

Annual auditing of retirement village accounts

Guidelines for retirement village operators

July 2019

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Introduction

The accounts of retirement villages are required to be audited each year by a qualified auditor. These guidelines are issued under section 189B of the *Retirement Villages Act 1999* (the Act) to assist operators and residents by providing information on the process of appointing an auditor.

Operators should also read and become familiar with the relevant parts of the Act as indicated in these guidelines. It should be noted that the NSW Civil and Administrative Tribunal (the Tribunal) may take these guidelines into account to determine if operators have complied with the requirements of the Act.

Any reference to an **operator** in this guideline means “the person operating a retirement village who manages or controls the village”.

Selecting an auditor

Seeking consent from residents

The operator must seek residents’ consent before they appoint an auditor to audit the retirement village’s accounts. This must take place each year unless an auditor has previously been appointed for a period of up to 3 years. This person must be a qualified auditor - that is, a person qualified to audit accounts for the purposes of the *Corporation Act 2001* (Commonwealth).

To seek residents’ consent, the operator must give each resident a written **consent request notice**.

The consent request notice must include:

- the name of the person proposed for appointment,
- that person’s address and qualifications,
- the proposed period of the appointment (no more than 3 years), and
- if the residents are to pay the audit fees, the cost that will apply to them (which must also be itemised in the annual budget).

Residents then have a 30-day period to meet and consider the notice, and vote on:

- appointing the operator-proposed auditor, and
- the proposed period of appointment (if more than 1 year).

The operator may wish to seek consent on both their proposed auditor and on the proposed annual budget (or an amended budget) together. If so, the operator can include the consent request notice in an annual budget notice (section 112(4) of the Act).

However, the vote to consent to the auditor’s appointment must be taken separately from the vote to approve the budget. Where the residents’ consent to the proposed budget is taken to have been given (for example, when the proposed increase in recurrent charges is equal to or less than CPI), a separate vote on appointment of the auditor is still required.

Response from the residents

Within 30 days of receiving the consent request notice, the residents must give the operator a written **consent response notice**. This should state:

- if they agree or disagree with the operator-proposed auditor, and
- if they disagree with the proposed period of appointment (and only agree to the operator-proposed auditor).

If the residents do not agree with the operator-proposed auditor, they can:

- propose an alternative qualified auditor in writing or in the consent response notice. They first need to agree on their chosen alternative by vote, or
- advise the operator they will take an additional 30 days to respond with a chosen auditor. They must include this in the consent response notice.

Residents are able to advise the operator by written notice from the resident's committee. For villages without a resident's committee, they may convene a residents meeting. They must provide evidence of 'general consent' for their consent of an operator-proposed auditor or the nomination of their own chosen auditor.

Appointing an auditor

If the operator agrees on the residents' chosen auditor, then all parties are taken to have agreed. The auditor can then be appointed. The residents must pay the audit fees as part of the annual budget.

If the residents do not tell the operator their decision in a consent response notice, it can be taken that they agreed to the operator's choice. If an auditor is agreed to in this way, they cannot be appointed for longer than a year.

An operator does not have to accept the residents' alternative choice of auditor. However, the operator must then give the residents written reasons explaining why their choice was not accepted.

Not reaching an agreement

If an agreement cannot be reached, the operator may apply to:

- NSW Fair Trading for mediation to attempt to resolve the disagreement with the residents, or
- the Tribunal.

The Tribunal may resolve the dispute by appointing either the person proposed by the operator or the residents. However, the Tribunal will only consider the operator's proposed auditor if there are exceptional circumstances for doing so. Exceptional circumstances are determined by the Tribunal.

These may include, but are not limited to:

- the operator's proposed auditor being unreasonably refused by the residents,

- the residents' proposed auditor being reasonably refused by the operator, and
- the operator making a genuine attempt to resolve the impasse (including applying to Fair Trading for mediation).

The Tribunal may consider if an auditor has been reasonably refused. A reasonable refusal may include instances where significant concerns about an auditor's independence, expense or competence can be demonstrated. For example, this could include evidence that:

- the auditor was insufficiently experienced in doing similar types of auditing, or
- there is a conflict of interest between the operator and the proposed auditor.