



OAK TREE DURAL LIFESTYLE RESORT RESIDENTS ASSOCIATION EXECUTIVE SUMMARY OF OUR RESPONSE ON THE RETIREMENT ACT

Retirement Village Exit Entitlements Discussion Paper
Regulatory Policy, Better Regulation Division
Department of Customer Service
2-24 Rawson Place
HAYMARKET NSW 2000
12th August 2019

Subject: "Exit Entitlements & recurring Charges Cap" discussion paper.

Dear Sir/Madam,

We submit our response to the "Exit Entitlements & Recurring Charges Cap" discussion paper issued by the NSW Government's Fair-Trading Department which is required by 16th August 2019.

Whilst we generally find the proposals contained in the Paper are acceptable, there are a number of issues which need further consideration before we can support them as a whole set of amendments.

As a residential community concerned for a considerable time about weaknesses in the Retirement Act 1999 as amended which were clearly detailed in the 2017 Greiner Inquiry Report, we contend that the proposals in the Discussion Paper need more working before there is an objective and equitable framework dealing with the critical areas of residential fees payable after a resident's departure from a village as well as the repayment of monies owing by the Village Operator to that departing resident. Additionally, the Government has now introduced grandfathering, post the election.

[Outline of Our Submission](#)

This response has been compiled from meetings of the Association's Residents Committee with residents of the Oak Tree Lifestyle Resort with expressed concerns particularly in the following areas:

1. "Grandfathering" the application of the proposed amendments to the Act such that there is discrimination against the existing residents who expected all amendments resulting from the Greiner REVIEW were to benefit current and future residents and accordingly influenced them to vote for the current Government. This Discussion paper fails to meet what we saw as a publicly stated election commitment before the State Elections last March 2019.
2. Support for the 42 days limit on the monthly retirement village general services charges after the departure of a resident.



3. Support for the 6 months mandate for repayment of exit entitlements for our residents as we reside in the Metropolitan Area, with the exception for a resident who has to move permanently into residential care accommodation because of health issues. In that aspect, however, we support the South Australian Government's approach of 60 days so that the departing resident can meet the accommodation requirements for their new care environment.
4. The engagement of a property valuer to determine a "price" for the premises from which a resident has left when a sale cannot be achieved within 6 months of the resident's departure. Our concern is the need for an acceptable definition of "independent" for insertion in the amendments, along with a requirement for a mutually acceptable engagement of the valuer who has experiential competency in retirement properties because of their specialist nature.

The Discussion Paper's Appendix D containing questions have been answered and are appended to this submission.

We are keen to address the reviewing panel and our best contacts are:

Mr James Mein,

Mr Robert Jarvis,

Yours faithfully,

Robert Jarvis

Secretary



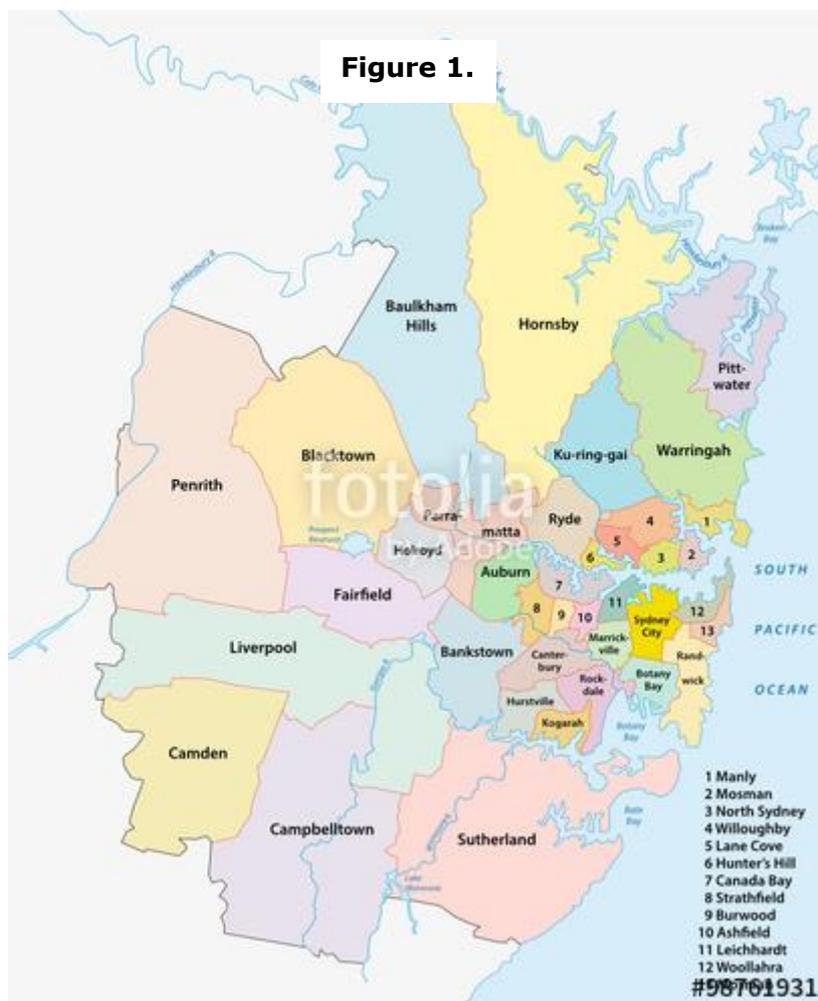


Appendix to the **Oaktree Tree Dural Lifestyle Resort Residents Association** Submission dated 16th August 2019

Summary of questions for comment:

Identifying the Sydney Metropolitan Area

1. Is the description of the 'Sydney Metropolitan Area' appropriate? If not, why not, and what areas should be included or excluded?
 - a. **It is felt that the Metropolitan area is defined Penrith to the West, Hornsby to the North and Campbelltown to the South. (See Figure 1)**



Exit entitlements - Calculating fair property values

2. Are the proposals for appointing a valuer, to determine the value of the property, necessary and appropriate?
 - a. Yes, the engagement of a property valuer to determine a "price" for the premises from which a resident has left is critical.



3. Should the valuation be done by someone independent of both parties?
 - a. Yes, the engagement of an independent property valuer to determine a “price” for the premises from which a resident has left when a sale cannot be achieved within 6 months of the resident’s departure. Our concern is the need for an acceptable definition of “independent” for insertion in the amendments, along with a requirement for a mutually acceptable engagement of the valuer who has experiential competency in retirement properties because of their specialist nature.
4. Do the provisions, above, adequately manage any potential or actual conflicts of interest? If not, why? How could conflicts of interest be better addressed?
 - a. If a conflict of challenge to the independence of the valuer, an Independent Retirement Village Ambassador or Ombudsman should be involved.
5. What information should the operator be required to provide to the resident when the exit entitlement has been determined?
 - a. Full document disclosure of the valuation.
 - b. Full document disclosure on the sell price.
 - c. Timing of any refurbishment, to enable a timely exit.
 - d. Assignment or termination of lease.
 - e. Date of exit or exchange date.
 - f. Resident disclaimer on the condition of the premises.
 - g. Date the new resident takes possession.
 - h. Date the new resident signs a contract.
 - i. Details of any outstanding recurrent charges.
 - j. All documents regarding fees due from the sale process.

Opt-out provisions – Exit entitlements

6. Where residents wish to sell their residence on their own terms, under what circumstances should they be able to opt in or opt out of the exit entitlement provision?
 - a. If the resident chooses to opt out of Exit entitlements, they forfeit any entitlements after their departure.
7. At what point, or time should residents be able to exercise these rights?
 - a. At the date of departure.
8. Should former residents be able to change their mind and opt back into the provisions, after they have notified the operator they are opting out?
 - a. No, they have forfeited that right by opting out.



NSW Civil and Administrative Tribunal – Exit entitlements

- 9.** What issues should the Tribunal take into account when considering whether or not the operator has done everything in their power to enable the sale of a premises?
- Adequate refurbishment of premises up to a presentable saleable level.
 - Correct selection criteria of retirement village industry sales expert.
 - Contract condition not overly onerous.
 - Industry competitive sale price.
 - Adequate marketing exposure of property.
 - Prioritising the resident's sale over the operator's property for sale.
- 10.** Are there any additional circumstances the Tribunal should be able to consider when considering a hardship application from an operator?
- Resident should receive compensation in the form of net interest on the projected sale price.

The trigger points

- 11.** Are there any other factors that could affect the setting of a 'trigger point'?
- First listed date of premises.
 - Resident departure date.
 - Resident advises departure date as the trigger point but remains in premises.
- 12.** Do you think any of the 'triggers' listed would be suitable to start the 6- and 12-month periods? Can you think of any others?
- Permanent departure with the 42 days recurrent charges.

Other timing considerations for the transfer of payments

- 13.** Would any of the current provisions in Victoria and South Australia as set out in **Appendix A**, be of benefit to NSW residents of retirement villages?
- A resident may, within 60 days of being approved for entry to an aged care facility, apply in writing to the operator of the village for payments to be made to the aged care facility on behalf of the resident. A resident can therefore opt out of the provisions if they wish.
- 14.** Would it benefit residents if the provisions were to apply to both registered interest holders and non-registered interest holders?
- no

Potential impacts of the reform

- 15.** Can you think of any other benefits or costs of this reform? What are they?
- It is highly unlikely that any village has a mass exit, thus impacting the operator's financial position drastically.
- 16.** Are the cost and benefits listed above, accurate? If not, please provide information to help work out the true costs and benefits.
- As we were not privy to the actuary's working and collection of information, no comment can be made.



A reform to limit recurrent charges

17.As with residents with a non-registered interest, should the 'trigger' to commence the 42-day period commence when the resident permanently vacates the premises?

- a.** Yes

Commencement options for both reforms

18.When is it appropriate to commence the provisions?

- a.** 1st July 2020 with no grandfather clause.

19.Should one or both of the reforms be 'grandfathered'? If not, please provide your reasons.

- a.** Neither.
- b.** Reasons: As explained in the covering letter as well as the following comments:

On 9th July 2019 Minister for Better Regulation and Innovation, the Hon Kevin Anderson, released a Discussion Paper inviting submissions from the public as to how the Government should proceed with its announced intention to: introduce a 42-day limit on the length of time retirement villages can charge for general services after the departure of a resident; and mandate that exit entitlements be repaid within six months of a resident moving out of a retirement village in metropolitan areas and twelve months for regional areas.

These reforms were a recommendation of the Greiner Inquiry into the Retirement Village Sector in 2017 and, as an election commitment before the State Elections last March, the Government undertook to implement them.

Upon release of the Discussion Paper we have learnt there is some suggestion that the reforms may be "grandfathered", that is, made applicable to residents of retirement villages who enter into residential contracts, after the reforms come into effect. (Not current residential contracts)

If indeed this is the intention, surely the NSW Government cannot segregate a large section of the senior citizen community by this action, as it is untenable and harsh.

It appears logical, if the current legislation is untenable for new contract, why is it not the same for existing contract holders?

The existing residents under the current legislation, are the ones who are suffering from the current unfair laws and would get no benefit or relief from the suggested Grandfathering of this new legislation change. This clause was generated in 1999 and it appears to have failed to keep pace with modern socially acceptable practices we are experiencing today, which has driven the recent changes to the Retirement Act. So, change must be for all retirees, without discrimination of our age or contract tenure.



The existing clause states:

The Retirement Villages Act 1999 (the Act) provides that operators of villages are not required to repay former residents (who are registered interest holders) their exit entitlements:

- a) until after their unit is sold, and*
- b) within 14 days after a new resident enters into a contract with the operator.*

Registered and non-registered interest holders are required to pay recurrent charges for general services (gardening, administration, cleaning, etc.) for 42 days after they vacate their premises. After the 42-day period, registered interest holders are still required to pay a share (equal to their potential share of the capital gain as per their village contract) of recurrent charges for general services. This continues until the premises has been sold and a new resident enters the accommodation.

If “grandfathering” were allowed to happen, it would be a huge financial disadvantage to your voting public. The Government made an election pledge that the reforms would be implemented without one word that the voters to whom the pledge was made would be excluded from the benefits. We would not like to have been misled into thinking that there was a well-deserved and sorely needed relief measure in the offing, when there was not!

We embrace and support the initiatives of the government for implementing these changes, however, we look to you to do what you can to resist any attempt to “grandfather” these reforms when they are referred to you for parliamentary consideration. The Government needs to honour the unambiguous undertaking it gave in this matter and your assistance will be highly valued in ensuring it happens.