SUBMISSION

Queensland

Independent Review of timeframes for exit payments in Queensland retirement villages – Queensland Government response

Introduction

The Property Council supports sensible reform of retirement village legislation and is committed to working with its members to ensure that the reputation of retirement living is strengthened through the adoption and implementation of high standards.

As part of this commitment, the Property Council, through its Retirement Living Council, adopted an 8-Point Plan for retirement living, which has led to a much stronger industry focussed on transparency, consumer education, staff training and operator performance. Key outcomes of the 8-Point Plan include:

1. The Retirement Living Code of Conduct, which has now been voluntarily adopted across almost 46 per cent of all retirement village dwellings in the country.

2. A new industry accreditation scheme, which provides an independently audited quality assurance framework for retirement villages.

3. The development of an industry capability framework that will ensure village managers and sales professionals are well trained and able to meet the high standards expected by operators and residents.

Another outcome of the 8-Point Plan, which has been incorporated into the Retirement Living Code of Conduct, is a requirement for Code complying operators to encourage all potential residents to seek independent legal and financial advice before signing a contract. In accordance with the Code, operators are also required to encourage potential residents to share information and legal advice with family members and trusted advisers.

These actions demonstrate the high commitment Property Council retirement living members have to their residents and the maturity of a sector that understands its customers and the importance of its social licence.

More than just a financial arrangement

Retirement villages are more than just a housing option for older people.

The World Health Organisation has identified the value of housing that allows older people to age comfortably and safely within their own community, but notes that dedicated and affordable seniors' housing is in short supply[1]. In an effort to direct more focus on this issue, the WHO has developed a global strategy and action plan on ageing and health with a vision

1 *Global Age-friendly Cities: A Guide*, World Health Organisation, 2007

of a world in which everyone can live a long and healthy life[2]. To achieve this vision, the WHO has listed the need to develop affordable and accessible age-friendly environments among its five strategic objectives.

The Queensland Government in the *Queensland Housing Strategy 2017-2027* also highlights the need to improve housing choice for older Queenslander's and commits to:

"Exploring options for promoting liveable, age-friendly housing design standards, and pursuing innovative partnerships to improve the variety, diversity and supply of housing to meet older people's needs."[3].

This commitment is backed by the Queensland Housing Strategy 2017-2020 Action Plan, which identifies "…pursuing innovative partnerships to improve the variety, diversity and supply of housing to meet older people's needs as a key service delivery reform[4].

The Property Council is highly concerned that the recommendations within the independent report will directly undermine the policy ambitions of the Queensland Government and significantly impact the affordability and accessibility of purpose-built age-friendly communities in the State.

By further undermining the financial viability of retirement villages it is highly likely that private investors, including many not-for-profit operators, will pursue alternative investments. This outcome leads to a direct conflict between the Government's aspiration to increase the variety, diversity and supply of housing to meet older people's needs and its desire to use the *Retirement Villages Act* as a means of forcibly rewriting lawful commercial contracts between residents and operators.

Affordable age-friendly housing for vulnerable Australians

The retirement living sector is the only non-government funded source of affordable age-friendly independent living communities in Australia. This unique status means they play an essential role in providing safe and secure homes for vulnerable Australians, and in particular single, older women.

Over the past decade there has been a 31 percent increase in women who are homeless, and it is the fastest growing group of homeless people in Australia.

2 *Global strategy and action plan on ageing and health*, World Health Organisation, 2017
3 Queensland Housing Strategy 2017-2020 Action Plan, Queensland Government, p6
4 Queensland Housing Strategy 2017-2020 Action Plan, Queensland Government, p6

Often these women are in housing limbo because they have too much money to qualify for social housing and too little money to buy a house. Their age is often a big barrier to securing a housing loan, and the pressure of paying rent quickly eats into modest retirement savings.

These women are known as the 'missing middle'.

The Queensland Government through its *Queensland Housing Strategy 2017-202 Action Plan* has made a commitment "supporting vulnerable women, including older women at risk of homelessness, to access safe and secure housing.[5]"

With nearly two in three Australian retirement village residents being female, and an estimated 80% being single and living alone, the retirement village sector is already an essential part of the solution to this issue.

The retirement village sector will not be able to provide the same levels of support if legislative changes make retirement living less affordable and less accessible. Furthermore, its ability to continue supporting vulnerable older women will be further compromised by the financial challenges that will be imposed on operators because of the proposed changes.

Given the geographic, economic and social diversity of retirement communities, there are presently broad range of affordable housing and tenure options available for prospective residents.

The 2021 PwC/Property Council Retirement Census shows that a two-bedroom independent living unit is 59% of the median house price in the same postcode. This is an even more dramatic figure in the rest of Queensland, with a two-bedroom independent living unit averaging 56% of the median house price.

This relative affordability is largely because retirement village operators are able to structure financial arrangements to accommodate the specific needs of individual residents.

By adjusting the ingoing contribution and deferred management fee (DMF) arrangements, unique to this type of housing, operators can lower the upfront capital cost of entering a retirement village. Furthermore, given that stamp duty (transfer duty) is not payable on these property types, residents can secure most home ownership benefits at a fraction of the cost of general residential properties.

[5] Queensland Housing Strategy 2017-2020 Action Plan, Queensland Government, p7

An uncertain future for Retirement Villages

Despite the important role retirement villages play in the provision of age-friendly and affordable communities, the operators of these communities receive no direct government funding and are generally required to make long-term investment decisions, which are highly susceptible to the risk of changing government regulation and tax arrangements.

While demand for downsizing options continues to grow in Queensland, investment uncertainty, continuous regulatory change and low financial returns have collectively contributed to very limited growth in the number of retirement villages across the state.

The 2021 PwC/Property Council Retirement Census identifies that the future supply pipeline in New South Wales and Victoria dramatically outstrips retirement village projects planned for Queensland. This data shows Queensland has 1,444 Independent Living Units planned until the 2024 financial year. New South Wales has 5,212 and Victoria 3,163.

A lack of supply and increasing costs imposed by government regulation are forcing older Queenslanders to increasingly downsize into homes that are not purpose-built for older residents or located in well-designed age-friendly environments. Consequently, the very clear economic and social benefits of retirement villages cannot be realised by many individuals or the community at large.

Social and economic benefits of retirement villages

Research commissioned by the Property Council uses official government data to demonstrate that retirement villages are directly responsible for saving Australian governments at least $2.16 billion each year through delayed entry of residents to aged care and through residents requiring fewer hospital and GP visits and shorter hospital stays. This research further specifically identifies Australian Institute of Health and Welfare data, which has been backed by independent analysis, that shows retirement village residents enter aged care on average five years later than those going from a family home.[6]

These significant health outcomes are achieved because retirement villages are designed and operated to mitigate the two main factors that lead to hospitalisation: falls and depression. It is therefore not unreasonable to suggest that older Queenslanders who do not live in a purpose-built, specially designed, aged-friendly community, are more susceptible to hospitalisation and the potential loss of up to five years of independent living.

Furthermore, continued investment into retirement living housing supports many construction jobs in metropolitan and regional areas and provides economic benefit through ongoing employment to support residents and the procurement of local goods and services.

Specific comments on the Queensland's Government's response to the independent report on exit payments

The Property Council has worked closely with the Government and the independent panel to relay the industry's significant concerns with the financial burden that the mandatory 18-month buyback timeframe places on retirement village operators and residents.

It is clear from the absence of any financial modelling, or economic impact assessment, that these concerns have not been properly considered by the independent panel.

Through qualitative, rather than quantitative, assessment, the recommendations of the independent review panel fail to evaluate the financial cost to residents of ongoing legislative change, the cash flow impact on operators, or the cost to the Queensland economy of not being able to realise the key social, economic and health benefits outlined above.

As such, it is disappointing that the independent review has a clear focus on prioritising consumer protection, with no proper consideration of the financial cost of changes to residents, and to operators who are battling to remain innovative and competitive.

On this point it is noted that the Western Australian Government commissioned Western Australian Treasury Corporation (WATC) to undertake an economic impact assessment of potential changes to exit entitlement arrangements.

While this assessment is awaiting final approval for public release, industry understands that the estimated cost of reducing exit entitlement timeframes to 12 months in that state, exceeds $150 million, with medium operators hardest hit.

Meanwhile, an independent review of the South Australian retirement village legislation has recommended that changes to exit entitlements, as urged by residents, only be considered when sufficient data is available to make a considered decision.

The approach from the Queensland Government does not appear to have relied on data, or an economic assessment, even though the financial impact on residents and operators will be more significant, due to property values, industry scale and regionalisation, in Queensland.

Despite this, the Property Council recognises that the Government has accepted the four recommendations regarding the payment of exit entitlements and is committed to working with Government to minimise the adverse financial impacts of their implementation.

Impact of the new timeframes for exit payments

The new 12-month time frame for the payment of exit entitlements and mandatory purchase of units in retirement villages is the second retrospective change in five years to alter lawful contracts made between operators and residents.

For investors and operators, it is difficult to justify continuing to invest in an environment where Government unilaterally alters the contractual arrangements lawfully agreed to by an operator and resident.

While there are some welcome changes that have emerged from the review - including changing the commencement of the buyback timeframe to 20 days after vacant possession and allowing for a one-off six-month extension to the buyback timeframe - these changes will not make a meaningful difference, especially when there are difficult market conditions.

The reduced timeframe will have clear impacts on operator's cash flow as they attempt to fulfill their financial obligations to pay exit entitlements under the new timeframes. This additional financial burden will only serve to make the costs of entering a retirement village more prohibitive and less accessible for residents as operators are forced to manage their liability.

Given that the Queensland industry is approximately 50% larger than Western Australia, it is conceivable that the recommendations being adopted by Government will require operators to hold nearly a quarter of a billion in cash for liquidity purposes 12-months from the date of legislative effect. This is estimated to be at least double the amount of cash operators are required to hold for existing arrangements.

Furthermore, the 12-month timeframe completely fails to account for:

1. The financial impact on residents when an operator is forced to liquidate stock to maintain cash reserves, which reduces market valuations and potential capital gains for an exiting resident.
2. The likelihood the future residents will not be offered capital gain share contracts, which will likely result in higher entry costs and potentially a much lower exit entitlement than might have been the case with a capital gain share contract.

The Property Council does not believe that these financial impacts have been articulated to residents. Furthermore, the Property Council contends that most residents would not opt for a reduced buy back timeframe at the expense of capital gain share.

Due to this, the Property Council makes the following recommendations to ease the burden of the new timeframes and maintain the viability of a sector that will play an essential role in providing safe and secure accommodation for an ageing population.

Solutions

1. ***Provide interest free loans for operators suffering from financial hardship due to the reduced exit payment timeframe***

During the first wave of buybacks in Queensland, over the period from 10 May to 30 September 2019, industry estimates operators were required to secure capital to fund approximately $150 million of exit entitlements. The latest reduction in the buyback timeframe will once again require many operators to capital to fund cash flow requirements.

To provide security and protect operators from financial peril, as occurred during the initial wave of buybacks, the Property Council believes that Government should provide interest free loans to operators struggling to fulfill their financial requirements. This will mitigate the impact of the new timeframe on existing contracts predicated on previous regulatory arrangements.

2. ***Require residents who receive their exit entitlement earlier than agreed to in their contract to forgo any capital gains share entitlement***

If the Government is not prepared to fund interest free loans for operators suffering from financial hardship due to the reduced exit payment timeframe, it must give consideration to requiring residents who receive their exit entitlement earlier than agreed to in their contract to forgo any capital gains share entitlement.

It is noted that Operators have limited scope to adjust market prices and maintain the competitiveness of retirement village options.

To recognise the cost of mandatory exit entitlements and allow for operators to have the required cash on hand to fund mandatory exit entitlements, residents be required to contribute to the cost through forfeiture of capital gain share entitlements, with the Deferred Management Fee then calculated as a proportion of the ingoing contribution.

For Strata Title retirement villages operators should be entitled to an agreed Deferred Management Fees plus 10 per cent of the residual settlement.

3. ***Introducing a "stop the clock" mechanism to account for reasonable delays***

As the Property Council has previously detailed at length in previous submissions, many of the conditions that determine the timeframe for selling a unit are outside of the operator's control. This applies to both market conditions and unexpected delays that relate to the reinstatement, valuation, and marketing of a unit.

For example, currently the time and cost it takes to reinstate a retirement unit has been significantly impacted by the well-documented material and labour shortages impacting the construction sector. This reinforces the fact that the complexity of the retirement village model means that many components of it are exposed to fluctuating market conditions outside of the operator's control.

In previous submissions, the Property Council highlighted that in some instances these conditions meant that the operator was only able to list a unit for sale 4-6 months after the buyback time frame had commenced. If this occurs under the new 12-month timeframe operators may only have six months to market and sell a unit. Even if an operator is able to secure the one off extension, they will still be dealing with the 18 month timeframe that previously contributed to several operators going into voluntary administration.

Due to this, it is vital to build in additional flexibility into mandatory exit entitlement framework. A practical solution would be to implement a "stop the clock" mechanism that accounts for reasonable delays reinstating, marketing and selling a unit.

Additional recommendations

The following feedback relates to the additional recommendations contained within the exit payment report that are yet to accepted by Government.

Additional recommendation – Ongoing service fees

Most residents appreciate that accommodation has ongoing costs – even after departure.

If a service fee cap is considered, it may be more balanced to limit it to the following circumstances:

a. A 6-month cap in circumstances where residents do not share in capital gain;

b. No cap, except where an operator does not pay the exit entitlement on date (whether or not that be with an extension).

In all circumstances, clarity around the resident's ability to delay payment should be provided.

Additional recommendation: Aged Care Rule – moving to a residential aged care facility

While the Property Council supports the principle of ensuring ongoing access to care for older Australians, this payment will require additional resources by operators. In order to allow operators to recover this, it is suggested that a cap be inserted for charging of, say, $1,000 which can be recovered from payment of the exit entitlement.

Additional recommendation: Rent Advance Rule – accommodation safety net in order to vacate a unit

There appears little justification for this proposal.

It could result in a situation where operators are funding the social desires of residents despite having no other legal or moral obligation to do so.

This could become even more unbalanced where an operator is funding both service fees and rental arrangements. It is akin to requiring every Queensland retirement village scheme operator to be a lender, but charge no interest or fees for doing so – even if the operator needs to obtain funding which incurs interest and fees.

If you require further information in relation to this submission please contact xxxx on xxxx.