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

Dear Sir/Madam,

The Property Council welcomes the opportunity to comment on the Retirement Villages – exit entitlements and recurrent charges cap discussion paper (**Discussion Paper**).

The discussion paper outlines further policy detail on the following government proposals to:

:

• restrict the time period in which a resident is required to pay fees on their property while it is being sold, and

• require a retirement village operator to sell or buy back a unit within six months of a person leaving a retirement village in metropolitan areas and 12 months in regional NSW (**proposed reforms**).

As you know, NSW legislation ensures non-registered interest holders already have a cap on the time an operator has to refund exit entitlements and the time for which a resident remains responsible to pay recurrent charges after departure. Therefore, we understand that the policy is directed at arrangements which apply to registered interest holders who have opted to share in the risk and reward of the value of their unit by sharing in the capital gain on the sale of the premises. In addition, it is proposed that resident interest holders have certain controls over the sale process.

The Property Council supports a buyback policy in NSW that effectively provides the certainty residents require as to when they will receive their exit entitlements, facilitates choice of contract for residents and ensures a viable retirement living sector in NSW to meet the housing needs of seniors.

However, while we support a buyback policy, we oppose the proposed reforms in their current form, as we hold grave concerns that the announced policy of six-month exit entitlements for metropolitan and 12 months for regional areas will:

- Significantly reduce access to capital and debt that results in a withdrawal of investment in seniors housing, both current and new, by all size of operators;
- Reduce the choice of contract for the incoming resident;
- Force smaller operators into liquidation; and
- Decrease sales prices of the dwellings impacting both the operator and residents.

We have looked at how the Government's policy objectives might be achieved without the adverse impacts the reforms as currently drafted would create. We have set out an alternate approach below. We would suggest that:

1. For new residents, every operator must offer at least one contract option that includes:
   - for residents who live in a village in the Sydney metropolitan area, a requirement for the resident to be paid their exit entitlements at 6 months (from vacant possession)
   - for residents who live in a village in a regional area, a requirement for the resident to be paid their exit entitlements at 12 months (from vacant possession)

2. Introducing protections for residents moving to aged care by implementing an Aged Care Rule, similar to that which applies in South Australia. In South Australia, Operators are to advance up to 85% of a resident's estimated exit entitlements (until balance of exit entitlements are otherwise paid) to fund the daily accommodation payment only for Residents who do not have ready access to funds to make the payment or whose personal finances would be seriously affected by any such payment on entry into aged care. This should not apply to owner residents. Any DAP payments made to the resident would be deducted from the exit entitlement when it is paid.

3. A safety net mechanism which requires the resident to be paid their exit entitlement after 18 months (from vacant possession). This should not apply to owner residents.

4. A reduction in the period for which a registered interest holder resident is required to contribute to recurrent charges to a maximum period of 6 months after departure.

The policy solution suggested above demonstrates the strong commitment of industry to find solutions which give residents and families certainty on departure as well as ensuring the continued viability of the sector. We would suggest that the policy be prospectively applied and that there be no retrospective application of the policy changes to protect the viability of existing arrangements in place.

Please see attached our detailed submission which outlines our proposed policy and issues raised in the Discussion Paper.

The Property Council would welcome the opportunity to meet with the NSW Government and the Department of Fair Trading to discuss this submission and the policy reforms in further detail.

Please contact Emma Ashton, Senior Policy Advisor, Yours sincerely,

Jane Fitzgerald
NSW Executive Director
Property Council of Australia

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Submission:

Retirement Villages – exit entitlements and recurrent charges cap discussion paper

August 2019

Background

Seniors housing is an important market segment it provides affordable accommodation where residents are part of a supportive community. The research paper, *National overview of the retirement village sector* authored by Grant Thornton and the Retirement Living Council, shows that people who live in this type of housing reduce the burden on the hospital system through lower admissions and also delay their entry into aged care. The *Inquiry into the NSW Retirement Village Sector* (The Greiner Report) also showed the vast majority of residents are happy with their decision to move into seniors housing, and stated that they would move into a retirement village again if they had the choice.

It is important to ensure any policies related to the sector support a strong pipeline of this purpose-built seniors housing and do not impact the financial viability of the sector.

Fair Trading Model is not representative of industry

In the Discussion Paper the Department has commissioned economic modelling to establish a "Fair Trading model" ("the model") to estimate the revenue that would be transferred from retirement village operators to registered interest holders due to these policy proposals.

The data used in the model and the assumptions that are made with this data are flawed and not an accurate representation of how the industry operates. Research commissioned by the Property Council shows that the oversimplification and standardised assumptions of operations across the retirement village as used in the model industry is of particular concern. (See Appendix A).

Further, the model includes a fundamental misunderstanding of the capital flows in the sector and ignores a number of the other aspects of the arrangement by assuming that the ingoing contribution paid by a resident as a loan is held in cash by the operator and is readily accessible. This is not the case and oversimplifies the capital structure on which the industry is built. We would be very happy to provide more detail about this issue in particular.

To use this model as the basis to justify these proposals is unfair and poor policy practice considering that it will penalise operators who have offered registered interest older contracts that share capital gains and other benefits with the residents. Also these reforms will have a detrimental impact on the financial viability of the sector.

The Property Council recommends the NSW Government should not rely upon the Fair Trading Model to set policy given the deficiencies identified including the veracity of the assumptions, the distributional effects within industry, not just estimated average effects and potential interactions with other policies, market condition and cash flow impacts.

The key assumptions of particular concern in the model are:

- Property Prices
- Time to Sale
- Capital Growth Share
- Applicable Interest Rate
- Fee Inflation

The limitations of the model have led to significant inaccuracies and created heightened risks of unintended policy outcomes.

The impact of the proposed exit entitlement scheme and capping of recurrent fees cannot adequately be understood or assessed with the data analysis that has been used as the basis for the discussion paper. Furthermore, the use of incorrect data and the misleading analysis of some of the data in the model, as revealed through the economic study commissioned by the Property Council, creates an even more distorted picture in favour of the proposed policy changes.

History has shown that it is extraordinarily difficult to model the full economic impact of market intervention. Aside from the issues we have with the assumptions used in the model, it is clear the model does not factor changing market conditions, the increasing prevalence of competitive, and less regulated, alternatives to retirement villages, or the investment risk factors that will limit the flow of capital into an industry that has hitherto based investment decisions on the well established principles of contract law.

Currently no data exists to model these impacts. It is our view that the financial impact of using a flawed economic model as the basis for making a highly risky and unprecedented decision to potentially retrospectively rewrite contracts and impose a six and 12 month buyback timeframe on the industry, is likely to be devastating for operators and residents and has the potential to undermine ongoing investor confidence in seniors housing in NSW.

Registered vs Non-Registered Interest Holders

There are important differences between registered and non-registered interest holders under the *Retirement Villages Act 1999 (NSW)* (**the Act**). The Act creates significant distinctions between the rights of registered and non-registered interest holders, given the fact that registered interest holders participate in capital gain sharing and control over the sales process similar to home ownership.

The legislation has encouraged the growth of both options, and village operators have made significant investment decisions based on the option they have chosen to pursue.

Any policy setting must appropriately have regard to the rights which attach to the registered interest holder model and not distort the ability of operators to offer choice to residents of different contracts.

A registered interest holder will receive at least 50% of the capital gain in their village unit on re-sale, and can receive up to 100%, depending on arrangements with the village operator.

Many operators offer multiple contracts models so the potential resident can make choice to suit their financial situation and whether they want to share in capital growth.

Registered interest holders have made a decision when entering a village to take on a higher level of risk in return for potentially higher returns in the form of this capital gain. This is an important element for residents to be able to choose the product that suits them and their financial situation.

In NSW a resident can currently choose to enter into a contract which contains an exit entitlement provision at 6 months by choosing a non-registered interest holder contract.

If government implements the proposed reform which would implement a six-month requirement to pay exit entitlements, operators who offer choice are extremely likely to remove the option for capital gain sharing in favour of contract offer only for non-registered interest holders. This would be the case as there is no longer a reasonable trade-off in terms of risk and reward between the two contracts. Operators inevitably will remove the contract that offers a reward (a share in capital gain) but places the risk of resale almost entirely on their shoulders. Also, removing the capital gain offered to residents will be necessary to allow operators to sell the premises more quickly to meet the 6- and 12-month timeframes as issues such as sale price, selling agent and extent of works are removed as sources of potential delay.

This will limit consumer choice and flexibility, but also will mean residents will not be able to benefit from sharing any capital gains. This is a poor outcome for consumers.

Timeframes of Sale of Retirement Village Units

The Property Council supports a policy which provides residents with a safety net regarding the payment of their exit entitlements.

In the NSW Government response to the Greiner Report, the former Minister for Better Regulation and Innovation said that there would be extensive consultation on this potential reform including that a Regulatory Impact Statement to be circulated for comment.

Unfortunately, this consultation did not occur and the six month buy back policy was announced for metropolitan areas and 12 months for regional areas on the eve of the election.

As stated above, the Property Council is concerned about the veracity and accuracy of the Fair Trading Model, however, of particular concern is the data used to justify the six-month and 12-month timeframes. The data which shows time between vacancy and settlement appears to be from a Property Council submission in Victoria from 2016.

The data that is used in the model suggests it takes on average 6.6 months to sell a dwelling in metropolitan areas and 13.1 months in regional areas. Oversimplification into averages neglects the distributional effects within the industry, not just estimated average effects. This Victorian data also does not take into account that NSW has registered and non-registered interest holder models. Also it only accounts for stock that is sold not stock at that time that was on the market awaiting sale.

A mandatory six month exit entitlement date:

- Will result in reduced choice for residents as outlined above by withdrawing capital gain share contracts
- Does not recognise the distribution of actual sales periods, and based on the model may mean that operators would be paying exit entitlements to a significant portion of available stock
- Does not consider the possibility of multiple resident departures at the same time
- Does not consider the current economic and property cycle.

It should be noted that operators are reliant on the family of a deceased or someone who has moved to aged care to vacate the premises. Also, in some cases probate can be a lengthy process. It is unfair that operators would be financially impacted when they are unable to get the dwelling on the market to ensure a sale within a six-month period.

Our proposed policy platform provides for both a safety net at 18 months and contract choice for residents as well as addressing issues of financial hardship for residents who move to aged-care facilities.

One of the concerns has been raised is that operators prioritise sale of new stock over existing stock. The NSW legislation already addresses this issue by allowing a resident to appoint an agent of their own choice (as a registered interest holder). If Government feels that this protection is not sufficient then we are happy to explore other options to address this issue.

Significant Financial Impact on all Operators

Relying on the average stated in the model, an operator would currently have to buy back a significant proportion of dwellings. This would mean the operator will have to source capital or debt to be able to meet this requirement. Industry representatives advise that this will have material flow on affects in creating a lack of access to capital to investment in new stock or capital investment in current villages. This would impact both large and small operators.

The viability of smaller operators under this policy is also of concern. A high proportion of retirement village operators in NSW are single or small operators. It would be particularly difficult for them to access capital and as lenders will see them as being of higher risk and may not be able to access debt or capital at all, or at an inflated price. There is a real risk of insolvency events occurring for small operators under this policy. As addressed later in our submission, we consider that the proposed hardship provision is not a viable solution to this risk, as its trigger will eliminate any confidence in the village, thereby seriously discouraging potential residents from entering into a contract with an operator who has liquidity problems.

There are currently only five banks in Australia that lend to the sector. Correspondence from the Chairman of Bendigo Bank which outlines the bank's concerns about how a six-month buy-back will impact their lending practices to the industry in NSW has been sent directly to the Minister for Better Regulation and Innovation.

Industry estimates for the first-wave of "buybacks" in Queensland, over the period from 10 May to 30 September, operators will need to secure capital to fund approximately $150 million. In circumstances where the period is six months and given the larger amount of stock and higher value properties in NSW, we expect that the capital outlay will be substantial with some operators unable to secure the necessary capital.

There are a number of other policy factors currently impacting the seniors housing market and the time of sales that are outside the control of the retirement living industry. The sale of retirement village properties is intrinsically linked to the property market. If potential residents cannot sell their home, they typically withdraw from any contract to move into a village.

In 2018, Sydney property prices dropped by nearly ten percent, with a further seven percent forecast for 2019. This has been the biggest downturn in two decades. It is a concern that a policy will be implemented that will be impacted by the current economic conditions at the time. The six month timeframe recommendation which was made in a thriving property market has not taken this downturn in account which also effects prices in seniors housing and the time a dwelling is on the market as usually the incoming resident is selling their current home.

Also, the outcome of the Banking Royal Commission has seen a tightening-up of lending conditions, with banks taking a far more cautious approach to lending to operators to not only this sector but all sectors.

Decrease in Value of Retirement Villages and individual dwellings

There are also the impacts on residents to be considered with this policy. There is a real possibility that the proposed reforms will result in residents receiving a lower sale price than would otherwise be the case. Currently the interests of operators and departing residents align in trying to obtain the highest selling price where they share in the capital gain. This relationship will not be aligned where the exit entitlement must be paid at six months.

The valuation of a retirement village is a cash flow-based calculation being a by-product of revenue received from deferred fees based on contracts in place. By implementing a mandatory cap on exit entitlement policy this cash flow will be impacted.

In essence buying back units reduces the number of contracted units and cash flow from deferred fees. This will have a downward impact on value as these bought back units are effectively removed from the cash flow. On top of this and going forward, following the implementation of a mandatory scheme, an allowance will need to be made in valuations for these buybacks. Again this will be a cost to valuation and will have a downward impact on value.

The flow on effect from this is that lending margins will more than likely be impacted as most loans on operational villages are set based on value and debt serviceability from cash flow, both of which will potentially be reduced. To make matters worse, operators will more than likely need to borrow funds to buy back units. This debt will need to be serviced from deferred fee cash flow. This position may not be financially viable for some operators both large and small, potentially creating liquidity issues.

Also if a village goes into financial hardship or liquidation this also decreases values and places extra stress on the resident due to the economic uncertainty.

Sale of Retirement Village units are highly regulated compared to other sectors

It should be noted a seniors housing transaction has different legislative requirements under the Act, compared to a residential property sale.

The incoming resident in a retirement village transaction has a number of protections and rights. In addition to cooling off rights, under the Act residents are afforded a 90-day settling-in period, in which the resident is able to terminate the contract during this time-frame and they are only liable to pay minimal administration costs and fair market rent for the period that the former occupant occupied the residential premises under the contract.

Also, holding deposits are fully refundable within 14 days after a prospective resident notifies the operator that they do not want to complete the sale.

A dwelling can also be “sold” multiple times before it gets to settlement, as the industry allows for cancellations.

All of the factors outlined above, support our proposed policy, which offers an 18-month safety net, recognising the extensive rights that residents have on their entry into the village.

Currently under the Act a registered interest holder also has the right to set the price of their dwelling and appoint an external selling agent. Non-registered interest holders do not have these same entitlements.

The Property Council recommends amendments to the Act would need to occur to ensure that registered interest holders who wish to set their own sale price without the agreement of the operator or as determined by an independent valuation would be required to opt out from the mandatory exit entitlement period.

For the operator to be responsible for paying the exit entitlement at the mandated time, it has to have some control of the sale process to try and achieve a sale inside the time period if at all possible. The operator should not be at risk where a resident has set an unrealistic sales price, appointed an inexperienced agent or otherwise where the sale is outside the operator's control.

Strata and Freehold Units should not be included in a “buyback” scheme

Currently under the Act the definition of a registered interest holder is:

- A registered proprietor of land;
- The owner of a lot in a strata scheme;
- The proprietor of a lot in a community land theme 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)
- A resident with a residence contract in the form of a registered long-term lease which includes a provision that entitles them to at least 50 per cent of capital gain.

A mandatory exit entitlement policy should only apply to a residence contract in the form of a registered long-term lease which includes a provision that entitles them to at least 50 per cent capital gain.

All other forms of registered interest holder tenure should not be subject to the proposed reform as they are ownership interests. The tenure arrangements between freehold and leasehold or license arrangements is fundamentally different and therefore the financial structure and arrangements for operators are completely different in these scenarios. In these cases the operator does not hold the underlying ownership of the dwelling and is not holding any amount that is to be repaid to the resident. Rather, the resident is typically required to pay amounts (departure fees, etc) to the operator once their premises are sold.

There is no reasonable justification for requiring operators who do not hold an interest in the premises to be required to make these payments to the departing resident.

Depending on the structure of the strata scheme, there are some instances where the other residents as members of the owners corporation would be required to fund the mandated exit entitlements. This is an unfair burden on the remaining residents.

An exit entitlement model which is fair and viable for both operators and residents

The Property Council suggests that the Government's policy objectives can be best achieved via a slightly different approach to the currently proposed policy. This would mean:

1. For new residents, every operator must offer at least one contract option that includes:
   - for residents who live in a village in the Sydney metropolitan area, a requirement for the resident to be paid their exit entitlements at 6 months (from vacant possession)
   - for residents who live in a village in a regional area, a requirement for the resident to be paid their exit entitlements at 12 months (from vacant possession)

2. Introducing protections for residents moving to aged care by implementing an Aged Care Rule, similar to that which applies in South Australia. In South Australia, Operators are to advance up to 85% of a resident's estimated exit entitlements (until balance of exit entitlements are otherwise paid) to fund the daily accommodation payment only for Residents who do not have ready access to funds to make the payment or whose personal finances would be seriously affected by any such payment on entry into aged care. This should not apply to owner residents. Any DAP payments made to the resident would be deducted from the exit entitlement when it is paid.

3. A safety net mechanism which requires the resident to be paid their exit entitlement after 18 months (from vacant possession). This should not apply to owner residents.

4. A reduction in the period for which a registered interest holder resident is required to contribute to recurrent charges to a maximum period of six months after departure.

This policy addresses government's key concerns by:

- safeguarding the resident against financial hardship when they have to move to aged care which is the most common reason a resident will leave a village;

- Providing a safety net of 18-months for the family of deceased residents or for residents that wish to move out;

- Providing new residents with an option to receive a six month commitment for the payment of their exit entitlement;

- Ensuring continued supply of age appropriate housing an its associated benefits for the people of NSW.

Queensland and South Australia determined that an appropriate period was 18 months. We note that South Australia originally proposed a 12 month period and moved to 18 months following feedback. We submit that the government should consider the assessment and experience of other states in framing the policy and adopt the 18 month timeframe to harmonise the position across the three states

Capping of recurrent fees at 42 days.

This proposed reform would bring registered interest holders in line with non-registered interest holder under the Act. The rationale for this policy appears to be that deceased residents should not pay fees, despite the fact that if the resident was living in regular housing, their estate would be required to do so. For example, deceased estatess continue to pay rates and strata fees until a residential apartment is sold, as in these cases they also reap the benefit of the capital gain in the dwelling (as do registered interest holders in retirement villages).

Currently, operators and residents often share in the responsibility for current charges costs after departure, as many operators share the capital gain with their residents. The proposed reform would put retirement village residents in a better position than other retirees who are living in other property types. It is unclear why retirement village residents should receive this special benefit.

Currently operators under the Act are financially liable for budget deficits in the provision of general services in the village. This legislation places the financial liability on the operator if the village operating budget is greater than what was approved. It is important to note that the operator cannot make any profit on the operation of the general services which are funded by recurrent charges. The budget is fixed each year and departures of resident does not reduce the costs of operating the village (for example insurance, rates, maintenance). The proposed reform means that operators will be bearing an additional cost, while the resident still receives the benefit of participating in the capital gain.

We appreciate however, that the government wants to give certainty to residents and suggest the following position, which balances the interests of the operator and the fact that the resident benefits from capital gain sharing.

The Property Council recommends that a resident will be required to continue to pay recurrent charges after 42 days and up until 6 months in the proportion they share in the capital gain.

This is a concession based on the current laws which allow for this structure of payment to continue until the dwelling is sold.

As noted above it is the operator which is reliant on the family of the deceased or on a resident who has moved to aged care vacate the premises. Also, in some cases probate can be a lengthy process. It is unfair that operators would be financially impacted when they are unable to get the dwelling on the market. At a minimum, the 42 day cap should only commence on the date the dwelling is able to be listed for sale.

Property Council's response to questions in the Exit entitlements and recurrent charges cap - discussion paper.

Please note that the Property Council by answering these questions does not mean it is giving endorsement to the six-month exit entitlement policy or 42 day cap on recurrent charges.

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

The discussion paper states that they Sydney Metropolitan Area is defined in the *Tow Truck Industry Act 1998* and the *Regional Development Act 2014.*

The Local Councils defined in these regulations include:

Bayside, City of Blacktown, City of Blue Mountains, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Wollondilly, Woollahra.

The Property Council suggests that the Central Coast should not be included as a metropolitan area. The impacts of a six month buyback would have significant financial impacts in an area where there is a large amount of stock but with a slower selling market then Sydney.

An operator on the Central Coast estimates based on the estimates of the last two years sales that they would have needed to spend approximately $1million per 100 independent living units to fund buybacks if they were defined as a metropolitan area.

The Property Council also recommends the City of Blue Mountains and Wollondilly be excluded from the definition of metropolitan as the outer metropolitan regions do not have the same market conditions.

2. Are the proposals for appointing a valuer, to determine the value of the property necessary and appropriate?

The proposal for appointing a valuer is appropriate in the cases where an operator and a resident cannot agree on a sales price. However, the valuer would have to have the necessary skills and experience to value a retirement village dwelling as it is a specialised area and it is different from other residential sales. An appropriate minimum number of years' experience in valuing retirement village units should be specified as a minimum qualification of the valuer to be appointed by the Australian Property Institute.

Also, provisions under the Act will need to be changed to ensure that registered interest holders lose the right to set the sales price or to appoint their own selling agent if they wanted to be entitled to a cap on payment of exit entitlements.

3. Should the valuation be done by someone independent of both parties?

The valuer should be independent of both parties and to assist in maintaining that independence the payment of the valuation cost should be shared equally. As outlined above valuations should be done by an independent valuer who has experience and knowledge of valuing retirement village assets.

4. Do the provisions, adequately manage any potential or actual conflicts of interest?

The Property Council supports provisions that ensure that valuers are independent and are disqualified if they have a conflict.

5. What information should the operator be required to provide to the resident when the exit entitlement has been determined?

The operator should show the calculations on how the exit entitlement was determined.

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?

The resident should be able to opt out of the exit entitlement provision upon election in writing. If a resident wishes to set their own sale price or appoint their own sales agent they should have no entitlement to a cap on exit entitlements.

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

If the resident wants to opt out it must be done in a timely manner so it does not provide the operator with uncertainty.

It is recommended that the resident or their family or designated legal representative has the right to opt out up until 21 days after they give notice to vacate.

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?

The operator should allow a resident to opt back into the exit entitlement. However, the cap period should not commence until the opt election in writing occurs and once the appropriate trigger for the commencement of the period occurs (see our response to item 12).

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?

The Property Council agrees that it is necessary to have a hardship provision.

However, operators will be reluctant to apply to the tribunal under these provisions due to the reputational damage that will occur when an operator reveals they are having difficulties in paying the exit entitlements. Applying to the Tribunal under these provisions could also make capital or debt harder to obtain, as it would call into question the financial viability of the business, as well as make potential residents cautious about buying into a village.

Factors that should be considered by the Tribunal include overall sales in the village, competing villages in their locations, documentation on how they have been marketing or enabling the sale.

10. Are there any additional circumstances the Tribunal should be able to take into account when considering a hardship application?

The hardship provision should be applicable to both registered and non-registered interest holder operators.

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?

The Property Council recommends that the trigger point to commence the cap on exit entitlements period ought to be when the dwelling is ready to be listed for sale.

This is once all of the following have occurred:

- vacant possession of the premises has been provided (including clearing the premises of belongings and furniture, returning the keys, etc.)
- the sale price is agreed or determined
- works to be carried out to the unit are agreed and completed

It should not be when the dwelling is simply vacated, as in the majority of cases when selling a retirement village unit, the sale price needs to be agreed and reinstatement and/or refurbishment works need to occur. The extent of these works will depend on how long the resident lived in the dwelling but on average it will take three months to get the dwelling ready for sale after vacant possession occurs.

It is suggested that a framework is drafted to include a maximum expected timeframe for works to be agreed to and completed to provide clarity for the resident and the operators so that delay to listing cannot be manipulated by either party.

The Property Council submits that any period should not commence until the resident provides vacant possession. It is imperative that in the context of a mandatory cap on payment of exit entitlements, operators be afforded the opportunity to market for sale an unoccupied unit. It is operators experience that the sale of a unit is significantly impeded in circumstances where a resident continues to reside in the unit and a potential resident is unable to see what the premises looks like when it is refurbished.

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?

As outlined above the Property Council recommends that the Aged Care Rule as implemented in South Australia be adopted in NSW, but **only** if an 18 month buyback period is legislated. The Aged Care Rule ensures that people who enter aged care facilities do not undergo financial hardship. This should not apply to owner residents.

However, the Property Council would not support an Aged Care Rule and a six month exit entitlement policy being introduced concurrently as it would be financially and administratively onerous on operators.

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

16. If not, please provide information to help work out the true costs and benefits.

It is difficult to answer this question accurately without seeing the economic modelling and data that is used to produce the model.

Earlier in this submission we outlined the significant impacts the policy of a six month buyback would have on investment in the retirement industry in NSW and also our concerns about its deficiencies and the oversimplification of the model.

This should occur prior to finalising the cap on exit entitlement to ensure irreparable damage is not done to seniors housing in NSW.

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

The Property Council recommends that the 'trigger commences' when the dwelling is ready for listing for sale. The operator should not be financially disadvantaged by actions by residents or families that delay in getting the dwelling listed for sale.

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.

Yes, both reforms should be grandfathered and only apply to new residents.

The Property Council strongly opposes making the six month entitlement proposal retrospective as it would have significant ramifications for the viability of the retirement industry. It is highly unlikely that banks would be willing to lend to the sector in NSW due to the increased risks and decrease in values. Smaller operators would be significantly impacted by this with many advising that they would have difficulty continuing to operate.

If a six month exit entitlement is implemented, it is critical to industry that these provisions are NOT retrospective. Not only is it unfair to operators to retroactively rewrite contracts that were modelled on the business and legislative conditions of that time.

Also, if applied retrospectively many smaller operators would have little ability to obtain the amount of capital that may be required when the buyback period commenced.

If this policy is applied retrospectively it is likely to be have irreversible impacts on operators and residents as well as undermine ongoing investor confidence in the seniors housing sector.

The discussion paper suggests that a village has the ability to absorb this level of funds transfer via “achieving efficiency gains” or “adjusting the revenue model to derive more revenue from current residents”. There are very little efficiency gains in the current models of retirement villages and certainly not enough to absorb multiple buybacks. Obviously over time operators would need to make adjustments to their contracts, however it is not good policy to have new residents unable to access the same types of contracts or models or have the same level of service to which current residents have had access..

Also it is unfair that current residents would be “cross subsidising” other residents in their village who decided to enter into a capital share contract when they themselves did not.

The NSW Government’s discussion paper states that if the policy proposals are to be applied retrospectively in the average yearly profits would fall from between 12 and 17 percent. It also states that if the buyback is to be grandfathered the average reduction in proactive margin is five percent, and 14 percent. Industry suggests that these figures are extremely conservative and may not be accurate.

The discussion paper is also silent on estimating the amount of capital that would be required to be paid out to residents if the policy reforms are made retrospective. The “Fair Trading Model” makes an assumption that the funds the resident paid to enter the village is placed in a bank account like an interest free loan and easily accessible. This is not the case and is usually used to pay down debt.

As stated previously, industry estimates for the first-wave of buybacks in Queensland, over the period from 10th of May to 30th of September, operators will need to secure capital to fund approximately $150 million. In circumstances where the period is six months and given the larger number of dwellings and higher value properties in NSW, it is expected that the capital outlay will be substantial which will leave operators, particularly smaller operators, unable to secure the necessary capital.

Also, as the current market conditions are impacting the sales in the sector, a retrospective application would also see an increase in dwellings to be brought back due the downturn in economic activity.

The Property Council recommends that any commencement date is at least 12 months after legislative amendments have been given royal assent. This will allow operators to adjust their upcoming yearly budgets to accommodate for the proposed capping of recurrent fees.

The commencement for exit entitlements should commence at least 12 months after legislative amendments have occurred as it is critical to allow enough time for operators to adjust contracts and models to encompass these changes as well as organise required finance or the sale of the village if they will be unable to cover the exit entitlement liabilities.

In Summary:

The Property Council strongly opposes the policy reforms as currently proposed due to the major financial impacts they will have on operators as well as residents and recommends that the NSW Government implements the policy solution outlined in this submission.

The Property Council recommends a policy which achieves government's goals and ensures the adverse impacts of the proposed reforms:

1. For new residents, every operator must offer at least one contract option that includes:
   - for residents who live in a village in the Sydney metropolitan area, a requirement for the resident to be paid their exit entitlements at 6 months (from vacant possession)
   - for residents who live in a village in a regional area, a requirement for the resident to be paid their exit entitlements at 12 months (from vacant possession)

2. Introducing protections for residents moving to aged care by implementing an Aged Care Rule, similar to that which applies in South Australia. In South Australia, Operators are to advance up to 85% of a resident's estimated exit entitlements (until balance of exit entitlements are otherwise paid) to fund the daily accommodation payment only for Residents who do not have ready access to funds to make the payment or whose personal finances would be seriously affected by any such payment on entry into aged care. This should not apply to owner residents. Any DAP payments made to the resident would be deducted from the exit entitlement when it is paid.

3. A safety net mechanism which requires the resident to be paid their exit entitlement after 18 months (from vacant possession). This should not apply to owner residents.

4. A reduction in the period for which a registered interest holder resident is required to contribute to recurrent charges to a maximum period of 6 months after departure.

Economic modelling commissioned by the Property Council shows the Fair Trading Model has deficiencies and not representative of the retirement living industry.

The Property Council recommends the NSW Government should not rely upon the Fair Trading Model to set policy given the deficiencies identified including the veracity of the assumptions, the distributional effects within industry, not just estimated average effects and potential interactions with other policies, market condition and cash flow impacts.

Thank you again for giving the Property Council the opportunity to comment on this important policy reform which will have significant impacts on the retirement living industry in NSW.

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