

24 February 2025

Exit entitlements and buybacks, reinstatements and renovations of residential premises, Property Condition Report

Following consultation with representatives of the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) on Tuesday 28 January 2025, this submission articulates the retirement living industry's response to the fourth consultation paper on proposed amendments to the Retirement Villages Regulations 1992 relating to exit entitlements and buybacks, reinstatements and renovations of residential premises and the Property Condition Report (PCR).

Preliminary comments

The Property Council has long held views regarding the valuation and timeframes under which an exit entitlement is paid, or a buyback is completed, and the substantial risk of financial harm this creates for operators.

The valuation process for determining an exit entitlement is critical to this process. The regulations to be prescribed under section 37 must provide greater clarity on the timeframes applicable to the process for determining a valuer and resolving disputes if the operator and a resident cannot agree. Given the mandatory exit entitlement period and the aged care payment provisions, it is crucial that the value of the residential premises be promptly agreed or determined. As a result, it is important for the regulations to specify short timeframes, such as ten business days.

Presently section 37(2)(a) refers to a valuer having "appropriate experience or expertise" and does not explicitly reference the retirement village industry. We stress the importance of the appointed valuer having specific expertise and experience in the valuation of retirement villages. The regulations may also cover what factors a valuer can consider during the valuation process.

Information to be contained in an exit entitlement statement

We note that the inclusion of much of the preliminary information, including date of commencement of residency, ingoing contribution, date of termination of residency and period of residency in the village, is already standard industry practice.

The consultation paper states the proposed regulations will require an exit entitlement statement to include information regarding the cost of reinstatement of residential premises but does not include reference to renovation. We recommend there also be reference to the estimated cost of renovation (in proportion to the split of capital gain).

Operator's payment of exit entitlement for aged care

The proposed regulations define an "eligible former resident" as one that "has permanently vacated premises". The Property Council recommends amending this definition to prevent the situation

where a daily accommodation payment would be triggered if one resident moved into aged care while another resident remained in the residential premises.

The Property Council supports the process for requesting payment of daily accommodation payments under Section 3(b)–(d) but recommends that these requests should come from the aged care facility (ACF), with the operator making payments directly to the ACF, rather than requests coming from the resident.

This will help simplify the process and reduce administrative burden on both the operator and the ACF. Additionally, it is noted that financial abuse tends to occur more at this stage of a resident's life and the process we recommend will minimise the risk of this occurring.

The operator will require an invoice from the ACF to process the daily accommodation payment and we note the administrative burden this may place on the ACF. The consultation paper contemplates that the request from the resident to the operator must be in the approved form. The Property Council recommends requiring the ACF provide documentation in a prescribed form. We recommend the form has a section to be completed by the former resident or their representative, and a section to be completed by the ACF. The regulations should provide that the operator must have received the completed form before the operator is obliged to begin daily accommodation payments. We also recommend requiring the ACF to notify the operator if a resident ceases to reside in an ACF, to prevent the operator overpaying the daily accommodation payment.

The Property Council notes under Section 3(e)(iv) that the operator must make the payments to the aged care provider, unless "the operator has paid 85 per cent of the estimated value of the former resident's exit entitlement". The Property Council recommends the regulations specify when the "estimated value" is calculated and recommends it is calculated at the time the resident permanently vacates the village and enters the ACF.

The Property Council suggests sufficient documentation or an agreement between the operator and the ACF that outlines the amount of the daily accommodation payment that an operator is obliged to pay and any other specific obligations.

Extension of time for payment of exit entitlements and buybacks

The Property Council recommends reducing the timeframe to apply to the Commissioner for an extension of time from "at least 60 days before the day that the operator would be required to pay an exit entitlement" to 30 days, by which time the operator will have a more conclusive view as to whether they will be able to pay the exit entitlement or complete the buyback within the prescribed timeframe.

The Property Council recommends including a maximum timeframe for the Commissioner to respond to an application for extension of time, and that if no response is given in that timeframe, the extension applies until a response is provided.

The Property Council maintains its position that regional villages should be granted a permanent extension to the deadline, as the risk of financial hardship and challenges associated with selling a residential premises in these areas is greater than in metropolitan Perth.

Renovation of premises – matters to be included in a renovation plan

The reinstatement requirements exclude fair wear and tear. As such, matters such as repainting and recarpeting will be classified as renovation rather than as reinstatement. We note a risk that may emerge should a resident not agree to a renovation plan promptly, which will delay operators being able to commence works. As a result, there lies a risk that the operator may not have the premises ready to be marketed in an appropriate time to be able to meet the 12-month mandatory exit entitlement payment.

We recommend the regulations prescribe how long a resident must respond to a renovation plan (e.g. ten business days) and that the approved renovation plan contain plain wording to which the resident can agree or disagree. We recommend that where no written agreement is reached within the prescribed timeframe, the operator can proceed with the renovations and there is deemed agreement from the resident. Otherwise, disputes and delays in reaching agreement on the renovation plan create risk for the operator.

Operators frequently deal with a representative of the resident rather than the resident themselves, and the Property Council recommends including the rights and obligations of the representative in regulations in relation to this section. The Property Council notes the age of an item is not relevant to the renovation in relation to the PCR; the relevant information is whether an item is working or not, and whether it is in good condition or not.

Matters to be included in property condition reports at start and end of occupation of residential premises

The Property Council recommends consistency between the PCRs at the start and end of occupation of residential premises. We note that these obligations are already described in many residence contracts as residents' and operators' responsibilities. The Property Council recommends a similar approach in relation to format and structure be given to the PCR as is used in the residential tenancies legislation in WA.

Next Steps

If you require further information or clarification on this submission, please contact Andrew Thomson, WA Policy and Research Advisor, at athomson@propertycouncil.com.au or on 0409 470 336.

Yours sincerely,



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