

## Forresters Beach Retirement Village Residents Meeting

14 August 2019

Retirement village exit entitlements and recurring charges cap consultation  
Regulatory Policy, Better Regulation Division  
NSW Department of Customer Service  
2-24 Rawson Place  
HAYMARKET NSW 2000

Email:

### **COMMENT ON DISCUSSION PAPER ON RETIREMENT VILLAGE EXIT ENTITLEMENTS AND RECURRING CHARGES CAP**

#### **Overview**

Both of us submitting these comments are residents at the Forresters Beach Retirement Village who have lived in the Village for over 3 years and both of us are on the Village Residents Committee. Both of us researched the policies before entering the Village and have found that the local management cares for the residents. However, we have noticed that the operator who manages the Village do not make decisions to keep the residents happy but to maximise the profits from the operation of the Village.

Fortunately, we have seen the NSW Government plans for retirement villages which aimed at putting the residents first, commencing with the report by Kathryn Greiner on 15 December 2017. We have followed the NSW response to the report and attended the forums chaired by Kathryn Greiner. We have also witnessed the election commitment made by the NSW Government on the 14 February to amend the Act to address the exit charges and recurring charges by placing a 42 day limit on the time villages can charge for general services after someone leaves and to address the time for exit entitlements leaving a retirement villages by 6 months for the Sydney Metropolitan Area and 12 months for regional areas. We also note that this election commitment applied to all residents of villages and did not discard any of them, We have also followed the steps taken with the issue of this paper on the retirement village exit entitlements and recurring charges cap and are submitting this response on behalf of our Village.

The 42 day limit on the charge for general services and the time limit of 6 months for a person leaving the village are excellent provisions for the Act and are fully supported by the Village of Forresters Beach. However, the issue which is abhorrent to the Village is the use of grandfather provisions which means that the conditions will only apply to residents after the Act is amended and will not apply in any way to the existing residents of the Villages. This means that the current residents will not have any financial advantage of the new Act and will for many years be at the mercy of the operators who will sell their residences at the time and place decided by the Operator. This will impact on over 66,000 residents. We do not accept this and will continue to force the NSW Government to ensure the new regulations apply to the

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residences in the current villages by whatever means possible. In addition to this grandfathering the Act should be amended so that the financial aspects can be consigned to the value of the resident forced to take aged care accommodation.

Grandfathering will mean that the reform will not be of any benefit to the current 66,00 retirement village residents in NSW. This will be a wasted opportunity to correct two of the many inadequacies of the current legislation and raise the current dissatisfaction of the current condition.

### **We specify our remarks as per your document as follows.**

#### 1. Registered interest holders and non-registered interest holders.

We respond Registered Interest Holders within the Metropolitan Region – Forresters Beach, Central Coast, 2260. (Table 2)

#### 2. Questions for Comment

##### a. Page 16/1

- i. Proposals are required as operators have a record of not being honest nor fair in their evaluations.
- ii. The valuation should be done by an independent party preferably from a list of valuers provided by the NSW Department of Fair trading.
- iii. With independent registered valuers, the provision would be adequate.
- iv. The operator provides documents that include the report from the independent valuer with discussion of the process and reasons for the valuation, e.g. location, market condition and possibly resale statistics in the area.

##### b. Page 16/2

- i. Residents should be able to notify the operator of their intent to sell on their own terms (privately or by external agent).
- ii. The resident should notify the operators of this option at the time notice of exit is provided to the operator, i.e. they are leaving the village.
- iii. Residents may change their minds and opt back into the provisions after notifying they are opting out. At this time the timing of notification would reset as the start of the exit procedure.

##### c. Undue Hardships for Operators

- i. Operators have 6 months in which to sell or make funds available for the exiting parties. They should have sufficient funds available knowing the statistics of the resident churn for vacating due to death or need for assisted care. Failure to pay could be indication that the village is under stress and may be in financial difficulty.
- ii. Operators must be regulated to not interfere nor delay the selling process by a third party and in fact be required to cooperate by providing required documentation regarding the village and the resident to the selling operator as if they were the selling agent.

##### d. Factor setting the trigger point for 6 and 12 months periods

- i. If a selling agent is engaged, the sale will be an “as is sale” and there will no fees other than the standard exit fee. However, there is no trigger to set the 6 or 12 month purchase by the operator in effect.

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- ii. If the operator is the selling agent, the 6 or 12 month period should start at the time when the resident vacates. The operator has the means and ability to make the resident saleable and should do so as a matter of urgency. This benefits both the resident and operator. No further delay should be considered.
- e. Other timing consideration for the transfer of payments
  - i. When a resident has a need and an agreement to move into aged care or equivalent where a deposit and recurring charge is involved, an agreement with the current operator of the retirement village, the resident and the assisted care operator can be executed whereby the exit monies for the departure can be agreed by consignment as surety against the sale value of the exited resident to meet the deposit for the resident to enter the assisted care institution.

### 3. Potential Impacts of the Reform

#### a. Operator Costs and Grandfathering

- i. The impact of the reform will be most affected whether it is grandfathered or not. If it is grandfathered, the reform will provide no improvement or benefit to the already over charged residents who have no control over the management costs or fee in the current situation. Operators can and do control the costs to meet their returns on the investment as they are in the business of making profits, not caring or supporting senior citizens. They will maintain that they care, but if they do it is after profits.
- ii. The impact on operator costs is possibly the return on investment (ROI). If the schedules shown on the report are correct, they are still above the current ROI in market conditions. Operators should be able to bear a non-grandfathered enactment of the changes according to Table 3 on page 23. The impact reduces over time as the resident churn moves forward.
- iii. Operators can and do set recurring fees for new entrants to a village. They certainly will adjust the fees to meet any cost impact or costs of the reform.
- iv. Social Impact Costs is not an acceptable reason to grandfather this reform. People staying in their homes are more impacted by the Federal Government programs to keep seniors in their own homes. This is a surfy raised by operators and should be discarded.
- v. The market is favourable to operators when selling leases to new residents. Capital gain is significant and can cover and cist impact of a non-grandfathered reform.
- vi. Operators can take advantage of tax credits and depreciation to improve profits that are not shared nor achievable by residents even when they fund additional capital items.

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- vii. We believe that the costs demonstrated are too much in favour of the operator, especially in the case of grandfathering being shown as over favouring the operator.
- b. Based on the above consideration, **grandfathering should not be considered nor applied to the reform**. Current residents are paying more than enough to supply the operator with an excellent ROI.
  - i. Benefits to both current residents and operators are favourable to a non-grandfathered reform. It would be enhanced further by providing a very honest and favourable contract that sees both parties in a good position in the market and amongst the community.
  - ii. Figures provided appear to be reasonable, however as residents become more expensive, the impact to the operators is more in their favour.

### **4. 42-day Cap – Recurring Payment**

- a. This an excellent reform. The trigger should be the vacating of the premises permanently by the resident. This reform should not be grandfathered. Operators are protected by the CPI and with good management can manage the costs effectively. The recurring costs are not meant to be profit generating but maintaining the residence to the original and marketing standard.
- b. This has been abused by the operators to ensure that refurbishing costs, especially normal wear and tear, are completely recovered. Residences that have been occupied for more than 5 years will require upgrading for releasing mainly because operators will not maintain the residence. In our village, a departing resident was required to pay \$30,000+ for refurbishment after 2 years residency. These costs can be reflected in the operator's re-selling price.

### **5. EXIT Fees (Methodology Needs to be addressed urgently)**

- a. Exit fees (EF) are not consistent across the industry. When the capital gain sharing is applied, unscrupulous operators double dip and as in the village we live in. The following are examples of the calculations:

### **6. Implementation Considerations**

- a. Current contracts are not sufficiently explained by the operators nor are they easily understood by lessees and the legal community. It is not until they are executed do the lessees begin to see the inequality of the contract which is in favour of the operator. By not grandfathering many of the reforms will correct the contract problems.
  - i. buy = 500, sell=600, capital gain = 100, EF = 32%, CG Share = 50%
  - ii. EF Currently used  
 $EF = (600 \times .32) + (100 \times .5) = \$240,000$

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Resident refund = \$360,000 = 60% of sale less costs  
operator double dips on exit fee calculation by taking EF twice

- iii. Equitable EF calculation that should be used  
 $EF = (500 \times .32) + (100 \times .5) = \$220,000$   
Resident refund = \$380,000 = 63.3% of sale less costs
  - iv. New contracts do not share the CG
- b. The new provisions should be commenced at the earliest possible time by the NSW Government. The contract conditions have too long been an issue that has created a bad reputation for operators. Operators who stay in the business with reforms will demonstrate a care for the aging that is necessary for a long term service industry. Government taxation and other financial considerations for the operators could be considered.
- c. Both reforms should not be grandfathered. The reasons are:
- i. A catalyst for a fuller reform is needed to correct the current conditions of the industry. The current legislation does not reflect the needs of the retirement living community. It favours a property investment industry that is unscrupulously profit oriented including quality of buildings provided.
  - ii. The multitude of contracts for leasing have been favoured toward the operator who are not in the people care business but in the ROI for profit only.
  - iii. Most operators are not by establishment in the aged care business and this is evident by their behaviour and demonstrate this by taking advantage of the bad contracts that not aged care oriented.
  - iv. Non-grandfathering could initiate a rewrite of the legislation that is so badly needed.
  - v. Non-grandfathering could initiate a standard contract as in the case of leasing rental premises for normal dwelling (Landlord Tenant Act).

Yours sincerely,

D Roser, Secretary  
D Savage, Treasurer