b> Mainly failure to meet the adult's support needs; and medical neglect	136	19.2%
<b>Physical abuse</b> Mainly pushing/shoving/grabbing/shaking; and inappropriate restraint or excessive use of force	32	4.5%
<b>Sexual abuse</b> Mainly sexual assault	7	1%
<b>Other</b>	13	1.8%
<b>Total allegations in reports about older people in retirement villages</b>	<b>709</b>	<b>100%</b>

Overall, the number of reports to the ADC about abuse, neglect and exploitation of older people living in retirement villages has been low, and likely reflects under-reporting. In many of the reports to the ADC about abuse of a retirement village resident, the operator has not been aware of the requirements to establish an elder abuse prevention strategy.

Additionally, a survey by the Retirement Village Residents Association in 2023 identified that 40% of survey respondents had experienced some form of psychological abuse in the previous year, with most of this abuse (70%) coming from another resident<sup>2</sup>.

### 3. How we support retirement villages in NSW

At the same time that the ADC commenced on 1 July 2019, changes were made to the Retirement Villages Regulation 2017 to introduce new requirements relating to the prevention of elder abuse. Rule 10 of the Rules of Conduct for Operators of Retirement Villages (Schedule 3A) requires operators to prepare and implement a clear and accessible strategy for both staff and residents to better prevent, identify and respond to elder abuse in their retirement village.

Rule 10 includes the specific requirement that the strategy must include 'guidance for accessing the services and resources of the NSW Elder Abuse Helpline and Resource Unit, the Ageing and Disability Commissioner and other relevant local services and support agencies.'

The ADC has worked with NSW Fair Trading, non-government organisations, including Seniors Rights Service, and peak bodies, including Ageing Australia and the Property Council, to support operators to prepare and give effect to the required strategy by:

- **Producing and disseminating a Retirement Village Operator Guide<sup>3</sup>** – in 2023, the ADC developed a guide to help operators to comply with Rule 10. In 2024, the ADC distributed hard copies of the guide to 774 registered retirement villages in NSW and followed up with phone calls to offer additional guidance.

<sup>2</sup> Retirement Village Residents Association, June 2023, 'Ageing Without Fear Survey Report', <https://www.rvra.org.au/education/research-ageing#Anchor3480>

<sup>3</sup> NSW Ageing and Disability Commission, May 2023, 'Keeping residents safe from abuse: A guide for retirement village operators to meet Rule 10 in the mandatory rules of conduct', [https://ageingdisabilitycommission.nsw.gov.au/documents/ADC\\_Retirement\\_Village\\_Operator\\_Guide\\_2024\\_w\\_ebsite.pdf](https://ageingdisabilitycommission.nsw.gov.au/documents/ADC_Retirement_Village_Operator_Guide_2024_w_ebsite.pdf)

- **Educating staff and operators** – we have delivered presentations to help operators identify and respond to abuse while developing effective prevention strategies.
- **Undertaking strategic communications** – the ADC has been involved in a targeted editorial series for senior executives in retirement villages, highlighting the prevalence of abuse of older people, the importance of compliance with Rule 10, and promoting our Retirement Village Operator Guide. The series received high engagement, consistently ranking among the most-read articles each month.

We have also undertaken initiatives to improve the awareness of retirement village residents and the community in relation to abuse, neglect and exploitation of older people, and the Ageing and Disability Abuse Helpline. This has included information sessions for residents and newspaper advertisements.

## 4. Feedback on the proposed Retirement Villages Regulation 2025

The ADC has previously provided feedback to NSW Fair Trading on key changes to the Retirement Villages Regulation 2017 we consider are needed to improve compliance with Rule 10, strengthen safeguards for residents, and support the work of the ADC. In particular, our feedback highlighted the need to:

- Introduce offence provisions for failure to comply with Rule 10, and for other Rules of Conduct that have a direct impact on residents.
- Establish a more formalised and transparent system for monitoring the compliance of operators with Rule 10, supported by information sharing between Fair Trading and the ADC to enable targeted support for operators without an elder abuse strategy.

We welcome the inclusion in the proposed Retirement Villages Regulation 2025 of several of our recommended changes. However, we have identified aspects of the proposed regulation that warrant amendment or additions to strengthen safeguards for residents and support operator practice and compliance.

### 4.1 Sharing relevant village information with the ADC

We support the proposed change to the Regulation to enable NSW Fair Trading to exchange relevant village information with the ADC. In the ADC's experience, there is minimal oversight or tracking of operators who are not complying with Rule 10, notwithstanding the importance of the requirements. In our view, there is a need for a more formalised and transparent system for monitoring compliance that does not increase the administrative burden on operators or create additional bureaucracy.

We are keen to see the provision of a reliable mechanism for:

- identifying operators who do not yet have an elder abuse prevention strategy, and
- facilitating the provision of early support to operators to ensure a strategy is developed and implemented.

We consider that the proposed amendment to the regulation to enable NSW Fair Trading to share relevant village information with relevant agencies, such as the ADC, will enable informed and targeted actions to support compliance.

Increased oversight and the proposed information sharing provisions regarding operators who do not meet Rule 8 (formerly Rule 10) would assist in:

- raising the awareness and practice of operators in relation to Rule 8 and resident safeguarding

- raising the awareness of staff and residents about preventing, identifying and responding to abuse of residents
- ensuring residents are aware of the services and supports available to them.

It is important to recognise that the sharing of information with the ADC about operators who do not have an elder abuse strategy would primarily inform more targeted engagement by our agency to provide support and assistance in relation to the development and implementation of an elder abuse strategy. As a small agency, the provision of relevant information would help us to make more effective use of our limited resources. It would also enable a more joined-up approach between NSW Fair Trading and the ADC in relation to retirement villages.

We note that the ‘relevant village information’ that would mainly support the above work is in sections 197B (e), (f), (g) and (j) of the *Retirement Villages Act 1999*. That is, information relating to complaints, enforcement or disciplinary action, and other information about the management and operation of a retirement village (that pertains to alleged abuse of residents or compliance with the requirement to have an elder abuse strategy). We consider that the information outlined in Schedule 5 of the proposed Regulation relating to the information required to be given to the Secretary is less relevant to this work.

## 4.2 Penalty notice offences

Consistent with our previous advice to NSW Fair Trading, the ADC supports the proposed introduction of additional penalty notice offences for Rules of Conduct that link to actual or potential abuse of residents, including Rule 8 (elder abuse strategy) and Rule 20 (not discouraging residents from making complaints or pursuing internal disputes).

We note that the 2019 regulations identify offence provisions for a range of areas in the Rules of Conduct, including in relation to processes and records for internal complaint and dispute resolution, records on staff training and professional development, and carrying out functions without disclosing a conflict of interest. However, there is currently no offence provision associated with operators failing to comply with the requirement to develop and implement an elder abuse strategy.

Our handling of reports about alleged abuse, neglect and exploitation of older people living in retirement villages has included residents who have been subject to significant financial exploitation (involving hundreds of thousands of dollars), psychological abuse, and coercive control, primarily by family members or other retirement village residents. (The case studies at the end of this submission provide two examples). The impact of this abuse has been devastating for the individuals including, among other things, placing their health and accommodation at considerable risk. The operators of the relevant retirement villages had typically not complied with the requirement to have an elder abuse strategy.

In our view, the significant adverse impact on residents of operators failing to comply with Rule 8 warrants additional measures to increase awareness and compliance, including the proposed introduction of an offence provision.

We also support the introduction of a penalty notice offence for operators discouraging or preventing residents from making complaints or pursuing internal disputes (Rule 25 in the 2019 regulation). Rule 25 identifies that ‘examples of discouragement’ include examples of abuse, including ‘employing high pressure tactics, harassing the resident or undertaking any other form of harsh or unconscionable conduct’, and exercising retribution against the resident for making the complaint/pursuing the internal dispute. Retribution against complainants (including individuals proposing to make a complaint) commonly attracts

penalties in other NSW legislation.<sup>4</sup>

However, we consider that the wording and information supporting section 20(2)(e) in the proposed regulation should be amended to:

- link to a definition of ‘detrimental action’<sup>5</sup>, and
- incorporate detrimental actions, complaints and internal disputes that are taken/made/pursued and those that are *proposed* to be taken/made/pursued. We suggest changing the wording to ‘taking or threatening to take detrimental action against the resident for making or proposing to make a complaint or pursuing or proposing to pursue an internal dispute’<sup>6</sup>. This would also enable better alignment with section 21(2) in the proposed regulation.

The ADC supports the proposed introduction of an offence in relation to keeping and providing access to records on conflicts of interest. However, in addition to the offence provision, we consider that there should be active engagement and proactive provision of easy-to-understand guidance by NSW Fair Trading, including clear examples of typical conflicts of interest in the retirement village context, to ensure improved understanding and compliance.

### 4.3 Suggested amendments to Rule 8

#### Reference to the Ageing and Disability Abuse Helpline

In the 2017 regulation, the requirements relating to an elder abuse strategy included that the strategy needed to include ‘guidance for accessing the services and resources of the NSW Elder Abuse Helpline and Resource Unit, the Ageing and Disability Commissioner and other relevant local services and support agencies.’ We note that the wording in Rule 8 in the proposed regulation has been changed to refer to ‘NSW Government agencies and helplines’ more broadly.

We recognise that the ADC and our Helpline are not the only options for obtaining guidance or support in relation to abuse of older people (for example, depending on the circumstances, helplines such as Lifeline, 1800RESPECT, and the NSW Domestic Violence Line may also be appropriate). However, to ensure residents, operators and the community can easily identify where relevant guidance on abuse of older people is available, we recommend amending the text to state ‘guidance for accessing the services and resources of appropriate NSW government agencies and helplines, including the NSW Ageing and Disability Abuse Helpline, and other relevant local services and support agencies.’

#### Reference to elder abuse

We suggest updating the terminology to reflect abuse of older people rather than ‘elder abuse’. Terminology in Australia has increasingly moved away from ‘elder abuse’ to avoid confusion and misunderstanding with references to Elders in First Nations communities.

#### Training for staff

Rule 8 requires operators to ‘give effect to’ and ensure that ‘all members of the operator’s staff are familiar with’ the elder abuse prevention strategy. However, in our view being ‘familiar’ with the strategy is a low benchmark – it may be possible to achieve compliance simply by staff being aware that a strategy exists. Equipping retirement village staff with the skills to identify and respond to abuse is essential. As the first point of contact for

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<sup>4</sup> See, for example, section 47 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*; section 15A and section 24 of the *Ageing and Disability Commissioner Act 2019*, and Part 4B of the *Ombudsman Act 1974*.

<sup>5</sup> For examples, see section 47(3) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, and the definitions at section 3 of the *Ageing and Disability Commissioner Act 2019*.

<sup>6</sup> This is consistent with the legislation outlined in footnote 4 above.

residents, staff play a crucial role in recognising and responding to abuse.

There would be merit in amending the wording of section 8(2)(a) to require operators to ensure that all staff understand and implement the elder abuse prevention strategy.

### **Reviews of the strategy**

The ADC supports the requirement for operators to review their abuse prevention strategy every two years. However, we consider that the input of residents should be a required component of the biennial review. Among other things, including consultation with residents as a mandatory part of the review would:

- enable operators to better understand and assess whether, and the extent to which, the strategy is known to and understood by residents and communicated in a meaningful and accessible way
- raise awareness among residents about the strategy, abuse, and how they can get assistance
- incorporate their experience into revision and delivery of the strategy
- enable specific consideration of residents' concerns and needs.

### **Case study 1**

We received a report about potential financial exploitation of Margaret, an older woman with dementia and declining decision-making capability who lived in a retirement village. The report alleged that thousands of dollars had been withdrawn from Margaret's bank accounts and a neighbour in the retirement village had sought to gain access to her accounts after getting her to appoint them as her Enduring Power of Attorney (EPOA) instead of her family member.

Margaret considered the neighbour to be a good friend, and she relied on them for company and some day-to-day support, including some grocery shopping, appointments, social activities and housework.

After preliminary inquiries, the ADC commenced an investigation. We found that almost \$300,000 of Margaret's funds had been used to pay for items that benefitted the neighbour, either directly or indirectly. This included the cost of the neighbour's retirement village unit, legal services, and motor vehicle.

We found that Margaret could not recall any information about her financial circumstances and her neighbour had been aware of Margaret's declining memory and decision-making ability for a long time. Shortly before the report to the ADC, Margaret had signed Enduring Guardian and EPOA instruments naming the neighbour as her guardian and attorney. Our investigation identified that, at the time of these appointments, Margaret did not have sufficient capability to understand what was happening.

The ADC made a report to police and worked in cooperation with the investigating officers. Police focused on the criminal investigation while the ADC focused on ensuring that Margaret had support and safeguards were in place to protect her finances. In liaison with Margaret and her family overseas, we made an application to NCAT for a financial manager and guardian, and NSW Trustee and Guardian was appointed.

At the end of the police investigation, criminal charges were laid against the neighbour and another party in relation to obtaining financial benefit by deception (fraud).

This matter highlighted a number of gaps and opportunities to better prevent and respond to financial abuse and exploitation of older people with disability, including the importance of retirement villages developing and implementing an elder abuse strategy for residents and staff, as required under the Retirement Villages Regulation.

### **Case study 2**

Douglas, a retirement village resident, faced financial hardship after his daughter and Enduring Power of Attorney, Ruth, transferred large sums from his bank account. Over several months, Douglas lost access to his own money and could not cover his expenses, resulting in an eviction notice from village management.

Ruth claimed she was protecting Douglas's finances due to his impulsive spending, but her actions left him at risk. Village staff hesitated to intervene due to the family dispute.

In 2024, a home care service intervened, leading Ruth to repay a large portion of the money and restoring some of Douglas's financial stability. However, the stress of eviction and financial loss had already affected his wellbeing.

Douglas's sister later reported the situation to the ADC, who helped him regain access to his funds, stop the eviction, and receive increased in-home support.

This case highlights the importance of retirement villages having a clear and easy to understand elder abuse strategy to enable operators and staff to better identify and take early action on abuse of residents, including potential financial abuse.