

# Review of the *Retirement Villages Act 1999*

## Consultation Regulatory Impact Statement



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# 1 Introduction

## 1.1 Executive Summary

In Queensland, retirement villages are regulated under the *Retirement Villages Act 1999*. This Act is being reviewed.

In late 2012, the review of the Act was referred to the Transport, Housing and Local Government Committee of the Parliament. The Committee subsequently published a report, called 'Review of the *Retirement Villages Act 1999*', which recommended 37 reforms. Throughout 2013, a Ministerial working party of key industry representatives met to discuss the report, before proposing a series of regulatory changes to best address the Committee recommendations. Four critical issues covered by the proposals of the working party are discussed in this Regulatory Impact Statement (RIS).

A RIS is a document which assesses regulatory proposals to weigh up their potential impacts on business, community and government. Ultimately, this assessment helps the government decide on the most efficient and effective option for addressing the underlying policy issues.

The Office of Best Practice Regulation has pinpointed four regulatory proposals which may have significant impacts on business, community and government, and so form the basis for this RIS. The issues involved and the options to address them are discussed below:

- The first issue involves the associated legal, financial and practical considerations when an existing retirement village closes down, including whether compensation should be paid to the remaining residents and how village units are valued. Reform options include (a) making it compulsory for the retirement village scheme operator (operator) to disclose, in the village public information document, what they will do if the village closes, and (b) amending the Act to prescribe a series of requirements which the operator must consider when managing closure of their village.
- The second issue concerns managing behavioural issues such as harassment, intimidation and infringement of privacy between residents and other people at a retirement village. Reform options include (a) making it essential for the operator to disclose, in the village public information document, how they will manage key behavioural issues, and (b) amending the Act to introduce fairness principles and enable any breaches to be resolved by the dispute resolution process or through arbitration.
- The third issue concerns whether operators should be able to offer prospective residents alternative payment models to the model prescribed in the Act, such as charging rent instead of asking for payment of an exit fee, and how such models should be developed. Reform options include (a) allowing operators to devise alternative payment models, which must incorporate adequate terms to protect consumers, and (b) amending the Act to prescribe the alternative payment models, which operators may then adopt, together with the corresponding terms to protect consumers.

- The final issue concerns whether a resident who has left the village should be entitled to their exit entitlement before resale of their unit, particularly in circumstances where there is a significant delay in reselling the unit. Reform options include (a) making it compulsory for the operator to disclose, in the village public information document, whether they offer early payment of the exit entitlement, and (b) amending the Act to make it compulsory for the exit entitlement to be paid to the resident after 18 months, unless this would cause undue hardship for the operator.

Unlike some other RISs, there is no preferred option for addressing these four issues. Rather, the RIS includes questions about each issue to encourage feedback from the wider community, residents and operators on the various options. The government will only decide on a preferred option after careful consideration of the submitted comments. As such, the various options described for each of these four issues do not represent government policy.

## 1.2 The Regulatory Impact Statement process

The Queensland Government is committed to applying regulatory best practice principles to reduce the amount of regulation in the community.

A RIS is a document which comprehensively assesses regulatory options, to determine their potential impacts on business, community and government. The purpose of this assessment is to determine which, if any, of those options is the most efficient and effective way of achieving a desired policy objective.

Regulation may sometimes be necessary to protect the community and to ensure a well-functioning economy and society. However, it is equally important to maintain an appropriate balance between the costs and benefits of regulation. Ultimately, the RIS process is designed to strengthen community safeguards while also reducing, or at least not adding to, the amount of regulation in Queensland.

The guidelines for preparation of a RIS have been developed by the Treasurer and Minister for Trade, and before any RIS may be released for public comment, it must be approved by the Office of Best Practice Regulation. Further information on the RIS model, including a copy of the Treasurer's guidelines may be found at [www.qca.org.au/obpr/ris/](http://www.qca.org.au/obpr/ris/).

The Consultation RIS, is designed to enable public consultation on both the issues and the options developed to address them. Release of a Consultation RIS will:

- maximise the opportunity for stakeholders to consider and comment on each of the available options
- allow for an improved understanding of the likely economic, social and environmental, impacts associated with compliance and competition issues
- identify any unintended consequences and compliance problems that could be prevented.

### 1.3 Overview of the retirement village industry

In Australia, retirement villages are regulated under specific state and territory laws. In Queensland, the relevant legislation is the *Retirement Villages Act 1999*. Retirement village schemes have contractual arrangements which differ markedly from other types of accommodation, and this is one of the reasons they are regulated by their own Act.

There are presently 317 retirement village schemes registered in Queensland. Most villages are located in metropolitan areas, particularly Brisbane and its surrounds, and along the coast. Although the Department of Housing and Public Works does not record numbers of accommodation units or residents, the industry estimates there are approximately 25,000 units, housing more than 28,000 older people. The majority of units are occupied by single people. In the past decade, retirement villages particularly in the over-65 age bracket, have become more popular.

Villages are operated by either not-for-profit, church/charitable entities or by commercial businesses. According to the industry, the average age of people entering a retirement village has changed from 55-to-65 years in the 1980s to around 75 years presently. One of the reasons for this is people are living longer, and in better health, than before.

There is an increasing trend for new retirement villages to be developed in conjunction with a separate, but co-located and linked aged care facility. Doing so helps the transition from low to high-care needs as a resident grows older, particularly where a resident is no longer able to manage at the retirement village.

The aging population has increased the demand for retirement village units, however it has also encouraged growth in other types of housing, including gated communities and manufactured home parks geared towards older people. In manufactured home parks, the resident owns their home and rents the land on which it is sited from a park owner, and this relationship is regulated under the *Manufactured Homes (Residential Parks) Act 2003*.

### 1.4 History of retirement village legislation

The retirement village industry in Queensland has evolved and expanded over time, as has the legislation that governs it.

Before 1989, there was no specific retirement village legislation in Queensland. The *Retirement Villages Act 1989* was a combination of retirement village laws from other jurisdictions, and was introduced to address the needs of consumers arising from rapid growth in this new type of housing. The legislation was therefore developed in response to an existing model for retirement living.

However, within a decade, a more sophisticated set of regulations were required for an industry which now involves both a wide range of available schemes and a variety of payment models for residents. The *Retirement Villages Act 1999*, which commenced in 2000, introduced key accountability and transparency requirements, particularly the resident and operator funds used to meet maintenance and capital costs, respectively.



Many smaller villages were unable to adapt to these new requirements, and some re-structured so they were no longer classed as being retirement villages as defined by the Act. Villages which opted to not be covered by the Act paid back the ingoing contribution to residents, and continued to operate as normal group titles (body corporate) schemes or rental accommodation.

Following an extensive review of the *Retirement Villages Act 1999*, the *Retirement Villages Amendment Act 2006* was passed. This resulted in major changes to village budgeting, resident meetings and the meaning of key definitions. There were also amendments to the rights of a relative or spouse of a resident living in the village and resident charges, which accrue after the resident leaves their unit but before it is resold.

### 1.5 Consumer protection through regulation

Although a person must be at least 55 years of age to enter a retirement village, the average entry age is now closer to 75 years. Thus, in addition to the likelihood of people living longer and in better health than before, residents and prospective residents of retirement villages are increasingly falling within the 'elderly' demographic. Of course, elderly people are also prone to physical frailty, which can affect their confidence and ability to address and rectify problems.

The payment model which is the keystone of retirement villages includes an exit fee payable when a resident leaves a village and their unit is resold. The exit fee is the operator's primary source of profit. Depending on the time the resident has lived in the village and the fee structure, this can be a large sum of money. The prospect of having to pay a large exit fee creates an incentive for a resident to remain in the village even if they would prefer to live elsewhere. At the same time, the exit fee model does not create a financial incentive on operators to ensure residents stay in the village as long as possible.

For this reason, one of the key objectives of the Act is consumer protection, which is shown through clearly outlining rights and obligations, and by regulating operator's decisions. Without such a focus, the Act would not recognise the particular vulnerabilities of consumers covered by the Act, which may lead to a failure in the regulations if the retirement village industry is no longer able to help the needs of the very consumers it serves. Such statutory intervention is therefore in the public interest; to the extent the benefits produced outweigh the costs associated with restricting competition.

The effectiveness of the legislation to protect consumers may be gauged according to its ability to help residents and prospective residents to effectively assess the facilities, services and financial requirements of individual retirement villages. This will help consumers decide whether that village suits their needs and circumstances, and also to compare different villages and contrast retirement villages with other types of accommodation for older people.

### 1.6 Present retirement village scheme design

While there is great diversity in the types of retirement village schemes presently on offer in Queensland, there are some features and regulatory requirements which are common to all. Similar features and requirements are also found in most retirement villages across Australia.

A retirement village scheme is a contractual agreement whereby older or retired people acquire a right to reside in a retirement village. The village itself consists of self-contained units and communal facilities.

Each village is managed by a scheme operator. According to the Act, the operator has to register the scheme with the administering department (section 27) and also lodge the village public information document (PID) and annual financial reports (section 35).

Most villages are leasehold, where ownership of a unit remains with the operator, and residents enter into a 99-year lease registered on the title deed for their unit. A variation on this (common in the church and charitable sector of the industry) is a licence arrangement, whereby the resident's right to reside is not registered on the title deed.

Another variation are freehold villages, which arose from existing group titles (body corporate) schemes that re-structured to fall within the scope of the Act. In these villages, the resident holds freehold title to their unit, and although this creates an overlap in legislative requirements between the Act and the *Body Corporate and Community Management Act 1997*, any inconsistency is resolved in favour of the *Retirement Villages Act 1999*.

A summary of the key operational aspects of the retirement village model under the Act is provided below:

### ***Entering a village***

Residents pay an ingoing contribution to enter into a retirement village. Although the average ingoing contribution is hundreds of thousands of dollars, there is significant variation in price depending on the size, modernity and amenities of the particular village. Residents sign a residence contract, which includes details of their particular contractual obligations and incorporates the PID (which contains general village information). The content of the residence contract and PID is prescribed in the Act (sections 45 and 74, respectively).

### ***Ongoing charges***

Day-to-day running costs of the village are met by the residents, through payment of ongoing general services charges. These charges may be increased by the operator, but the total of general services charges must not increase beyond CPI (section 106). However, this total amount excludes any increase in general services charges above CPI which the residents, through a special resolution, have approved (also section 106). Also excluded from this total are cost items such as rates, taxes, wages under an award, and insurance premiums, which are beyond the control of the operator and may increase beyond CPI without the need for a special resolution vote (section 107).

### ***Capital and maintenance funds***

The operator contributes to the capital replacement fund, out of which replacement of village capital items is paid (section 91). Residents contribute to the maintenance reserve fund, out of which maintenance of village capital items is paid (section 97). The residents' maintenance reserve fund contribution forms part of general services charges, and this contribution is also within the class of cost items which may be increased beyond CPI.

### **Budgets**

Each year, the operator must prepare budgets for general services charges, the capital replacement fund and the maintenance reserve fund, and provide a copy of the draft budget to residents upon request (sections 102A, 93 and 99, respectively). The residents, through their residents committee, may also request the operator to attend a meeting to discuss the draft budgets.

### **Reinstatement**

When a resident leaves the village, their unit is reinstated for resale (section 58). The resident and operator must agree on what reinstatement work needs to be undertaken. Reinstatement includes repair and replacement work required to restore the lived-in unit to a marketable condition. The extent of the reinstatement work must be agreed upon by the operator and the outgoing resident. The cost of reinstatement is met by the resident in a freehold village (section 61), and often (depending on the particular contract) by the operator in a leasehold/licence village (section 62).

### **Exit entitlement**

When the unit is resold, the sale amount is divided between an exit entitlement to the resident (section 16) and an exit fee to the operator (section 15). The exit entitlement is usually the amount of the resident's ingoing contribution, less (a) the exit fee, (b) any outstanding fees and charges, and (c) any reinstatement contribution and costs of sale (including legal costs). The resident and operator may also have agreed to share any capital gain on resale of the unit, in which case the resale price of the unit may be used to calculate the exit entitlement.

### **Exit fee**

The exit fee (previously called a 'deferred management fee') is the profit the operator receives for operating a retirement village. The exit fee is calculated using a formula set out in the residence contract (section 45), rather than being calculated on the pure cost-recovery basis applicable to all other amounts paid by residents. It is often a percentage of the ingoing contribution, with the percentage increasing each year up to a maximum amount. In many villages, the maximum percentage cap is reached after residents have occupied their unit for five years. Although the percentages used to calculate the exit fee will differ greatly between villages, the range used usually falls between 5% and 20% (although some contracts may extend this range up to 40% or even 60%).

### **Dispute resolution**

If residents disagree with fee increases or budget decisions, or have a dispute with the operator about rights or obligations imposed by the Act or the residence contract, they become involved in a retirement village dispute which may be resolved by the dispute resolution process under the Act (section 21). The dispute resolution process between the resident(s) and the operator involves informal discussion, mediation, and ultimately a hearing before the Queensland Civil and Administrative Tribunal (QCAT).

## **1.7 Timeline of the present review**

During the 2012 state election, the Honourable Campbell Newman MP, Premier promised to '*work with all stakeholders to fully review the Retirement Villages Act to ensure the welfare of seniors is protected*' (My Contract with Ashgrove).

The *Retirement Villages Act 1999* is presently being reviewed, and the key events of this review are:

- Following the election, in the July-December 2012 ‘Six month action plan’, the government committed to ‘*commence a review of the Retirement Villages Act to ensure the welfare of seniors is protected*’.
- The review of the Act was referred to the Transport, Housing and Local Government Committee of the Parliament, which released a report on 29 November 2012 entitled ‘Review of the *Retirement Villages Act 1999*’, being Report No.13 of the Transport, Housing and Local Government Committee.
- On 26 February 2013, the Honourable Tim Mander MP, Minister for Housing and Public Works, tabled the Queensland Government response to the report of the Committee.
- On 25 March 2013, the first meeting of the Ministerial working party was held, with seven subsequent meetings held on 17 April 2013, 7 May 2013, 28 May 2013, 25 June 2013, 8 October 2013, 15 October 2013 and 22 October 2013.
- On 5 December 2013, the Ministerial working party presented an Outcomes Report to the Minister, outlining its proposed action in relation to the recommendations of the Committee.

## 1.8 The report of the Parliamentary Committee

The Issues Paper released by the Committee attracted 23 written submissions. Several of those contributors were also invited to address the Committee at the public hearing. Among those contributors were the lead stakeholder groups in the retirement village industry, which were openly critical of some amendments proposed or passed by the previous government. These groups claimed amendments were often rushed and not developed through consultation. During the Committee process, those stakeholders repeatedly called for an evidence-based policy approach to changing the Act.

The Committee report contained 37 recommendations, ranging from straightforward initiatives such as publishing factsheets through to significant amendments to the Act. The report details the reasoning behind each recommendation and provides evidence used to back-up this reasoning. Such evidence is drawn from submissions made to the Committee at the public briefing and public hearing, and from the written submissions.

## 1.9 Ministerial working party

While some of the recommendations specify the exact way that the Act should be amended or the issue resolved, many recommendations are very open-ended, simply requiring the Minister to find a way of achieving a desired outcome. Consequently, and also given the call for evidence-based reforms, the Queensland Government response to the Committee report called for a measured and consultative approach to responding to the recommendations.

The Minister for Housing and Public Works convened a working party to ensure stakeholders were involved in both testing the reasoning behind each recommendation and developing options for legislative and other required action. Working Party details and summaries about their deliberations on a range of other key issues affecting the retirement village industry are contained in Appendices 1 and 2.

The table in Appendix 1 proposes steps to address each identified issue. These proposals are intended to guide the way forward and do not represent government policy. They will be reconsidered by the government after all feedback as a result of this RIS consultation process has been received. As with the four key issues discussed in this RIS, questions to prompt broad community, resident and operator feedback are included at the end of Appendix 1.

Some of the more significant issues discussed in Appendix 1 are:

- The Parliamentary Committee noted it was important for prospective residents to obtain adequate and timely pre-contractual information and advice about a retirement village. As a result, and in line with similar recent initiatives in NSW and Victoria, the working party proposed simplifying the PID and introducing a general inquiry document. The working party also proposed amending the Act to highlight to prospective residents the importance of obtaining legal and financial advice before signing the residence contract. Finally, the working party proposed amending the Act to introduce standard wording for key terms in the residence contract, which operators may adopt to ensure that they disclose necessary details within the contract.
- The Parliamentary Committee noted that the calculation and levying of recurrent and one-off fees and charges was often a contentious issue in retirement villages. The working party therefore proposed amending the Act to improve the existing model for calculating and levying general services charges, so making it clearer and fairer for residents and removing unreasonable restrictions for the operator. In particular, increases in utilities costs by more than the CPI will no longer require resident approval where these increases are beyond the control of the operator.
- The Parliamentary Committee noted that the various fees and charges which may be levied when a resident leaves a village are often a source of concern and confusion, and may affect a resident's ability to move elsewhere. The working party proposed amending the Act to clarify that the operator is solely liable for the cost of any improvements (that is, an 'upgrade') to a unit beyond the scope of the reinstatement work, unless the outgoing resident agrees to share this cost. The working party also proposed amending the Act to clarify an outgoing resident must not be charged a fee, charge, commission or lump sum upon resale, unless the amount charged is specifically incurred in selling the resident's unit.

The Ministerial working party represented diverse interests, and some members agreed more strongly than others about certain outcomes. Despite this, proposals to address all 37 recommendations were ultimately endorsed by the working party in the Outcomes Report presented to the Minister in December 2013. It should be noted members sometimes compromised to reach a negotiated outcome, on the basis that most outcomes would be subjected to further (and broader) consultation (including during the RIS process) before being implemented.

It is acknowledged there are other issues to be addressed in the review process, which were not raised by the Parliamentary Committee and the Ministerial working party and are not included in this RIS. Suggestions on other improvements to the Act, are also sought.

## 1.10 Quantitative data

The issues discussed in this RIS have already been fully examined by the Parliamentary Committee and the Ministerial working party.

As noted above, the Ministerial working party is comprised of the leading industry representatives of both residents and operators, and these bodies have considerable influence with their respective stakeholder groups. The various options outlined in this RIS arose from discussions of the working party, and therefore reflect a highly-informed view of the costs and benefits occurring as a result of different courses of regulatory action.

A qualitative risk analysis was conducted on the potential costs and benefits of the various options, to broadly assess each alternative in terms of its impact relative to the other costs and benefits. The criteria used to undertake this analysis is:

**Scale of potential cost or benefit:**

- minor cost or benefit
- moderate cost or benefit
- major cost or benefit.

**Probability of cost or benefit occurring:**

- unlikely to occur
- likely to occur occasionally
- likely to occur regularly.

Using these criteria, the qualitative risk analysis has ranked each cost and benefit according to the following degrees of impact:

**High impact**

- major cost or benefit / likely to occur regularly
- major cost or benefit / likely to occur occasionally.

**Medium impact**

- major cost or benefit / unlikely to occur
- moderate cost or benefit / likely to occur regularly
- moderate cost or benefit / likely to occur occasionally.

**Low impact**

- minor cost or benefit / likely to occur regularly
- minor cost or benefit / likely to occur occasionally
- moderate cost or benefit / unlikely to occur
- minor cost or benefit / unlikely to occur.

With reference to the impact ranking scales above, it should be noted that one-off costs for the operator or the government (such as devising an early payment policy for their village or having QCAT deal with an additional case load, respectively) have been treated as occurring 'occasionally'. Furthermore, although the costs incurred in the dispute resolution process may range from low (where the dispute is informally resolved) to very high (where

a decision of QCAT is appealed against to the QCAT Appeals Tribunal), for the purpose of this ranking, they have been treated as 'moderate' costs.

This RIS document contains less quantitative data about the impact of various options than some others released for consultation. However, given the wide range of topics and issues which RISs may address, it is not unusual for the content between them to differ significantly. Furthermore, the guidelines for preparation of a RIS specifically recognise that assessment of impacts due to potential costs and benefits will depend greatly upon the availability of data.

One of the lead stakeholder representatives for operators, Leading Age Services Australia Queensland (LASAQ), has advised the government it is 'doubtful' most of this quantitative data would be 'available from anywhere in the industry'. Furthermore, LASAQ noted that given the 'diverse' nature of the retirement village industry, averages derived from anecdotal data would probably be 'meaningless'. Another lead stakeholder representative for operators, The Property Council of Australia Limited (the Property Council) agreed, noting that using industry averages may ignore 'significant impacts felt by some operators who do not conform to such averages'.

A draft version of this RIS was provided to the lead stakeholder representatives in the retirement village industry, including LASAQ, the Property Council and the Association of Residents of Queensland Retirement Villages (ARQRV), National Seniors Australia (National Seniors) and Council on the Ageing (COTA) for preliminary feedback. Their key comments, together with illustrated examples of their feedback using quantitative data, are included in discussion of the four key issues below.

Before any final decisions are made about which options to recommend, all available quantitative data will be obtained and evaluated. Questions are also included to ensure broader community, resident and operator interest groups have an opportunity to comment on the costs and benefits of each option.

## 2 Introduction to issues

The main objects of the Act (section 3) are to:

- (a) promote consumer protection and fair trading practices in the operation of retirement villages, and
- (b) encourage the continued growth and viability of the retirement village industry.

Although at first glance, these objectives may seem contradictory, particularly given residents are seeking more constraints on fees and charges while the operators are seeking to improve cost recovery and profit levels, in reality these objectives are complementary and even co-dependent.

In order for the retirement village industry to be viable, it needs to ensure this accommodation model continues to be available to assist housing an ageing population, but also supports residents by ensuring they are able to resell their units, and do so quickly and at a good price.

The real conflict between these objectives is related to the degree to which the consumer protections in the Act are prescriptive. On one hand, it is common for residents to demand tighter regulation to deal with emerging issues, yet on the other hand operators often push for increased flexibility to permit individual villages to manage the issue. Such conflict is understandable, given that the Act prescribes a one-size-fits-all regulatory framework for an industry which, although endorsing the same contractual model for rights and obligations, encompasses a very broad variety of village types: from small, church and charity run villages in regional areas, to large, high-end villages in cities, and a range of variations in between.

For this reason, the main policy objective of this Regulatory Impact Statement (RIS) is to identify the balance of prescription and flexibility needed to ensure the workability of any regulatory change. In other words, the intention of this RIS is to ensure the welfare and interests of residents are protected without compromising the viability of the industry.

The current Act fails to meet these dual objectives in the following four areas:

- village closure (deciding the processes to be followed should a retirement village need to close down)
- best practice standards (management of behavioural issues affecting interaction between people at a retirement village)
- alternative payment models (allowing operators to offer prospective residents payment models which are different to the model presently prescribed in the Act)
- early payment of the exit entitlement (whether a resident who leaves a retirement village should have access to their exit entitlement before resale of their unit).

Each of these four issues is discussed in detail in the body of this RIS. Following the discussion, a table sets out other issues raised by the Parliamentary Committee and/or the Ministerial working party about the Act, and the proposed action to address these. Although some of these additional issues would require regulatory change, none have a significant impact on the community, business or government and are therefore not included within the RIS proper.

### **3 Pre-contractual disclosure**

Before examining the four key issues, it is worth noting one critical theme applying to them (and many of the additional issues in the table) is the extent to which they could be addressed by improving disclosure of contract conditions prior to signing of those documents (pre-contractual disclosure).

Firstly, the benefits of improving pre-contractual disclosure in dealing with the additional issues are described below:

- Many prospective residents consider the public information document (PID) for a retirement village too lengthy and complex, and therefore difficult to use and understand. Therefore, the Act should be amended to allow development of a new approved form for the PID, modelled on the NSW and Victorian disclosure statements, which will reduce the complexity and length of the document. Similarly, the Act should also be amended to include standard wording for key terms in the residence contract.



- Currently, prospective residents can use the PID to compare and contrast different retirement villages. However, these documents are not usually posted online, and most operators are reluctant to provide hardcopy versions unless the prospective resident has taken some binding contractual step. Consequently, the Act should be amended to require operators to develop a general inquiry document (in an approved form), which concisely details the key aspects of the PID, to be posted online as a more cost-effective tool for a basic comparison of villages.
- Many prospective residents do not obtain adequate (or any) legal and/or financial advice before signing their residence contract. Therefore, the Act should be amended to require the PID to highlight the importance of a prospective resident obtaining independent financial and legal advice before signing the residence contract. Furthermore, the Act should be amended to require the operator to obtain a written acknowledgement from a prospective resident that they are aware of their right to obtain legal advice before signing the residence contract.

Secondly, improving pre-contractual disclosure is presented as an option to address three of the four key issues examined in this RIS. In such instances, pre-contractual disclosure is not recommended simply to make prospective residents better aware of their rights and obligations should they buy into a particular village (although that is still a critical and valuable outcome), but also as a means of encouraging the marketplace to resolve issues which may be less suited to a purely regulatory response.

The purchase of a right to reside in a retirement village unit is a significant financial and personal decision, and one which usually occurs only once in a lifetime. However, consumers may be unaware of all the issues they need to consider before making that decision. An uninformed choice may have significant financial consequences.

Exacerbating this, some operators have been reluctant to disclose information about important aspects of their services, online or otherwise, unless a consumer has expressed a genuine interest to purchase.

One regulatory approach to deal with the situation where one party has better information than the other (sometimes called 'information asymmetry') is to make it compulsory for operators to provide earlier and expanded pre-contractual disclosure. Within Australia, improved information disclosure measures have been introduced in industries such as consumer credit, financial services, used motor vehicle sales and the real estate market. Once in place, these measures may also encourage increased competition between suppliers, improved efficiency, innovation and product standards, and stimulate growth in the particular industry.

A critical consideration in designing of any proposed form of regulatory change is to balance 'red tape' requirements for business against improved consumer welfare. Unless carefully designed, policies intended to improve consumer confidence and knowledge may create significant compliance burdens for business or reduce competition, which in turn may ultimately increase costs for consumers. Therefore, it is appropriate to include an option, such as the proposed mandatory expansion of pre-contractual disclosure, which is both workable and has only minimal compliance implications for business.

In summary, by requiring the PID to disclose how a particular retirement village addresses the key issues, prospective residents should not only be better informed about that village (and therefore better able to decide whether it suits their needs) but should also be able to more easily, and precisely, compare and contrast between different villages. Market forces should then operate to decide a fair and effective means of addressing the issues. In this way, prospective residents will favour those villages having processes which best manage the issues, and over time, other villages will adopt similar (or better) processes in order to remain competitive.

Driving marketplace improvement through enhanced pre-contractual disclosure does not require operators to change their present business model. Instead, it encourages them to develop workable and commercially sustainable ways of dealing with the issues.

Regulating an issue through enhanced pre-contractual disclosure should also deliver an 'economically efficient' outcome, leading operators to reduce unnecessary costs by tailoring the terms of a contract to better meet the specific, and diverse, needs of prospective residents. For example, the operator may offer prospective residents two (or more) options of dealing with a given issue, so a prospective resident who is less likely to be affected by the issue may choose the option which gives a lower level of protection in return for other financial incentives (such as a reduced buy-in price) – an alternative possible only because the operator will not need to fund a high degree of protection for that particular resident.

However, pre-contractual disclosure is not fool-proof in ensuring prospective residents make the best choices. When faced with a significant decision such as choosing between different retirement villages, there are other key factors to be weighed up, and simply because one factor is fully disclosed in pre-contractual documentation does not necessarily mean the prospective resident will consider it closely. This problem may be exacerbated if a key factor deals with a matter which is unlikely to occur (or at least, at the time of contract, appears unlikely to occur), because the prospective resident may rank other, possibly lesser, factors above it during their overall assessment of the village or villages. Similarly, expanded pre-contractual disclosure has the potential to cause 'information overload', whereby critical facts are overlooked in the sheer volume of information presented to a prospective resident.

As pre-contractual disclosure may fail to effectively deliver the intended consumer protections, this RIS also includes more 'traditional' regulatory options, where key rights and obligations are prescribed in the Act, thereby providing a base level of protection.

## 4 Village closure

### 4.1 Executive Summary

The policy objective of this Regulatory Impact Statement (RIS) is to manage the associated issues when a retirement village closes down, or is in the process of closing down, by ensuring any solution balances prescription and flexibility to deliver consumer protection and maintain viability of the industry.

The three options presented to address this policy objective are: (1) maintain the status quo, (2) improve pre-contractual disclosure, by requiring village closure processes to be detailed in the public information document (PID), and (3) specify the issues which must be addressed when a village is closed, and have this closure plan independently reviewed and approved.

### 4.2 Background of issue

#### 4.2.1 Introduction

Although the Act specifies the processes for registration of a retirement village scheme and its operation, there is relatively little information about the process for deregistering a scheme or cancelling the registration, and then closing down its operations. The only provisions in the Act which specifically govern village closure are detailed below.

#### 4.2.2 Deregistration

The Act provides a scheme may be deregistered by the chief executive (section 28A), but only if the chief executive has reasonable grounds for believing the scheme is no longer operating. In this situation, the chief executive provides a deregistration notice to the operator (section 28A(2)); however, the operator may apply to Queensland Civil and Administrative Tribunal (QCAT) for a review of this decision (section 29(3)).

The Act does not prescribe criteria to be considered by the chief executive when deciding whether reasonable grounds have been established, other than that the retirement village scheme is no longer in operation. In other words, it only applies to the narrow situation of a village being closed for business, with no residents remaining.

#### 4.2.3 Cancelling registration

Alternatively, the Act allows the operator to apply to the chief executive to cancel the registration (section 40). The application must demonstrate that notice has been given to the village residents advising them of: (a) the application, (b) how the closure of the village will affect them, and (c) their right to lodge an objection to the closure with the chief executive. The Act does not prescribe what should be addressed in any such notice. The chief executive may then cancel the registration if satisfied that doing so is appropriate, and after taking into account any objections lodged by the residents in response to the operator's notice (section 41).

Although not required in the Act, it is presumed the chief executive will convey the residents' objections to the operator, who may then revise their closure plan (to deal with

the resident's concerns), and re-submit this to the chief executive. Again, the Act does not prescribe criteria for the chief executive to follow when deciding how to balance the merits of the operator's plan against any objections raised by the residents. Likewise, there is no prescribed process for the chief executive to negotiate with the operator about changes to the plan in response to such objections.

The Act does not give QCAT any specific role in cancelling registration of a scheme. Rather, if the chief executive refused to cancel registration (presumably because doing so would not be appropriate to safeguard the residents' interests), this decision would be one which the operator could then seek to have reviewed. Likewise, if residents did not agree with the chief executive's decision to cancel registration, they could also seek administrative review.

However, under the usual dispute resolution process, residents may have grounds to apply to QCAT if the operator did not comply with requirements under the Act which, although not specific to village closure, would still be relevant. For example, the resident may object to any valuation of their unit obtained by the operator (section 60) which unfairly reduces the exit entitlement paid to them. Although not explicitly prescribed in the Act, a residence contract presumably would terminate if the scheme is cancelled. This is because all the rights and obligations upon which the contract is based would cease at that time, unless the resident terminated their contract earlier. In this way, since some of the requirements under the Act (including obtaining valuation) are only activated after termination, the resident's right to apply to QCAT would only become available after the village has closed and the resident has been forced to leave.

#### **4.2.4 Instances of village closure**

Historically, the incidence of retirement villages closures in Queensland has been extremely rare. The orderly, low-impact characteristics of early closures did not identify any deficiency in the relevant provisions. However, two later examples of retirement village closures brought into focus areas where such provisions are lacking.

When the Act was introduced in 2000, all existing villages had a grace period to put in place the new funds (that is, the maintenance reserve fund and the capital replacement fund) prescribed under the Act. Several smaller villages opted to cancel their registration because their low-income residents would have been unable to meet the necessary contributions to these funds, so the scheme operators re-configured their financial arrangements (including paying back the residents' ingoing contributions) to change the retirement village into a standard group title (body corporate) scheme. In such instances, closure did not have substantial impacts on the residents because they remained in their units and continued paying similar levels of ongoing charges.

Other smaller villages closed altogether, however the residents were not disadvantaged because of processes employed by the operator. In those instances, the units were progressively bought back by the operator at an acceptable price, and cancellation of the scheme was only sought once all residents had vacated.

However, in the past ten years, two retirement village closures have had substantially more impact on residents, and highlighted the lack of process in the Act to manage such situations. The issues arising from these situations may be summarised as follows:

- Operators may decide they can make more profit by closing the retirement village and realising the value of the land on which it is built, rather than spending their own funds to (a) improve the village business model, or (b) repair village buildings which have fallen into serious disrepair or simply reached the end of their useful life.
- Operators wanting to close their village may slowly 'wind it down' by not reselling units as they fall vacant, rather than promptly applying to close the village once they have decided not to continue as a long-term going concern.
- Such a winding down may result in the communal facilities not being maintained due to the decreasing number of residents available to contribute to the maintenance reserve fund. This situation, in turn, affects the day-to-day amenity of the village for the remaining residents, and causes the overall value of the village to fall.
- Once the eventual closure of the village becomes public knowledge, either through the operator making this known or it becoming apparent from the lack of resales and the drop in maintenance of communal facilities, the value of the remaining residents' units may fall. This situation, in turn, reduces their exit entitlement and their capacity to afford alternative accommodation.
- Residents experiencing a fall in the value of their units may find it difficult to challenge this low valuation by initiating a retirement village dispute, because the valuation requirements in the Act are only activated after the resident terminates their contract and thus gives up occupancy of their unit.
- Regardless of whether the village is closed slowly or in a timelier manner, it remains an extremely disruptive and stressful experience for residents, particularly if they are elderly and/or have limited financial resources beyond the capital tied up in their retirement village unit.

These examples show how the lack of specific guidelines in the Act about village closure has meant that such critical issues are essentially unregulated. In particular, these examples have identified the following limitations in the chief executive's powers to take action to protect the residents:

- Where villages are still operating, even in a limited way, the chief executive has no power to act and unilaterally deregister the scheme.
- Although the chief executive may enforce the operator's compliance with the Act in relation to day-to-day running of the village until it eventually shuts its doors, the chief executive has very little power to influence the process for relocation of residents to new accommodation.
- Where valuation of units is in dispute, it is currently only the affected residents who can initiate the dispute resolution process to seek higher valuations from QCAT.

The actual closure incidents, and the issues they highlighted, were disturbing not only for the residents and families directly affected, but also for the broader retirement village industry. Other operators were concerned that the situation generated extremely bad publicity for the industry, and called upon the government to amend the Act to prevent such problems occurring in future.

## 4.3 Issues statement

### 4.3.1 Introduction

In the unfortunate event of a retirement village closing, the Act offers little guidance for the operator about how the actual closure should occur, and provides no direction about how the residents' interests should be managed and protected. This gap in the legislative framework exposes both operators and residents to uncertainty and financial disadvantage.

When a retirement village closes, it has a significant impact on both the operator and residents. As noted above, the Act only offers some broad guidelines around closure (including a limited role for the chief executive). As a result, management of the closure and mitigation of the impacts is largely left to be resolved between the parties involved. The issues arising from the examples noted above illustrate how this existing legislative framework was very deficient in the case of two village closures. In each case, the lack of a comprehensive closure process had a detrimental impact on residents, and provided little guidance for the operator and the chief executive about ensuring best practice in the circumstances. However, these two cases also highlight the rarity of village closure, given they are the only two significant instances of this occurring since the Act was first passed.

### 4.3.2 Impacts of closure

Before considering whether government intervention is necessary to adequately manage the impacts of village closure, those impacts need to be understood. When a retirement village closes, the people most affected are the operator and the residents. When an operator first registers their village, they expect it will continue indefinitely as a profitable enterprise, and when residents sign their residence contracts, they expect the life of the village will outlast their own term of occupancy. Accordingly, when a village closes, there will be potential impacts for both operators and residents, as discussed below.

The impacts for the operator include:

- losing a business, which in most cases would have generated regular and substantial income each time a unit was resold
- costs incurred to practically achieve the closure including (a) legal, financial and administrative expenditure, and (b) valuations, stamp duty, bridging finance and bank charges and
- paying the exit entitlements to all residents at the same time or within a short timeframe.

However, offsetting these costs for the operator are savings from:

- not having to reinstate the units, assuming they were contractually bound to contribute to this cost
- not having to market the units for resale, or otherwise meet any costs of sale not recoverable against an outgoing resident and
- freeing the land and buildings comprising the retirement village for other, potentially more profitable, purposes.

Furthermore, the operator is still entitled to receive their exit fee, and may continue to levy general services charges on the remaining residents to upkeep the village (as needed) during the winding-down period.

The impacts for residents include:

- losing security of tenure, which is one of the key selling points of moving into a retirement village compared to similar accommodation models (such as manufactured home parks geared towards older people), and having to find other accommodation
- receiving a reduced exit entitlement if their unit is valued lower than expected because the village is no longer a going concern
- incurring costs to secure comparable accommodation, particularly if this exceeds their exit entitlement, or having to relocate to a lower, more affordable standard of accommodation
- incurring costs to physically relocate.

However, offsetting these costs for residents are savings from:

- not having to reinstate the units, assuming they were contractually bound to contribute to this cost
- not having to meet any costs of sale for which they may have otherwise been liable.

Residents would also still be liable to pay the operator their exit fee. Furthermore, for the time they remain in the village during the winding-down period, residents may continue to be liable to pay general services charges to upkeep the village, although they may also recoup the unspent balance of general services charges and the maintenance reserve fund once the village is empty (presuming the operator agrees to this, given that the Act is silent on this matter).

Given the above impacts and the present scope of the legislative framework, there are certain key issues which are not adequately addressed by the Act and may result in residents being treated unfairly. These issues include how much notice residents should receive before the village is closed, the way ongoing village operating costs are met in the interim, and how any balance of general services charges or the maintenance reserve fund will ultimately be disbursed. Other issues concern how residents' units will be valued when they are paid their exit entitlement, and whether closure should reduce the exit fee received by the operator. Finally, residents are concerned about how they will find alternative accommodation, and the extent of help, financial or otherwise, which the operator may offer in this regard.

The low likelihood of village closure may dispute the need to address these considerations. However, there is good reason to presume the actual closure situations discussed above may not be the only times this will ever occur.

A retirement village scheme is a business, and it is likely other villages will close in future if this business component fails. Furthermore, and as shown by one of the actual closure situations discussed above, it is possible for the 'fabric' of an existing village to wear out beyond repair, necessitating closure. The more dense the development, such as with a 'tower block' style village, the more difficult it is to carry out piecemeal refurbishment and

avoid a forced closure. This issue will become more pressing as existing villages continue to age and reach the end of their useful life.

Even if the likelihood of village closure is low, the consequences where it does occur may be very serious for the residents concerned. As noted above, residents not only face significant financial burden, but also loss of security of tenure, which may require moving to a lower standard of accommodation and/or away from family, friends and facilities. Of course, the impact of these consequences is heightened for residents who are elderly and/or on fixed pension incomes.

#### **4.3.3 Previous consideration of impacts**

The Parliamentary Committee considered the problem to be sufficiently serious to warrant government intervention, and recommended amending the Act to more comprehensively regulate the closure of retirement villages. The Ministerial working party endorsed this broad recommendation and went on to consider the specific aspects of village closure which required expanded regulation.

### **4.4 Policy objectives**

As stated, the Act broadly regulates the closure of retirement villages, but is largely silent about a range of associated issues which need to be considered and resolved to protect the residents' interests and facilitate the actual closure by the operator. However, any reform to address these issues must also be consistent with the main objective of the Act.

Consequently, the relevant policy objective is to ensure village closures are adequately managed, and to achieve this in a way which complies with the broader objectives of the Act.

These key issues are:

- (a) notifying residents about the closure
- (b) meeting operating costs of the village between the decision to close and actual closure
- (c) valuing the units, particularly where a village is winding down
- (d) disbursing any balance of general services charges or the maintenance reserve fund
- (e) timing payment of the resident's exit entitlement
- (f) compensating residents for actual costs incurred in having to find alternative accommodation
- (g) calculating the operator's exit fee
- (h) relocating residents to new accommodation.

The approach of the Parliamentary Committee was to address these issues by expanding the existing legislative framework for village closure in the Act. This is only one possible option for addressing these issues and may not necessarily best satisfy the overarching policy objective.



## 4.5 Options and alternatives

The three options proposed to address the issues arising from village closure are discussed below.

### 4.5.1 Option 1 – Status quo

The first option is to maintain the status quo and not take any action to address the issues arising from village closure.

### 4.5.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the PID to specifically disclose how the operator will manage each of the key issues arising from village closure (as listed above). Furthermore, if the operator does not intend to plan ahead to manage the issues arising from village closure (in whole or partly) the PID must (a) expressly state this, and (b) explain the impact of this decision, for example:

*‘This retirement village does not presently have a process in place for managing the key issues which may arise should the village close down. Accordingly, you will not know how these issues will be managed until such time as the village closes. At that time, the way the scheme operator decides to manage the issues may have significant financial and personal impacts on you.*

*The key village closure issues are:*

- *notifying residents about the closure*
- *meeting operating costs of the village between the decision to close and actual closure*
- *valuing the units, particularly where a village is winding down*
- *disbursing any balance of general services charges or the maintenance reserve fund*
- *timing payment of the resident’s exit entitlement*
- *compensating residents for actual costs incurred in having to find alternative accommodation*
- *calculating the scheme operator’s exit fee*
- *effecting relocation of residents to new accommodation’.*

In this example, the operator did not have a plan in place for any of the key issues arising from village closure and was therefore required to explain the impact of this decision. If the operator had a plan about only some of the issues, this explanation would cover those issues not included within the plan.

By reading the PID for a village, a prospective resident should easily be able to identify the processes in place to address the resulting issues if the village closes down. The prospective resident will also be able to compare and contrast processes at different villages. Even if a particular village does not have a process in place to manage this issue, the absence of such a process and the impact of this decision must still be disclosed.

This option allows market forces to influence an effective, fair and efficient means of addressing the issues. It is likely that prospective residents will favour those villages

having processes which best manage the issues, and over time, other villages will adopt similar (or better) processes to compete. This option does not force the operator to change their present business model. Instead, it encourages operators to develop workable and commercially sustainable ways of dealing with the issues.

When deciding whether to enter a retirement village and also when choosing between villages, there are many factors for a prospective resident to consider. However, immediate factors such as the buy-in price and village amenity might rate above other equally important, but more remote considerations (including what would occur if the village closed). Consequently, a critical component to the success of option 2 is the requirement for the operator to disclose whether their village has a process in place to manage village closure because this will draw the attention of prospective residents to this issue, thus making it a key point of consideration and comparison. If villages without any closure management process are required to disclose that fact, it will help prospective residents make an informed decision about whether or not to move into such a village.

Ultimately, the success of this option in delivering better protection to consumers will depend upon (a) the attitude of operators as to whether they implement a closure management process (and what that process entails), (b) the amount of competition in the industry prompting more passive operators to adopt a process at least equal to that implemented by other operators, and (c) the importance which prospective residents place on this issue; that is, whether the existence of a process (and what it entails) influences their decision about whether to enter a particular village.

#### **4.5.3 Option 3 – Prescribed closure requirements**

The third option prescribes a series of requirements which the operator must consider when devising a plan to manage village closure, once the decision to close is made. The features of the third option are described below.

The operator must devise and implement a plan for closure of the retirement village which covers:

- the amount of closure notice, which should be given to residents
- the way in which operating costs of the village are met between the decision to close and actual closure
- the criteria for valuing the units, particularly where a village is winding down
- disbursement of any balance of general services charges or the maintenance reserve fund
- when residents are to be paid their exit entitlement.

In devising this closure plan, and outlining how the matters listed above are addressed, the following points should be considered:

- whether compensation should be paid to residents, covering actual costs involved in having to find alternative accommodation
- whether to reduce (partly or in total) the exit fee the operator would normally receive
- whether to actively assist with relocation of residents to new accommodation, and how this could be achieved.

Once devised, this closure plan must be submitted to the chief executive for assessment and approval. It is during this process, that the chief executive will consult with residents on the plan. The chief executive will also be given the power to make changes to the plan to ensure the above considerations have been adequately addressed.

As residents will receive notice of the proposed closure during the chief executive's assessment process, the current provisions requiring the operator to give notice to residents when applying to the chief executive to cancel registration of the retirement village scheme, will no longer be necessary.

After approving the plan, the chief executive will then make the decision about cancelling registration of the scheme.

By having the requirements for the closure plan prescribed in the Act, this option will give the operator, residents and the chief executive clear guidelines about whether the plan provides a clear, orderly and fair process for village closure.

In accordance with natural justice, the operator or the residents could seek administrative review of the chief executive's decisions about (a) the adequacy of the closure plan, including any adjustments or additions made to the plan, and/or (b) cancelling registration. Furthermore, as the requirements for a closure plan would be prescribed under the Act, a failure by the operator to properly consider any of them when devising the plan would also amount to a retirement village dispute, which the residents could take to Queensland Civil and Administrative Tribunal (QCAT) for review. If QCAT found there were deficiencies in the plan, it could direct the operator to revise it in accordance with requirements in the Act before the plan could be submitted to the chief executive for approval.

In situations where the interests of residents are being adversely affected, this option would also prescribe a new basis for the chief executive to deregister a scheme, particularly if a village is being deliberately run down towards eventual closure. This ground should include a 'show cause' process, whereby the operator must justify to the chief executive why the scheme should not be deregistered. Again, the operator or residents could seek administrative review of the final decision by the chief executive. Should the chief executive decide it is in the best interests of residents to deregister the scheme, the standard closure plan process detailed above will come into play.

Finally, this option would extend the existing power of the chief executive to apply to the District Court to appoint a manager for a village, if necessary to protect the interests of the village residents (section 38). Depending on the final decision of the chief executive, the manager will either be appointed to (a) guide the village back to operating in compliance with the Act so the scheme may continue, or (b) implement the closure plan.

This option gives the operator flexibility to devise and implement a closure plan which suits the particular circumstances of their village and the needs of the village residents, while ensuring the plan has clear and enforceable requirements to ensure key consumer protections are incorporated. The review of the plan by the chief executive (including the discretion to amend and add to it as necessary) will further safeguard these consumer protections. Where a village is being run down towards closure, the option also empowers the chief executive to act to protect the interests of residents.

## 4.6 Impact assessment

The key identified stakeholders are:

- operators, including the retirement village industry generally
- residents, including prospective residents
- the government
- the administering department.

An assessment of the costs and benefits to affected parties of all three options, as measured against a baseline of no action being taken (the status quo) to address the issues arising from village closure is provided below.

### 4.6.1 Option 1 – Status quo

The first option is to maintain the status quo, and not take any action to address the issue of village closure.

The actual village closures of recent years have highlighted the inadequate coverage of this issue in the present legislative framework. Consequently, this option may mean such deficiencies remain unaddressed.

While the incidence of village closure is low, and the actual occurrences which have prompted examination of this issue are probably worst-case scenarios, they do clearly show the danger of allowing such a significant issue to be largely self-regulated. On the other hand, a process for village closure which is not overly prescriptive may potentially benefit the operator and/or residents, because of the flexibility this gives to make arrangements which best suit the individual circumstances of the village.

### 4.6.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the operator to specifically disclose in the PID how they will manage village closure issues at the retirement village, or alternatively, if the operator does not intend to plan ahead to manage these issues, to disclose this in the PID. With this option, prospective residents will not only potentially be better informed about how these issues will be dealt with in a retirement village, but will be able to directly compare and contrast different villages.

The potential costs for residents include:

- **Medium impact:** Once this new pre-contractual disclosure requirement becomes law, all residents entering a particular village after that time will be aware of the closure process applicable to that village before signing their residence contract. However, existing residents would not have been aware of, or agreed to, any such process when they originally entered into their residence contract (because it was not regulated by the Act at that time). Therefore, existing residents may potentially feel disadvantaged by having the closure process imposed on their village, especially if they believed the present process under the Act (that is, the chief executive must decide, on a case-by-case basis, whether resident interests are adequately safeguarded before agreeing to cancel registration) was likely to deliver a better financial outcome for residents.

- **Low impact:** Issues that can arise from retirement village closures are a matter of serious concern. However, closures are rare across the industry, and there is a risk of overstating the extent of this problem by highlighting closure management processes in the PID. As such, prospective residents may potentially dismiss a particular retirement village on the basis of its village closure process if such information is disclosed upfront in the PID. This may disadvantage existing residents trying to resell their unit, if in weighing up the overall pros and cons of their village, the prospective resident considers the management of closure issues to be significant. However, as noted above, the issues arising from village closure (and indeed, the likelihood of closure happening at all) may not be at the forefront of a prospective resident's assessment of the desirability and suitability of a particular retirement village, and therefore this potential impact may rarely, if ever, eventuate.

The potential benefits for residents include:

- **High impact:** The operator's decision whether or not to implement a process for addressing village closure, and the details of any such process, may potentially be used by prospective residents as an objective benchmark for comparing and contrasting retirement villages before choosing one. This will assist prospective residents to make a more informed decision about which village to buy into, particularly where management of village closure is within the key selection criteria for the prospective resident.
- **Medium impact:** Where the operator has implemented a process for addressing village closure, residents at the retirement village will have increased certainty and protection should a closure actually occur. Of course, the more rigorous and comprehensive the process, the more likely it is the issues arising from closure will be meaningfully addressed. Should a village then close, the chief executive could require the operator to comply with their own, pre-existing closure process. Presently, residents facing closure of their village have no security as to what closure process the chief executive might endorse.

The potential costs for the operator include:

- **Medium impact:** The operator will be required to revise their PID to detail how closure issues will be addressed at their village (unless managing these issues is already covered in an existing PID). Most villages update their PID regularly, and therefore there is minimal additional cost associated with this option. However, in devising the best way to address closure issues at their village, an operator may potentially need to obtain legal and financial advice. This scenario would impose extra costs to those incurred in simply making content changes to the PID, which smaller villages may find difficult to absorb.
- **Medium impact:** Although the operator may choose to take no action to address closure issues, they may potentially feel obliged to devise some affirmative measures for fear of losing market share to other retirement villages which chose to address these issues. Furthermore, if a number of operators develop and implement a more detailed and rigorous means of addressing closure issues, this may set the market benchmark, which other operators may feel compelled to also match. The ultimate

result may be a more costly business framework for operators, although given the rarity of village closure, the additional requirements are unlikely to ever be called upon.

The potential benefits for the operator include:

- **Medium impact:** The operator's decision whether or not to implement a process for addressing closure issues and the details of any such process may be used by prospective residents as an objective benchmark for comparing and contrasting different retirement villages before choosing one. Therefore, if the operator introduces a solid and fair process, they may potentially have an advantage over other operators who have a lesser process or no process at all, and may at least be able to better compete with other operators with a comparable process. Of course, this may mean those operators with a lesser process or no process at all will potentially be at a competitive disadvantage.

#### 4.6.3 Option 3 – Prescribed closure requirements

The third option prescribes a series of requirements which the operator must consider when devising a plan to manage their village closure. The option then empowers the chief executive to review and approve this plan, and if necessary, adjust or add to the plan to ensure consumers are adequately protected. This option also extends the existing powers of the chief executive to deregister a scheme or apply to appoint a village manager, if such action is necessary to protect the residents' interests.

Under this option, both residents and the operator will have clarity about the critical matters to be included in a closure plan. Such clear parameters will also assist the chief executive in evaluating the adequacy of closure plans, and so assist the chief executive to decide whether the village should be closed. Should the operator or residents disagree with the chief executive's decisions, administrative review of those decisions would be available.

The potential costs for residents include:

- **Medium impact:** There is a possibility that with a defined closure process, operators who may otherwise have been prepared to continue to run a marginally financial village will now choose to pursue a closure option. However, it is considered unlikely to promote more closures. In the circumstance of closure, affected residents will face the expense of leaving the village including having to find alternative accommodation.
- **Low impact:** If the residents make a submission when the chief executive reviews the operator's closure plan, they may potentially incur costs in making the submission. However, such costs are likely to be offset (and more) if they lead to a final closure plan which better safeguards their financial interests.

The potential benefits for residents include:

- **Medium impact:** This option will potentially make it less likely residents will be financially disadvantaged if their village closes because the financial impacts on residents must be considered in the closure plan. For example, the operator will need to ensure the valuation reflects the circumstances, and must also determine the notice

period and amount of compensation necessary and reasonable to enable residents to relocate as smoothly as possible. By increasing the chief executive's existing powers to consider deregistration when a village is being run down towards closure, and to also appoint a manager, the chief executive's ability to take action where necessary to protect residents' financial interests will further improve.

- **Medium impact:** This option may provide residents with more certainty about what will happen if their village closes. In addition, the review process by the chief executive will provide residents with a potential opportunity to comment on the operator's closure plan and influence any changes or additions which the chief executive makes.
- **Low impact:** This option may potentially make residents less likely to initiate their own disputes about the adequacy of the closure plan, because the requirements for the plan will be prescribed and the chief executive will also be empowered to change or add to it where necessary.

The potential costs for the operator include:

- **Medium impact:** After a village closes and all payments are made to the residents, it is likely the operator will still have considerable equity left in the village land and structures. However, if this option results in residents being in a better position financially (because the critical matters affecting the financial impacts on residents must be considered in the closure plan), this may reduce the operator's remaining equity because more will have been paid out to residents. In other words, this option may potentially reduce any financial benefit the operator might otherwise have gained from closing the village. In anticipation of this, it is quite likely operators may attempt to recover such reduced financial benefit by increasing exit fees or otherwise clawing back the 'lost' amount from residents while the village is still operating (although doing so may well result in the operator pricing themselves out of the market to cover a risk which may never eventuate).
- **Medium impact:** This option may potentially increase costs for the operator in devising a closure plan (including engaging appropriate consultants), because of the extra details the plan needs to cover, and the likelihood of increased scrutiny by residents and the chief executive.
- **Low impact:** This option may potentially cause the operator to incur costs in making a submission in support of their plan and/or challenging any changes or additions to the plan directed by the chief executive. Conversely, there may be fewer challenges to the closure plan as this option gives operators more guidance about what their closure arrangements must address, and therefore the overall standard of closure plans may potentially improve.
- **Low impact:** Increasing the chief executive's existing powers to consider deregistration of a scheme when a village is being run down towards closure, and to also appoint a manager, may potentially incur costs to the operator in challenging such a decision. However, the circumstances when the chief executive would even consider taking such drastic action would be very rare.

The potential benefits for the operator include:

- **Medium impact:** This option will provide the operator with potentially more certainty about what will happen if closure occurs. Where there is confusion and conflict surrounding closure and a protracted timeframe for the closure, the operator may incur additional costs in running and maintaining the village until such time as the closure process may be agreed upon and implemented. Therefore, as all the key considerations arising from a closure must be addressed in the closure plan, the operator and residents are more likely to resolve their financial and other issues efficiently and with minimum dispute, potentially allowing the actual closure to proceed in a timely manner.
- **Medium impact:** This option may potentially reduce the bad publicity for the operator surrounding the closure, by being able to rely on a strong plan which has been independently reviewed and approved by the chief executive. In turn, industry in general may benefit from evidence that the new closure process has helped residents, by reinforcing the perception of retirement villages as a solid and secure accommodation choice. This would be particularly so if the evidence showed residents were saved from the significant disadvantage which may otherwise have arisen from being forced to leave the village.
- **Low impact:** This option empowers the chief executive to review and approve the operator's closure plan, which includes how resident units are valued. Therefore, the operator may potentially be liable to pay a lower exit entitlement than if the valuation was decided by residents taking individual disputes to QCAT.

The potential costs and benefits for government include:

- **Medium impact:** Expanding the chief executive's existing powers to consider deregistration of a scheme when a village is being run down towards closure, and to also appoint a manager, will improve their ability to act where necessary to protect residents. However, this may potentially result in (a) costs to the administering department in applying to appoint a manager, arguing for this appointment, or defending a decision to deregister a scheme, and (b) costs to the administering department in meeting the salary of a manager (assuming such costs cannot be recovered from the operator). Furthermore, given the overall rarity of village closure, the chief executive is only likely to take such drastic action in circumstances where the operator has been particularly uncooperative.
- **Medium impact:** Detailed guidelines about what a closure plan must address will provide improved certainty and fairness for both residents and the operator. In turn, by reducing the amount of monitoring and compliance needed when a village closes, this may reduce demand on government resources. The process would involve intensive and ongoing liaison with both residents and the operator, and careful examination of how the financial affairs of the village are managed during the winding-down period.
- **Medium impact:** Giving QCAT an expanded role in village closure may potentially have a direct cost to government. However, this may be offset by greater clarity for people, resulting in less matters being taken to QCAT.



- **Low impact:** This option may potentially increase the workload for the department in approving closure plans, and also potentially expose the chief executive to more reviews against the related decisions because of the significant implications of approving a closure plan. However, given the rarity of village closure, this increased workload would be sporadic, at best, and therefore unlikely to represent an ongoing financial burden.

## 4.7 Analysis of options

As noted above, the Parliamentary Committee recommended government action is taken to address the issues arising from the lack of regulation around retirement village closures:

*Recommendation 28: 'The Committee recommends the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide for the protection of residents in the event a retirement village closes down, or is in the process of closing down.'*

In particular, the Committee noted some of the key village closure issues included (a) how much notice must be given to residents, (b) how units are valued, (c) when the exit entitlement is paid, and (d) how any balance of general services charges or the maintenance reserve fund is disbursed.

After considerable discussion, the Ministerial working party accepted the Parliamentary Committee's recommendation, and agreed action was needed to ensure villages had processes in place to adequately deal with the issues arising from village closure. Options 2 and 3 reflect the key concern of the Parliamentary Committee and the Ministerial working party, being that appropriate action is required to address issues associated with retirement village closure.

Given the variation between retirement villages in Queensland, a one-size-fits-all process for village closure may inevitably leave some residents unprotected and other villages over-regulated. By leaving it to individual operators to devise a process for managing closure which best suits the circumstances of their village, option 2 may result in an efficient means of addressing the identified problem. However, by not being overly prescriptive, this option does run the risk of some villages adopting a less-than-adequate process, and success would then depend upon market forces intervening to give other villages with more effective processes in place the competitive edge. In time, this may become the de facto industry standard to which all villages aspire.

The feedback received from consultation on this RIS will not only assist the government to obtain a better understanding of the issues, but also identify which option, or variation thereof, most successfully addresses those issues.

## 4.8 Implementation, evaluation and compliance support strategy

Depending on which option is adopted, a sufficient lead-in time will be granted between when any necessary amendments to the Act are made and when they commence. The adequacy and workability of the preferred option will be evaluated through ongoing consultative feedback from the retirement village industry and residents. A deeper and more comprehensive evaluation will happen once any village closure occurs.

## 4.9 Feedback questions on issues and options

This Consultation RIS is designed to facilitate public consultation on issues arising from village closure and the options developed to address those issues. Answers are therefore being sought to the following questions:

- Which, if any, of the three options do you prefer, and why?
- For option 2, which of the impacts to residents do you consider the most significant, and why?
- For option 2, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 2, and what do these involve?
- For option 3, which of the impacts to residents do you consider the most significant, and why?
- For option 3, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 3, and what do these involve?
- If you do not prefer any of the three options, is there another way of addressing the issues arising from village closure, and what does that way involve?
- Do you have any further comment about the issue of village closure?

## 5 Best practice standards

### 5.1 Executive Summary

The policy objective of this Regulatory Impact Statement (RIS) concerns managing the behavioural issues which affect interaction between people at a retirement village. Also, the aim is to ensure any solution evenly balances prescription and flexibility in order to deliver consumer protection and maintain viability of the industry.

The options to address this policy objective are (1) maintain the status quo, (2) improve pre-contractual disclosure by requiring any village process for addressing key behavioural issues to be detailed in the public information document (PID), and (3) introduce fairness principles, and enable breaches of these to be resolved by the dispute resolution process or through arbitration.

### 5.2 Background of issue

#### 5.2.1 Introduction

Although the Act extensively prescribes rules and processes for many of the financial and operational interactions between the operator and residents, it is largely silent about best practice standards for how both groups should treat each other in more general terms.

During its review of the Act, the Parliamentary Committee heard anecdotal evidence about problems at retirement villages due to the way that the operator and residents interact on a day-to-day basis. The industry is aware of the importance of village 'reputation' to prospective residents. In this way, isolated examples of 'bad behaviour' may sour the

amenity of a particular village, and if such behaviour continues and the village develops a reputation for constant disputes and widespread resident dissatisfaction, the ability to attract new residents may be damaged. The cumulative impact of behavioural issues across the industry has the potential to diminish the longer-term appeal of retirement villages as an attractive accommodation model for older people.

### 5.2.2 Fairness principles

Some submissions made to the Parliamentary Committee advocated the introduction of fairness principles into the Act, to formally recognise the standards expected for interaction between parties, and also suggested what such principles should cover. The Committee noted several other Australian jurisdictions already include the following fairness principles in their retirement village laws:

- The NSW *Retirement Villages Act 1999* provides the operator must respect the rights of residents of the village, including not interfering with their reasonable peace, comfort or privacy, and ensuring residents live in an environment free from harassment and intimidation (section 66). In turn, the NSW Act also provides that residents must respect the rights of other residents and of other people at the village (section 83).
- The Victorian *Retirement Villages Act 1986* provides the operator must not take any action that might reasonably be regarded as deterring a resident from making a management complaint (section 38E).

The Parliamentary Committee endorsed the above examples in the NSW and Victorian Acts because they roughly aligned with the fairness principles suggested in the submissions.

## 5.3 Issues statement

### 5.3.1 Introduction

The rights and obligations of both the operator and residents at a retirement village are comprehensively regulated under the Act, but only in connection with procedural matters and finance. Interpersonal issues between both groups and between residents in general, may not only impact on these existing rights and obligations, but also lower the amenity of the village and the overall appeal of retirement villages as an accommodation option. Leading stakeholder representatives and individual submissions provided the Parliamentary Committee and the Ministerial working party with numerous, often serious, examples of behavioural issues at retirement villages.

### 5.3.2 Behavioural issues

Some of the key examples of behavioural issues are noted below.

- There were specific instances of the operator demonstrating threatening and intimidating behaviour towards residents, particularly to prevent disputes being initiated or pursued. Such behaviour was sometimes in direct response to a complaint, or followed a dispute hearing in order to punish the resident in question and dissuade other residents from taking similar action. Instances where such 'name and shame' tactics were employed include disputes where the ruling in favour of a resident

increased costs for the operator (either generally, or in defending the particular dispute), which were legitimately passed on to the other residents, and the operator then publically blamed the resident for raising costs for everyone else.

- There were instances of the operator not responding promptly to correspondence from residents, or from their family if the resident has died or moved to an aged care facility. Such behaviour often made it difficult to resolve resident complaints or progress reinstatement of a unit.
- There were also instances of ‘troublemaker’ residents writing vexatious complaints or letters to the operator, and even openly abusing the operator or their office staff where minor village issues were not fixed at once.
- Other instances of behavioural issues included (a) the operator or residents committee allowing irregularities in voting and village meetings, (b) residents harassing other residents about noise, pets and visitor disagreements, (c) residents assaulting village staff who were following the operator’s lawful instructions , and (d) the operator entering a resident’s unit unannounced.

The following limited information is available about behavioural issues at retirement villages:

- During 2007/2008, the Association of Residents of Queensland Retirement Villages (ARQRV) (the leading stakeholder body for residents) logged 4,642 complaints from residents in Queensland, ranging from operators not strictly complying with the Act, to residents being subjected to bad, sometimes threatening behaviour from the operator and other residents. Although such a detailed log has not been provided to other parties or been maintained for the past few years, the ARQRV noted a very large volume of resident complaints were also received during this period.
- Leading industry bodies representing operators have surveyed residents, and found high levels of satisfaction with life at retirement villages.
- The department administering the Act receives a very small number of complaints about behavioural issues.

Despite requests from operator representatives, the ARQRV has not shared its log of complaints. The operator-generated surveys have been criticised for not surveying former residents after they have left a village and paid their exit fee, reinstatement and other departure costs. Finally, as the department does not have legislative powers to intervene in most behavioural issues at villages, it is possible many residents and operators simply decide there is no point in raising such issues with it.

### **5.3.3 Impacts of behavioural issues**

The potential impacts of behavioural issues at a retirement village range from people feeling unhappy through to fear for physical safety. In between, people may feel distress, anxiety, upset and intimidation.

Many residents are elderly and vulnerable, and may therefore suffer significant upset and stress if subjected to intimidating behaviour or if their privacy is violated. Similarly, the operator must act in the best interests of the village and in compliance with the Act, and neither they nor their employees should be harassed or intimidated for going about their lawful business.

Presently, there are only limited ways that behavioural issues at a retirement village may be dealt with. Where the operator, or their employee, is bullied by a resident or their family, this may constitute workplace harassment and be pursued through workplace relations laws. Similarly, very serious examples of harassment involving violence, assault, or stalking may amount to a criminal offence. However, such laws do not provide a way of resolving most of the types of intimidation and harassment which village residents may encounter. Likewise, operators are reluctant to become involved in resident-to-resident disputes for fear of either being seen to be taking sides or preventing the residents from resolving the matter informally between themselves.

The impact of behavioural issues on residents is further increased by their inability to quickly extricate themselves from the situation due to the significant costs associated with leaving a retirement village.

#### **5.3.4 Previous consideration of impacts**

The Parliamentary Committee and the Ministerial working party acknowledged the impact of such bad behaviour on (a) operators and their staff, (b) residents and their families, and (c) financiers and the broader community (about their perception of communal living at a retirement village).

The Parliamentary Committee considered the problem warranted intervention, and recommended amending the Act to include fairness principles and introduce a code of conduct for operators. Such a code would establish best practice standards in the operation of retirement villages (such as engaging with residents in a respectful and consultative manner), and ensure residents receive a base level of service (including an experienced and professional approach to managing village finances). The Committee also recommended including fairness principles in the Act as another way of managing operator and resident behaviour at villages.

The Ministerial working party endorsed the need for government intervention, and while agreeing with the introduction of fairness principles, considered a code of conduct was unnecessarily onerous and added a further layer of red tape for operators. The working party noted many operators already have corporate governance standards in place for their village, either of their own design or in accordance with one of the existing industry accreditation schemes. It was suggested this may be a more effective and sophisticated means of ensuring a village follows best practice principles than a one-size-fits-all code of conduct which is difficult to enforce.

The working party did not endorse a 'star rating' system for retirement villages. To prevent discriminating against smaller villages with limited resources, such a system could probably only cover the most basic, universal features of a village (which may not include comprehensive fairness principles).

## 5.4 Policy objectives

The Act creates rights and obligations for both the operator and residents, but these do not address behavioural issues affecting general interaction between people at a retirement village. However, any reform to address these issues must also be consistent with the overarching objective of the Act, which is to (a) promote consumer protection and fair trading practices in the operation of retirement villages, and (b) encourage the continued growth and viability of the retirement village industry.

The key policy objective is to find a way to protect rights in a way that balances prescription and flexibility across a range of issues, such as:

- privacy and independence including a resident's right to quiet enjoyment of their unit and the communal facilities, and a resident's right to autonomy over personal, domestic and financial matters and over their possessions
- harassment and intimidation including a resident's right to express views about village issues without fear of recrimination, and the right of the operator and their employees to go about lawful village business
- responses to correspondence to the operator including a resident's right to receive a response within a reasonable timeframe
- health and safety including the right of a resident or an employee of the operator not to have their health and safety endangered.

The Ministerial working party only agreed to introduce fairness principles, although both the Committee and the working party identified the list of issues above as being those requiring the most attention. In particular, the Ministerial working party endorsed the rights of residents (and other people at a retirement village) prescribed in the NSW *Retirement Villages Act 1999*, which are reflected in the key issues described above.

The Ministerial working party also recognised a need to make the fairness principles enforceable by law to avoid such principles simply being 'motherhood statements' offering no real protection of rights.

The recommendation of the Parliamentary Committee and the proposals of the Ministerial working party are among the possible options for addressing these issues while also satisfying the overarching policy objective stated above.

## 5.5 Options and alternatives

Three proposed options for managing the key behavioural issues affecting interaction at a retirement village are discussed below.

### 5.5.1 Option 1 - Status quo

The first option is to maintain the status quo, and not take any action to manage the key behavioural issues affecting interaction at a retirement village.

### 5.5.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the operator to specifically disclose in the PID how they will manage each of the key behavioural issues at their retirement village.

The three most likely ways that this might be done are (a) introducing new rights and/or obligations in the village by-laws, (b) incorporating new rights and/or obligations in future residence contracts, or (c) adhering to a voluntary, industry-based code of conduct prescribing new rights and obligations.

Furthermore, if the operator does not intend to plan ahead to manage the key behavioural issues at a retirement village (in whole or partly), the PID must (a) expressly state this, and (b) explain the importance of this decision. For example, a PID could state:

*'This retirement village does not presently have a process in place for managing the key behavioural issues which may arise at a retirement village. Accordingly, you will not know how these issues will be managed until such time as they arise. At that time, the way the scheme operator decides to manage the issues may have significant financial and personal impacts on you.'*

*The key behavioural issues are as follows:*

- *privacy and independence including a resident's right to quiet enjoyment of their unit and the communal facilities, and a resident's right to autonomy over personal, domestic and financial matters and over their possessions*
- *harassment and intimidation including a resident's right to express views about village issues without fear of recrimination, and the right of the scheme operator and their employees to go about lawful village business*
- *responses to correspondence to the operator including a resident's right to receive a response within a reasonable timeframe*
- *health and safety including the right of a resident or an employee of the operator not to have their health and safety endangered'.*

In the above example, the operator had no plan for any of the key behavioural issues, and was therefore required to explain the significance of this decision in relation to all the key issues. If the operator had a plan about only some of the issues, this explanation would cover those issues not included within the plan.

By reading the PID for a village, a prospective resident will easily be able to identify the processes in place to (a) safeguard privacy and independence, (b) prevent harassment and intimidation, (c) respond to resident correspondence, and (d) ensure health and safety. The prospective resident will also be able to compare and contrast the processes at different villages. Even if a particular village does not have a process in place to manage all of these issues, the absence of such a process and the impact of this decision must still be disclosed.

Although it will depend on what process is implemented, residents and the operator are likely to acquire new rights and obligations. Therefore, the Act should be amended to require the operator to also adopt a process for resolving breaches of these rights and obligations. A process such as informal village mediation may be suitable where the rights and obligations are included in village by-laws. If these rights and obligations are incorporated into the residence contract, then a breach of them would automatically give rise to a standard retirement village dispute. This requirement to adopt some measure of dispute resolution will ensure any new rights or obligations are able to be enforced, rather than simply being 'motherhood statements' offering no real remedy when breached.

This option should let market forces decide an effective, fair and efficient means of addressing the issues. It is expected prospective residents will favour those villages having processes which best manage the issues, and over time, other villages will adopt similar (or better) processes to compete. This option does not require the operator to change their present business model. Rather, it encourages operators to develop workable and commercially sustainable ways of dealing with the issues.

When deciding whether to enter a retirement village and also when choosing between different villages, there are many factors a prospective resident must consider. However, it is likely the buy-in price and village amenity will rate above other important considerations (including behavioural issues which may arise at a retirement village) when making such decisions. Consequently, a critical component to the success of option 2 is the requirement that operators disclose whether or not their village has a process to manage behavioural issues (and what that means for residents), because this will draw prospective residents' attention to this aspect of village life and thereby make it a point of consideration and comparison.

Ultimately, the success of this option in delivering better protection for consumers will depend upon (a) the attitude of operators with regards to introducing a process (and what this process entails), (b) the degree of competition existing in the industry to prompt more passive operators to adopt a process at least equal to that which other operators have implemented, and (c) whether the existence of a process (and what it entails) constitutes a 'deal breaker' for prospective residents when considering a particular village.

It should also be noted that while prospective residents may not rate this issue highly when comparing different villages, and so operators may not be prompted to implement tough behavioural management processes to stay competitive, those same residents may later consider the issue far more important if the village they chose did not have a satisfactory process in place and they were actually facing a situation involving bad behaviour.

### **5.5.3 Option 3 – Prescribed rights and obligations**

The third option is to manage the key behavioural issues at a retirement village by introducing fairness principles dealing with interaction between people at the village, and expanding the existing dispute resolution process to make these principles enforceable.

The Act would be amended to introduce fairness principles prescribing basic rights for residents and the operator, as detailed below.

The Act would be amended to ensure both the operator or residents do not unreasonably interfere with the following rights:

- (a) A resident has the right to privacy, which includes a right to quiet enjoyment of their unit and the communal facilities.
- (b) A resident has the right to autonomy over their personal, domestic and financial matters and over their possessions.
- (c) A resident has the right to not be harassed or intimidated, which includes a right to express views about village issues without fear of recrimination.
- (d) A resident has the right to not have their health and safety endangered.



(e) A resident has the right to receive a response from the operator to correspondence within a reasonable timeframe.

The right in (e) is also owed to a family member of a resident, when writing on behalf of the resident or their estate. The rights in (a) to (e) are owed by the operator either directly or through the actions of their employees at the retirement village.

The Act would be amended to provide that a resident must not unreasonably interfere with the following rights:

- (a) The operator has the right to not be harassed or intimidated.
- (b) The operator has the right to not have their health and safety endangered.

The rights in (a) and (b) are owed to the operator and their employees at the retirement village.

Interference with a right may not be unreasonable if, for example, the operator restricted access for a time to the communal facilities to make necessary repairs. Conversely, an example of unreasonable interference with a right is if the interference contravened the Act, a residence contract or a village by-law.

The Act would prescribe a maximum time (being six weeks) within which the operator must respond to correspondence. In other words, a response may be received anytime within six weeks, provided such time is reasonable in the circumstances; however, a response after six weeks is automatically deemed unreasonable. The amendment will also ensure the six-week deadline does not apply to correspondence which is deemed to be vexatious, frivolous or intended to harass or intimidate.

This option would also allow the Act to be amended to make a breach of any of these rights a retirement village dispute, and thereby able to be pursued under the dispute resolution process. To facilitate this, the existing dispute resolution process will be expanded to include independent and binding arbitration. Breaches of the fairness principles would be resolved in the following ways:

- Where a breach is committed by the operator (or their employee) against a resident (or their family member), this may be pursued through either the existing dispute resolution process or arbitration, at the resident's discretion (or, if applicable, their representative or estate).
- Where a breach is committed by a resident against another resident, this may be pursued through arbitration, or may be pursued by the operator (on behalf of, and at the request of, the resident whose rights were breached) through the dispute resolution process.
- Where a breach is committed by a resident against the operator (or their employee), this may be pursued through either the existing dispute resolution process or arbitration, at the operator's discretion.

Where resolution of a breach is through arbitration, the decision would be final and binding.

This option will provide significant guidance to both the operator and residents about what constitutes acceptable behaviour at a retirement village. This option will also enable a person whose prescribed rights have been breached to enforce such rights and therefore prevent any future breaches. Two negative consequences are the potential for minor disagreements to end up before the tribunal, and for the lifestyle and amenity of a village to break down as a result of residents taking other residents to the tribunal. Consequently, the introduction of independent and binding arbitration will offer another method for resolving minor disputes, and will allow disputes between residents to be resolved in an informal manner.

## 5.6 Impact assessment

The key identified stakeholders are:

- operators, including the retirement village industry generally
- residents, including prospective residents
- the government.

An assessment of the costs and benefits to affected parties of all three options, as measured against a baseline of no action being taken (the status quo) to manage the key behavioural issues affecting interaction at a retirement village is provided below.

### 5.6.1 Option 1 – Status quo

The first option is to maintain the status quo, and not take any action to manage the key behavioural issues at a retirement village.

Actual incidents of serious interaction problems between people have highlighted inadequate coverage in the present legislative framework concerning behavioural issues at retirement villages. Consequently, this option may mean such deficiencies remain unaddressed.

This option is consistent with the present scope of the Act, given it does not extend to regulating personal interactions between the operator and residents (or interaction between residents).

It should be noted in some instances, serious ‘interpersonal’ problems may also constitute breaches of the Act or the residence contract. For example, the contract must give a resident the right to use the village communal facilities (section 10(4)), and so if the operator attempted to stop a resident having reasonable access to such facilities, this would be considered a retirement village dispute because it is a breach of that contractual term. Therefore, option 1 does not absolutely prevent all behavioural issues at a retirement village being dealt with.

However, in the long term, the absence of best practice standards in the Act may potentially reduce consumer confidence in choosing retirement villages as an accommodation model, and so damage the ongoing viability of the industry.

### 5.6.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the operator to specifically disclose how they will manage each of the key behavioural issues at their retirement village, or, if the operator does not intend to manage these issues, to disclose this in the PID. If an operator manages these issues in a way which creates rights and obligations, this option could also require the operator to adopt a process for resolving a breach of such rights or obligations.

Under this option, prospective residents would not only potentially be better informed about how behavioural issues will be dealt with in a retirement village, but will be in a better position to directly compare and contrast different villages.

The potential costs for residents include:

- **Medium impact:** If a process for managing behavioural issues creates rights and obligations, residents may potentially become involved in more disputes – either through the formal dispute resolution process (if incorporated into the residence contract), or through whatever alternative resolution process the operator has implemented (if introduced through some other means, such as village by-laws). As a result, this may (a) cause added stress and cost for residents due to initiating or defending such disputes, and (b) contribute to village disharmony, particularly where resident-to-resident disputes are involved.
- **Medium impact:** Existing residents may potentially be disadvantaged if the process for managing behavioural issues incorporates new rights and obligations into the residence contract, because their contracts would already be in place and so will not include such rights and/or obligations.
- **Low impact:** Behavioural issues at a retirement village may be a matter of serious concern. However, such issues are not a common problem across the industry, and there is a risk of overstating the extent of this problem by highlighting behavioural management processes in the PID. In this way, prospective residents may potentially dismiss a particular retirement village on the basis of its process for managing behavioural issues if such information is disclosed upfront in the PID. This, in turn, may disadvantage existing residents trying to resell their unit, if in weighing up the overall pros and cons of their village, the prospective resident has placed a great deal of importance on how behavioural issues will be managed. However, as noted above, behavioural issues (and the likelihood of facing such issues at all) are not usually in the forefront of a prospective resident's assessment of the desirability and suitability of a particular retirement village, and so this potential impact may rarely, if ever, eventuate.

The potential benefits for residents include:

- **High impact:** The operator's decision whether or not to implement a process for addressing key behavioural issues, and the details of any such process, may potentially be used by prospective residents as an objective benchmark for comparing and contrasting different retirement villages before choosing one. This will assist prospective residents to make a more informed decision about which village to buy into, particularly where management of bad behaviour at a village is within the key selection criteria for the prospective resident.

- **High impact:** Where the operator has implemented a process for addressing key behavioural issues, the standard of conduct at the retirement village may potentially rise. Of course, the more rigorous and comprehensive the process, the more likely it is any bad behaviour presently complained about at villages will be properly addressed. Furthermore, regardless of the process adopted to manage behavioural issues, residents will have a way of resolving breaches of any rights and/or obligations created by the process.

The potential costs for the operator include:

- **High impact:** If a process for managing behavioural issues creates rights and/or obligations, the operator may potentially become involved in more disputes – either through the formal dispute resolution process (if incorporated into the residence contract), or through whatever alternative resolution process the operator has implemented (if introduced through some other means, such as village by-laws). As a result, this may (a) cause added stress and cost for the operator due to initiating or defending such disputes, and (b) contribute to village disharmony, particularly where resident-to-resident disputes are involved.
- **Medium impact:** The operator will be required to revise their PID to detail how the key behavioural issues will be addressed at their village (unless managing these issues is already covered in an existing PID). Most villages update their PID regularly so the additional cost will be minimal. However, in devising the best way to address key behavioural issues at their village, an operator may potentially need to obtain legal advice and make administrative changes. Such a situation would impose costs above those incurred in simply making content changes to the PID, which smaller villages may then find difficult to absorb.
- **Medium impact:** Although the operator may choose to take no action to address key behavioural issues, they may potentially feel obliged to devise some affirmative measures for fear of losing their market share to other retirement villages which do decide to address these issues. Furthermore, if a number of operators develop and implement a more detailed and more rigorous method for addressing the behavioural issues, this may set the market benchmark, which other operators may therefore feel compelled to also match. This option may result in new costs for some operators, particularly those having no history of behavioural issues and so no practical need to adopt ways of managing such issues.

The potential benefits for the operator include:

- **Medium impact:** The operator's decision whether or not to implement a process for addressing key behavioural issues, and the details of any such process, may be used by prospective residents as an objective benchmark for comparing and contrasting different retirement villages before choosing one. Therefore, if the operator implements a solid, enforceable process, they may potentially have an advantage over other operators who have a lesser process or no process at all, and may at least be able to more evenly compete with other operators who have a comparable process. Of course, the result of this may be that those operators with a lesser process, or no process at

all, will potentially be at a competitive disadvantage. However, given the diversity within the retirement village industry, there is presently no equality of market share.

- **Medium impact:** Where the operator has implemented a process for addressing key behavioural issues, the standard of conduct at the retirement village may potentially rise, thereby improving the overall amenity of the village. Furthermore, where any such process includes a means of resolving disputes between residents, this will prevent the operator being drawn into deciding resident-to-resident disagreements.

### 5.6.3 Option 3 – Prescribed rights and obligations

The third option is to amend the Act to introduce fairness principles for interaction between people at a village, and also enable breaches of such principles to be resolved through the existing dispute resolution process.

Under this option, both the operator and residents will have clear guidelines about what constitutes acceptable behaviour at a retirement village, and be able to effectively and efficiently enforce such behaviour through a range of appropriate resolution avenues.

The potential costs for residents include:

- **Medium impact:** By seeking to resolve breaches of fairness principles, residents may potentially become involved in additional disputes, which may cause (a) increased stress and cost in initiating or defending such disputes, and also (b) village disharmony, particularly due to resident-to-resident disputes.

The potential benefits for residents include:

- **High impact:** Addressing or preventing bad behaviour will be easier when there are clear statements about what is expected through the fairness principles. Residents may potentially be in a better position to address issues which would fall short of reaching the formal retirement village dispute threshold. For example, if a group of residents ridicule or intimidate other residents at resident meetings, and the operator is reluctant to become involved because overall the meeting process complies with the Act, this option may allow the affected residents to directly challenge such bad behaviour and prevent it in future.

The potential costs for the operator include:

- **Medium impact:** By seeking to resolve breaches of fairness principles, the operator may potentially become involved in additional disputes, which may cause (a) increased stress and cost in initiating or defending such disputes, and also (b) village disharmony, particularly due to resident-to-resident disputes.

The potential benefits for the operator include:

- **High impact:** The operator may potentially be in a better position to address or prevent bad behaviour from and between residents, which may not otherwise constitute a retirement village dispute, by seeking to resolve breaches of the fairness principles.

- **Medium impact:** The standard of conduct at the retirement village will potentially rise, thereby improving the overall amenity of the village. In addition, the process for resolving disputes between residents will prevent the operator being drawn into deciding resident-to-resident disagreements.

The potential costs and benefits for government include:

- **Medium impact:** Expanding the types of disputes heard by the Queensland Civil and Administrative Tribunal (QCAT) may potentially have a direct cost to government. Furthermore, introducing an option for some breaches of the fairness principles to be remedied through arbitration, will involve the establishment and administration of a panel of suitable arbitrators, together with meeting the actual cost of engaging arbitrators for individual disputes. However, it is anticipated that over time, as people become aware of, and comply with the legally prescribed fairness principles, the government will benefit from a reduction in disputes.
- **Medium impact:** If breaches of fairness principles can be resolved through the dispute resolution process or by arbitration, there may potentially be a decrease in the volume of complaints directed to the government, and so be beneficial due to a reduction in compliance and monitoring activities.

## 5.7 Consultation

The issues raised in this RIS were subject to preliminary consideration by the key stakeholders. Leading industry organisations including the Property Council of Australia Limited (the Property Council) and Leading Age Services Australia Queensland (LASAQ) agreed it was important for residents and operators to behave in accordance with the 'generally-accepted norms within a village', as reflected in the rights listed in the *NSW Retirement Villages Act 1999*. However, LASAQ suggested any prescribed rights should not impose any obligation on the operator to ensure the health and safety of residents. For example, the operator should not be required to guard residents against passive smoking risks or assaults arising from village break and enter crimes. Similarly, LASAQ noted any prescribed rights must be drafted so as to not conflict with, or duplicate, existing laws about privacy and bullying.

National Seniors Australia (National Seniors) noted anecdotal evidence that some residents leave their retirement village because of the 'disruptive behaviour' of other residents. However, the organisation was not aware of instances of bad behaviour 'so serious' that it resulted in a dispute being initiated. National Seniors supported an approach such as option 3 because it imposed the necessary range of fairness principles, and also made them 'enforceable' – noting that 'guidelines are useful, but weak', and 'it is easy to ignore guidelines, but not so easy to ignore enforceable principles or laws'.

## 5.8 Analysis of options

As noted above, the Parliamentary Committee recommended the government intervene to manage the key behavioural issues affecting interaction at a retirement village.

Specifically, the relevant recommendations of the Parliamentary Committee were:

- Recommendation 2: *'The Committee recommends the Minister for Housing and Public Works include principles in the Act for (a) scheme operators in their management of villages and interaction with residents and their families, and (b) residents in their interaction with operators, staff and other residents.'*
- Recommendation 3: *'The Committee recommends the principles referred to in recommendation 2 should cover the following matters: (a) residents' right to peace, comfort and quiet enjoyment of their unit and communal facilities, (b) residents' right to privacy and freedom from unplanned attendance at their unit by operators, (c) residents' right to express their views about issues affecting the village without fear of public or private recrimination from the operator or other residents, (d) residents' and operators' right to freedom from harassment and intimidation by other residents and operator staff, (e) a requirement for residents to respect the rights of other residents and the operator of the village, and (f) a requirement for operators to respect the rights of residents and persons working in the retirement village.'*
- Recommendation 5: *'The Committee recommends the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to require new residence contracts include an obligation on operators to respond to written correspondence from residents within six weeks, and this requirement is also noted in Public Information Documents.'* and
- Recommendation 14: *'The Committee recommends the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to insert provisions which will deter operators and residents from engaging in harassment and intimidating behaviour towards one another, other residents and staff of retirement villages.'*

Overall, the Parliamentary Committee recommended it was important to maintain an open and constructive relationship between residents and the operator, particularly as many decisions made by the operator have a significant impact on residents (financially and otherwise). The Ministerial working party agreed with the introduction of fairness principles as one means of achieving this, (including measures to prevent harassment and intimidation), and a requirement for the operator to promptly respond to correspondence. However, the working party did not agree on mandating a timeframe for responding to correspondence, or the introduction of a code of conduct, believing this would add additional unnecessary layers of red tape for operators. Furthermore, although the working party did not agree on a final wording for the fairness principles, it accepted the principles suggested by the Parliamentary Committee as a fair summary of the core behavioural issues requiring attention.

Options 2 and 3 reflect the key concern of the Parliamentary Committee and the Ministerial working party, being that appropriate action is required to curb bad behaviour at retirement villages.

Given the variation between retirement villages in Queensland, a one-size-fits-all set of fairness principles may inevitably leave some residents unprotected and other residents over-regulated. By allowing individual operators to devise a process for managing the key behavioural issues which best suits the situation at their own village, option 2 may result in a more efficient way of dealing with the identified problem. However by not being overly prescriptive, this option does run the risk of some villages adopting a less-than-adequate process, and the option would then only succeed if market forces intervened to give a competitive edge to other villages with more effective processes in place. In time, those processes favoured by prospective residents when deciding between villages may become the de facto industry standard to which all villages aspire.

The feedback received from consultation on this RIS will not only assist the government to obtain a better understanding of the issues, but also identify which option (or variation thereof) is best suited to deal with those issues. As such, answers are being sought to the following questions about the options to manage the key behavioural issues affecting interaction at a retirement village:

- Which, if any, of the three options do you prefer, and why?
- For option 2, which of the impacts to residents do you consider the most significant, and why?
- For option 2, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 2, and what do these involve?
- For option 3, which of the impacts to residents do you consider the most significant, and why?
- For option 3, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 3, and what do these involve?
- If you do not prefer any of the three options, is there another way to manage the key behavioural issues affecting interaction at a retirement village, and what does that way involve?
- Do you have any further comment about the issue of behavioural issues at a retirement village?

## 5.9 Implementation, Evaluation and Compliance Support Strategy

Depending on which option is adopted, a sufficient lead-in time will be required between when any amendments to the Act are made and when they start. The adequacy and workability of the preferred option will be evaluated through ongoing consultative feedback from the retirement village industry and residents. A deeper and more comprehensive evaluation will happen once a sufficient cross-section of behavioural disputes occurs.



## 6 Alternative payment models

### 6.1 Executive Summary

The policy objective of this Regulatory Impact Statement (RIS) involves managing the issues arising from allowing operators to offer alternative payment models, and to ensure any solution balances prescription and flexibility, to protect consumers and maintain viability of the industry.

The options to address this policy objective are (1) maintain the status quo, (2) allow operators to devise alternative payment models, which must incorporate adequate consumer protections, or (3) prescribe both the alternative payment models which operators may then adopt, together with the corresponding consumer protections.

### 6.2 Background of issue

#### 6.2.1 Introduction

The Act addresses a specific type of contractual arrangement which was initially developed by the retirement village industry in response to consumer demand. The Act reinforces this payment model by only allowing accommodation options complying with the model to be registered and called a 'retirement village'.

The requirements of this include:

- residents pay an ingoing contribution to secure their right to reside in the village
- the operator must establish a capital replacement fund (to which only they contribute), and a maintenance reserve fund (to which only residents contribute)
- residents pay ongoing general services charges to meet the day-to-day operating costs of the village, and contribute to the maintenance reserve fund
- the maintenance reserve fund must be budgeted according to the recommendations of a quantity surveyor, and general services charges are levied on a strict cost-recovery basis
- when residents leave the village, their unit must be reinstated for resale, and they may be required to contribute to this cost
- following resale of the unit, residents receive an exit entitlement and pay the operator an exit fee, with the latter being profit an operator receives for running the village.

During its review of the Act, the Parliamentary Committee noted this strict payment model may stifle innovation and flexibility. Furthermore, the Committee noted these requirements make this model out of reach for many older people because they may (a) have insufficient funds to pay an ingoing contribution, (b) be unable to absorb large increases in general services charges, or (c) fear the uncertainty of what their departure costs (particularly the exit fee) may be. In particular, older people from a lower socio-economic background may not be able to afford to move into a retirement village. Furthermore, in a slow property market, even prospective residents otherwise able to afford paying the ingoing contribution to enter a retirement village may be prevented from doing so if the necessary funds are tied up in a family home they are unable to sell.

## 6.2.2 Registration difficulties

Despite the wide variety of retirement villages, a prospective resident and the operator may be prevented from agreeing on contractual terms best suited to the resident's financial circumstances if those terms are inconsistent with the model prescribed in the Act. For example, a resident may propose a fixed rate of general services charges, but the Act requires such charges to be calculated according to the actual maintenance and day-to-day operating costs of the village.

Since the Act was introduced, there have been several examples of new retirement village schemes submitted for registration, and initially rejected by the administering department for not complying with this prescribed model. In some instances, the applicant proceeded with the development as a different accommodation model (say, a 'retirement resort') which did not require government approval, instead of altering the scheme to fit within the Act. In other instances, applicants modified their schemes to secure registration.

One recent example of the latter scenario occurred in 2012. The proposed scheme differed from the prescribed model because it proposed charging residents an ongoing rental fee instead of general services charges, with rental payments tied to a percentage of the age pension. This would have provided a secure cap on ongoing payments, rather than allowing variations in payments according to the operating and maintenance costs of the village. Under the proposal, the operator would meet the general services charges and maintenance reserve fund contribution (in return for a higher exit fee). After negotiation with the department, the proposed scheme was redesigned (to reinstate the standard general services charges levy) and then duly registered. Despite this positive outcome for the applicant, consumers were denied the choice of an accommodation option which may have better suited their needs.

Refusal of registration as a retirement village scheme does not prevent the developer pursuing their accommodation project aimed at older people - they are simply not permitted to promote it as a 'retirement village'. However, retirement villages, because they are regulated by the Act, may be perceived by prospective residents as a safer and more secure choice than other options. Furthermore, the Act provides an exemption from the *Anti-Discrimination Act 1991*, to permit operators to restrict residency in retirement villages to older persons (section 26).

## 6.3 Issues statement

### 6.3.1 Introduction

The Act may limit the types of financial arrangements which operators may offer to prospective residents. This restriction limits the ability for operators to compete in the seniors' accommodation market, thereby preventing some prospective residents from choosing a retirement village because the financial requirements do not suit their circumstances.

In recent years, and particularly in response to the ageing population, developers have begun offering a wide range of accommodation options designed to appeal to older people including (a) manufactured home parks and group title (body corporate) schemes, and (b) gated communities, and similar 'retirement resort' housing projects. These options are

encroaching into the market served by retirement villages. In terms of appearance and amenity, these options resemble retirement villages, however their financial structure puts them outside the reach of the Act (in fact, manufactured home parks and group title schemes are regulated by the *Manufactured Homes (Residential Parks) Act 2003* and *Body Corporate and Community Management Act 1997*, respectively).

The advantage such options often have over a retirement village is they do not need to comply with the financial requirements of the Act, including (a) the ingoing contribution, (b) variable ongoing general services charges, and (c) reinstatement costs and the exit fee upon leaving the village.

### **6.3.2 Impacts of other accommodation options**

The key impact of the rise in popularity of other accommodation models geared towards older people is that it increases choice. With such strong market forces at play, these models have become (a) increasingly competitive in terms of pricing, (b) innovative in design, and (c) quick to respond to changes in consumer demand. To some extent, retirement villages have similarly evolved, although only as far as the requirements of the Act will allow.

Such increased consumer choice is certainly a positive impact for prospective residents and developers. However, there are implications for retirement village scheme operators and existing residents, as discussed below.

To compete with other accommodation options, operators may consider modifying their existing retirement village scheme to make it more attractive to a wider variety of prospective residents. However, some of these changes may impact on profitability, for example (a) if the exit fee is reduced or the operator incurs a larger share of day-to-day and reinstatement costs, or (b) if the operator is prompted to make significant capital investments to upgrade the village or install new resident facilities. A reduction in profitability disadvantages existing operators, and may also deter development of new retirement villages (which, in turn, reduces consumer choice and competition). Furthermore, such 'mid-stream' changes may cause existing residents to resent new residents entering the village on terms they consider better than those in their residence contract.

As other options become more popular, existing residents may also find it more difficult to resell their units, which may lower their value, and reduce their corresponding exit entitlement. In the longer term, such a shift away from retirement villages may cause some villages to close, with significant consequences for both the operator and residents involved.

### **6.3.3 Previous consideration of impacts**

The Parliamentary Committee and the Ministerial working party recognised the impacts of maintaining the strict financial model in the Act, and its impact on (a) prospective residents and housing developers, and (b) existing residents and operators.

The Parliamentary Committee considered the problem to be so serious that government intervention was appropriate, and recommended amending the Act to allow operators to

offer payment models beyond those prescribed in the Act. The Ministerial working party agreed, and suggested the types of alternative payment models might include:

- forgoing the ingoing contribution, in exchange for a higher exit fee
- forgoing the exit fee, in exchange for a higher ingoing contribution
- forgoing the ingoing contribution and/or exit fee, in exchange for a recurrent rental payment
- forgoing general services charges, in exchange for a recurrent rental payment.

The Ministerial working party also advocated extending the existing consumer protections in the Act to cover any alternative payment models.

## 6.4 Policy objectives

The Act prescribes one payment model that all retirement village schemes must comply with; however, it does not allow the operator to offer prospective residents an alternative model where this would better suit the needs of both parties. However, any reform to address this issue must also be consistent with the overarching objective of the Act which is to (a) promote consumer protection and fair trading practices in the operation of retirement villages, and (b) encourage the continued growth and viability of the retirement village industry.

Accordingly, the relevant policy objective is to ensure introduction of alternative payment models contain adequate protection for both prospective and existing residents.

These key issues are:

- Payment models must have clearly defined rights and obligations for both the operator and residents.
- Payment models must not be so different from the present requirements under the Act so as to call into question why the Act should even apply to such a model, or cause the Act to unintentionally relate to other types of accommodation (such as group titles schemes or boarding houses).
- Payment models must still align with other, non-financial rights and obligations in the Act, including registration, pre-contractual disclosure, meetings, voting and dispute resolution.
- Payment models must provide the same, or equivalent, level of consumer protection to residents as is presently given to residents under the Act.
- Payment models must not disadvantage existing residents where a new model is adopted at an existing village.

The approach of the Parliamentary Committee was simply to amend the Act to allow alternative payment models, and presumably allow market forces and the general provisions in the Act to manage these issues.

The Ministerial working party agreed with expanding the Act to permit alternative payment models, but also proposed requiring such models to be prescribed in the Act.

Furthermore, the working party was concerned about how existing consumer protections could be extended to cover such new payment models, and how the contractual rights of

existing residents could be protected where the alternative payment models were offered to new residents at their village. The existing consumer protection provisions in the Act are designed around the existing payment models, and the working party decided unless these protections were extended and modified as necessary to cover the alternative payment models, new residents may be disadvantaged. This problem would be intensified if there were no limits on the models to which parties may contract, because only the most broadly drafted protections could apply.

In practical terms, the policy objective is to address these identified issues in a way which satisfies the overarching policy objective of balancing prescription and flexibility. In this context, the approach of the Parliamentary Committee, the approach of the Ministerial working party and one further option to address the issues will be discussed below.

## **6.5 Options and alternatives**

There are three options proposed to address the issues arising from allowing operators to offer alternative payment models.

### **6.5.1 Option 1 – Status quo**

The first option is to maintain the status quo, and not take any action to allow operators to offer alternative payment models.

### **6.5.2 Option 2 – Industry-devised alternative payment models**

The second option is to amend the Act to allow operators to offer alternative payment models, although only for new retirement village schemes. The payment models would not be prescribed in the Act; however, operators would be required to ensure any model addresses key consumer protection requirements as part of their application to register their scheme, and the model must align with other, non-financial rights and obligations in the Act.

This option would allow developers to devise new retirement village schemes which respond to shifts in consumer demand, while still requiring the scheme to comply with the broader framework of the Act, particularly with regards to resident protection. Presently, any new scheme must still be registered by the chief executive, and so any deficiency concerning resident protections is able to be identified and must be rectified before approval is granted.

By only being applicable to new retirement villages, this option ensures existing residents are not disadvantaged by the operator attempting to integrate residents under substantially different financial arrangements into the village. It also makes the payment model which an operator needs to devise simpler, because it does not need to address how the model may be integrated into an existing village. This option would satisfy concerns raised during consultation with industry representatives about ensuring alternative payment models adequately protect the rights of existing residents.

### **6.5.3 Option 3 – Prescribed alternative payment models**

The third option is to amend the Act to prescribe the alternative payment models which operators may offer at their retirement village, and to expand the existing consumer protections in the Act to address such models.

The alternative payment models would be developed in consultation with industry, to ensure they (a) reflect the accommodation needs of residents and prospective residents, and (b) provide the industry with workable and profitable business models. The alternative payment models would only apply to new retirement village schemes, unless models can be developed in a way whereby existing residents at the village are not disadvantaged.

As with option 2, this option would allow developers to offer new retirement village schemes which, while featuring payment models which respond to consumer demand, still comply with the broader framework of the Act, particularly with regard to resident protection. However, unlike option 2, such new schemes would be prescribed in the Act to ensure they retain the essential characteristics of a 'retirement village' and provide residents under such new schemes with the same level of consumer protection as existing residents.

It is expected this option would be implemented in two phases. Firstly, the Act would be amended to allow prescribed alternative payment models to be offered. This empowering provision would then activate the second phase, which would involve development of new models in consultation with industry, and then incorporating these within the Act. Given the various issues involved with introducing alternative payment models, particularly about ensuring equal coverage of the existing consumer protection provisions to the new models, full implementation in the short term may be difficult. Depending on the outcome of the second phase, a decision would be made as to whether any alternative payment model could apply to existing retirement villages.

As discussed below, it is unlikely any alternative payment model offered to prospective residents entering an existing retirement village could also be offered to those residents already living in the village:

- All financial rights and obligations in a particular residence contract must be considered, and therefore one aspect cannot be changed in isolation. An alternative payment model may offer a higher ingoing contribution and a fixed (low) periodic rental, instead of the present model of a lower ingoing contribution and fluctuating general services charges. If an existing resident were transferred to this new model, they would benefit from having originally paid a low ingoing contribution and now also paying a low ongoing amount. A solution may be to adjust the existing resident's contract, and pay the difference in ingoing contribution. However, even if the resident had the available funds to do so, it would be a complicated process (particularly if other contractual rights and obligations also required similar adjustments).
- Instead of adjusting an existing residence contract to better fit an alternative payment model, the resident may terminate their contract and enter into a fresh residence contract under the new model, with an appropriate financial adjustment being agreed.

## 6.6 Impact assessment

The key identified stakeholders are:

- operators, including the retirement village industry generally
- residents, including prospective residents
- the government.

An assessment of the costs and benefits of all three options, as measured against a baseline of no action being taken (the status quo) to address the issues arising from allowing operators to offer alternative payment models is provided below.

### 6.6.1 Option 1 – Status quo

The first option is to maintain the status quo and not take any action to allow operators to offer alternative payment models.

However, this option does not address the restriction in the present legislative framework which allows one type of payment model to be offered by operators.

This option maintains the integrity of the Act, as it only exists to regulate a very specific type of contractual arrangement, and does not prevent developers from pursuing other accommodation models which may appeal to older people.

### 6.6.2 Option 2 - Industry-devised alternative payment models

The second option is to allow operators to offer alternative payment models provided such models (a) only apply to new retirement villages, and (b) comply with the broader regulatory framework of the Act, particularly about maintaining the same level of consumer protection.

Under this option, operators will have the flexibility to design and offer payment models which best suit the individual circumstances of prospective residents and keep pace with market trends, in addition to potentially increasing profit levels.

Prospective residents will also have confidence such models still offer the same level of consumer protection and existing residents will not be disadvantaged by having new models imposed at their village.

The potential costs for residents include:

- **High impact:** Some residents under alternative payment models may pay more than they would have under the present model. For example, a resident paying a fixed recurrent rental will never pay less than this amount, whereas if they paid variable general services charges, they may have seen this amount reduce over time. However, any such 'detriment' to a resident under an alternative payment model may be offset by a corresponding benefit, such as the exit fee being set lower than present existing contracts. Although presumably residents will choose a payment model which best suits their circumstances, the long-term impact of the chosen model may not be recognised when the choice is made. This present problem may be intensified if alternative payment models were offered, because such models are untested and so

prospective residents will have no historical basis for estimating their short and long-term financial implications.

- **Medium impact:** The availability of alternative payment models will increase competition between retirement villages, particularly between those offering alternative models and those remaining with the present model. Depending on how popular the alternative payment models prove to be, outgoing residents at villages under the present model may potentially find it more difficult to resell their unit.
- **Medium impact:** By not prescribing alternative payment models in the Act, residents and prospective residents will need to understand the general non-financial consumer protection provisions in the Act in the context of the specific financial arrangements in their residence contract. This may potentially result in uncertainty about their specific rights and obligations, whereas presently, prospective residents are in a good position to fully understand their financial rights and obligations because most are detailed within the Act.

The potential benefits for residents include:

- **High impact:** Some residents under alternative payment models may potentially be in a better position financially than they would have been under the present model. For example, a resident paying a fixed recurrent rental will never pay more than this amount, whereas if they paid variable general services charges, they may have seen this amount increase over time. In other words, residents would not only have all the existing benefits of choosing a retirement village as their accommodation option, particularly with regards to regulated contractual terms, but may also enjoy financial rights and obligations which are better than those given to existing residents. However, any such 'benefit' to a resident under an alternative payment models may be offset by a corresponding disadvantage such as the exit fee being set higher than current existing contracts.
- **Medium impact:** Prospective residents will potentially have increased choice of accommodation if alternative payment models are offered which suit a broader range of consumer needs and budgets.

The potential costs for the operator include:

- **Medium impact:** By allowing operators to offer a variety of alternative payment models, new operators may potentially be disadvantaged by feeling they must also offer comparable models to secure their market share, even if such models may not have the same level of profit as the existing model (or an alternative payment model devised by the operator). In such a situation, the operator may also incur significant costs due to the market research, financial planning and legal advice involved in developing or adopting a new payment model.
- **Low impact:** By not allowing the operator at an existing retirement village to offer an alternative payment model, they may potentially be disadvantaged by not being able to compete in the (new) marketplace. However, one perspective on changing the Act to allow alternative payment models is that this represents a major shift in the present regulatory regime resulting in two classes of operators: those who entered the market



under the Act as it presently stands, and those entering the market under a very different Act and significantly altered commercial opportunities. Consequently, the amendment may be viewed as creating two separate streams within the one industry.

The potential benefits for the operator include:

- **High impact:** Operators will potentially be able to better compete for a share of the seniors' accommodation market by offering prospective residents an increased choice of payment models suiting a broader range of consumer needs and budgets. Exactly how far this market reach extends will depend on the types of alternative payment models devised (and approved by the chief executive), and particularly whether they lessen barriers to many prospective residents choosing a retirement village (being high buy-in and leaving costs, and variable ongoing charges), while maintaining those aspects of the traditional retirement village model (being security of tenure, and regulated rights and obligations) which made this option attractive in the first place.

The potential costs for the government include:

- **Medium impact:** Significant enquiries and consideration will be required of the chief executive in assessing new schemes utilising an alternative payment model to ensure (a) the model is not so different from the existing payment model that the scheme could no longer be classified as a 'retirement village', and (b) the model maintains the same level of consumer protection as presently applies.

### 6.6.3 Option 3 - Prescribed alternative payment models

The third option is to allow operators to offer alternative payment models provided such models (a) are prescribed in the Act, and (b) comply with the broader regulatory framework of the Act, particularly about maintaining the same level of consumer protection as applies to the current model. Alternative payment models will apply to new retirement villages, although any model which would not disadvantage residents at existing villages would also be applicable to such villages.

Under this option, operators will have the flexibility to offer payment models which best suit the individual circumstances of prospective residents and keep pace with market trends, and potentially increase profit levels. Prospective residents will also have confidence such models still offer the same level of consumer protection which make retirement villages an attractive option for older people. Furthermore, existing residents will have the security of knowing they will not be disadvantaged if new models are introduced for new residents moving into their village.

The potential costs for residents include:

- **High impact:** Residents under alternative payment models may potentially pay more than they would have under the present model. These impacts would be similar to those described in option 2.
- **Medium impact:** The availability of alternative payment models will increase competition between retirement villages, particularly between those offering alternative models and those remaining with the present model. Depending on how popular the

- alternative models prove to be, outgoing residents at villages under the present model may potentially find it more difficult to resell their unit (if their village does not also offer the same model).
- **Medium impact:** Where an alternative payment model is adopted at an existing retirement village, two significantly different models will then be operating side by side. This may potentially cause confusion for residents about how both models are integrated and may also create ill feeling in the village. For example, all residents may vote on whether new facilities should be introduced at the village (such as provision of a communal bus), however residents paying a fixed recurrent rental will not be required to pay any more for maintenance and operating costs associated with such facilities, whereas residents paying variable general services charges may see their charges increase. The fact this perceived 'benefit' to the fixed rental residents may eventually be offset by their alternative payment model prescribing a higher exit fee would not necessarily be appreciated by existing residents. In more general terms, residents under the existing payment model may resent new residents entering under an alternative payment model, because the option of such a model was not available to them when they entered the village.

The potential benefits for residents include:

- **High impact:** Residents under alternative payment models may potentially be less financially disadvantaged than they would have been under the present model. These impacts would be similar to those described in option 2.
- **Medium impact:** Prospective residents will potentially have increased choice of accommodation options if alternative payment models are offered which suit a broader range of consumer needs and budgets.

The potential costs for the operator include:

- **Medium impact:** By allowing operators to offer a variety of alternative payment models, new and existing operators may potentially be disadvantaged by feeling they must also offer comparable models to retain their market share, even if such models may not have the same level of profit as the existing model (or an alternative payment model devised by the operator). Furthermore, as well as making village management more complicated, existing operators may potentially be disadvantaged by having to also offer an alternative payment model to compete, without the same profit levels as the model already in operation in their village. This may be the case particularly as some monies (say, cost-recovery general services charges versus a periodic rental) may need to be accounted for separately, yet then used for similar purposes. In addition, operators may also incur significant costs due to the market research, financial planning and legal advice involved in adopting a new payment model.
- **Low impact:** Where an alternative payment model is adopted at an existing retirement village, two significantly different models will then be operating side by side. As a result, the operator may potentially incur additional administrative and financial management costs in integrating the operation of both payment models.

The potential benefits for the operator include:

- **High impact:** Operators will potentially be able to better compete for a share of the seniors' accommodation market by offering prospective residents an increased choice of alternative payment models suiting a broader range of consumer needs and budgets. Exactly how far this market reach extends will depend on the types of alternative payment models devised and enacted in the legislation. These impacts would be similar to those described in option 2.

The potential costs for the government include:

- **Medium impact:** The administering authority will need to spend significant resources in first working with the industry to develop alternative payment models, and then progress the necessary amendments to the Act to give effect to such models.

## 6.7 Consultation

The issues raised in this RIS were subject to preliminary consideration by the key stakeholders. Industry organisations such as the Property Council of Australia Limited (the Property Council) and Leading Age Services Australia Queensland (LASAQ) considered approaches such as options 2 and 3 were 'unnecessarily inflexible' and would 'constrain innovation' in the retirement village industry, because option 2 only applied to new villages, and option 3 did not enable operators to devise whatever scheme they wanted to meet shifting consumer preferences. Ultimately, they supported an approach such as option 2, provided it applied to all villages – and argued any residents at existing villages who were affected by the imposition of an alternative payment model could use the dispute resolution process if they did not want the model approved by the chief executive.

Prospective residents through National Seniors Australia (National Seniors) noted there could be a monetary benefit to residents under alternative payment models, particularly if they 'fixed' general services charges, and therefore agreed to the introduction of such models. However, National Seniors was concerned introduction of an alternative payment model into an existing retirement village may cause confusion, particularly about 'who pays' for services, which could 'lead to conflict and interfere with the harmony of the village'. As a result, National Seniors supported an approach such as option 3, because it offered a more 'step-by-step' approach to introducing alternative payment models, particularly at existing villages. Ultimately, National Seniors noted there was 'an imperative to handle the introduction of the option expertly'.

## 6.8 Analysis of options

As noted above, the Parliamentary Committee recommended government intervention to allow operators to offer alternative payment models.

Specifically, recommendation 37 of the Parliamentary Committee provided:

*'The Committee recommends the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to provide alternative financial models for retirement village living, for example periodic payments, which provide improved choice and flexibility*

*for residents and operators, do not include an exit fee (deferred management fee) and are available to prospective residents from lower socio-economic positions.'*

In particular, the Parliamentary Committee considered the present exit fee model prescribed in the Act may stifle innovation and flexibility in the retirement village industry, and make this accommodation model beyond the reach of many older people, particularly those on a fixed pension.

The Ministerial working party accepted the Parliamentary Committee's recommendation to allow operators to offer alternative payment models suiting a broader range of resident financial circumstances. However, the working party noted consumer protections in the Act would need extension to adequately cover residents under such alternative payment models, and warned residents of existing retirement villages may be disadvantaged if such models were introduced for new residents of the village (thereby creating a 'salt and pepper' village where two or more significantly different payment models operate side by side).

Option 3 reflects the proposals of the Ministerial working party, which in turn gives effect to the recommendation of the Parliamentary Committee.

Allowing operators to offer alternative payment models to prospective residents will remove the present inflexibility in the Act which may be preventing residents and operators from negotiating contractual terms best suited to the resident's financial circumstances. Offering alternative financial models is one way the retirement village industry would be more able to respond to shifts in consumer needs and compete within an increasingly crowded seniors' accommodation market.

Option 3 provides more certainty to both residents and operators about the rights and obligations arising from alternative payment models, by prescribing the features of such models, and the corresponding consumer protection provisions, within the Act, rather than leaving it for individual operators to devise their own models and then expecting prospective residents to know and understand their existing rights, obligations and protections.

By having the payment model and corresponding consumer protections already prescribed in the Act, option 3 may also reduce the amount of market research, financial planning and legal advice which the operator would otherwise have to do if they had to devise the model and protections themselves. Furthermore, prescribing the model and protections in the Act will assist in ensuring efficient approval of schemes offering an alternative payment model, and reduce the enquiries and consideration the chief executive must do in assessing such new schemes. Of course, as market shifts demand even greater diversity of alternative payment models, further significant amendments to the Act will be needed to incorporate such models.

The feedback received from consultation on this RIS will not only assist the government to obtain a better understanding of the issues, but also identify which option (or variation thereof) most successfully addresses those issues.

## 6.9 Implementation, evaluation and compliance support strategy

Depending on which option is adopted, a sufficient lead-in time will be granted between when any necessary amendments to the Act are made and when they start. The adequacy and workability of the preferred option will be evaluated through ongoing consultative feedback from the retirement village industry and residents. A deeper and more comprehensive evaluation will be conducted once any alternative payment models have been in operation for a reasonable period of time to gauge their workability and impact on resident protections.

## 6.10 Feedback questions on issues and options

This Consultation RIS is designed to facilitate public consultation on issues and the options developed to address those issues. As such, answers are being sought to the following questions about the options in relation to allowing operators to offer alternative payment models:

- Which, if any, of the three options do you prefer, and why?
- For option 2, which of the impacts to residents do you consider the most significant, and why?
- For option 2, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 2, and what do these involve?
- For option 3, which of the impacts to residents do you consider the most significant, and why?
- For option 3, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 3, and what do these involve?
- If you do not prefer any of the three options, is there another way to address the issues about allowing operators to offer alternative payment models, and what does that way involve?
- Do you have any further comment about the issue of allowing operators to offer alternative payment models?

# 7 Early payment of exit entitlement

## 7.1 Executive summary

The policy objective of this Regulatory Impact Statement (RIS) involves managing the issues arising from a substantial delay in reselling a resident's unit, and to ensure any solution evenly balances prescription and flexibility - that is, it delivers consumer protections and maintains viability of the industry.

There are three options to address this policy objective, being (1) maintain the status quo, (2) require the operator to disclose whether they offer early payment of the exit entitlement, and (3) require the exit entitlement to be paid to the resident after 18 months (unless this would cause undue hardship for the operator).

## 7.2 Background of issue

### 7.2.1 Introduction

The practice at most retirement villages is for an outgoing resident to be paid their exit entitlement after the right to reside in their unit has been resold as the operator funds the exit entitlement from the resale proceeds. The Act allows for the exit entitlement to be paid either when the resident terminates their contract or when the unit is resold (section 16), and the residence contract will nominate which of these options apply.

### 7.2.2 Delay in receiving exit entitlement

Most residents fund the ongoing contribution by selling their residential home, and as the cost of buying into many modern retirement villages is comparable with the ordinary property market, such residents end up with the bulk of these sale proceeds tied up in their retirement village unit. Furthermore, the only income for many residents in retirement villages is the age pension, which (given the obligation to pay ongoing, and constantly rising, general services charges) provides little scope for residents to amass new savings. Consequently, when a resident leaves the village, many depend upon the resale proceeds of their unit to fund their next accommodation.

Although this situation may appear similar to that faced by any person selling their home, the circumstances at a retirement village are different. If someone is unable to sell their house, they have the option to lower the price, or perhaps rent out the property. However, in a retirement village, lowering the resale price would not only reduce the operator's profit, but may also affect the 'going rate' for units at the village, so disadvantaging other residents looking to resell their units. Furthermore, the Act does not support rental of units, and in any event, this may be opposed by the other residents. As with people in their own home, residents in retirement villages have the option of waiting until the market improves. However, this is less realistic for retirement village residents if increases in general services charges outstrip their ability to pay them. There are instances where individual operators may be prepared to reduce the resale price to prevent a unit sitting vacant for a lengthy period; however, there is no legislative requirement for an operator to do so.

Problems caused by a resident being unable to resell their unit were raised with the Parliamentary Committee during its review of the Act. The Committee noted the possible negative consequences for the outgoing resident, and also how it may impact on the industry overall if the risk of being unable to secure a timely resale discourages prospective residents from choosing a retirement village as their preferred accommodation choice.

### 7.2.3 Payment of exit entitlement in other jurisdictions

Representatives of retirement village residents have previously called on the government to legislate for 'compulsory buy back' of units which remain unsold for a significant period of time. In other words, the operator notionally 'buys back' the unit by paying out the outgoing resident's exit entitlement, without first waiting for resale of the unit to a new resident. In support of this, the representatives noted both the NSW and Victorian

retirement village laws allow for early payment of the exit entitlement, although closer inspection reveals there are significant restrictions on this right.

Similar representations were made to the Parliamentary Committee, citing the legislative approach taken in other jurisdictions to address the problems caused by a delayed resale. In considering these approaches, it should be noted that in Queensland, the majority of residents (around 57%) occupy their units under a registered lease, a significantly smaller number (around 32%) occupy their unit under a licence (also known as an unregistered lease), and the remaining minority (around 11%) hold the freehold title to their unit. Traditionally, commercially-operated villages offer leasehold tenure, and the not-for-profit sectors mainly use licence-based schemes.

Under the NSW *Retirement Villages Act 1999*, the operator must pay the exit entitlement to an outgoing resident within fourteen days of the unit either being resold to an incoming resident or bought back by the operator themselves, unless the parties have contracted for earlier payment. This rule applies where the resident occupies their unit under either a registered lease or freehold title. The decision about whether to pay the exit entitlement before resale of the unit appears to rest solely with the operator.

The NSW Act then provides that in all other situations, such as where the resident occupies their unit under a licence, the exit entitlement must be paid within fourteen days of the unit being resold or six months after the outgoing resident gave up possession of the unit, whichever occurs first, or any earlier period contracted for between the parties. However, if the requirement to pay the exit entitlement after six months would cause 'undue hardship' for the operator, the tribunal may make an order either extending this period or allowing payment by instalment. In making its decision, the NSW tribunal may take into account the 'hardship' such an order could have on the outgoing resident, and may also award payment of interest.

Under the Victorian *Retirement Villages Act 1986*, the operator must pay the exit entitlement to an outgoing resident within fourteen days of the unit either being resold or another period contracted for between the parties. This rule applies where the resident occupies their unit under freehold title.

The Victorian Act then provides that in all other situations, such as where the resident occupies their unit under a registered lease or licence, the operator must pay the exit entitlement within fourteen days of the unit either being resold or six months after vacation of the unit, whichever occurs first, or any earlier period contracted for between the parties. However, provisions of the Victorian *Retirement Villages (Contractual Arrangements) Regulations 2006* negate this requirement for a six-month timeframe if the outgoing resident is allowed under their contract to appoint a real estate agent to resell their unit. A further key aspect of the Victorian laws is that, regardless of the prescribed timeframes, the outgoing resident is entitled to be paid that part of their exit entitlement which is equivalent to the amount required to pay an accommodation bond at an aged care facility. This must be paid either six months after vacation of their unit, six months after moving into the aged care facility or the date when the bond is payable, whichever is the latest.

In summary, there are preconditions which must be met before payment of the exit entitlement is required under these interstate provisions. This should be understood when

considering how to address the problem of retirement village units remaining unsold for long periods.

## 7.3 Issues statement

### 7.3.1 Introduction

The financial model employed at most retirement villages makes it a requirement for payment of an outgoing resident's exit entitlement to be funded from the ingoing contribution paid by the incoming resident. Operators make their profit from reselling resident units, as other fees and charges are levied on a cost-recovery basis, and so villages do not have other sources of income from which to pay the exit entitlement. A significant delay in reselling a unit may disadvantage the outgoing resident if the exit entitlement is needed to meet the cost of their next accommodation option. However, the Act does not provide for processes or considerations for early payment of this amount.

Leading stakeholder representatives and individual submissions provided both the Parliamentary Committee and the Ministerial working party with several serious examples of delays in reselling units.

In one instance, an elderly resident in Queensland has been waiting for more than two years for her unit to resell, and is presently renting because the resident cannot afford to obtain permanent accommodation. This resident requested the release of at least part of her exit entitlement funds, however the operator refused to do so. The working party noted that for an elderly person, the lack of security inherent in such long-term renting is akin to 'homelessness'. In another extreme instance, this time in Victoria, a resident waited seven years for their unit to be resold and be paid their exit entitlement.

The buying and selling of retirement village units is part of the broader real property market, and so a downturn in this market may affect the speed at which resale of such units occurs. Furthermore, the Ministerial working party noted the possibility of residents buying into a retirement village when the overall property market was buoyant, but then needing to sell their unit when that market was flat, and experiencing delays in securing a resale.

Unlike the broader property market, the sale of retirement villages units involves two parties (the village operator and the resident) with separate interests, and this is a critical difference. If a retirement village unit cannot be resold, it may be partially due to the business model of the operator (for example, the village facilities may be lacking, or the recurrent costs are too high). Furthermore, the sale price of a retirement village unit is not decided solely by the unit owner, but rather, jointly with the operator. In other words, a retirement village resident may be entitled to regulatory support and consideration beyond which a member of the general public selling their own home may reasonably expect.

### 7.3.2 Impact of delayed resale

In Queensland, the next accommodation option for most outgoing retirement village residents is an aged care facility.



From 1 July 2014, all people entering an aged care facility may be required to contribute to their accommodation costs. A new combined income and assets test will be introduced, and people will have the choice to pay for their accommodation through a bond, a rental style periodic payment, or a combination of both. Consequently, the number of retirement village residents needing access to their exit entitlement to fund moving to an aged care facility may increase significantly over the next few years.

Therefore, when it takes a long time to resell a unit, an outgoing resident may find it difficult to fund their move to an aged care facility, or to any other alternative accommodation.

### **7.3.3 Present industry response**

When a resident enters a retirement village, they are in a sense buying into the operator's business. Consequently, while the resident cannot expect to be automatically 'rescued' by the operator if doing so would endanger the viability of that business (for both the operator and other residents), at some point it would be reasonable for the operator to take responsibility for problems which may have more to do with the overall business than an individual resident's particular circumstances. Such business-related impacts include the market appeal of the village, which may have fallen behind other villages, and therefore could compromise a resident's opportunities for achieving a timely resale.

The Act does not require the operator to pay the exit entitlement before the outgoing resident's unit has been resold. However, individual operators have implemented ways of dealing with lengthy delays in reselling units:

- Some small retirement villages, particularly in the not-for-profit sector, pay the exit entitlement if a unit remains unsold for a significant period, which varies between villages (six months, twelve months or two years).
- At least one village presently offers outgoing residents an interest-free loan to meet the cost of a bond to enter an aged care facility (and associated costs) as needed.

In the first example, it should be noted some of these villages have now abandoned early payment of the exit entitlement, because of the serious negative impact of this on their viability. Similarly, in the second example, the village has acknowledged it may be unable to sustain the interest-free loan policy if numerous outgoing residents requested it at the same time.

These difficulties stem from the underlying business models of a retirement villages, whereby sales of units is a source of ongoing profit.

Although it is expected that retirement villages could absorb the cost of the occasional early payment of exit entitlements, the timing of vacation of units, and the instances where units take a long time to sell, are unpredictable. It is therefore possible, for example, that a village may not need to pay an early exit entitlement for years, and then have to make ten such payments at the same time. The latter situation would clearly be one where the operator would experience severe hardship (and under the NSW law could apply to the tribunal to be released from the obligation to make an early payment). In the long term, the

potential for this type of financial exposure may make financiers reluctant to invest in the retirement village industry.

The proliferation of other accommodation options aimed at older people will increase competition in the marketplace, and could make it more difficult for existing residents to resell their units. For this reason, it is not unreasonable to foresee a situation where, within the same timeframe, several units at a particular village remain unsold for a significant period, and for this scenario to exist in multiple villages concurrently. Therefore, the potential impact of a buy-back requirement on the viability of villages is likely to be an even greater concern in the future.

## 7.4 Policy objectives

The Act regulates payment of the exit entitlement to a resident, but does not address the issue of significant delays in payment resulting from unsold units. Consequently, the relevant policy objective is to ensure the issues arising from substantial delays in reselling units are adequately managed, and in a way which complies with the broader objectives of the Act.

These key issues are as follows:

- identifying a reasonable period within which resale of an outgoing resident's unit may be expected, particularly as this is needed to fund payment of the exit entitlement to the resident
- the hardship caused to the outgoing resident as a result of not being paid their exit entitlement (or part thereof) within a reasonable time after leaving the retirement village
- the hardship caused to the operator if the exit entitlement is paid out (in full or in part) without first receiving the proceeds from resale of the outgoing resident's unit.

The approach of the Parliamentary Committee was to recommend amending the Act to require the operator to pay the exit entitlement within six months of the resident terminating their contract, but only where there were exceptional circumstances such as the village closing down or the resident being likely to experience severe hardship if no such payment was made. The Ministerial working party did not believe villages could financially support any buy-back regime. Instead, the working party proposed amending the Act to require the public information document (PID) to disclose (a) whether the operator offered an option for early payment of the exit entitlement, and the circumstances in which this may apply, and (b) the sales history of units in the village over the previous year.

However, the recommendation of the Parliamentary Committee and the proposals of the Ministerial working party are not the only possible options for addressing the identified key issues in a way which meets the overarching policy objective of balancing prescription and flexibility. A range of options, incorporating the laws in other jurisdictions and the approaches of the Parliamentary Committee and the Ministerial working party, are discussed below.

## 7.5 Options and alternatives

There are three options proposed to address the issues arising from a substantial delay in reselling a resident's unit.

### 7.5.1 Option 1 – Status quo

The first option is to maintain the status quo, and not take any action to address the issues arising from a substantial delay in reselling a resident's unit.

### 7.5.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the PID to specifically disclose (a) whether the operator offers an option to pay the exit entitlement before resale of the unit, and the circumstances in which this may apply, and (b) the sales history of units in the village over the previous year. Any early payment policy would only apply to residence contracts entered into after the Act was amended and the policy implemented (unless, of course, the operator generously elected to extend the policy to existing residents).

Furthermore, if the operator does not offer any early pay option, the PID must (a) expressly state this, and (b) explain the consequences of this decision, for example:

*'This retirement village does not presently have a process in place for paying out the exit entitlement (in whole or partly) before resale of the right to reside in your accommodation unit. Consequently, you will not be able to access any of the incoming contribution you paid upon entering the retirement village until such time as the resale occurs, and this may have significant financial and personal impacts on you if such funds are required to meet the cost of your next accommodation choice.'*

By reading the PID which incorporates such clauses, a prospective resident would have a clear understanding of the processes in place regarding delayed sale of their unit. The resident would also be able to compare and contrast the processes at different villages. If a particular village does not have a process in place to manage this issue, the absence of such a process and the impact of this decision must still be disclosed.

The requirement in option 2 for operators to also disclose their recent sales history will help prospective residents put the early payment position of individual villages in context, and is crucial to their understanding of whether the village presents a good or bad 'risk'. Where recent sales at a village have proven to be slow, and particularly where there were instances of very long delays in achieving a resale, a prospective resident may feel more confident buying into that village if it offered an early payment option.

This option should enable market forces to decide an effective, fair and efficient means of addressing the issues arising from delayed resale. It is expected prospective residents will favour those villages having processes which best manage the issues, and over time, other villages would adopt similar (or better) processes to compete. This option does not require the operator to change their present business model - rather, it encourages operators to develop workable and commercially sustainable ways of dealing with the issues.

The operator may adopt more than one early payment policy, to appeal to different classes of prospective residents. For example, those prospective residents with a substantial amount of money beyond the capital tied up in their retirement village unit may be less dependent on payment of their exit entitlement to fund a later accommodation change, and so may prefer a residence contract charging a lower exit fee in lieu of an early exit entitlement payment.

Among the many factors which a prospective resident may consider when first deciding whether to enter a retirement village and then choosing between different villages, the buy-in price and village amenity appear to rate far above other equally important considerations, including the policy on timing of exit entitlement payments. As such, a critical component to the success of option 2 is the requirement for the operator to openly disclose whether or not their village has a policy of early payment of the exit entitlement (and what that means for residents), as this will attract the attention of prospective residents, thereby making it a key point of consideration and comparison.

Ultimately, the success of this option in delivering enhanced consumer protection will depend upon (a) the attitude of operators to implementing an early payment policy (and what any such policy entails), (b) the degree of competition existing in the industry to prompt more passive operators to adopt a policy at least equal to other operators, and (c) whether the existence or otherwise of such a policy constitutes a 'deal breaker' to prospective residents when considering a particular village.

It should also be noted that while prospective residents may not rate this issue highly when comparing different villages, and so operators will not be prompted to implement an early payment policy to stay competitive, those same residents may consider the issue to be of far greater significance if the village they chose did not have a policy in place and the resident was actually facing delayed resale of their unit.

### **7.5.3 Option 3 – Prescribed early payment**

The third option is to amend the Act so that, in circumstances where an outgoing resident's unit remains unsold for 18 months, the operator is required to pay the resident their full exit entitlement. However, the operator may apply to the Queensland Civil and Administrative Tribunal (QCAT) for an extension of time to pay all or some of the exit entitlement if full payment after 18 months would cause the operator undue hardship. This option does not alter the method already prescribed in the Act for valuation of units, merely the timing for paying the exit entitlement. The early payment requirement would only apply to those residence contracts entered into after the Act was changed. However, accommodation bonds for Australian Government subsidised aged care services must be paid within 6 months if paid as a lump sum, with interest payable on the outstanding amount. There are hardship provisions that apply in circumstances such as difficulty in selling a home.

This option balances the respective hardship to a resident arising from not receiving their exit entitlement within a reasonable period, against the hardship to the operator of having to pay the exit entitlement without first receiving the proceeds of reselling the resident's unit. After consultation with industry representatives, the period of 18 months was decided on as being the time within which most retirement village units are expected to be resold.

When a resident leaves the village, they are still liable for the general services charges for their unit for nine months or until it is resold, whichever is the earlier (section 104(2)). By

similarly setting a timeframe for payment of the exit entitlement, this option corresponds with the existing provisions of the Act where financial responsibility for an unsold unit eventually reverts exclusively to the scheme operator.

However, this option also recognises that payment of the exit entitlement may cause significant financial hardship for the operator, particularly if this applies to several residents at once. Such hardship may be so severe as to jeopardise the viability of the retirement village, which obviously has negative consequences for the remaining residents of the village. Therefore, the ability of the operator to obtain an exemption from QCAT is a critical safeguard protecting both the operator and other residents.

While QCAT may exempt the operator from early payment of the full exit entitlement, this option also empowers QCAT to order the operator to make an early part payment where doing so would address the resident's problems (say, by meeting the cost of a bond to enter an aged care facility) without having a negative impact on village finances.

## 7.6 Impact assessment

The key identified stakeholders are:

- operators, including the retirement village industry generally
- residents, including prospective residents
- the government.

An assessment of the costs and benefits to affected parties of all three options, as measured against a baseline of no action being taken (the status quo), to address the issues caused by a substantial delay in reselling a resident's unit, is provided below.

### 7.6.1 Option 1 – Status quo

The first option is to maintain the status quo, and not take any action to address the issue of problems caused by a substantial delay in reselling a resident's unit.

Actual incidents of substantial resale delays, and associated problems caused to residents where they are not paid their exit entitlement in a timely manner, have highlighted shortcomings in the present legislative framework. Consequently, this option may result in such inadequate coverage remaining unaddressed. However, this option does not prevent individual operators from voluntarily implementing early payment procedures which are sustainable at their own village.

### 7.6.2 Option 2 – Mandatory disclosure

The second option is to amend the Act to require the PID to specifically disclose whether or not a village offers early payment of the exit entitlement, and the recent sales history of the village. Under this option, prospective residents will potentially be both better informed about a retirement village's policy on the issue, and able to more directly compare and contrast different villages.

The potential costs for residents include:

- **Medium impact:** Where an early payment policy is overly generous, the financial stability of the retirement village may potentially be threatened and the remaining residents put at risk of the village closing. However, it is highly likely any policy adopted by the operator would be compatible with the financial circumstances and capacity of the village to absorb the anticipated amount of early payments. There is also the possibility that any additional operator costs arising from an early payment policy (such as interest from bridging finance) will be recovered through raising future ingoing contributions, thereby making buy-in more expensive for new residents.
- **Low impact:** Excessive delays in reselling vacated retirement village units are a matter of serious concern. However, such delays are not a common problem across the industry, and highlighting early exit entitlement payment policies in the PID creates the risk of overstating the extent of the problem. Prospective residents may potentially dismiss a particular retirement village on the basis of its early payment policy and/or recent sales history if such information is disclosed in the PID. This may disadvantage existing residents trying to resell their unit, if in weighing up the overall pros and cons of their village, the prospective resident has placed a great deal of importance on how resale delays will be managed. However, as noted above, a policy for early payment of the exit entitlement (and indeed, the likelihood of delayed resale at all) is not usually in the forefront of a prospective resident's assessment of the desirability and suitability of a particular retirement village, and therefore this potential impact may rarely, if ever, eventuate.

The potential benefits for residents include:

- **High impact:** If the operator has implemented an early payment policy, residents will benefit from not having to wait until their unit is resold to access their exit entitlement. Of course, the more generous the policy, the more likely it is the problems caused by delays in resale will be properly addressed.
- **High impact:** The operator's decision whether or not to offer an early payment option (together with the details of recent sales history) may potentially be used by prospective residents as an objective benchmark for comparing and contrasting different retirement villages before choosing one. This will assist prospective residents make a more informed decision about which village to buy into, particularly where management of delays in reselling units is a key criteria for the prospective resident.

The potential costs for the operator include:

- **Low impact:** Potentially, an operator may have to reveal confidential business information by disclosing the recent sales history at their retirement village. However, it is likely a prospective resident would have already sought access to this data when investigating the pros and cons of a particular village.
- **Low impact:** The operator will be required to revise their PID to detail their early payment policy and list the recent sales. Most villages update their PID regularly, and therefore the additional cost caused by this option will be minimal. However, in devising an early payment policy for their village, an operator may need to obtain legal and

financial advice, which is an additional cost to those costs incurred in simply making content changes to the PID. Smaller villages may find these additional costs difficult to absorb. However, there would also be minimal, if any, cost incurred in compiling sales information, as it would be recorded and therefore easily accessible.

The potential benefits for the operator include:

- **Medium impact:** Prospective residents may potentially be better able to compare and contrast different retirement villages if the early payment policy and recent sales history are fully disclosed in the PID. For this reason, it would be easier for a village with a strong early payout policy and solid sales history to attract prospective residents. In contrast, those operators with a less-favourable payment policy, or no policy at all, could be at a competitive disadvantage.

### 7.6.3 Option 3 – Prescribed early payment

The third option is to require an outgoing resident to be paid their full exit entitlement if their unit remains unsold for 18 months, unless doing so would cause the operator undue hardship.

Under this option, the resident would be paid their full exit entitlement after 18 months, which is similar to the present requirement under the Act returning liability for general services charges for an unsold unit back to the operator after 9 months. However, the option also recognises the hardship such a payment may cause the operator, and the remaining residents, and allows QCAT to substitute a lesser amount if that is more sustainable having regard to the financial position of the retirement village.

The potential costs for residents include:

- **High impact:** Early payout of an exit entitlement (in whole or part) to an outgoing resident could potentially threaten the financial stability of the village, particularly if more than one such payment is made at the same time. As a result, the remaining residents of the retirement village may potentially be put at risk of the village closing. There is also the possibility that any additional operator costs arising from an early payment policy (such as interest from bridging finance) will be recovered through raising future ingoing contributions, thereby making it more expensive for prospective residents to buy into a retirement village.
- **Medium impact:** Outgoing residents may potentially incur costs in applying to QCAT to challenge the operator's claim to reduce and/or delay an early payment of their exit entitlement.

The potential benefits for residents include:

- **High impact:** An outgoing resident may potentially be paid their exit entitlement (in full) after 18 months without having to wait until their unit is resold, and use this payment to fund their next accommodation option. Likewise, if only part payment is made, the resident may potentially also be paid the balance of their exit entitlement before their unit is resold, depending on the terms of the QCAT order. Of course, this

option is only beneficial if the operator does not already offer a comparable early payment process.

- **High impact:** Prospective residents may have more confidence in selecting a retirement village as an accommodation option because of the opportunity to be paid their exit entitlement (in full or partly) without having to wait until their unit is resold. In turn, such consumer confidence may assist an outgoing resident obtain a prompt resale of their unit, and for a good price. However, the possibility of QCAT substantially reducing the payment figure, or deciding against any payment whatsoever may reduce this consumer confidence.

The potential costs for the operator include:

- **High impact:** The operator may potentially be required to pay an outgoing resident their exit entitlement (in full or partly) after 18 months without having to wait until the resident's unit is resold and the proceeds from the resale are received. Where this occurs, the financial stability of the retirement village may potentially be threatened and the operator may be at risk of having to close the village, particularly if more than one such payment is made at the same time. Alternatively, the operator may need to secure bridging finance (and incur the associated interest) to make the payment(s). The fact that several smaller villages which, in the past voluntarily offered early payment options now no longer do so because of the risk it created to village viability, demonstrates the potential impact of imposing such a mandatory requirement on all villages.
- **Medium impact:** The operator may potentially incur costs in applying to QCAT to reduce and/or delay an early payment of the exit entitlement to an outgoing resident. Although this cost would almost certainly be minimal in comparison to the amount involved in early payment of the exit entitlement (in whole or partly) it still represents a new expense which the operator is not presently required to meet.

The potential benefits for the operator include:

- **High impact:** The ongoing viability of the retirement village industry may be strengthened as a result of prospective residents having more confidence in selecting this accommodation option due to the opportunity to be paid their exit entitlement (in full or partly) without having to wait until their unit is resold.

The potential costs for government include:

- **Medium impact:** Giving QCAT an expanded role in deciding whether there should be early payment of the exit entitlement, or the amount of this payment, may potentially have a direct cost to government.



## 7.7 Quantitative data

### 7.7.1 Objection to early payment of exit entitlement

In response to option 3, both the Property Council of Australia Limited (the Property Council) and Leading Age Services Australia Queensland (LASAQ) noted that a compulsory buy-back requirement had the potential to create a contingent liability for operators. Such a liability would need to be disclosed to an operator's financier, which in turn may (a) reduce the amount the financier is prepared to lend (the loan-to-value ratio), or (b) require an (exit entitlement) financial facility (or other cash reserves) to be maintained, thereby incurring annual fees even if such a facility is never called upon. The implications at a 'portfolio level' may potentially be to reduce the likelihood of developers constructing more retirement villages.

To illustrate the potential financial impact of option 3 on operators, the Property Council and LASAQ put forward the following 'real world case study' involving an actual retirement village. It should be noted that while option 3 proposes early payment of the exit entitlement after 18 months, the case study data below is based on early payment after six months.

- Around 10% of units are likely to be vacant at any given time (equating to 34 units), with this being a 'conservative' figure, and one which would rise in an 'economic slowdown'. As an aside, around 65% of the vacating residents moved to an aged care facility.
- The time involved in reinstating a unit, marketing it for sale and obtaining the resale proceeds 'typically' takes around seven months.
- Assuming a compulsory buy-back at six months from vacation and an average exit entitlement of \$440,000 per resident, the likely contingent liability at any given time would be in excess of \$10M. Therefore, assuming an 8% annual financing fee for maintaining the necessary cash reserve, operators would pay an additional \$800,000–plus in fees per year.

LASAQ also noted compulsory buy-back would expose operators to an 'unexpected hit' on their balance sheet, cash flow and financing arrangements which may difficult to absorb.

The Association of Residents of Queensland Retirement Villages (ARQRV), through its legal representative, gave more detailed quantitative data about fifty residents who vacated their retirement village between December 2009 and February 2012. The average time taken to resell a unit in this example was almost 9.5 months, with the average exit entitlement paid being \$189,375 (on an average ingoing contribution of \$233,587). The time taken to resell the units is outlined below:

- six were resold within three months
- nine were resold within six months
- eleven were resold within nine months
- nine were resold within twelve months
- eight were resold within 18 months
- eight were resold after 18 months – with the longest times taken to resell being 20 months, 21 months, 23 months (twice), 26 months, 27 months, 30 months and 34 months.

## 7.8 Consultation

The issues canvassed in this RIS were subjected to preliminary consideration by the Ministerial working party. The Property Council and LASAQ made the following observations in opposition to compulsory buy-back (such as the approach in option 3):

- A small village may either be unable to obtain the necessary financial facility, thereby putting them at higher risk of insolvency, or may only obtain one in exchange for agreeing to 'onerous covenants', thereby exposing them to higher costs of finance.
- The costs incurred in maintaining a financial facility are unlikely to be able to be passed on to the residents of the village through general services charges, and will therefore significantly reduce the profitability of running a retirement village.
- As the option does not consider a resident's financial capacity outside the capital tied up in their retirement village unit, operators are, in effect, 'being asked to operate as a bank' for the resident.
- The option provides 'greater personal financial protection against hardship' than ordinary people in the community have when trying to sell their principal place of residence.

The Association of Residents of Queensland Retirement Villages (ARQRV) suggested that under a leasehold/licence arrangement, the ingoing contribution paid by the resident should be considered 'an interest-free loan' to the operator. As a result, residents are entitled to be repaid this amount (through the exit entitlement) within a reasonable time after leaving the retirement village. The ARQRV noted the Act required reinstatement work to be completed within 90 days of vacation, and so a compulsory buy-back at six months would still allow the operator at least three months to secure a resale. The ARQRV also argued this buy-back should not be dependent upon the resident first establishing 'hardship', because such a threshold was 'difficult to quantify'.

National Seniors Australia (National Seniors) asserted that 'currently most often there are substantial delays for residents in the reselling of their unit'. National Seniors noted retirement villages do not presently appear to 'advertise upfront' about whether or not they offer a buy-back policy, and prospective residents do not usually check the 'sales history' of a village before signing up. However, if such information were disclosed, 'interested older people would soon take notice' and factor it into their decision-making process. Ultimately, National Seniors supported imposing a mandatory buy-back as this would offer residents 'the most security and assurance that funds would be available', particularly to meet the cost of a bond to enter an aged care facility.

## 7.9 Analysis of options

As noted above, the Parliamentary Committee recommended government intervention to address the issues arising from a substantial delay in reselling a resident's unit in recommendation 34:

*'The Committee recommends the Minister for Housing and Public Works seek amendment to the Retirement Villages Act 1999 to ensure residents receive their exit entitlement from an operator within six months of terminating their right to reside in exceptional circumstances, such as if they would experience severe*

*hardship if they did not receive this money, or if the village has closed or is closing down.'*

Option 3 reflects the key concern of the Parliamentary Committee and the approach taken in other jurisdictions, whereas Option 2 aligns with the approach preferred by the Ministerial working party.

Given the variation between retirement villages in Queensland, a one-size-fits-all process for early payment of the exit entitlement would inevitably leave some residents unprotected and other residents over-regulated. By allowing early payment policy to be a matter for individual operators to decide upon, option 2 should result in an efficient means of addressing the identified issues. This option does not require operators to implement, or even consider, offering an early payment policy, and therefore success of the option may depend upon market forces intervening to give other villages offering early payment the competitive edge, which in time may become the de facto industry standard to which all villages aspire.

The feedback received from consultation on this RIS will not only assist the government obtain a better understanding of the issues, but also identify which option (or variation thereof) most successfully addresses those issues.

## **7.10 Implementation, evaluation and compliance support strategy**

Depending on which option is adopted, a sufficient lead-in time will be granted between when any amendments to the Act are made and when they start. The adequacy and workability of the preferred option will be evaluated through ongoing consultative feedback from the retirement village industry and residents. A more comprehensive evaluation will be conducted once a representative cross-section of situations where early payment of the exit entitlement was required actually occurs.

### **7.11 Feedback questions on issues, options and the preferred option**

This Consultation RIS is designed to facilitate public consultation on issues and the options developed to address those issues. As such, answers are being sought to the following questions about the options to address the issues arising from substantial delays involved in reselling residents' units:

- Which, if any, of the three options do you prefer, and why?
- For option 2, which of the impacts to residents do you consider the most significant, and why?
- For option 2, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 2, and what do these involve?
- For option 3, which of the impacts to residents do you consider the most significant, and why?
- For option 3, which of the impacts to operators do you consider the most significant, and why?
- Are there any other significant impacts caused by option 3, and what do these involve?

- If you do not prefer any of the three options, is there another way to address the issues arising from a substantial delay in reselling a resident's unit, and what does that way involve?
- Do you have any further comment about the issue of substantial delays in reselling a resident's unit?

# Review of the *Retirement Villages Act 1999*

## Consultative Regulatory Impact Statement

### Appendix 1 - Table of Additional Issues

In 2013, the Minister for Housing and Public Works convened a working party of operator, resident and seniors stakeholders, with the aim of developing options to implement each recommendation of the Parliamentary Committee.

The following table discusses the issues raised in those recommendations, and proposes a range of solutions to address the issues, including amendments to the Act. As these issues sometimes comprise a number of separate recommendations, the numbering of the table does not match the numbering and sequencing of the Parliamentary Committee recommendations.

The Minister invited the working party members to consider any other issues affecting the retirement village industry, and the following table also proposes action to address those additional issues. It should be noted these proposals do not represent government policy; they are simply intended to act as guide for the way forward, and will be reconsidered by the government in view of all feedback received on the issues as a result of this Regulatory Impact Statement (RIS) consultation process. To prompt broad community, resident and operator feedback, key questions are included at the end of the table.

It is acknowledged there are other issues to be addressed in the review process, which were not raised by the Parliamentary Committee and the Ministerial working party and are not included in this RIS. Suggestions on other improvements to the Act, are also sought.

No.	Identified issue	Proposed action	Potential impacts
1	<p><b>Clarifying definitions</b></p> <p>The terms 'residence contract' and 'right to reside' are not used consistently within the Act, which may cause confusion.</p>	<p>The Act should be amended to define the terms 'right to reside' and 'residence contract', and ensure those terms are used consistently and appropriately within the Act. This action is consistent with recommendation 4 of the Parliamentary Committee.</p>	<p>The amendment will improve the clarity of the Act.</p>
2	<p><b>Registering schemes</b></p> <p>The Act requires a retirement village scheme to be registered by the chief executive. This process incurs a registration fee for the operator, and some operators have also experienced delays in finalising the registration. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested removing the requirement for registration of a scheme.</p>	<p>The Act should not be amended to remove the present requirement for the operator to register a new retirement village scheme with the chief executive.</p>	<p>Not only does registration ensure the operator complies with the Act in designing their retirement village scheme, but (a) the fee is minimal in the overall context of establishing a scheme, and (b) the only significant delays in the process occur when the scheme does not comply with the requirements of the Act, and the chief executive must consequently request changes.</p>
3	<p><b>Retirement village register</b></p> <p>The Act requires the operator to lodge public information documents and annual financial statements with the chief executive, for inclusion on the retirement village register. Some operators consider this requirement unnecessary. Furthermore, as the register is maintained in hardcopy form, all material lodged must also be hardcopy, thereby imposing administrative and printing costs on operators. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested removing the requirement for a retirement village register.</p>	<p>The Act should not be amended to remove the present requirement for the operator to lodge public information documents and annual financial statements with the chief executive, for inclusion on the retirement village register. However, the chief executive should implement an electronic register, thereby significantly reducing costs for operators to supply documents.</p>	<p>Maintaining the register allows the chief executive to ensure compliance with various requirements of the Act, and gives prospective residents access to key information about villages. The shift to an electronic register will at least address operators' concerns regarding costs involved in complying with the lodgement requirement.</p>
4	<p><b>Misleading representations</b></p> <p>The Act does not specifically prohibit residential premises being falsely represented as a registered retirement village scheme. Any such misrepresentation may confuse prospective residents about whether the consumer protections under the Act apply to those residential premises.</p>	<p>The Act should not be amended to specifically prevent residential premises being falsely represented as a registered retirement village scheme. This action is not consistent with recommendation 8 of the Parliamentary Committee.</p>	<p>There was little or no evidence of people misrepresenting their business as a registered retirement village, and even if this did occur, the Australian Consumer Law already prohibits making such a false or misleading representation.</p>
5	<p><b>Simplifying the public information document</b></p> <p>The public information document for a retirement village must comply with the approved form under the Act. However, many residents consider the document too lengthy and complex, and therefore difficult to use and understand.</p>	<p>A new approved form for the public information document should be developed, and the Act should be amended to allow this format to reflect the equivalent NSW and Victorian disclosure statements. This action is consistent with recommendation 29 of the Parliamentary Committee.</p>	<p>A revised public information document, particularly if modelled on the new NSW and Victorian disclosure statements, will effectively reduce the complexity and length of the document.</p>
6	<p><b>Warning statement</b></p> <p>Many prospective residents do not obtain adequate legal and/or financial advice before signing their residence contract, and some obtain none at all.</p>	<p>The Act should be amended to require the public information document to highlight the importance of a prospective resident obtaining</p>	<p>The change will ensure prospective residents are made better aware of the importance of obtaining pre-contractual advice.</p>

No.	Identified issue	Proposed action	Potential impacts
		independent financial and legal advice before signing the residence contract. This action is consistent with recommendation 10 of the Parliamentary Committee.	
7	<p><b>Easier access to public information document</b></p> <p>Prospective residents may use the public information document (PID) to compare and contrast different retirement villages. However, these lengthy documents are not usually posted online, and most operators are reluctant to provide hardcopy versions unless the prospective resident is considered to be a 'serious' purchaser.</p>	<p>The Act should not be amended to either require the public information document (PID) to be (a) posted online, or (b) given to prospective residents without first seeking personal information, or when they receive the village prospectus. Instead, the Act should be amended to require operators to develop a general inquiry document, which concisely details the key aspects of the public information document, and then post this online. This action is not consistent with recommendation 30 of the Parliamentary Committee.</p>	<p>Operators would incur costs in posting documents online and then keeping them updated, and also in giving hardcopy documents to people who are only making general inquiries about a village. Instead, adopting the general inquiry document, which is already used in NSW and Victoria, would be a more cost-effective tool for allowing prospective residents to do a basic comparison of villages.</p>
8	<p><b>Earlier access to the public information document</b></p> <p>Prospective residents may use the public information document (PID) to compare and contrast different retirement villages. However, most operators are reluctant to provide a hardcopy version of this lengthy document unless the prospective resident has taken some binding contractual step.</p>	<p>The Act should not be amended to prescribe a time within which prospective residents must be given a copy of the public information document (such as completing an application to purchase a unit or paying a deposit). Instead, the Act should be amended to require the operator to develop a general inquiry document, and post this online. This action is not consistent with recommendation 31 of the Parliamentary Committee.</p>	<p>There are many possible steps leading up to signing a residence contract, and it would therefore be difficult for the operator to determine when to provide a prospective resident with the public information document to satisfy a prescribed timeframe in which this must be done. In any event, residents already have a 14-day cooling-off period in which consider the residence contract and public information document. The general inquiry document is a more efficient means of providing earlier village information to prospective residents, particularly as it would be available online.</p>
9	<p><b>Standard residence contract</b></p> <p>The Act does not prescribe an approved form for the residence contract (as it does for the public information document), which may make it difficult for prospective residents to understand key contractual terms and compare different villages.</p>	<p>The Act should not be amended to mandate a standard form residence contract. Instead, the Act should be amended to include standard wording for key contractual terms, which will assist operators in making full disclosure to prospective residents. This action is not consistent with recommendation 36 of the Parliamentary Committee.</p>	<p>A standard form residence contract may be unworkable for such a varied industry, given the wide range of contractual terms employed by different operators (particularly if other reforms allow operators to offer additional, alternative payment models).</p>
10	<p><b>Exit fee formula</b></p> <p>In comparing and contrasting different villages, prospective residents are particularly interested in how the operator at each village intends to calculate their exit fee.</p>	<p>The Act should not be amended to specifically require residence contracts to include the detailed exit fee calculation formula. This action is not consistent with recommendation 32 of the Parliamentary Committee.</p>	<p>All residence contracts already detail the exit fee calculation formula. Furthermore, this information will be available in the general inquiry document, which all operators will make available online.</p>
11	<p><b>Pre-contractual advice</b></p> <p>Many prospective residents do not obtain adequate legal and/or financial advice before signing their residence</p>	<p>The Act should be amended to require the operator to obtain a written acknowledgement from a prospective</p>	<p>While it is important for prospective residents to obtain legal and financial advice, it is difficult to determine</p>

No.	Identified issue	Proposed action	Potential impacts
	contract, and some obtain none at all.	resident that they are aware of their right to obtain legal advice before signing the residence contract. However, this amendment should not extend to including an acknowledgment about the resident being aware of their right to obtain financial advice. This action is consistent with recommendation 9 of the Parliamentary Committee in relation to the acknowledgement about legal advice, but is not consistent with the recommendation in relation to the acknowledgement about financial advice.	whether sufficient financial advice has been obtained because the parameters of such advice are so broad. The amendment would ensure prospective residents are made better aware of the importance of obtaining pre-contractual advice, without being overly prescriptive (or, indeed, unduly restrictive) about financial advice.
12	<p><b>Cooling-off periods</b></p> <p>The different cooling-off periods for conditional and unconditional residence contracts may cause significant problems for both residents and operators. In particular, the starting date of the cooling-off period for conditional contracts is when the condition is satisfied, even if that occurs years after the contract was signed, and operators and village investors may therefore be exposed to financial risk if they act on contracts which although 'settled' are still capable of being avoided years later. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested making the cooling-off period for conditional residence contracts the same as the period for unconditional residence contracts.</p>	The Act should be amended to change the cooling-off period for conditional residence contracts, by bringing it in line with the cooling-off period for unconditional residence contracts - this being that the period starts when the contract is made.	The amendment would simplify the cooling-off period provisions, and avoid any negative unintended consequences arising from the period presently applicable to conditional residence contracts.
13	<p><b>Sections 106 &amp; 107</b></p> <p>Sections 106 and 107 of the Act prescribe how general services charges are calculated for different items of expenditure. Residents believe the wording in these sections is presently too flexible, giving the operator excessive discretion about how charges are increased, whereas operators consider the sections too prescriptive, making it difficult to increase charges to meet actual village expenditure.</p>	The Act should be amended to make the existing model for calculating and levying general services charges clearer and fairer, by (a) making any changes needed to prevent the operator unfairly moving costs between sections 106 and 107, (b) moving utilities costs from section 106 to section 107, to avoid the restriction on increasing such costs above CPI, and (c) making any other changes needed to improve the clarity and workability of sections 106 and 107. This action is consistent with recommendations 16 and 17 of the Parliamentary Committee.	The amendments would provide both residents and the operator with more certainty about when, and by how much, charges may be increased, while also removing restrictions on the operator's ability to levy charges to recover actual village expenditure.
14	<p><b>Incomplete units</b></p> <p>The Act requires the operator to pay general services charges and maintenance reserve fund contributions for units built, but not yet sold. However, the Act is silent about whether this extends to incomplete units.</p>	The Act should be amended to specifically require the operator to pay proportional (pro-rata) general services charges and maintenance reserve fund contributions for incomplete retirement village units. This action is consistent with recommendations 19 and 20 of the Parliamentary Committee.	The amendment would give legal effect to an existing industry practice, whereby any minimal costs incurred by incomplete units (such as rates) are usually paid for by the operator.



No.	Identified issue	Proposed action	Potential impacts
15	<p><b>Financial statements</b></p> <p>There are various requirements in the Act relating to the provision of annual and quarterly financial statements to individual residents and the residents committee. These requirements impose administrative and printing costs on the operator, while (depending on who requests the statements, and whether they are distributed) not guaranteeing adequate access to the statements for all interested residents. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested access should be streamlined to these statements.</p>	<p>The Act should be amended to streamline how and when quarterly and annual financial statements are given to residents or the residents committee. This could be achieved by replacing the present requirements with new requirements to (a) post these financial statements on village noticeboards, and (b) only provide hardcopy versions of statements to the residents committee, upon request.</p>	<p>The amendments would reduce costs for the operator, while improving resident access to financial statements.</p>
16	<p><b>Quantity surveyor reports</b></p> <p>The operator is required to obtain a full quantity surveyor report every three years. The operator is also required to obtain a full report in any year when substantial changes are made to the village, and obtain an updated report in years between when a full report is needed. Some operators have noted the substantial cost in obtaining a full report, and argued it may not always be needed as frequently as once every three years. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested reducing the frequency with which a full quantity surveyor report is required.</p>	<p>The Act should be amended to reduce the frequency within which the operator is required to obtain a full quantity surveyor report (down to once every five years). However, the requirements about obtaining interim reports should not be changed.</p>	<p>Although a quantity surveyor's report ensures the operator has an informed and independent foundation upon which to base budget decisions, a slight reduction in the frequency of obtaining full reports would not compromise the currency of the report during the in-between years.</p>
17	<p><b>Extent of reinstatement</b></p> <p>The Act requires a unit to be reinstated to a 'marketable condition' before it is resold, and what this actually involves often results in disagreement between the operator and the outgoing resident.</p>	<p>The Act should be amended to make the operator liable for any improvement to a unit beyond the scope of reinstatement work as presently defined, unless the outgoing resident agrees to share this cost. This action is consistent with recommendation 26 of the Parliamentary Committee regarding clarification of the extent of reinstatement work required when a unit is vacated. However, it is not consistent with the recommendation about defining other terms relevant to the reinstatement process.</p>	<p>It is not the definition of reinstatement which is unclear. Rather, the confusion is about who pays for additional 'refurbishment' of a unit which goes beyond mere reinstatement, and the amendment therefore provides the clarity which is practically needed.</p>
18	<p><b>Resident improvements</b></p> <p>Residents may make improvements to their unit, which the operator may demand be removed when the unit is reinstated, even if the improvement may potentially increase the resale value of the unit.</p>	<p>The Act should not be amended to require an incoming resident to be consulted about whether any resident improvements to a unit should remain. This action is not consistent with recommendation 25 of the Parliamentary Committee.</p>	<p>It would be impractical to allow resident improvements to remain until the person to whom the unit is resold has been consulted about whether or not the improvements should stay. Instead, the decision about removing a resident alteration to a unit, and who will bear the cost of any removal, should be considered in the context of the usual reinstatement process (specifically about determining the extent of any 'refurbishment' needed to the unit).</p>

No.	Identified issue	Proposed action	Potential impacts
19	<p><b>Timing of reinstatement</b></p> <p>Under the present wording of the Act, the start date for the period within which the operator must complete the reinstatement work to a unit may, in some instances, begin before the operator and the outgoing resident have reached agreement on the reinstatement work, thereby making it difficult for the operator to complete the work on time. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested clarifying this anomaly.</p>	<p>The Act should be amended to clarify the start date for the period within which the operator must complete the reinstatement work to a unit. The start date for the 90-day period will be the later of either (a) the date the outgoing resident and operator agree on the extent of the reinstatement work, or (b) the vacation date.</p>	<p>The amendment would remove an anomaly which may affect the operator's ability to comply with their requirements under the Act.</p>
20	<p><b>Appointing a real estate agent</b></p> <p>The Act allows a real estate agent to be appointed to resell an outgoing resident's unit. However, it is silent about whether this agent may be the operator (or a related entity) where they are also a licenced real estate agent. The practice of appointing the operator (or a related entity) as the real estate agent under the Act already occurs within the industry. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested removing any uncertainty about the ability of the operator to act as the real estate agent.</p>	<p>The Act should be amended to extend the options of an outgoing resident, when appointing a real estate agent to resell their unit, to also appoint the operator (or a related entity), where the operator (or a related entity) is a licenced real estate agent.</p>	<p>The amendment would facilitate a fast resale of an outgoing resident's unit, at the best price, because general real estate agents may not have the same understanding of the industry and access to prospective buyers as the operator.</p>
21	<p><b>Selling and termination fees</b></p> <p>In addition to the exit fee and any outstanding fees, some operators charge outgoing residents a 'termination fee' or other levy simply for reselling the resident's unit.</p>	<p>The Act should be amended to clarify an outgoing resident must not be charged a fee, charge, commission or lump sum upon resale, unless the amount charged is directly incurred in selling the resident's unit. However, the Act should not be amended to prohibit a termination fee being charged, provided it is fully disclosed in the residence contract. This action is consistent with recommendation 21 of the Parliamentary Committee, in relation prohibiting the levy of selling charges unrelated to the actual resale of a resident's unit, but is not consistent with the recommendation about automatically prohibiting a termination fee, however described.</p>	<p>Residents ultimately benefit from having their unit professionally marketed, and therefore any associated fee, charge, commission or lump sum is justified. Conversely, if a resident has agreed to an arbitrary ('termination') fee in their residence contract, and such a fee is not one which might otherwise be prohibited under the Act, there is no reason this fee should be prohibited.</p>
22	<p><b>Estimate of exit entitlement</b></p> <p>The Act requires a resident to give written notice that they are considering leaving the village before the scheme operator is obliged to provide an estimate of their exit entitlement, and some residents may be reluctant to reveal this intention.</p>	<p>The Act should not be amended to remove the present requirement for a resident to give notice to the operator before being given an estimate of their exit entitlement. The Act should also not be amended to specifically require the operator to provide a resident with an estimate of their exit entitlement every twelve months, upon request, and when the resident decides to leave the village. This action is not consistent with recommendation 33 of the Parliamentary Committee.</p>	<p>There is considerable cost incurred by the operator in preparing an estimate of the exit entitlement, given the complex calculations which may be involved. In any event, resident access to estimates is not presently a problem within the industry, as no operator is likely to refuse to provide an updated estimate to a resident considering leaving the village, even if an estimate had already been given within the previous twelve months.</p>

No.	Identified issue	Proposed action	Potential impacts
23	<p><b>Calculating exit entitlement</b></p> <p>The Act does not prescribe a particular method for calculating an outgoing resident's exit entitlement. Where a residence contract bases this calculation on the resale value of the resident's unit, the resident will benefit where the unit is resold at a good price, but see their exit entitlement reduced if the resale value is less than expected.</p>	<p>The Act should not be amended to require the exit entitlement to be calculated independently of an incoming resident's ongoing contribution. This action is not consistent with recommendation 35 of the Parliamentary Committee.</p>	<p>Not only would such a change restrict freedom of contract, there is also clear market demand for retaining this calculation model.</p>
24	<p><b>Resale on different terms</b></p> <p>The operator may resell a resident's unit on terms different to those in the resident's original contract. Sometimes, these new terms may cause the unit to be sold for less than expected, particularly where capital gains sharing is no longer offered, thereby potentially reducing the exit entitlement the outgoing resident receives.</p>	<p>The Act should be amended so in the situation where the operator resells a resident's unit on capital gains sharing terms different to those in the resident's original contract, the valuation of the resident's unit (upon which the exit entitlement is calculated) must be based on the terms of the original contract. This action is not consistent with recommendation 23 of the Parliamentary Committee.</p>	<p>Instead of prohibiting the operator from reselling a resident's unit on less favourable terms than those in the resident's original contract, the amendment maintains freedom of contract while still ensuring the outgoing resident is not disadvantaged.</p>
25	<p><b>Capital gains sharing</b></p> <p>The Act does not prescribe a particular calculation method for the exit fee and exit entitlement. Some residence contracts may apportion the sharing of capital loss between a resident and the operator in a different ratio to how those parties share the capital gain.</p>	<p>The Act should not be amended to require an outgoing resident and the operator to share the any capital loss in the same proportion as they share any capital gain. This action is not consistent with recommendation 24 of the Parliamentary Committee.</p>	<p>Capital gain and loss sharing should be a matter for parties to negotiate and fully disclose within the residence contract. Consequently, imposing limitations on this would restrict freedom of contract (which would limit the types of contracts able to be offered, and thereby potentially exclude some prospective residents from being able to afford to buy into a retirement village).</p>
26	<p><b>Proportional exit fee</b></p> <p>An amendment to the Act in 2012 required a proportional (pro rata) calculation of the exit fee for pre-2012 residence contracts if it is uncertain whether the contract prescribes such a calculation method. Some operators have sought clarification about how to determine whether a contract does, in fact, prescribe such a proportional method. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested adding such clarification in the Act.</p>	<p>The Act should not be amended to provide guidance about how to determine whether or not a pre-2012 contract prescribed a proportional calculation method.</p>	<p>There is no evidence that a reading of any pre-2012 residence contract would fail to reveal whether or not a proportional calculation method is prescribed.</p>
27	<p><b>Dispute resolution</b></p> <p>Some residents may be uncertain about the scope of the existing dispute resolution process under the Act, and specifically whether it applies to disputes between residents.</p>	<p>The Act should not be amended to clarify the scope of the dispute resolution process. Instead, the Act should be amended to extend the existing dispute resolution process to include breaches of the <i>Fair Trading Act 1989</i>. This action is not consistent with recommendation 11 of the Parliamentary Committee, about clarifying the scope of the existing</p>	<p>The Act is already sufficiently clear in this respect, and was never intended to deal with resident-to-resident disputes. However, extending the dispute resolution process to include breaches of the <i>Fair Trading Act 1989</i> will improve access to justice and prevent duplication of legal processes.</p>

No.	Identified issue	Proposed action	Potential impacts
		dispute resolution process.	
28	<p><b>Non-resident disputes</b> Under the present definition of what constitutes a retirement village dispute, a non-resident owner (a person who purchases a unit on behalf of a resident) could not initiate a dispute.</p>	The Act should not be amended to extend the scope of the present dispute resolution process to include non-resident owners. This action is not consistent with recommendation 13 of the Parliamentary Committee.	This action is not consistent with recommendation 13. A non-resident owner can simply have a resident take dispute action on their behalf, and therefore extending the scope of the present dispute resolution process is unnecessary.
29	<p><b>Passing on legal costs</b> Some operators pass onto residents the legal fees they incurred during the dispute resolution process, which may discourage other residents from commencing a dispute.</p>	The Act should be amended to ensure the existing prohibition against the operator passing onto residents the awarded costs of a dispute also includes legal fees incurred by the operator during the dispute. This action is consistent with recommendation 15 of the Parliamentary Committee.	However, the amendment does not prevent the operator still being able to recover from residents the legal expenses incurred in the day-to-day running of the village.
30	<p><b>Forced resident removal</b> The Act gives the operator power to remove a resident from the retirement village where the resident's care needs exceed what the village can provide. However, the operator may be unable to act if the resident's family refuse to have the resident medically assessed. Furthermore, this power of removal does not include situations where the resident causes mental harm to other residents. Some operators have therefore sought additional powers for the Queensland Civil and Administrative Tribunal to remove a resident in order to better protect the resident, other residents, village staff and village property. Although not included in the recommendations of the Parliamentary Committee, the Ministerial working party suggested providing such additional powers to the Queensland Civil and Administrative Tribunal.</p>	The Act should not be amended to give the Queensland Civil and Administrative Tribunal power to remove a resident if the retirement village is no longer a suitable accommodation option as a result of the resident having health needs exceeding the care available at the village, or if the resident is causing severe mental harm to other residents.	The existing requirements appear adequate, because there is no evidence the operator's powers are inadequate to remove a resident due to their health needs. In addition, removal on the grounds of causing mental harm may be open to abuse if an operator sought to use this power to evict a so-called 'troublemaker'.

### Feedback questions on issues and proposed action

This Consultation RIS is designed to facilitate public consultation on issues and the action chosen to address those issues. As such, answers are being sought about each issue in the above table:

- For each issue, do you agree with the proposed action to address the issue, and why or why not?
- If you do not agree with the proposed action, is there another way to address the issue, and what does that way involve?
- Do you have any further comment to make about the issue?

If you have suggestions for other improvements to the Act, apart from those outlined in this RIS, please provide details.

# Review of the *Retirement Villages Act 1999*

## Consultative Regulatory Impact Statement

### Appendix 2 – Ministerial working party

#### *Membership of the working party*

There are several established, organised and proactive bodies representing both residents and operators in the retirement village industry. This has enabled government to conduct ongoing and targeted consultation processes in the review and development of legislation, and is an avenue through which information on changes may be efficiently disseminated to affected parties. These core consultation partners, which have also been active participants in previous Ministerial working parties and made submissions to the Committee, are as follows:

- Leading Age Services Australia Queensland (LASAQ) (formerly Aged Care Queensland Incorporated)
- the Property Council of Australia Limited, Retirement Living Committee (the Property Council) (formerly the Retirement Villages Association Limited)
- the Association of Residents of Queensland Retirement Villages (the ARQRV).

The existence of such large peak industry bodies ensure operator interests are comprehensively represented, as they not only have a large membership but encompass a wide range of villages from small and church-run through to expensive, high-end models. Similarly, the ARQRV directly represents a large number of residents from varying types of villages, but is also extremely active in advancing the rights of all residents. These operator and resident bodies also have sufficient industry reach to ensure the particular concerns of both metropolitan and rural retirement villages are represented.

The Queensland Law Society (QLS) is a vital stakeholder in any government legislative review process, and the Elder Law Committee, which comprises members with many years of direct experience in the retirement village industry, has made an extremely informed contribution to past reviews of the Act. As its name suggests, the Elder Law Committee is also at the forefront of considering a range of other emerging seniors legal issues.

Given the age of people entering retirement villages, which although notionally beginning at 55, is today more commonly over 70 years, seniors are also an important stakeholder group. However, this group may be difficult to reach as it comprises people who, while of an eligible age to enter a village, may not yet have considered this option, let alone started investigating the steps involved. The following bodies have therefore proved valuable consultation partners in capturing the views of potential and prospective retirement village residents:

- Council on the Ageing Queensland (COTA)
- National Seniors Australia (National Seniors)
- Caxton Legal Centre Inc. (Seniors Legal and Support Service) (SLASS).