

Retirement Villages Act 1999 – REFORM POLICY PACKAGE

Reform 1 – Imposing a 42-day cap on recurrent charges for registered interest holders

- The reforms will place a 42-day time limit on the payment of recurrent charges for general services (e.g. office management, gardening) after a registered interest holder leaves a village. Currently only unregistered interest holders have this cap applied.
- The definition of “permanently vacates” in the Act will be amended to make it more easily understood when control of a property is given to the operator and when the property is empty.
- The 42-day cap will be applied to all present and future residents (that is, it will apply to contracts prospectively and retrospectively).
- As the reform will apply to current residents, a six-month transitional period will apply to provide operators reasonable time to amend their budgets.

Reform 2 – Providing a right for orders to be applied for the payment of exit entitlements if a property has not sold within 6 or 12 months based on location

- This reform aims to ensure that residents departing a village are provided with a right to seek an order for the operator to pay their exit entitlements, so they can receive their money in a reasonable time period.
- When the Amendment Bill is released for public consultation, Fair Trading will be seeking further information from residents and operators on the definition of metro/regional areas.
- The 6 and 12 month time periods will be a ‘safety net’ and applied only if the property does not sell prior to these periods.

- The reforms will work like this – once the 6 or 12 month time periods are reached after a resident leaves, they gain a right to apply to the Secretary for an order, for the operator to pay their exit entitlement.
- The trigger will commence when the property has been “placed on the market”. This will be easily understood and able to be readily determined.
- The operator will be required to prove they have not unreasonably delayed the sale of the property. The onus will be on them to prove this.
- The exit entitlement, including any capital gain, would be based on either an agreed sale price, or one determined by an independent property valuer, paid by both parties.
- If parties don’t agree with the Secretary’s order, then mediation can occur, and the parties could apply to the Tribunal for a resolution.
- Operators will also be able to apply for an order to delay payment of exit entitlements on the grounds they had not unreasonably delayed the sale of properties in their village.
- Residents will be able to opt out of the exit entitlement scheme if they want by notifying the operator. However, if they then choose to opt back in, the 6 or 12 month time period will commence from the date they advise the operator.
- The exit entitlement reforms will apply to all present and future residents of retirement villages, except for those who have placed their property on the market
- The proposal will not apply to those residents who choose to apply for payments from the operator under the “aged care rule”.

Reform 3 – providing residents with an ‘aged care rule’

- More than 60 percent of residents transition from villages directly into aged care accommodation. However, under the present provisions of the Act, many are unable to directly afford these costs if their unit does not sell quickly.
- These provisions will directly address this concern. Where a resident wants or needs to move quickly into aged care accommodation and is unable to afford this cost, this reform will require an operator to pay a portion of the estimated exit entitlement to an aged care provider as the Daily Accommodation Payment.
- The payment of the exit entitlement by the operator as the Daily Accommodation Payment will allow the resident to seamlessly transfer from their village to their aged care accommodation.
- This reform is tried and tested. It is based on similar reforms that have been operating successfully for many years in South Australia and Victoria.
- The rule would be applied to all present and future residents (that is, apply to contracts prospectively and retrospectively).
- There will be a number of criteria applied:
 - A resident will first need to be approved for residential aged care under the Aged Care Act of the Commonwealth to enter residential aged care provided by an approved provider under that Act.
 - The operator may require the resident to provide evidence of their financial need for the payments. This will possibly be Centrelink's income and assets assessment. This is fair as residents are gaining a considerable financial advantage by having their exit entitlement returned directly through the aged care provider.
 - The operator would be required to pay no more than 85 percent of the operator's reasonable estimate of the amount of the exit entitlement. This is to cover any over-valuation of the property once it is sold.



- The resident would obtain the remaining 15 percent of the exit entitlement on the actual sale of the property.
- The exit entitlement, including the amount of the capital gain, would be based on either an agreed value of the property, or, if the parties cannot agree, the value determined by an independent property valuer appointed by the parties as used for the exit entitlement provisions.