Retirement villages - exit entitlements and recurrent charges cap

Discussion Paper – July 2019

NSW GOVERNMENT

Publication information

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Minister’s message

I am proud to present this discussion paper on reforms to address exit entitlements and recurrent charges in retirement villages.

One of life’s great certainties is ageing. Many of us will reach a point in our lives where we consider moving either ourselves or our relatives into a retirement village.

The NSW Government wants the retirement village sector to offer our community an accommodation option that is safe, secure and affordable. Retirement villages currently accommodate over 66,000 retired people, and this number is expected to double by 2033. For these reasons, over the last 12 months the NSW Government has been actively pursuing a package of reforms to deliver improved business practices.

This paper seeks to progress action on two types of financial costs that have caused significant concern for residents – exit entitlements and recurrent charges.

These issues were discussed extensively in the sector review conducted by Ms Kathryn Greiner AO and highlighted as areas where structural changes were necessary. In response to the review, on 14 February 2019 the NSW Government made election commitments to require operators to pay exit entitlements within 6 months for retirement villages in metropolitan areas and 12 months in regional NSW and to place a 42-day cap on the recurrent charges for general services.

Through this paper I invite operators, residents and the wider community to provide feedback on how the Government should implement these reforms.

I appreciate that the reforms are significant and propose a significant change to current business practices applied by most village operators. By working through the issues, I believe that we can strike a balance that leads to improved outcomes for operators, residents and their families.

I encourage you to take part in this consultation process and look forward to your comments. A sector that operates fairly and transparently will support the best interests of the entire community.

Kevin Anderson MP
Minister for Better Regulation and Innovation

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Purpose of this discussion paper

On 30 July 2017, the NSW Government announced a four-point plan for retirement villages in NSW aimed at putting consumers first. This plan included commissioning an independently chaired Inquiry into the sector. The Inquiry provided its final report to the Government on 15 December 2017, making 17 recommendations for improvements. One recommendation was considering reforms to reduce the burden and uncertainty for residents and their families of ongoing recurrent charges when a resident left the village, and of costs and liability when the resident's unit remained unsold.

On 14 February 2019, the NSW Liberal and National Government made an election commitment to amend the *Retirement Villages Act 1999* (the Act) to address these concerns by placing a 42-day limit on the length of time villages can charge for general services (such as operational and management costs that are paid by all residents in a village) after someone leaves. It also announced a requirement that retirement village operators pay exit entitlements within 6 months of a person leaving a village in metropolitan areas and within 12 months of a person leaving a village in regional NSW.

The purpose of this discussion paper is to seek feedback from the retirement villages sector and the NSW community about how this commitment should be implemented. This feedback will be used to help shape the reforms and ensure that they reflect the needs of residents and village operators.

Model to estimate money received by residents

A model has been established to estimate the revenue that would be transferred from retirement village operators to (former) registered interest holders due to the reforms. This model is referred to as the 'Fair Trading Model'.

The key assumptions and values used in the Fair Trading Model are detailed in **Appendix C**. We acknowledge that this model is based on available data and may not be a complete representation of the sector.

Have your say

We invite you to read this paper and provide comments. You may wish to comment on only one or two matters of particular interest, or all of the issues raised.

We prefer to receive submissions by the online form provided, or by email; requesting that you provide any documents to us in an 'accessible' format. Accessibility is about making documents available to as broad an audience as possible, including people who may have some form of impairment and may be using assistive technology, such as screen readers. Further information on how you can make your submission accessible is contained at http://webaim.org/techniques/word/.

If you do not wish for your submission or any part of your submission to be published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish for certain information to be published, there may be circumstances in which the Government is required by law to release that information, for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

How to lodge your submission

You can provide a submission by email to rvdiscussionpaper@finance.nsw.gov.au, by using the online form on the Have your say page for this consultation, or by post to the following address:

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

Submissions close **5pm 16 August 2019**

Important note: release of submissions

All submissions will be made publicly available. If you do not want your optional details or any part of your submission published, please indicate this clearly in your submission together with your reasons.

You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009).*

1. A reform to ensure payment of exit entitlements within set timeframes

Summary

The NSW Government intends to amend the *Retirement Villages Act 1999* (the Act) to provide former residents who are registered interest holders with certainty about when the operator is required to pay their exit entitlements.

The requirement would include specific timeframes for when operators must pay a former resident their exit entitlements.

Residents of villages in the Sydney Metropolitan Area would be provided with a maximum period of 6 months to await their entitlement. Residents outside of this area would be provided with a 12 month maximum period.

There would also be safeguards established in the process to manage complex situations (e.g. ability for residents to 'opt out') and undue hardship provisions for operators.

Background

The problem defined

The payment of exit entitlement monies to departing residents depends on the sale of the premises, and another resident entering the village. These processes can take up to 12 months or more to be completed. This means that former residents and their families can face great uncertainty about when they will receive payments. Residents who wish to move to another village or transition into aged care are particularly disadvantaged as they often rely upon the money to pay for their new accommodation. It can also cause distress to families managing deceased estates by delaying the settlement of financial affairs.

Vulnerability of former residents

Former residents are a particularly vulnerable type of 'consumer'. The average age of residents entering a village in NSW is 75 years and they have an average tenure of 7 years. Being older persons, many often have financial pressures (e.g. dependent on reduced or fixed funds), limited support and lower financial awareness. As a result, they may be more open to manipulation or confusion about financial matters.

What is an exit entitlement?

Exit entitlements are the payments transferred to outgoing residents when they permanently leave a retirement village. The specific amounts paid to a resident depends on the terms of their individual contract and other factors such as:

- the length of tenure,
- the amount of the ingoing contribution,
- the interest rate applied to the deferred management fee paid by the resident when they leave the village, and
- any capital gain sharing arrangements (depending on whether there was capital growth experienced over the tenure period).

The Fair Trading Model indicates that the average exit entitlement payable to the middle 50 per cent of residents (those who pay an entry price of between $505,375 and $734,500) is $662,700 for those in metropolitan areas. Further, for the middle 50 per cent of residents in non-metropolitan areas who pay an entry price between $395,000 and $470,000, the average payment that they receive is $424,000.

Factors affecting the sale of premises and timing of the payment of exit entitlements

The timing of the payment of exit entitlements currently differs for each resident and village. Generally, when it is paid will depend on whether the resident is a registered or non-registered interest holder, the terms of the contract and the state of the property market.

Registered interest holders and non-registered interest holders

The Act recognises two types of residents - registered and non-registered interest holders. Each category of resident has different rights, particularly in relation to the payment of exit entitlements and their obligations to pay recurrent charges for general services once they have left a village. Section 7 of the Act defines what a registered interest holder is. **Table 1** below, summaries the different arrangements for registered and non-registered interest holders.

Registered interest holder	Non Registered Interest Holder
• A registered proprietor of land • The owner of a lot in a strata scheme • The proprietor of a lot in a community land scheme within a retirement village (as such has a residence right in respect of those premises) • The owner of shares in a company title scheme (that gives rise to a residence right in respect of residential premises) • Residence contract is in the form of a registered long-term lease includes a provision that entitles them to at least 50 per cent of any capital gain	• Rental arrangement • Loan arrangement • Licence arrangement • Lease where the resident is not entitled to capital gains • Lease term is less than 50 years

Table 1: Summary Registered and Non-Registered Interest Holders arrangements

The Fair Trading Model suggests that approximately 87 per cent of contractual agreements in NSW are for registered interest holders, primarily as long-term registered lease holders.

The importance of village contracts and impacts on payments

To live in a retirement village, a prospective resident must enter into a contract with the operator. Village contracts detail the rights, responsibilities and entitlements of the two parties to the contract and include information such as:

- whether a resident is a registered or non-registered interest holder,
- whether an ingoing contribution has been paid, the details of that contribution, and whether or not the contribution is refundable when the resident leaves the village,
- the recurrent charges that a resident will be responsible for, and how they may be varied,
- whether the resident will be entitled to a part of the capital gain on the sale of their premises, or whether the resident will be responsible for any capital loss,
- whether a departure fee forms part of the payment on termination of the contract and how this is to be calculated, and
- the timing for any payment on termination of a residence right.

The requirements of the law regarding timing of payments

Currently, **non-registered interest holders** must be paid their exit entitlements within a maximum period of 6 months after the date on which they delivered up vacant possession of the premises to the operator (s 181 Act).

For **registered interest holders,** unless the contract provides for earlier payment, exit entitlements must be paid following the sale of the premises within 14 days after one of the following events occurs:

- the operator enters into a village contract with an incoming resident of the premises,
- the operator enters into a residential tenancy agreement with an incoming tenant of the premises,
- a person takes up residence in the premises with the consent of the operator (s 180 Act).

These provisions are fully set out in excerpts from the Act in **Appendix B**.

The timing of the payment of exit entitlements required currently under the Act is illustrated in the diagram below (**Figure 1**).

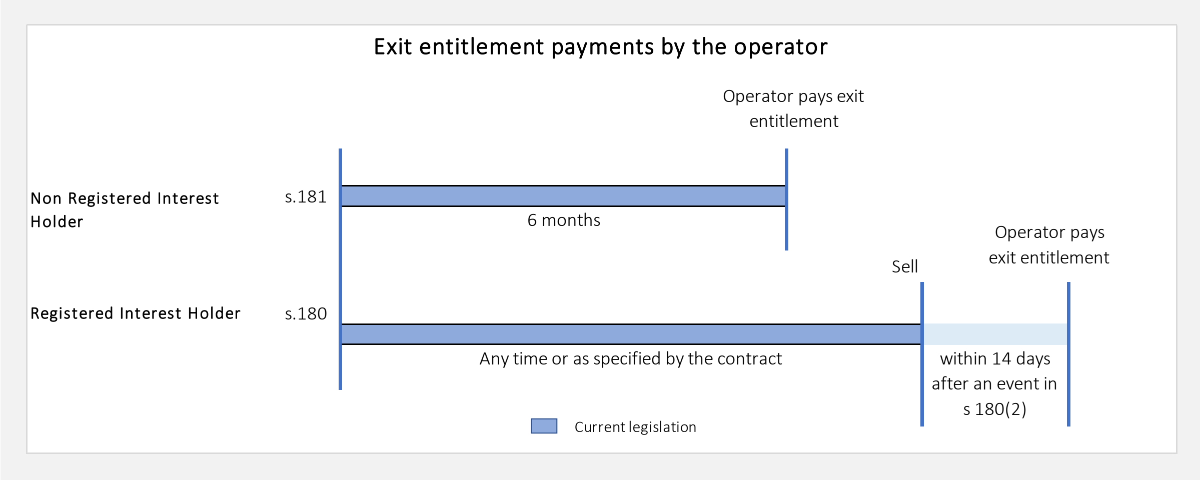

Figure 1: Current payment of exit entitlements to former retirement village residents

Retirement villages a 'niche' market impacting sales and subsequent payments

The sale of a premises can often be made much harder by the fact that retirement villages are a different property market from other property markets. These differences include:

- family members may be heavily involved in supporting the resident's entry into the village or acting on their behalf,
- contracts can be complex and lengthy, which can make it difficult for people to interpret and know exactly what they are committing to,
- it can be difficult to acquire legal advice to assist with the transaction due to a lack of specialised professionals who understand the intricacies of retirement village contracts,
- the decision-making process around entering a village can be an emotional one as it often represents a major life decision for the resident, and
- the value of the dwelling may be influenced by the type of amenities and services provided by the village (e.g. swimming pools, caravan or boat storage, bowling greens).

The Inquiry noted that the sale of premises by a resident who wants to leave and terminate their contract can be delayed by a number of factors that don't affect other property markets. In particular, the Inquiry noted the power the operator has over the sale of a resident's premises. For example, former residents reported that operators often promoted the sale of their new developments in a village over residents' current premises.

The Act also requires that a contract for a sale of a premises must include a provision that the sale is conditional on a purchaser entering into a service contract with the operator. This can also be a cause for the delay of a sale.

Finally, premises in retirement villages are available for sale only to persons who have retired from full time work or who are over 55 years. As such, there is often a much smaller market for the purchase of this type of premises. This can often affect sales and the flow-on effect of the repayment of exit entitlements to former residents.

Outline of the reform

Registered interest holders will have a maximum period of 6 months for a village in the Sydney Metropolitan Area, and 12 months for villages in other areas, to be paid their exit entitlements by the operator. The provisions of Section 180(2) will still apply. An exit entitlement can be paid by the operator earlier than these two periods if a premises is sold and one of the provisions of section 180(2) is met.

Below is a diagram of the current requirements and the changes that would be implemented (**figure 2**).

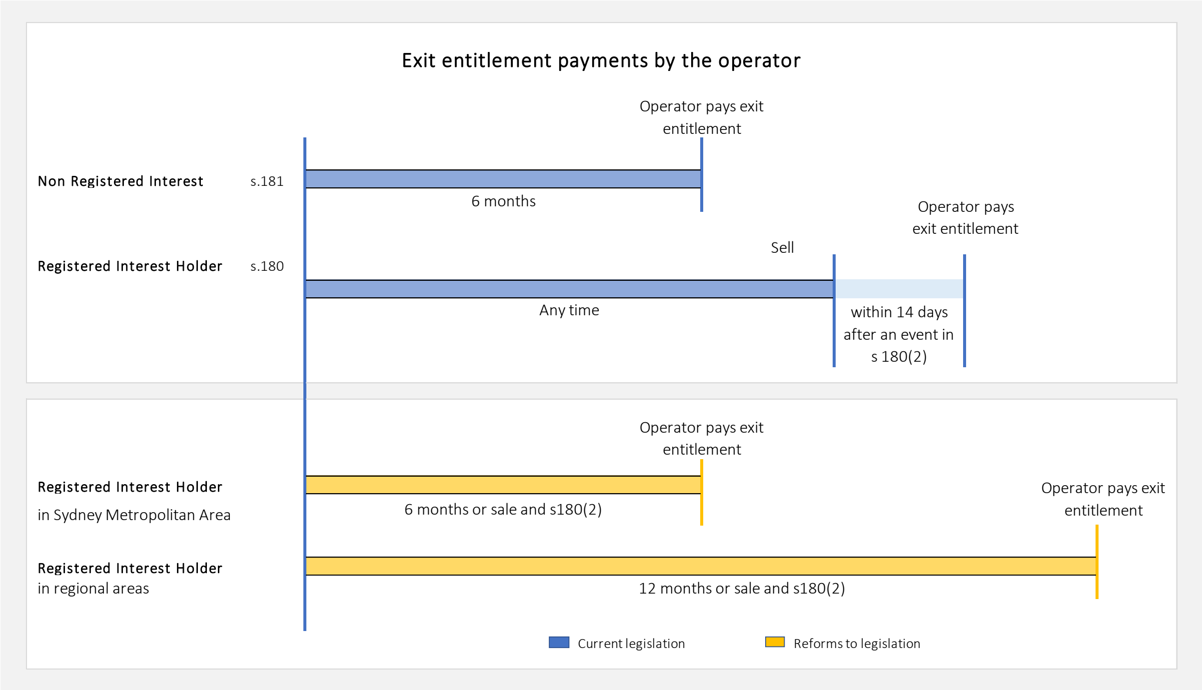

Figure 2: Exit payments current and reforms

Identifying the Sydney Metropolitan Area

The reform requires that the Sydney Metropolitan Area be defined. While this is a commonly used term, NSW legislation generally identifies this area by using local government areas. For example, the *Tow Truck Industry Act 1998* and the *Regional Development Act 2014* and their Regulations use this definition. Using these examples as a baseline, the Sydney Metropolitan Area is bordered by Lithgow, Katoomba and Campbelltown, with all other areas designated as regional. The proposed Sydney Metropolitan Area is shown in **Figure 3** below.

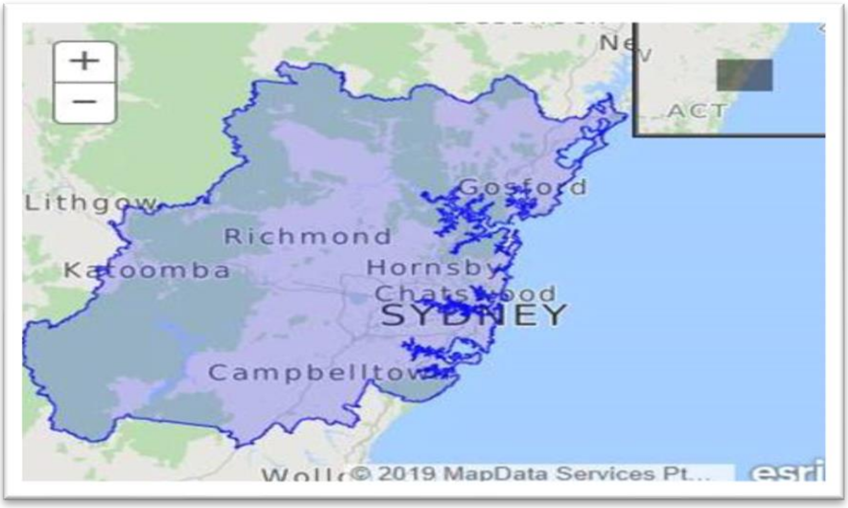

Figure 3: Sydney Metropolitan Area

Question for comment:

- Is the description of the 'Sydney Metropolitan Area' appropriate? If not, why not, and what areas should be included or excluded?

Research provided for the Inquiry indicates that the majority of retirement villages in NSW are located along the eastern seaboard, with the overwhelming majority located in the greater Sydney area.

The distribution of retirement villages in NSW by region is demonstrated in **Table 2.**

Number of retirement villages per region

Region	Total No. Villages	%
Greater Sydney	286	44%
Newcastle and Lake Macquarie	44	7%
Illawarra	43	7%
Central Coast	37	6%
Hunter Valley exc Newcastle	33	5%
Murray	32	5%
Mid North Coast	29	4%
Richmond - Tweed	29	4%
Central West	24	4%
Capital Region	21	3%
Southern Highlands and Shoalhaven	17	3%
Far West and Orana	16	2%
New England and North West	16	2%
Coffs Harbour - Grafton	15	2%
Riverina	11	2%
Total as at Aug 2017	653	

Table 2: number of retirement villages per region

The 6 and 12 month timeframes for payment of exit entitlements

The Fair Trading Model shows that NSW retirement villages experience a maximum period of 202 days (6.7 months) between vacancy and settlement for the majority of residences in the Sydney Metropolitan Area, and 399 days (13.3 months) in regional areas.

The resulting distributions of time between vacancy and settlement in the Sydney Metropolitan Area and non-metropolitan areas is demonstrated in **Figure 4**.

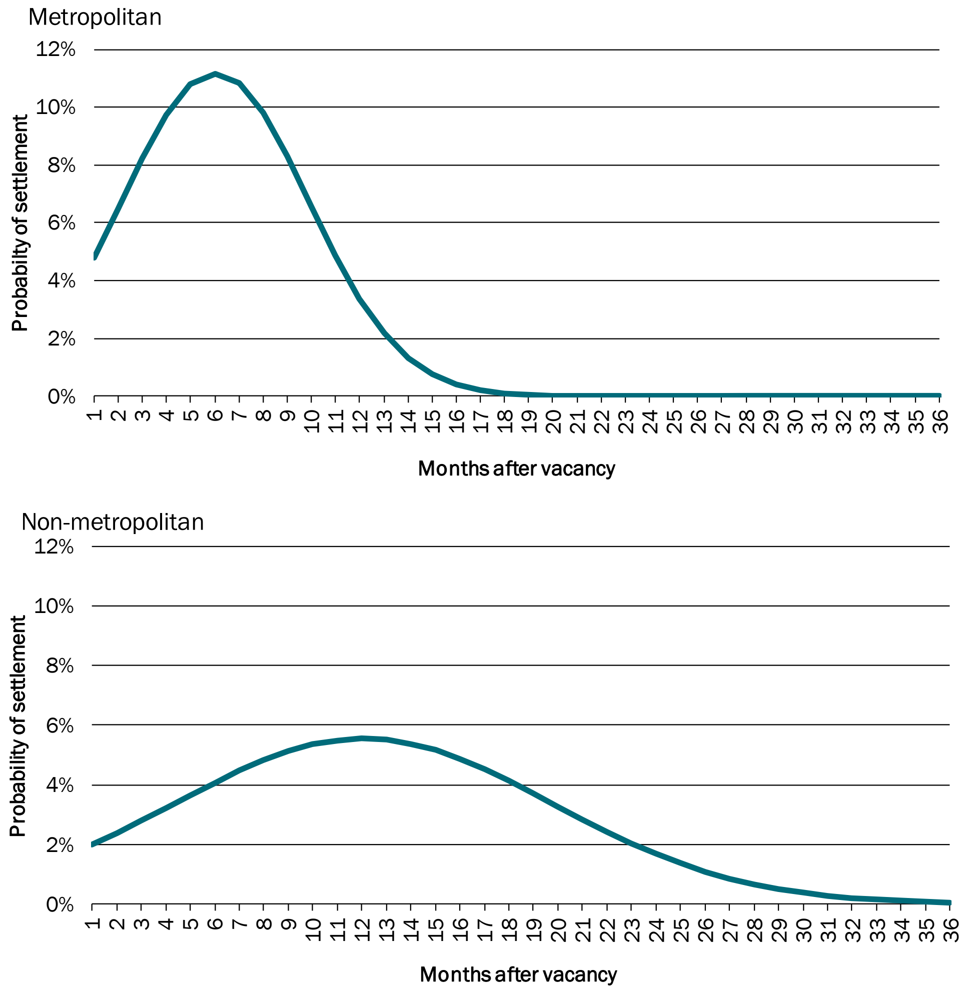

Figure 4: Distribution of duration between vacancy and settlement

These periods give the (average) time over which operators can hold the exit entitlement. This average has been used as the basis for the reforms to require operators to pay exit entitlements at the end of these periods.

The current regime is outlined in the attached legislation in **Appendix B**.

Calculating fair property values

Under the reform, the operator would be required to calculate the exit entitlement on an agreed re-sale value of the premises. There may be circumstances where the operator and the former resident do not agree on a value. It is proposed to insert provisions to assist in resolving any disagreements between the resident and the operator. Some suggestions include:

- involving an independent property valuer in the process,
- providing a pathway to resolve disputes, and/or
- requiring the operator to provide certain information during the process.

Independent property evaluations by a professional valuer

The market value of the premises would have to be determined by a property valuer or agreed by both parties. A valuer is a highly trained professional qualified to determine a range of factors in determining an accurate property value for a premise in a particular market.

To ensure fairness for operators and residents, it may be necessary to require valuations by an independent person, to avoid any conflict of interest. While valuers are ethically required to be independent, this requirement could be further reinforced by legislation.

Provisions to address the situation where a valuer cannot be agreed upon

Where the parties are unable to agree, a suitable valuer could be nominated by the President of the NSW Division of the Australian Property Institute, or a President or Chief Executive Officer of another organisation representing property valuers. This is a similar requirement to that provided in the *Retail Leases Act 1994* and has proven to be a transparent way of agreeing a value for a property. This would expedite the process and ensure the independence of the valuer.

Obligations on the operator to provide all the necessary information

It is important for the valuer to have access to all the information they need to provide a full and frank valuation. To facilitate this, it will be necessary for the operator to provide the valuer with any relevant information.

The operator should provide the resident with a document containing the information used to determine the exit entitlement. This would ensure fairness and transparency in the process. It is therefore proposed that the following provisions could apply:

- any appointed valuer would be required to state any connection to, or agreement with, the village operator that could call into question the independence of the valuation,
- valuers would be required to consider a range of matters in their calculation of the value of the premises,

- valuers would also be able to require certain information to be provided to them by the village operator when calculating the value of the premises,
- the operator would have to provide the former resident with a document setting out their calculation of the exit entitlement, how this was determined, and any documentation used to determine the entitlement, and
- the costs of the valuation would be shared equally by the former resident and the operator.

Questions for comment:

- Are the proposals for appointing a valuer, to determine the value of the property, necessary and appropriate?
- Should the valuation be done by someone independent of both parties?
- Do the provisions, above, adequately manage any potential or actual conflicts of interest? If not, why? How could conflicts of interest be better addressed?
- What information should the operator be required to provide to the resident when the exit entitlement has been determined?

Opt out provisions for residents

Some residents may wish to sell their residence on their own terms. They may not be dependent on a quick payment of their exit entitlement. Therefore, they may not need the 6 or 12 month maximum periods, to access their money earlier. For example, they may wish to wait to see if they could get a better price upon sale of the unit. They could take advantage of a possible rising property market, in order to increase their capital gain. To allow for this, the legislation could include an ‘opt out’ provision. The resident would need to notify the operator in writing advising of their decision. Residents would not be required to provide any reason for their decision.

The timing of the opt out provision is important to the process. While mindful of residents’ rights to ‘opt out’, operators’ needs would also be considered. Opting out should not be exercised too late in the process, to ensure operators have some certainty and are able to manage the funding of exit entitlements. This issue would be carefully considered.

Questions for comment:

- 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?
- At what point, or time should residents be able to exercise these rights?
- 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?

Undue hardship provisions for operators

Ability for operators to apply to the NSW Civil and Administrative Tribunal

There may be exceptional circumstances where an operator is unable to pay the exit entitlement within the timeframes. It is therefore important that this is acknowledged and addressed in the legislation, so that it is fair on both parties.

It is fair to recognise the difficulties that operators outside the metropolitan area may face in facilitating prompt sales of premises. As previously noted, on average, NSW retirement villages experience an average 399 day period (13.3 months) between vacancy and settlement for the overwhelming majority of residences in villages located in non-metropolitan areas. However, the information also shows a distribution of up to 36 months (3 years) between vacancy and settlement for these villages.

The Act already provides a wide range of circumstances allowing residents and operators to access the NSW Civil and Administrative Tribunal (the Tribunal). There is no limit to the amount of money that the Tribunal may order to be paid. Currently, operators can apply to the Tribunal to obtain relief under undue hardship provisions in relation to the 6 month maximum period to pay exit entitlements to non-registered interest holders (section 181(5) Act). These provisions are outlined in the legislation in **Appendix B**.

It may therefore be appropriate to replicate these provisions for operators dealing with registered interest holders. Operators could apply to the Tribunal for an extension of time to pay the exit entitlement to former residents who were registered interest holders. Each case would have to be carefully examined due to the different circumstances of sale for each individual village and area.

To provide some certainty for all parties, including the Tribunal, operators would have to make their application to the Tribunal within prescribed time limits. This is necessary, so the Tribunal has adequate time to hear and determine an application by an operator. This would also provide a reasonable time for a former resident to take into account the Tribunal’s determination, in their decision making about their future.

Former residents can also present their concerns to the Tribunal

While it is important for the Tribunal to consider any hardship issues that the operator may face, the individual circumstances of the former resident seeking earlier payment of the exit entitlement also need to be considered. The provisions should therefore allow the former resident to formally present their concerns to the Tribunal, if they wished to oppose the operator’s application.

Circumstances that the Tribunal can take into account

The Inquiry noted that operators retain a lot of power to be able to affect the sale of a premises if they wish to do so. As has already been noted, feedback suggested that operators sometimes frustrated sales by promoting the sale of their own newly built residences over those of former residents. The possible effect of this, is operators could artificially delay having to have to pay entitlements, when a premises could have been sold earlier if they had actively assisted the sale.

To address this imbalance between the operator and former resident, the Tribunal could assess whether the operator had done everything they could to actively assist the sale of the former resident's premises. This could include the operator:

- not interfering in the sale,
- promptly providing documents to a valuer if required, and
- providing prompt assistance to a real estate agent appointed by the resident to sell the premises.

Possible orders

At the end of proceedings, the Tribunal makes a final decision or orders. A legal order is a directive to one or more of the participants to either do something or refrain from doing something. For example, the Tribunal could make an order fixing a later date for payment based on circumstances such as the following:

a) the operator is unlikely to be able to sell the right to reside in the former resident's premises before the day payment is required; and

b) if the order is not made, the operator is likely to suffer undue financial hardship; and

c) the order would not be unfair to the former resident, taking into account any submissions made by the former resident about hardship they are likely to suffer if the order is made; and

d) the operator has done everything in their power to enable the sale of the premises.

Questions for comment:

- 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?
- Are there any additional circumstances the Tribunal should be able to take into account when considering a hardship application from an operator?

Commencement of the 6 and 12 month period

Currently under the Act there is no ‘trigger point’ to start the clock for the 6 and 12 month periods for the payment of exit entitlements. This part of the paper proposes possible points for commencement and invites comments.

Understanding the financial model used by retirement villages

The financial model currently applied by many retirement villages is intended to benefit residents and operators.

Operators allow incoming residents to pay less than the market value for an equivalent premises outside the village by, instead, paying a fee when they exit the premises. The result of this deferred payment means that the resident has more money to spend during their retirement. This arrangement may benefit them by providing money during their stay in the village to pay for other services.

Monies received from ingoing fees are not held against individual units but are used to fund the whole village model. Operators have use of the money during the resident’s occupation to help fund payment of other exit entitlements and create profit for the operator.

Liquidity – ability to pay exit entitlements before sale

Villages in both the metropolitan area and regional areas cannot control the number of residents who leave a village in any one period. However, regardless of their location, many operators would be unlikely to have sufficient liquidity to fund a multiple exit entitlement payments within a very short period.

Often an operator will be dependent on the sale of the asset to a new resident to liquidate the funds necessary to pay the exit entitlement to the former resident. Where insufficient liquid funds exist, operators would need to source the finance from a parent company or financial institution (loan).

Financial institutions could be reluctant to provide loans without operators taking steps to assist in funding payments. For example, operators could be required to make efficiency changes or recoup funds from current residents.

It is noted that the industry is not concentrated, and no single operator holds more than 3 per cent of the market. This may mean that the likelihood of a resident exiting a village is relatively similar across the sector.

What is a fair time for the 6 or 12 month period to commence?

The point at which the 6 or 12 month time period should commence is important for fairness to both the resident and the operator. Ideally, the operator should have the necessary time to be able to obtain funding and pay the required exit entitlement.

One suggestion is to start the time period when the premises is put up for sale. However, it is noted that a resident wishing to sell is faced with a number of steps to complete before the premises is able to be placed on the market. These could include the following:

- renovating or upgrading the premises prior to listing for sale[1],
- selecting a real estate agent to sell their property, completing associated paperwork and obtaining information from the operator to facilitate a listing,
- preparing a contract for the sale of land by a solicitor or licensed conveyancer,
- preparing marketing material and advertise the property,
- arranging for a Power of Attorney or Executor to initiate or manage the sale of the premises if a resident is unable to manage their financial affairs, and
- obtaining continued accommodation elsewhere, where a resident does not wish to market the property until this is secured.

Question for comment:

- Are there any other factors that could affect the setting of a 'trigger point'?

Considering these issues, some alternative triggers could include the following:

- the date the premises are formally listed or first marketed 'for sale', or
- the date that the resident formally leaves the premises, or
- the date that the resident provides a notice to the operator advising that they wish to remain in occupation of their residence until their exit entitlement becomes payable (or their accommodation is sold), and the notice is not subsequently withdrawn.

Question for comment:

- 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?

Other timing considerations for the transfer of payments

More than 60 per cent of village residents transition directly to aged care accommodation and this rate is growing. This growth has been assisted by the fact that more than 29 per cent of villages have aged care accommodation co-located or in close proximity, enabling a smooth transition.

Fair Trading Model data indicates that the average age of people entering retirement villages throughout Australia is currently 75 years and the average age of current residents is 81 years. Thus, more people will be moving into aged care accommodation from retirement villages in the future.

One of the main reasons people want their exit entitlements quickly is that they wish to transition directly to aged care accommodation. If they do not have funds readily available, their move can be delayed. While the payment of exit entitlements is at 6

[1] A resident, just like any other property seller, wishes to obtain a maximum sale price for their premises. This is particularly so, if the former resident is to share any capital gain obtained through a sale with the village operator.

and 12 months respectively, there could be an opportunity for the operator to pay a portion of these exit entitlements earlier to assist residents to transition to aged care.

Aged care accommodation is regulated by the Federal Government, not by the NSW Government.

What fees will a person going into aged care accommodation pay?

The fees a person will pay for aged care are divided into four categories (see **figure 5**). An accommodation payment is paid, for the right to live in the aged care residential service for life. This helps cover the cost of a room, amenities and maintenance. The basic care fee and means-tested fees pay for the cost of care. Additional service fees are only payable if a person elects to take extra services, such as choice of meals, daily newspaper, internet access, etc.

Each residential service can set its fee based on commercial factors. These factors include local property costs, building costs, standard of accommodation, room type and market demand[2].

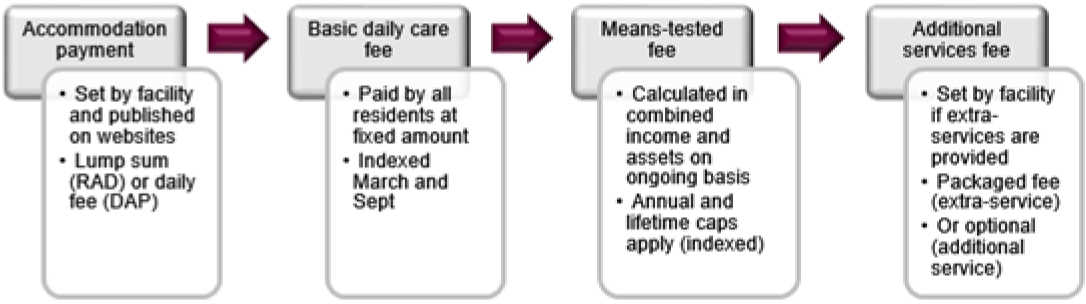

Figure 5: four categories of payment types for aged care

A person wishing to enter aged care accommodation can choose to pay either a lump sum payment termed a Refundable Accommodation Deposit (RAD), or a daily fee termed a Daily Accommodation Payment (DAPS). The lump sum payment can be large whereas the DAPs is a percentage of lump sum payment worked out on an annual interest rate (currently 5.54 per cent). An example provided by an aged care facility noted that for the accommodation valued at $550,000 (RAD), the DAPs would be approximately $85.73 per day.

A retirement village resident has only 28 days prior to entry into aged care accommodation to decide on a payment option (either a RAD or DAPs). If a resident is unable to access ready funds it may limit their choice of aged care accommodation as the availability of premises who offer either RAD or DAPs payment places are limited.

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[2] For further details regarding aged care fees and pricing, please refer to the Federal Department of Aged Care's website myagedcare.gov.au.

What are other States doing to assist residents to move to aged care?

Victoria and South Australia currently require retirement village operators to pay an agreed amount of a resident's exit entitlement as a Daily Accommodation Payment (the DAPs). This assists a resident to immediately transition to aged-care accommodation from their village.

South Australian legislation provides that the operator may require a resident to give evidence that they cannot readily make the payments or that their finances may be seriously affected if they do so. This evidence can include the value of the resident's income and assets as determined under the *Aged Care Act 1997* of the Commonwealth. This assists operators in determining whether or not they agree with making the payment and any appeal they may wish to make. Details of the Victorian and South Australian legislation can be found in **Appendix A**.

<u>Questions for comment:</u>

- 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?
- Would it benefit residents if the provisions were to apply to both registered interest holders and non-registered interest holders?

Potential impacts of the reform

The reforms are likely to have a range of impacts on residents, their families, operators and the community. This section of the paper highlights the key costs and benefits and seeks feedback on their impact.

Costs

Operator costs

The main costs for operators are expected to be financial. These include impacts to cash flows and running of their business due to the early payment of monies before a sale occurs.

Operator costs are estimated to impact villages in the Sydney Metropolitan Area and regional areas in relatively equal measure. This is because the difference between the estimated baseline sale period (6.7 months and 13.3 months), and the mandatory payment periods (6 and 12 months respectively) are roughly equivalent.

IbisWorld 2018 reports that industry revenue for retirement villages in Australia is expected to increase at an annualised 8.1 per cent from 2018 to 2022-23, to reach $6.8 billion. Australian retirement village industry profits average 7 per cent of revenue. If the national distribution of revenue is in line with the national distribution of villages (28.5 per cent of villages located in NSW), it is possible to approximate the average impact of the exit entitlement provisions on industry profitability in NSW.

For the mandatory payment of exit entitlements reform, the cost to operators is in the order of 1-2 per cent of revenue. This tends to reflect the high cash flow characteristics of retirement villages. These projected costs are demonstrated in **Table 3** below:

Year	2019–2023	2024–2028	2029–2033
	Average % p. a.	Average % p. a.	Average % p. a.
Grandfathered	0.1	0.4	0.9
Retrospective	1.1	1.0	1.2

Note: Revenue forecasts based on IbisWorld 2018.

Table 3: Costs of mandatory payment as a proportion of operator revenue

The timing of a premises being vacated and instances where premises take a long time to sell are hard to predict. It is therefore possible for an operator not to have to pay an early exit entitlement for years, and then have to make 10 such payments at the same time. This situation may be one where the operator could possibly experience hardship and could apply to the Tribunal for relief. In the long term, the potential for this type of financial exposure may make financiers reluctant to invest in the retirement village industry. This would negatively impact on the industry.

The growth of other accommodation options aimed at older people, such as 'ageing in place'[3], will increase competition in the marketplace. This could make it more difficult for existing residents to resell their premises. For this reason, it is not unreasonable to foresee a situation where several premises at a particular village remain unsold for a significant period. It is possible that this scenario could occur in multiple villages concurrently. Therefore, an early exit entitlement pay back requirement could impact on the viability of villages, should such circumstances occur.

The impact on village sustainability depends on the ability of villages to absorb this level of funds transfer. They could do this by achieving efficiency gains or adjusting the revenue model to derive more revenue from current residents. In practice, the impact on profitability would affect each village differently. The effects would depend on how well a village manages its cash flow, achieves returns on the investment of the ingoing contribution, its residency turnover, and capital growth in the area.

However, in a very unlikely worst case scenario, villages could achieve no efficiency dividends, and fail to adjust their revenue model. For example, operators could fail to drive efficiencies in operations and expenditure. They could not increase ingoing payments for new residents, or adjust recurrent charges, or increase the number of premises in the village and/or reduce the number of registered interest holders. According to the Fair Trading Model, average village profits could then fall between 12 and 17 per cent per annum over the 2020–2033 period for metropolitan villages if applied retrospectively. If the payback period is grandfathered[4], the average reduction in profitability is less than 4 per cent in the first 5 years, and 14 per cent down by 2033.

Industry numbers have grown over the past five years, as new players have entered the industry to capitalise on the rapidly increasing demand for aged-care accommodation services from Australia's ageing population. Operators are increasingly consolidating, generally implementing improved business practices and management services, minimising the likelihood of these scenarios ever occurring.

For non-metropolitan based villages, it is estimated that average village profits will fall between 16 and 25 per cent per annum over the 2020–2033 period if the exit entitlement period change is applied retrospectively. If the exit entitlement period change is grandfathered, the average reduction in profitability is less than 6 per cent in the first 5 years, and 18 per cent down by 2033.

However, revenue and profits of retirement villages will increase. Australia's ageing population has contributed to continued revenue growth, as there have been more retirees seeking to live in retirement villages. Rising health expenditure is also likely to assist the industry, as improving health standards may prolong the time that residents spend in retirement villages before they must move, either to higher levels of care in nursing homes, or other accommodation. Steadily rising aged pension

[3] When living in their home, care needs may increase over time. Ageing in place means an older person is not required to move to a retirement village, as their care needs can be taken care of.
[4] Grandfathered means the provisions start when the legislation is enacted. Payment provisions for exit entitlements would only be applicable for those residents who move into a village after the changes to the legislation are made.

payment amounts, along with increasing deferred management and administrative fees charged by industry operators, have also contributed to rising industry revenue. The population aged 70 and over has also increased steadily over the past 5 years and this demographic has grown at a faster rate than the overall population. Ongoing growth in this demographic is expected to contribute to an 8.8 per cent increase in current year revenue. Therefore, the predicted reduction in profits could be less.

Resident costs

Resident costs would primarily relate to possibly forgone capital gain on their premises. It is proposed that the exit entitlement be based on a reasonable sale price for the premises. This would be determined by an independent property valuer prior to the 6 month or 12 month periods, including the assessment of capital gain.

Residents may incur additional costs if they challenge an operator’s hardship claim to the Tribunal (e.g. application fee or legal services if acquired).

Social public costs

The reforms could have a negative effect on the general housing market. To be able to pay for earlier payments of exit entitlements, operators may charge higher upfront payments for entering into a village. However, this could discourage potential residents if it made retirement villages not such an attractive financial option for retirees. This could in turn affect the availability of housing stock for younger people in the general housing market, as retirees decide to remain in their current premises longer.

Benefits

Operator benefits

Operators would likely gain some additional certainty in relation to when exit entitlements would be required to be paid. Villages with liquidity issues might particularly benefit, as they could better plan their required payments.

The reforms could provide potential residents with more confidence to enter a village once they know that their exit entitlements will be returned to them or their family within a specified period. In turn, this may increase the popularity of retirement villages, creating more business for the sector.

Resident benefits

Residents would gain certainty about when they would be paid their exit entitlement and could also gain a financial benefit.

Former residents would obtain more certainty regarding the maximum period they would need to wait before receiving their exit entitlement and be able to plan their financial affairs accordingly. This would be particularly beneficial for residents exiting a village to transition to aged care accommodation. The reforms would also benefit families administering a deceased estate, as they would be able to conclude the former resident’s financial affairs more quickly.

As discussed above, one benefit could be increased consumer confidence in the retirement village accommodation option because of the opportunity for residents to be paid their exit entitlement without having to wait until their premises is sold. In turn, this increased consumer confidence may assist an outgoing resident to obtain a prompt resale of their premises for a good price.

Former residents being paid their entitlements at the mandated periods would have their money returned earlier to them by the operator than would have otherwise been the case. This benefits them financially.

It is acknowledged that estimating the financial return per consumer is complex. It depends on when the residency was entered, the length of tenure, exit entitlement arrangements, the time between exit and settlement and the nature of individual contracts.

If grandfathered, for metropolitan-based residencies the value of earlier returned entitlements per residency that is permanently vacated, is calculated at approximately:

- $11,000 to $14,000 using an exit entitlement payment period of 6 months
- $15,000 to $17,000 using an exit entitlement payment period of 12 months.

Questions for comment:

- Can you think of any other benefits or costs of this reform? What are they?
- Are the cost and benefits listed above, accurate? If not, please provide information to help work out the true costs and benefits.

2. A reform to limit recurrent charges

Summary

The NSW Government intends to amend the Act to provide a 42-day cap on registered interest holders having to continue to pay recurrent charges for the provision of general services. This will then be consistent with the provisions for non-registered interest holders.

The cap would apply 42 days after the resident has permanently vacated the premises. Provision may need to be made to address the different definitions in the current law for permanent vacation for registered and non-registered interest holders.

Background

The problem defined

The liability for non-registered interest holders to continue to pay recurrent charges for general services ceases 42 days after they permanently vacate their premises. However, former residents who are registered interest holders are not only liable to pay recurrent charges for general services during this period, but also continue to pay a portion of these recurrent charges until the premises is sold and a new resident enters into a contract.

After 42 days following their permanent vacation, former residents who are registered interest holders continue to pay recurrent charges for general services in the same percentage as they are required to share their capital gain with the operator, as per their village contract. As the time of the premises being sold is uncertain, this continuing liability can be very costly for former residents and their families. It results in them having to continue to pay for services for which they obtain little benefit.

What are general services and optional services?

Retirement village residents are required to pay for both general services and any optional services that are provided by the operator. These are paid as recurrent charges. They are charged consistently to residents throughout the year and are not a one-off fee. General services include village administration, staffing, gardening, cleaning and maintenance of facilities. Optional services are additional services that a resident may require. They can include meals, outings, hairdressing, and personal care or nursing.

Provisions of the Act for the recurrent charges cap

The liability of a former resident who is **not a registered interest holder**[5] to pay recurrent charges for general services, ceases 42 days after the day they permanently vacate their premises (s 153 Act).

Former residents who are **registered interest holders**[6] are also required to pay recurrent charges for general services up to the 42 day period after they permanently vacate their premises. However, the Act requires registered interest holders to then continue to share this liability with the operator, in the same proportions as the share of any capital gain provided for under their village contract (s152(3)(b)). This further liability for registered interest holders continues, and ceases only when the premises is sold, and another resident takes up occupation of the premises in compliance with one of the provisions in Section 152(2) of the Act. The provisions of the Act in relation to both registered interest holders and non-registered interest holders are set out in **Appendix B**.

The liability for payment for optional services ceases for both registered and non-registered interest holders when they permanently vacate their premises. The liability for payments for general services is shown in the diagram below (**figure 6**).

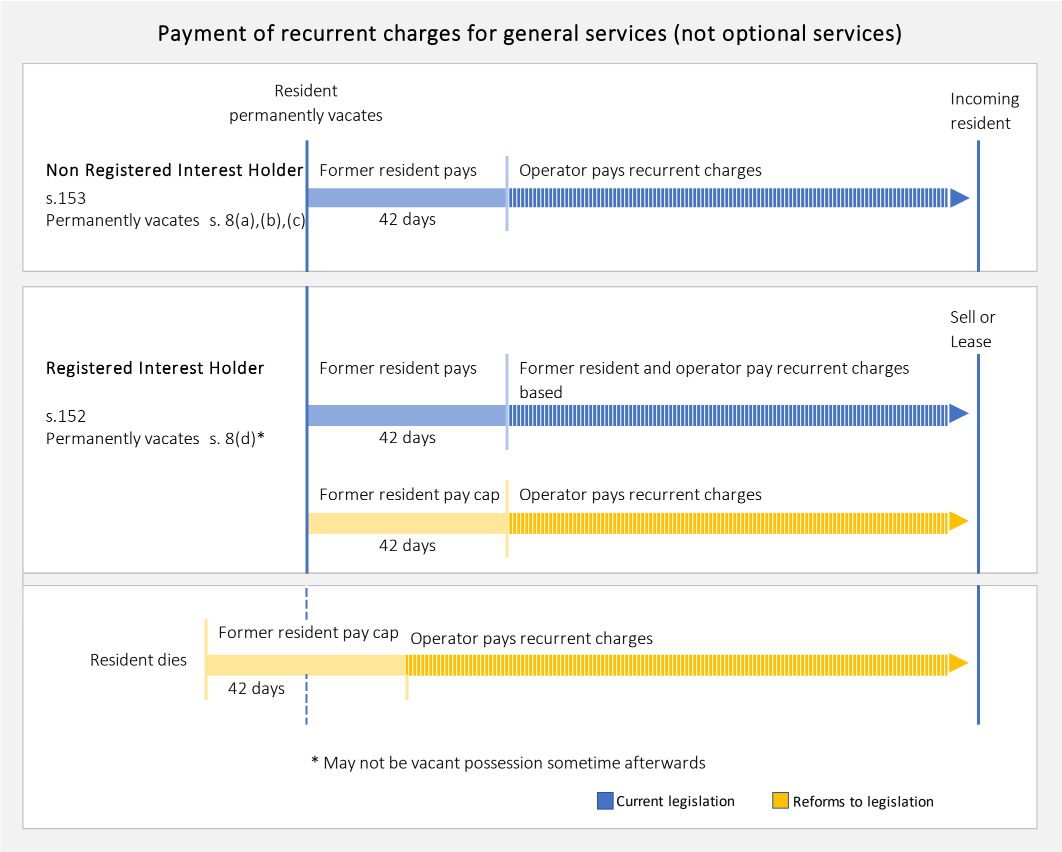

Figure 6: Payment of recurrent charges (general services) current and reformed

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[5] An explanation of the difference between registered and non-registered interest holders was provided in chapter 1 of this paper.
[6] As above.

The definition of "permanently vacates" impacting cap timing

The 42-day cap currently provided in the Act for **non-registered interest holders** commences when the resident **'permanently vacates'**[7] the residence (s153(2)(e)).

Section 8 of the Act defines the term, "permanent vacation" of residential premises. In most cases, this includes a well understood term of "giving up vacant possession" of a premises. However, "permanent vacation" for a **registered interest holder**, occurs when the person "dies or moves out" of the premises (s 8(d)). The situation is not simple, as a resident could pass away while in the premises, but their household possessions remain until family or the executor deal with them. This could delay an operator placing the property on the market. In this situation, the operator would be disadvantaged if the 42-day time period commences when the resident dies.

Outline of the reform

When should the 42-day time clock start?

Giving up vacant possession – time when the 42 day clock should start

The time to start the 42 day clock is complicated by the definition of "permanent vacation" and the differences for non-registered interest holders and registered interest holders (as explained in the Background section, above). This difference means that to replicate the provisions for non-registered interest holders, adjustments need to be made. For example, if a resident dies but their goods are not removed from the premises for some time, then it may be unfair on the operator for the 42-day time clock to commence before vacant possession is given.

In addition, as with a large number of sales of premises in the wider property market, a registered interest holder may choose for whatever reason, to continue to live in the premises until the completion of the sale, and not terminate their contract until this occurs. In this circumstance it is fair that they pay for general services because they continue to benefit from them.

Therefore, it is proposed to align the provision for registered interest holders with the current provision for non-registered holders. This would mean that the premises would need to be "permanently vacated" for the 42 day clock to start. The date of the passing of a resident would not trigger the 42 day clock. This is fair for both the operator and the former resident and their families.

The new provision could apply in addition to the current provisions (whichever occurs earlier) that are provided in Sections 152 and 153 of the Act.

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[7] 'Vacant possession' for unregistered interest holders will occur under a number of circumstances including when the executor or administrator of the deceased occupant advises the operator. However, a person can also provide 'vacant possession' by notifying the operator when a person has 'vacated' the premises.

When the 42 day time limit ceases altogether

The Act currently sets out when the former resident's liability to pay recurrent changes ceases altogether (s 152). For example, when an operator enters into a village contract with an incoming resident. This is an overriding provision and in effect can cut short the 42 day period when a former resident has to pay for general services. Under the reform, this provision would still apply.

The former resident's liability could cease on the date on which they permanently vacated the premises. The provision could then apply in addition to the current provisions (whichever occurs earlier) that are provided in Sections 152 and 153 of the Act.

Questions for comment:

- 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?

Potential impacts of the reform

Costs

Operator costs

Operators' costs are more broadly impacted by this reform than that for mandatory payback of exit entitlements. This is because the reform is more closely linked to the number of departing residents, as virtually all departing registered interest holders are affected. This is not the case for the mandatory payback, where a smaller number of interest holders are affected due to intervening factors (for example, residents who sell before the mandatory payback period). So, while the average amounts are much smaller, the cost to operators remains sizeable because of the number of residents impacted.

In the first 5 years, the cost to operators is estimated at $3.1 million if grandfathered, or $46 million if applied retrospectively. A discussion on whether the two reforms should be grandfathered, is presented in Chapter 3 of this paper. Given the longer sale periods in non-metropolitan areas, approximately 70 per cent of costs are incurred by operators in non-metropolitan areas (**table 4**).

Year	**Grandfathering** for existing residents, and change applied to 2019 contracts onwards			**Applied retrospectively** and impacting all residents that exit from 2019		
	Metro $mn	Non-metro $mn	Total NSW $mn	Metro $mn	Non-metro $mn	Total NSW $mn
2019–2023	1.1	2.0	3.1	14.3	31.8	46.0
2024–2028	7.5	16.5	24.0	17.4	42.0	59.4
2029–2033	18.6	43.0	61.6	25.4	60.7	86.0
2019–2033	**27.2**	**61.6**	**88.7**	**57.0**	**134.5**	**191.5**
% of total	**30.6%**	**69.4%**	**100.0%**	**29.8%**	**70.2%**	**100.0%**

Table 4: Cost to operators of the recurrent charges cap

Costs as a proportion of revenue are shown in **Table 5**. Costs as a proportion revenue have been estimated at 0.0 per cent for 2019-2023, rising to 0.3 per cent for 2029-2033, as more residents are affected. This has been determined for NSW, as a proportion of the total national revenue, $4.6 billion. Revenue is expected to increase by 8 per cent per year.

Year	2019-2023	2014-2028	2029-2033
	Average % p.a.	Average % p.a.	Average % p.a.
Total NSW			
Grandfathered	0.0	0.2	0.3
Retrospective	0.4	0.4	0.4

Note: Revenue forecasts based on IbisWorld 2018.

Table 5: Costs of the recurrent charges cap as a proportion of operator revenue

If villages do not achieve any productivity gains over the forecast period, and are unable to adjust their revenue model, at worst, average village profits would fall by less than 1 per cent in the first 5 years and be 3 per cent down by 2033.

For non-metropolitan based villages, it is estimated that the average reduction in profitability would be less than 1.3 per cent in the first 5 years and be 8 per cent down by 2033.

The impact of the reform would be spread across the sector, given that market concentration in the retirement village industry appears to be very low. It is therefore unlikely that small or large operators would be impacted disproportionately.

The reduction in operator revenue is expected to be $1.6 million by 2023, $7.4 million in 2028, and $16.0 million in 2033, which represents 8 percent and does not take into account the expected growth of the industry

Resident costs

Resident costs associated with the reform primarily relate to the time involved in familiarising themselves with the new requirements. As with any other legislative change, Fair Trading will provide information to new residents and representative groups to ensure that any changes are understood.

An associated cost may be incurred by the remaining residents of the retirement village. Departing residents who stop paying for general services after the specified period, will still obtain some benefit from those services. For example, garden care and general village maintenance will continue to benefit residents selling their premises by possibly affecting the market value and desirability of the residence to incoming residents. The cost for these general services must still be met. The operator may choose to recoup these costs by increasing recurrent charges for remaining residents.

Benefits

Operator benefits

Operator benefits primarily centre on the reform creating a level playing field for all residents of retirement villages and the benefits that will bring to village administration as a whole. As the operator has some control over sales and leases, the amendments will act as an incentive for operators to find replacement residents sooner. Operators will retain a degree of certainty on revenue to cover ongoing fixed costs that accrue, prior to the resale of a former resident’s premises.

Resident benefits

Resident benefits for this reform, as noted above, affect nearly all residents who depart a retirement village.

Under this reform, residents will obtain the time and financial value of the money not otherwise paid in recurrent charges, beyond the imposed time period. The daily fee for the provision of general services in retirement villages is approximately $14.00 to

$15.00 (approximately $453 per month). This daily charge is levied on registered interest holders for the first 42 days following their permanent departure.

The Fair Trading Model suggests this averages $1330 for residents departing a metropolitan village, and $3600 for those departing a non-metropolitan village. This is demonstrated in **Table 6**, below.

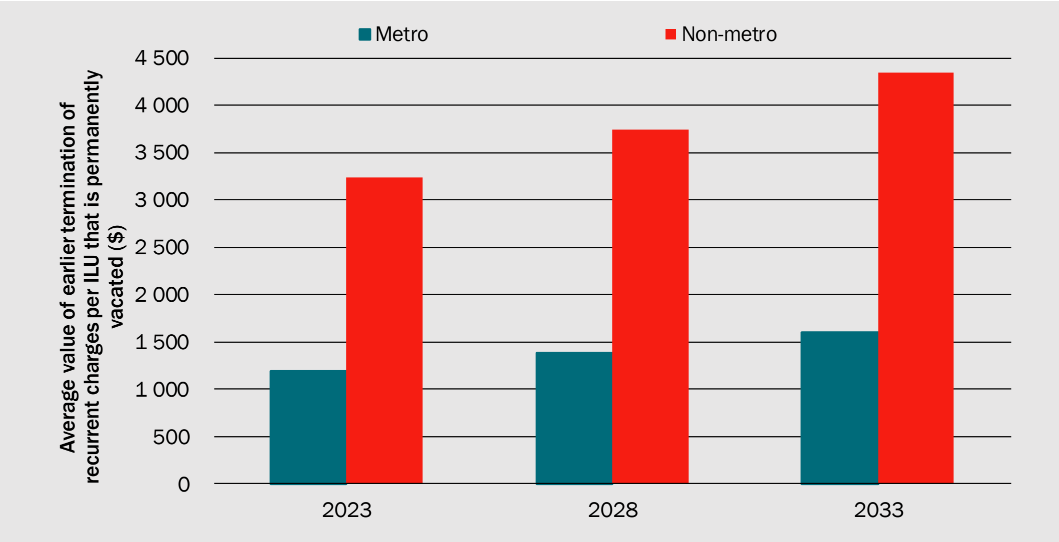


Table 6: Impact of the recurrent charges cap on consumers

Costs as a proportion of revenue are shown in **Table 7**. IbisWorld calculated Australia-wide industry revenue for 2017-18 to be approximately $4.6 billion, growing at an annual 8.8 per cent. Depending on the implementation scenario and treatment of existing residents, costs as a proportion of revenue for NSW operators are around 0.0 per cent for 2019-2023, rising to 0.3 per cent for 2029-2033, as more residents are affected.

Year	2019-2023	2014-2028	2029-2033
	Average % p.a.	Average % p.a.	Average % p.a.
Total NSW			
Grandfathered	0.0	0.2	0.3
Retrospective	0.4	0.4	0.4

Note: Revenue forecasts based on IbisWorld 2018.

Table 7: Costs of the recurrent charges cap as a proportion of operator revenue

If villages do not achieve any productivity gains over the forecast period, and are unable to adjust their revenue model, at worst, average village profits would fall by less than 1 per cent in the first 5 years and be 3 per cent down by 2033.

3. Implementation considerations

Summary

This part of the paper discusses implementation issues such as when should the provisions apply and whether both reforms should commence together.

When should the provisions apply

It may be beneficial to 'grandfather' both the exit entitlement reform and the 42-day cap reform. Grandfathering is a relatively common method of implementing significant reforms. In this context it would mean that the reforms would not apply to residents who had entered into contracts before the legislative requirements commenced.

Grandfathering existing contracts would lessen the adjustment period for operators. Arguably this is fairer for all parties, given that the pricing model offered by villages to existing residents was made without the proposed amendments. If operators elect to make the new requirements cost-neutral, this could require existing remaining residents to be subject to higher charges than currently incurred.

There would be financial benefits to former residents who had entered into contracts before this commencement date. However, the Fair Trading Model shows applying the exit entitlement reform retrospectively would impose extreme financial impacts on operators. These would likely be passed on to present and future residents of retirement villages. For example, for the period from 2019 to 2023, if the exit entitlement provision was grandfathered, $115.5 million would be transferred from operators to former residents over that period, as against $10.7 million if grandfathered.

With both legislative reforms grandfathered, the value of earlier returned entitlements per residency that is permanently vacated, is valued at around $11,000 to $14,000, using the exit entitlement payment period of 6 months. For non-metropolitan-based residents under the grandfathered arrangement, the value of earlier returned entitlements per former residency that is permanently vacated is valued at around $15,000 to $17,000, using the exit entitlement payment period of 12 months (see **Table 8**).

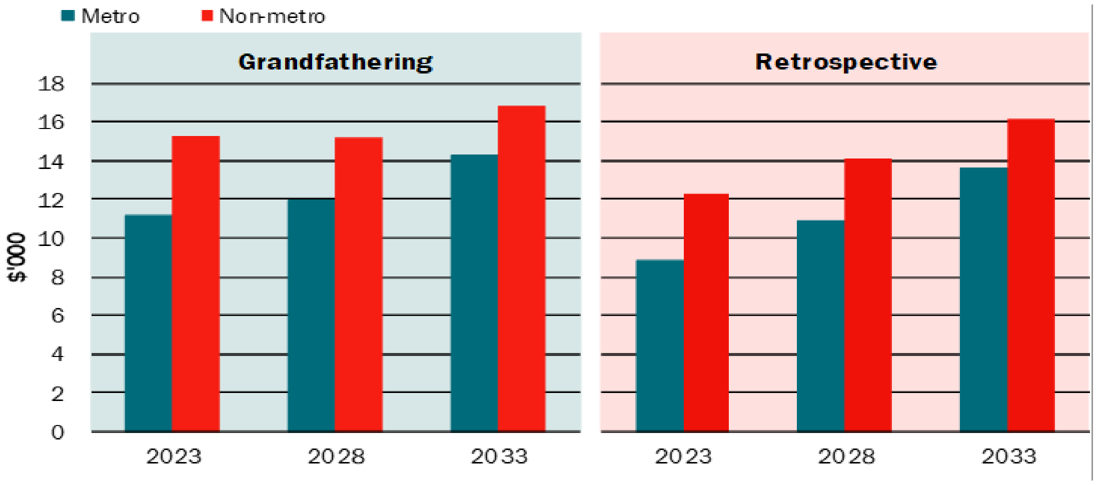


Table 8: Metropolitan and non-metropolitan-based residents under the grandfathered arrangement

Commencement options for both reforms

The Government proposes that the amendments to exit entitlements and the 42-day cap should commence together. This would be intended to help the sector adjust to the change by reducing administrative complexity. It would also ensure that residents and the community gain the largest potential benefit from the reforms.

Implemented separately, information from the Fair Trading Model shows that mandating early payment of exit entitlements would return the most funds to consumers (74 per cent). However, this would only benefit a subset of consumers – those for whom funds are returned in longer-than-average sale periods. While the financial returns associated with the recurrent charges cap only account for 26 per cent of total consumer returns, almost all consumers would benefit given most durations to sale would be longer than 42 days.

The Fair Trading Model indicates that 75 per cent of the costs to operators of the proposed changes relate to the mandatory buy-back and 25 per cent relate to the recurrent charges cap.

Assuming both changes are implemented together, over the first 5 years, total costs per village average $142,000, if changes are applied to all residents departing from 2019 (applied retrospectively). On an annual basis, this is $28,400.

Over the first 5 years, total savings to residents vacating an occupied dwelling average $7,087 when existing contracts are grandfathered. Savings to consumers calculate the time value of money that is received earlier.

Question for comment:

- When is it appropriate to commence the provisions?
- Should one or both of the reforms be 'grandfathered'? If not, please provide your reasons.

Appendix A

Current provisions for Victorian residents

For non-owner residents who signed their retirement village contract before 30 July 2017:

- If residents entered aged care and their retirement village unit had not changed hands allowing them to access their exit entitlement, the village operator must, upon request, fund their:
    - Daily Accommodation Payments (DAPS) from the resident's entry into aged care until they receive their exit entitlement, or
    - Refundable Accommodation Deposit (RAD) no later than six months after the person's entry into aged care (unless the operator is granted a hardship exemption by the Victorian Civil & Administrative Tribunal (VCAT).
    - In both cases, the operator must only fund the DAPs or RAD up to a maximum of 85 per cent of the estimated exit entitlement. At the time when the exit entitlement is payable, any aged care payments funded by the operator will be deducted.

For non-owner residents who signed their retirement village contract on or after 30 July 2017:

- For these residents, the village operator must, upon request, fund the DAPs from the person's entry into aged care until the person receives their exit entitlement.
- The operator must only fund the DAPs up to a maximum of 85 per cent of the estimated exit entitlement. At the time when the exit entitlement is payable, any aged care payments funded by the operator will be deducted.
- As the DAPs is a much smaller amount than the RAD, the operator is not permitted to apply to VCAT to seek a hardship exemption.
- In both cases, the amount payable by the operator is based on a determination of the exit entitlement payable to the resident, which is worked out on an 'agreed' resale value of their residence. If the resident disagrees with the operator's estimate of the amount of the unpaid exit entitlement, then the value of the property must be determined by an independent valuer agreed on by the parties or appointed by the President of the Victorian Division of the Australian Property Institute.
- The provision applies only to non-owners of their residential premises.

Current provisions for South Australian residents

- 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.
- To be eligible, the resident must not have ready access to funds to make payment, or their personal finances would be seriously affected by any such payment.
- The operator is entitled to request evidence of the value of the resident's income and assets as determined in accordance with the *Aged Care Act 1997 (Commonwealth)* – for example, Centrelink's income and assets assessment.

- The operator must, within 30 days after receiving the application, commence making payments to the aged care facility for the DAPs applicable to the resident's care at the aged care facility.
- The operator must continue to make the payment until either the total amount of the payments made by the operator equals 85 per cent of the operator's reasonable estimate of the amount of the resident's exit entitlement; or the resident becomes entitled to be paid the resident's exit entitlement, whichever occurs first. This ensures that the operator does not pay more than the actual entitlement when it is required to be paid.
- Note that South Australia has a maximum period of 18 months for the operator to have to pay the exit entitlements due to a resident from the date they leave their accommodation.
- If an operator fails to pay an amount as required, the operator is guilty of an offence. A maximum penalty of $5,000 applies.
- An operator may recover all amounts on behalf of a resident by deducting the total of any amounts paid from the resident's exit entitlement.

Appendix B

Current legislation for exit entitlements and recurring charges cap

<u>Registered interest holders:</u>

<u>S.180 of the *Retirement Villages Act 1999*</u>

180 Payments to former occupants who were registered interest holders

Note.
This section deals with payments to such former occupants of residential premises following the sale of the premises. The sale of premises includes:

(a) in the case where the former occupant was the registered proprietor of land, the owner of a lot in a strata scheme or the proprietor of a lot in a community land scheme and as such had a residence right in respect of residential premises—the sale of that land or interest in that land, and

(b) in the case where the former occupant was the owner of shares in a company title scheme that gave rise to a residence right in respect of residential premises— the sale of that residence right (see section 4 (3)), and

(c) in the case where the former occupant's residence contract was in the form of a registered long term lease that included a provision that entitled the former occupant to at least 50% of any capital gain—the sale of that residence right (see section 150).

(1) *This section applies to a former occupant of residential premises in a retirement village who is, or was, a registered interest holder in respect of the premises.*

(2) The operator of a retirement village must make any payment required to be made to the former occupant following the sale of the premises within 14 days after the earliest of the following:

(a) the date on which the operator receives full payment under a residence contract with an incoming resident of the premises,

(b) the date on which the operator enters into a village contract with an incoming resident of the premises,

(c) the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises,

(d) the date on which a person takes up residence in the premises with the consent of the operator,

(e) if the operator buys the premises from the former occupant—the date on which the operator completes the purchase,

unless the contract between the operator and the former occupant provides for earlier payment.
Maximum penalty: 50 penalty units.

(3) *At the same time as the payment is made, the operator must give the former occupant a statement setting out the following and showing how the amounts were calculated:*

(a) the departure fee, if any, payable by the former occupant,

b) accrued or outstanding recurrent charges, if any, payable by the former occupant,

(c) any amount payable by the former occupant in relation to the sale of the residential premises concerned,

(d) any other amount payable by the former occupant under a village contract,

(e) in the case of a former occupant referred to in section 7 (1) (c)—the sale price of the premises,

(f) in the case of a former occupant who is required to pay for the cost of the refurbishment of his or her residential premises (as referred to in section 165)—the cost of that refurbishment,

(g) the amount of the payment to the former occupant.

Maximum penalty: 10 penalty units.

(4) *If a payment is not made to the former occupant within the time required by subsection (2):*

(a) *the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, and*

(b) interest is payable, at the rate prescribed by the regulations, on that unpaid amount on and from the date that the amount becomes overdue.

(5) *If, in the opinion of the former occupant, the amount of a payment made under this section was not calculated in accordance with this Act or any relevant village contract, or the conduct of the operator has unfairly had a negative financial impact on the former occupant:*

(a) *the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to recalculate the amount in accordance with the directions of the Tribunal and pay any additional amount due to the former occupant as a result of the recalculation, and*

(b) *if the Tribunal considers it appropriate, the Tribunal may order the payment of interest on that additional amount at the rate prescribed by the regulations.*

(6) *Without limiting subsection (5), conduct of the operator that may unfairly have a negative impact on a former occupant includes entering into a village contract with a subsequent resident that contains terms that:*

(a) *are substantially different from those contained in the village contract to which the former occupant was a party, and*

(b) *will have a negative financial impact on the former occupant to the benefit of the operator.*

S. 152 of the Retirement Villages Act 1999

152 Recurrent charges in respect of general services: registered interest holders

(1) This section applies to a former occupant of residential premises in a retirement village who is a registered interest holder in respect of the premises.

(2) Subject to subsection (3), the former occupant's liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant permanently vacated the residential premises ceases on:

(a) the date on which the operator of the retirement village enters into:

(i) a village contract with an incoming resident, or

(ii) a residential tenancy agreement with an incoming tenant,

in relation to the premises, or

(b) the date on which a person takes up residence in the premises with the consent of the operator, or

(c) if the operator buys the premises from the former occupant—the date on which contracts for the purchase are exchanged, or

(d) if the former occupant is a person referred to in section 7 (1) (c):

(i) if the Tribunal terminated the residence contract—the date on which the former occupant permanently vacated the premises, or

(ii) if the former occupant permanently vacated the premises after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract—the date on which the former occupant permanently vacated the premises,

whichever date occurs first, unless the contract between the former occupant and the operator provides for an earlier cessation of that liability.

(3) The former occupant's liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant has permanently vacated the residential premises is to be met:

(a) in respect of a liability arising during the 42 days immediately after the former occupant permanently vacated the premises—by the former occupant, and

(b) in respect of a liability arising after the period referred to in paragraph (a)—by the former occupant and the operator of the retirement village in the same proportions as the former occupant and the operator of the retirement village would share any capital gain under the village contract.

Non registered interest holders

S.181 of the *Retirement Villages Act 1999*

181 Payments to former occupants who were not registered interest holders

(1) *This section applies to a former occupant of residential premises in a retirement village who is not, or was not, a registered interest holder in respect of the residential premises concerned.*

(2) The date on which the operator of a retirement village must make any refund of the former occupant's ingoing contribution that is required, under a village contract, to be made is:
(a) the date that is 14 days after the date on which the operator receives full payment under the residence contract of an incoming resident of the premises, or

(b) the date that is 14 days after the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises, or

(c) the date that is 14 days after the date on which a person takes up residence in the premises with the consent of the operator, or

(d) if the Tribunal terminated the residence contract—the date that is one month after the date of the termination, or

(e) if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract—the date that is one month after the date on which vacant possession was delivered, or

(f) the date that is 6 months after the date on which the former occupant otherwise delivered up vacant possession of the premises to the operator,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree (unless the contract between the operator and the former occupant provides for earlier payment).
Maximum penalty: 50 penalty units.

(3) Any other payment that is required, under a village contract, to be made to the former occupant, being an amount that is dependent on the amount of the ingoing contribution of the incoming resident of the premises, is to be paid to the former occupant within 14 days after the earlier of:
(a) the payment, under a village contract, of any money to the operator, by that incoming resident, or

(b) the incoming resident's taking up residence in the premises.

Note.
A contract may provide that the resident, when he or she permanently vacates his or her residential premises in the village, is to receive a refund of a fixed amount of the resident's ingoing contribution plus a share of any capital gains (that is, any greater amount of ingoing contribution payable by the incoming resident compared with the ingoing contribution paid by the former occupant). The refund of the ingoing contribution must be paid by the time specified in subsection (2), while the share of capital gains (if any) must be paid by the time specified in subsection (3).

(4) At the same time as a payment is made under this section, the operator must give the former occupant a statement setting out the following and showing how the amounts were calculated:

(a) the departure fee (if any) payable by the former occupant,

(b) accrued or outstanding recurrent charges, if any, payable by the former occupant,

(c) any amount payable by the former occupant in respect of repairs required to the residential premises concerned (as referred to in section 163),

(d) in the case of a former occupant who is required to pay for the cost of the refurbishment of his or her residential premises (as referred to in section 165)—the cost of that refurbishment,

(e) any other amount payable by the former occupant under a village contract,

(f) in relation to the part of a refund referred to in subsection (3)—the amount of the ingoing contribution of the incoming resident of the premises,

(g) the amount of the payment to the former occupant.

Maximum penalty: 10 penalty units.

(5) If the operator is of the opinion that he or she will not be able to enter into a residence contract with another person in respect of the premises within the time specified in subsection (2) (f), the operator may apply to the Tribunal for an order:
(a) extending the time allowed for payment under this section, or

(b) allowing payment by instalments,

on the grounds that compliance with the time-frame specified in subsection (2) (f) would cause undue hardship to the operator.

(6) In determining an application made under subsection (5), the Tribunal:
(a) may have regard to the hardship to be caused to the former occupant if an order of the kind set out in subsection (5) is made, and

(b) may make an order of that kind, and

(c) may, if it sees fit to do so, make a further order for the payment of interest at a rate determined by the Tribunal.

(7) If a payment is not made to the former occupant within the time required by this section:
(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, and

(b) interest is payable, at the rate prescribed by the regulations, on that unpaid amount on and from the date that the amount becomes overdue.

(8) If, in the opinion of the former occupant, the amount of a payment made under this section was not calculated in accordance with this Act or any relevant village contract, or the conduct of the operator has unfairly had a negative financial impact on the former occupant:
(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to recalculate the amount in accordance with the directions of the Tribunal and pay any additional amount due to the former occupant as a result of the recalculation, and

(b) if the Tribunal considers it appropriate, the Tribunal may order the payment of interest on that additional amount at the rate prescribed by the regulations.

(9) Without limiting subsection (8), conduct of the operator that may unfairly have a negative impact on a former occupant includes entering into a village contract with a subsequent resident that contains terms that:

(a) are substantially different from those contained in the village contract to which the former occupant was a party, and

(b) will have a negative financial impact on the former occupant to the benefit of the operator.

<u>S. 153 of the Retirement Villages Act 1999</u>

153 Recurrent charges in respect of general services: generally

(1) This section applies to a former occupant of residential premises in a retirement village who is not a registered interest holder in respect of the premises.

(2) The former occupant's liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant permanently vacated the residential premises ceases (unless the contract between the former occupant and the operator provides for an earlier cessation of that liability) on:

(a) the date on which the operator of the retirement village enters into:

(i) a village contract with an incoming resident, or

(ii) a residential tenancy agreement with an incoming tenant,

in relation to the premises, or

(b) the date on which a person takes up residence in the premises with the consent of the operator, or

(c) if the Tribunal terminated the residence contract—the date on which the former occupant permanently vacated the premises, or

(d) if the former occupant permanently vacated the premises after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract—the date on which the former occupant permanently vacated the premises, or

(e) the date that is 42 days after the date on which the former occupant otherwise permanently vacated the premises,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree.

(3) On and from the date that the former occupant's liability to pay recurrent charges (being recurrent charges in respect of general services) ceases under subsection (2), the operator of the retirement village must pay the recurrent charges payable in relation to those residential premises until the date on which the operator of the village enters into a village contract with an incoming resident.

Appendix C

Retirement village model

A spreadsheet-based model has been built to estimate the revenue transfer from retirement village operators to (former) registered interest holders because of reforms to the exit entitlement and recurrent charge periods.

The approach taken to the modelling sees calculation of the revenue accruing to village operators under the current arrangements, and then what that revenue would be under the policy options. The difference between the two revenue streams reflects the transfer of money from village operators to registered interest holders. Revenue impacts have been calculated for both metropolitan and non-metropolitan retirement villages, and (annually) over the 15-year time period 2019 to 2033.

The model is detailed below, as are the assumptions made and values assigned to key parameters.

Exit Entitlement

The revenue accruing to village operators under the current arrangements reflects several factors, namely:

- the price of retirement dwellings (in metropolitan and non-metropolitan areas)
- the number of registered interest holders (RIH) exiting their dwellings, which in turn reflects:
    - the number of Australians in the >65 age group
    - the retirement village penetration rate
    - the number of people per retirement dwelling
    - the share of dwelling occupiers that are RIH
    - the distribution of RIH tenure
- the liable DMF charge, which in turn is dependent on:
    - the annual DMF charge and maximum (capped) rate
    - whether the DMF charge is applied to ingoing purchase price, or outgoing, and if outgoing:
        - the annual rate of capital growth
        - time (years) between retirement village entry and exit (with exit reflecting the distribution of RIH tenure) to determine years of capital growth and outgoing dwelling value
    - the distribution of RIH tenure to calculate the DMF charge, or whether the cap has been reached
- capital growth in the dwellings and the proportion returned to the RIH, which reflects:
    - assumed annual capital growth rate (in metropolitan and non-metropolitan property markets)
    - time (years) between retirement village entry and exit (with exit reflecting the distribution of RIH tenure) to determine years of capital growth
    - the capital growth sharing arrangement with retirement village operators
- the duration between dwelling vacancy and settlement (reflecting the distribution of sale time)
- the financial gain (interest rate) to village operators to holding onto the exit entitlement figure for the time between vacancy and settlement.

Each of these factors is discussed briefly below.

Retirement dwelling prices

Retirement village dwelling entry prices were taken from a data mining exercise on queries made with the NSW Fair Trading Retirement Village Calculator.[8] People can use the calculator to estimate the costs of a retirement village. Part of the calculations require (potential) residents to enter the purchase (or entry) price, and the postcode of the village. After some data cleaning, the entered queries were used to arrive at average entry prices across various percentiles in metropolitan and non-metropolitan areas. Table 1 reports the estimated entry prices in 2018.

Table 1. Retirement village entry prices in 2018

Area	Percentile		
	25	50	75
	$	$	$
Metropolitan	505 375	734 500	1 000 000
Non-metropolitan	395 000	470 000	551 250

Source: analysis of dataset underlying the NSW Fair Trading Retirement Village Calculator.

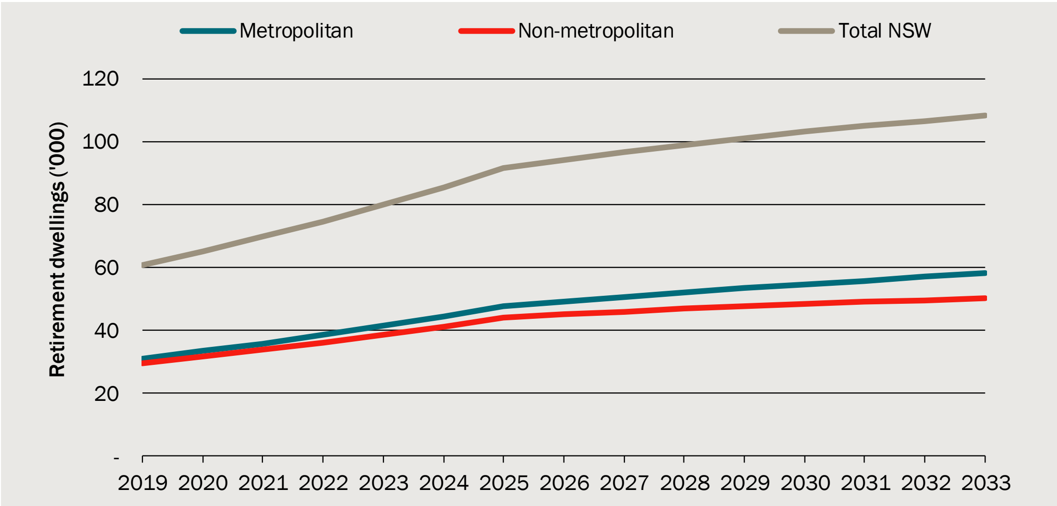
Number of registered interest holders

The ABS produce a time series of forecasts of the number of Australians in various age groups (see ABS 3222.0,). It is assumed that only those Australians greater than or equal to 65 years of age enter retirement villages. The number of Australians (greater than or equal to 65 years of age) in retirement villages is taken to be 7.1 per cent up until 2025, and then 7.5 per cent post 2025, reflecting an increasing share of the population choosing to reside in a retirement village, based on Property Council of Australia, National overview of the retirement village sector, October 2014.

The number of Australians 65 or older, combined with the assumed retirement village penetration rate, provide an estimate of the number of residents in NSW retirement villages. Data from 2014 suggests that, on average, 1.27 people reside in each retirement dwelling. Assuming this figure holds going forward, the number of occupied retirement dwellings can be calculated. Chart 1 reports the estimated number of occupied retirements dwellings in metropolitan, non-metropolitan and total NSW over 2019–2033.

8 See rvcalculator.fairtrading.nsw.gov.au/

Chart 1: Number of occupied retirement dwellings



Data source: Fair Trading Model calculations.

The return to retirement village operators of the current exit entitlement arrangements depend on the number of dwellings vacated in a year, which in turn reflects the assumed dwelling tenure distribution. The length of time residents spend in a retirement village (or the time from entry to exit) is calculated as follows.

The probability of living in a retirement village in NSW at a given age is calculated from the 2016 Census. This is based on the Dwelling Location variable (DLOD), which provides information about the location of dwellings other than 'typical' private dwellings, such as retirement villages and caravan parks. This data was downloaded for each age above the 55 years of age from the ABS Census Table Builder.

The number of people entering retirement villages by age is then calculated from the probability of living in a retirement village, given an assumed exit process. The model allows individuals to begin entering retirement villages at the age of 55, with the number entering consistent of the probability of living in a retirement village at a given age. It then assumes the exit process from retirement villages is driven by the following factors.

Survival rates by age which are calculated from life tables. We assume that on average individuals leave retirement villages three years prior to dying, which is consistent with the observation that many individuals transition from retirement villages to aged care, and that the average stay in aged care is two and a half years.[9] This may underestimate duration of tenure, insofar as some people will die while living in retirement villages, and may over or underestimates tenure given retirement village residents may have correlated health characteristics which result in longer or shorter life expectancy than the rest of society. The survival rate used is a weighted average of the male and female survival rates, weighted by the gender breakdown of retirement villages.[10]

Idiosyncratic departures, we assume that in the first year of entry to retirement village 10 per cent of new entries depart and in each subsequent year 2 per cent of residents depart for a reason unrelated to the life tables (for example, due to preferences or changing family circumstances etc.).

The number of people entering NSW retirement villages at each age is then estimated using this exit process and the probability of living in a retirement village in NSW at a given age, recognising that

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9 See Australian Institute of Health and Welfare, https://www.gen-agedcaredata.gov.au/Topics/People-leaving-aged-care, accessed on 27 November 2018.

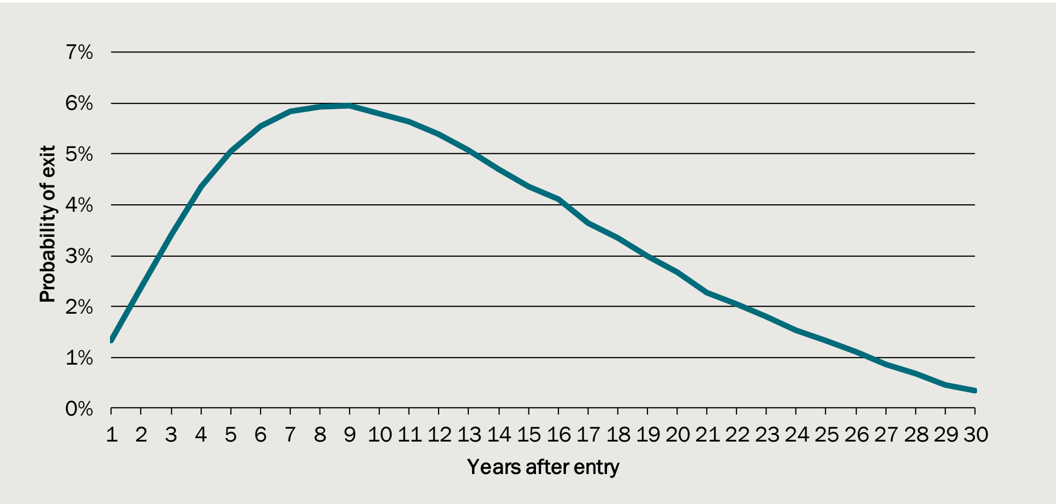
10 It is reported that 65 per cent of retirement village residents are female, see PWC and Property Council 2017, Retirement Census.

people living in retirement villages may enter at different ages. For instance, if the Census implies there are 1 000 70-year-olds living in retirement villages, 100 may have entered when they were 65 years of age, 200 may have first entered when they were 68 years of age, 250 may enter when they were 69, and so on. This results in an estimated distribution of entry into retirement villages, which describes probability of a new retirement village resident being a specific age.

The distribution of retirement village tenure is estimated using the distribution of entries by age and the exit process described above, based on life tables and idiosyncratic departures. Given the age breakdown of new retirement village residents, life tables and idiosyncratic departures allow estimation of the number of residents remaining in a retirement village some number of years after entering. From this the distribution of retirement village exits by years of tenure is calculated, which describes the probability of given tenure, given the age profile of new residents. [11]

The tenure distribution is reported in chart 2. Under the derived tenure distribution, residents have a higher probability (6 per cent) of leaving the village in the 9th year of their residency. The long tail of the distribution sees the average residency in a retirement village being 12 years.

Chart 2: Length of tenure in retirement village



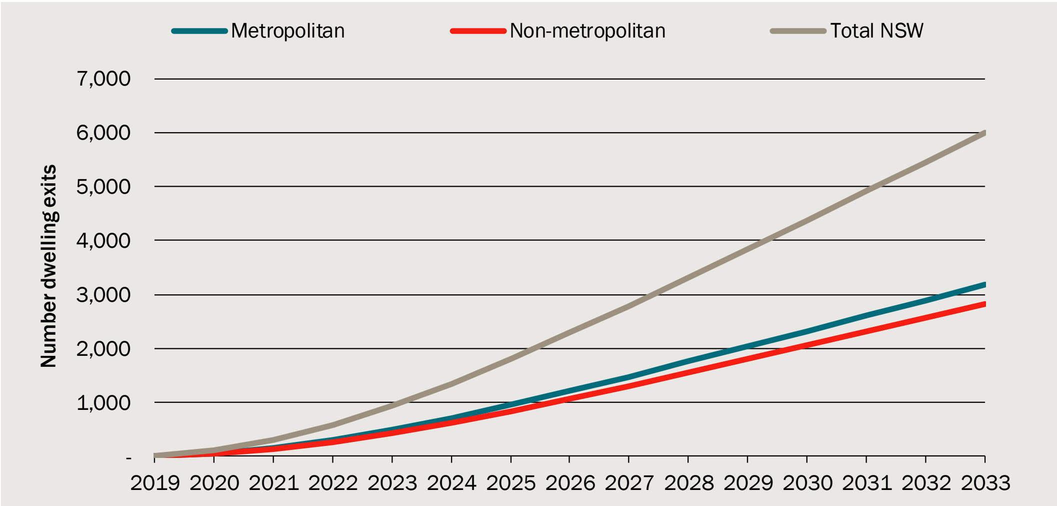
Data source: Fair Trading Model calculations.

The tenure distribution is applied to a year's retirement village entrant cohort to determine when those entrants exit the village. For each cohort, it is assumed that 87.2 per cent of dwellings are registered interest holders, based on analysis of Cradduck and Blake 2012 op. cit.

Summing across cohorts allows the total number of RIH dwelling exits to be calculated on a year-by-year basis, which is shown in chart 3 assumes that current arrangements are grandfathered, and hence only exits for the 2019 and after cohorts are relevant. If current arrangements are not grandfathered, then account needs to be taken of retirement village entrants in earlier years that exit in years 2019 and after.)

[11] A tenure distribution for retirement village entrants in earlier years is calculated in the same way as for new entrants. This uses the same exit process and the observed age breakdown of residents from the Census, as opposed to the estimate of the age of new retirement village entrants.

Chart 3: Retirement dwelling exits (grandfathered arrangements)



Data source: Fair Trading Model calculations.

Liable DMF charge

The DMF charge payable on exit (vacancy) of a retirement village dwelling is assumed to be calculated at a rate of 5 per cent annually, capped at 30 per cent (hence after the 6th year of residency no additional DMF charge is payable). The DMF charge is applied to either the ingoing entry price, or the outgoing price (which, in turn, reflects the ingoing price of the next resident to live in that dwelling).

Ingoing metropolitan and non-metropolitan dwelling prices are observed in 2018 (see above) and are assumed to experience annual capital growth of 5 per cent and 3 per cent (respectively). In the case of DMF payments that are applied to the outgoing dwelling price, the outgoing price is based on the ingoing price scaled up by the appropriate number of years of capital growth, with the number of years capital growth reflecting the tenure distribution.

Available data suggests that for 76 per cent of dwellings, the DMF charge is applied to the ingoing price, based on analysis of the PwC/Property Council Retirement Census for 2017.

Capital growth

It is assumed that for all RIH, any capital growth between time of village entry and settlement is shared between the RIH and village operator 50–50 (that is, 50 per cent of the capital growth gain accrues to the RIH).

The absolute size of the capital gain is a function of the entry price, the assumed capital growth rate, the time between village entry and exit (which reflects the tenure distribution), and the capital gain sharing arrangement.

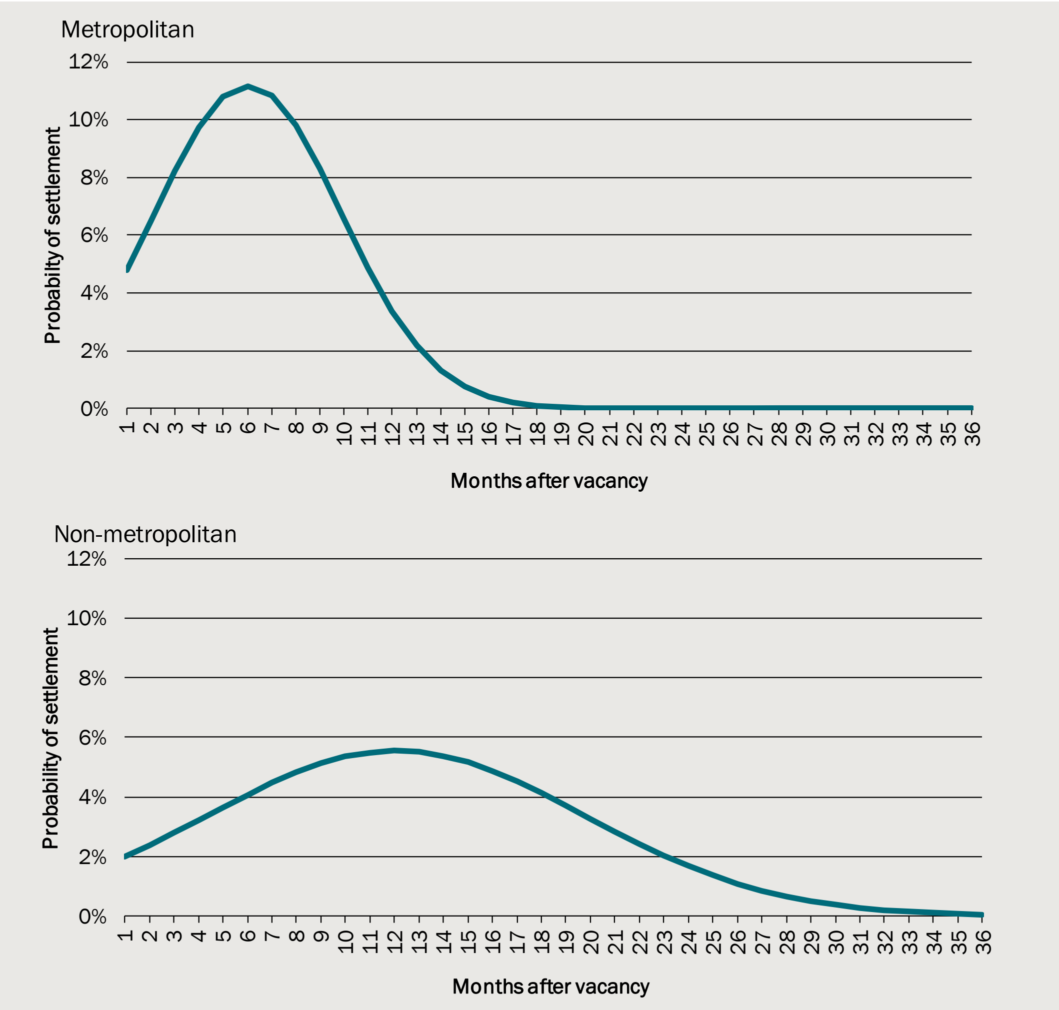
Duration between vacancy and settlement

Currently, operators need to repay exit entitlements within 14 days of dwelling sale (taken to be settlement). The duration between a person leaving their dwelling (vacancy) and settlement reflects the time the operator must use those funds.

Figures from Victoria suggest that it takes 273 days on average to sell an interest in a retirement village dwelling. Assuming it takes twice as long to sell an interest in non-metropolitan regions than in metropolitan areas and using the number of metropolitan and non-metropolitan dwellings as weights, it is possible to use the 273-day average figure to derive average durations between vacancy and settlement for the two areas. This date is taken from modelling undertaken by the Property Council in relation to the Victorian Aged Care Rule, which assumes an average sale period of 9 months.

A (normal) probability distribution is fitted around these average figures, with dwelling sold within 18 months of vacancy in the case of metropolitan dwellings, and 36 months in the case of non-metropolitan dwellings. Chart 4 shows the resulting distributions of time (months) between vacancy and settlement in metropolitan and non-metropolitan areas.

Chart 4: Distribution of duration between vacancy and settlement



Data source: Fair Trading Model calculations.

On average, it is estimated that retirement village dwellings in metropolitan areas experience a 202-day (6.6 month) period between vacancy and settlement, versus a 399-day (13.1 month) period in the case of dwellings in non-metropolitan areas.

These periods give the (average) time over which operators can hold the exit entitlement.

Financial gain to village operators

The approach taken to estimating the financial impact on village operators see calculating the gain operators get from the current arrangements, and then what that gain would be under the mandatory exit entitlement arrangement. The factors detailed above can be used to arrive at the entitlements to be returned to (former) RIHs once settlement on vacated dwellings is realised. By holding this entitlement until settlement is realised, village operators are accessing an interest free loan, which delivers a financial benefit. The magnitude of the dollar benefit will depend on the use to which that money is put. As this is unknown/unobservable in the publicly available data, it has been assumed that the benefit from access to an interest free loan is given by the small business lending rate (in other words, the cost had the village operator had to borrow the money). In 2018, the interest rate was 5.65 per cent per annum.[12]

The length of time over which operators get to use that money is given by the distribution of duration between vacancy and settlement, which was discussed above. These distributions can be combined with the annual interest rate to arrive at an effective interest rate for the period over which the interest free loan is provided, as shown in table 2.

Table 2: Interest rates applied to exit entitlements

	Metropolitan	Non-metropolitan
Average time between vacancy and settlement (months)	6.6	13.1
Annual interest rate (%/annum)	5.65	5.65
Effective interest rate under current arrangements (%)	3.17	6.41
Mandatory exit entitlement period (months)	6	12
Effective interest rate under mandatory exit entitlement (%)	2.36	4.40

Source: Fair Trading Model calculations.

Recurrent charges

The recurrent (strata etc) charges paid to village operators after RIHs exit a village is a function of:

- the number of RIHs exiting a village in a year (discussed above)
- the length of time between vacating a dwelling and settlement (discussed above)
- the recurrent fee daily charge, noting that:
- the full daily rate charge is levied for the first 42 days
- after 42 days, recurrent charges are shared between RIHs and village operators in proportion to the capital growth sharing arrangement
- the rate at which the daily fee is increased over time.

Recurrent fee daily charge

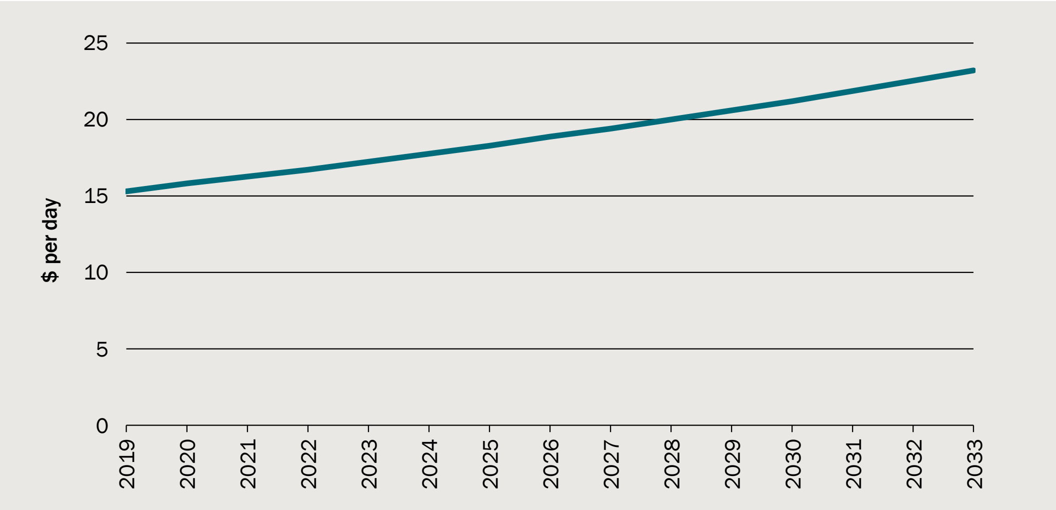
The 2017 PwC/Property Council Retirement Census reports that on average in Australia, the monthly service fee (for a single resident) is $453, or $14.88 per day. The 2014 Retirement Census reports a daily service fee of $14.23 per day for a NSW retirement dwelling.

[12] RBA 2018, Lending rates; Small business; Variable; Weighted-average rate on credit outstanding, Indicator Lending Rates – F5, https://www.rba.gov.au/statistics/tables/xls/f05hist.xls?v=2018-12-05-11-03-01, accessed 5 December 2018.

While the 2014 Retirement Census provides a daily service fee for a NSW dwelling, the data is now 4 years out-of-date. And while the 2017 Census figure is the most recent available, it relates to the average Australian dwelling, as opposed to the average NSW dwelling. These limitations mean that neither figure is likely to be ideal. It was decided to use the more recent figure of $14.88 for the recurrent fee daily charge in 2018.

The daily fee was grown over time in line with an assumed inflation rate of 3 per cent, resulting is the recurrent fee schedule reported in chart 5.

Chart 5: Recurrent charges



Data source: Fair Trading Model calculations.

The daily charges reported in chart 5 are only levied for the first 42 days (if settlement has not been achieved by then). After 42 days, the recurrent fee charge is shared between the RIH and the village operator in proportion to the capital growth sharing arrangement, which, as discussed above, is assumed to be shared equally (with both parties accruing 50 per cent of any capital gains).

For the RIH, this arrangement means that the recurrent fee daily charge of $15.33 in 2019 would fall to $7.66 after 42 days. Table 3 reports the various recurrent fee charges according to time since vacancy, and average daily charge until settlement (using the 2019 daily charge).

Table 3: Recurrent fee daily charges in 2019

	Metropolitan	Non-metropolitan
Average time between vacancy and settlement (days)	202	399
Recurrent fee charge in first 42 days ($/day)	15.33	15.33
Recurrent fee charge after 42 days ($/day)	7.66	7.66
Average recurrent fee charge until settlement ($/day)	8.10	7.83

Source: Fair Trading Model calculations.

The revenue impact of the proposed implementation of a recurrent charges cap would involve moving from (an average) total recurrent fee per vacated metropolitan dwelling in 2019 of 202 days at $8.10 per day, to 42 days at $15.33 per day under the proposed reform (if settlement not reached within 42 days).

Box 1 provides a summary of key modelling assumptions.

Box 1: Key modelling assumptions

Exit entitlement

Retirement village penetration rate — 7.1 people per 100 population in the 65 and over age group over 2015–2025-time period, and 7.5 people per 100 population after 2026.

People per retirement dwelling — 1.27.

Share of dwellings that are occupied by RIH — 87.20 per cent

DMF charge — 5 per cent per year of residence, capped at 30 per cent.

Base to which DMF charge is applied — 76 per cent of dwellings the DMF is applied to the ingoing price, while for 24 per cent of dwelling the DMF applied to outgoing price.

Assumed capital growth — 5 per cent in case of metropolitan dwellings, 3 per cent in case of non-metropolitan dwellings.

Sharing of capital gain — 50 per cent accrues to the RIH and 50 per cent to the village operator.

Lending rate — 5.65 per cent (small business lending rate).

Recurrent charges

Recurrent fee daily charge — $14.88 in 2018.

Inflation rate — 3 per cent.

Appendix D

Summary of questions for comment

1. A reform to ensure payment of exit entitlements within set timeframes

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?

Exit entitlements - Calculating fair property values

2. Are the proposals for appointing a valuer, to determine the value of the property, necessary and appropriate?
3. Should the valuation be done by someone independent of both parties?
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?
5. What information should the operator be required to provide to the resident when the exit entitlement has been determined?

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?
7. At what point, or time should residents be able to exercise these rights?
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?

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?
10. Are there any additional circumstances the Tribunal should be able to consider when considering a hardship application from an operator?

The trigger point

11. Are there any other factors that could affect the setting of a 'trigger point'?

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?

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?

14. Would it benefit residents if the provisions were to apply to both registered interest holders and non-registered interest holders?

Potential impacts of the reform

15. Can you think of any other benefits or costs of this reform? What are they?

16. Are the cost and benefits listed above, accurate? If not, please provide information to help work out the true costs and benefits.

2. 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?

3. Commencement options for both reforms

18. When is it appropriate to commence the provisions?

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