

APPENDIX D – FEEDBACK TO QUESTIONS FOR COMMENT

by

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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?

Many, if not most retirees choose to live along the eastern seaboard, many relocating from Sydney or other congested areas to enjoy a quieter and less costly lifestyle. For example, the mid north coast has a large percentage of retirees and would likely equate to a similar time between vacancy and settlement to that of the described area. In summary the area is not appropriate and needs to be expanded to include regions that attract and maintain a high concentration of retirees.

Exit entitlements - Calculating fair property values

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

In most cases one would expect that an operator and resident would be able to reach a mutual agreement. However, we support the option to appoint an independent, professional valuer for occasions when such an agreement cannot be reached.

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

We would expect that an operator and resident would be able to reach a mutual agreement. However, should this not occur, engaging an independent, professional valuer would be most appropriate.

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?

In most cases one would expect that an operator and resident to arrive at a mutual agreement. However, the options to appoint an independent, professional valuer are most appropriate. Potentially, the risk of a conflict of interest will more likely arise if the reforms compel the Operator to pay out the exit entitlement within a given timeframe for future residents against no such commitment coupled to existing residents.

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

The recent amendment (section 69A of the Act) provides a resident the opportunity to request a contract information meeting with the operator at least once a year with their Power of Attorney or legal advisor. This process will more likely to result in a mutually acceptable outcome and less likely to require the services of a valuer.

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?**

If existing contracts are “grandfathered” the resident will be unable to opt in or out. A newer resident however should only be able to opt in or out if both parties are in mutual agreement about a minimum sale price and the resident believes they can gain a better outcome.

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

Again, if existing contracts are “grandfathered” the resident will be unable to opt in or out, but a newer resident should be able to exercise these rights at the commencement of a sale. They should also be allowed to opt out later subject to demonstrating that the operator is giving preference to the sale of other properties.

- 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?**

Again, if existing contracts are “grandfathered” the resident will be unable to opt in or out, but if the resident requires nursing home entry or have since deceased, then provision should be made for residents or executors of estates to opt back in.

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?**

The Tribunal should examine if the operator has promoted the sale sufficiently by:-

- a) compare recent sales to gauge the current performance against the norm,*
- b) determine if all documents were released to a valuer at the appropriate time,*
- c) establish if barriers have slowed the sale with the owner, attorney or executor to consider if a mutually acceptable condition of the premises was accepted.*

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

It is not in the interest of the operator or former resident to market a sale at a lower than market value, but it could be an option to consider. As another option, the parties may agree to a part payment subject to the former resident or family requirements, such as funding a transition to a nursing home. In such a case, the operator should pay the outstanding balance at a predetermined date inclusive of an interest of the bank bill rate plus 3%.

The trigger points

- 11. Are there any other factors that could affect the setting of a ‘trigger point’?**

The trigger point would serve best if the clock only began after the last resident or their attorney or executor has listed the premises for sale; and

- the last residing resident has deceased; or*
- has been assessed for an urgent transition into an aged care facility; or*
- has been assessed to be of a compassionate nature that prevents the resident from continuing to enjoy a desirable lifestyle in the village.*

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 triggers listed to the previous question are the only suitable triggers.

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?**

Yes, current provisions, as listed in Appendix A, would assist residents in their transition into an age care facility. However, the considerations must also be assessed on a compassionate basis such as emotional need to move closer to family for support.

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

All villages would benefit from the standardisation of contracts, but this will not be the case if existing contracts are “grandfathered” as if this is the case the uncertainty will increase as will the division within the village community.

Potential impacts of the reform

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

The Discussion Paper has adequately addressed the costs and benefits of those who will enjoy the proposed reforms whereas, “Grandfathering” existing contracts will leave existing residents behind.

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

It is too early to determine the accuracy of true costs and benefits; this can only be assessed when the reforms are implemented and by learning who will be included.

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?**

The trigger should be the same as was suggested in question 11, in which for each case it was when the resident permanently vacates the premises. The cost of the 42-day cap would represent a shortfall for either the operator or resident in which the cost would eventually fall back to the resident. A fairer requirement for operators as well as registered and non-registered residents would be to bring the recurrent charge cap in line with exit entitlement buy-back provision of 6 or 12-month cap.

3. Commencement options for both reforms

18. **When is it appropriate to commence the provisions?**

The provisions should only commence when the Minister has taken on board the concerns of all parties and aligns all concerns towards a balanced outcome.

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

Neither reform should be 'grandfathered' as it will divide each village into two classes, those left behind and future residents with all the benefits of these provisions. Grandfathering existing contracts will leave the sale of these premises as a secondary choice for the operator who will have a monetary incentive to prioritise sales that are coupled to the new exit entitlements.

As existing residents, we accept the departure fee is the operators profit but reject the view that our ingoing contribution was less than what was available for an equivalent property outside the village. In truth, operators will charge the maximum entry fee that the market will tolerate and make a predetermined profit on departure.

At the time of exit from our contract, we would have equally contributed to the total operating cost of the village in return for a percentage share of capital gain or loss after the operator takes 35% from the new ingoing.

We dispute the grandfathering of existing contracts and find it horrifying that the paper aims to lessen the adjustment period for operators on page 34, suggesting this will fairer for all parties. Later in the same section of the paper it recognises the risk that existing remaining residents could be subject to higher charges than currently incurred. If grandfathering is introduced, the NSW Government will leave a legacy of division for existing residents, or their families.

There was no suggestion that the new provisions would only apply to new residents during its election promise, grandfathering existing contracts can only cause division and introduce a new level of uncertainty for those left behind.