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

The Queensland Government is committed to a fair and sustainable residential sector that gives people who reside in retirement villages, and those who operate them, a regulatory framework that delivers the best possible outcomes for consumers.

Under the *Queensland Housing Strategy 2017-2020 Action Plan*, the *Retirement Villages Act 1999* (the Act) was amended to provide greater security and confidence to residents of retirement villages, balanced with industry viability. These amendments included measures to improve consumer protections for residents in cases of delayed resale of their retirement village unit, by requiring retirement village scheme operators to pay exit entitlements within 18 months of a resident's departure, unless doing so would cause the operator undue hardship.

The amendments also included a requirement for an independent review to start 2 years after commencement of the changes to determine the impact of the 18-month timeframe on residents, former residents, families of residents, and scheme operators.

The review

An independent panel was appointed by the Queensland Government to conduct the *Independent review of timeframes for exit payments in Queensland retirement villages* (the review). The panel were provided with Terms of Reference to guide the review.

The panel's goal was to engage with as many stakeholders as possible to gain a rich understanding of their views and experiences. This included receiving written submissions and conducting surveys and interviews with current and former residents, families of residents, scheme operators, and past village managers. The panel also consulted with other Australian jurisdictions, peak groups, and advisers who assist the Queensland retirement village industry.

Recommendations

In response to the Terms of Reference, the panel made four recommendations to the Queensland Government regarding the 18-month timeframe for exit payments.

Recommendation 1: Timeframe for payment of exit entitlements or mandatory purchase of a unit

The date for payment of exit entitlements and mandatory purchase of units in Queensland retirement villages be 12 months from the date that is 20 business days (or 40 business days if the village is located outside an urban area) after the resident has provided vacant possession to the scheme operator. For the purposes of this recommendation, urban villages are those that are in South East Queensland.

Government response:

The Queensland Government supports Recommendation 1, subject to consultation to identify implementation issues and shape potential amendments to the Act.

Recommendation 2: QCAT and financial hardship provision

Scheme operators can apply for an extension of up to 6 months for the payment of exit entitlements or the mandatory buyback of freehold units. The grounds for extension will be market conditions and the extent of actions taken by the scheme operator to sell in a timely manner. The scheme operator is required to notify the resident of the extension request. The resident may submit a response if they oppose the extension of time on the basis that:

- the scheme operator did not take all reasonable steps to sell in a timely fashion
- the harm and inconvenience caused by the extension outweighs the harm and inconvenience likely to be suffered by the scheme operator.

The application for an extension of six months can be made when the scheme operator can demonstrate that they have taken all reasonable steps to sell the unit or the right to reside in the unit within the timeframe for payment of exit entitlements or mandatory buyback, which may include but is not limited to:

- timely reinstatement of the unit
- proactive marketing including showing the unit to prospective purchasers
- cooperating with any real estate agent appointed by the resident and not interfering in the sale
- setting a realistic sale price.

The panel recommended that operators may only be granted one extension up to six months per unit.

Government response:

The Queensland Government supports Recommendation 2, subject to consultation to identify implementation issues and shape potential amendments to the Act.

Recommendation 3: Applications for extensions of time for payment of exit entitlements or mandatory buybacks under the Act

The panel recommended creation of a simple and accessible decision-making mechanism for applications for extension of time:

- by the scheme operator
- by a resident for payment of the exit entitlement or mandatory buyback due under the Act.

These applications should be made in writing with supporting documentary evidence to the Director-General of the Department of Communities, Housing and Digital Economy (or relevant Department), and decisions on the applications by the Director-General of the Department should be made in a timely manner.

Government response:

The Queensland Government accepts the Independent Review Panel's findings about the need to ensure a timely and cost-effective decision-making mechanism for extension applications is available for scheme operators and residents of retirement villages. The Department of Communities, Housing and Digital Economy will work closely with the Department of Justice and Attorney-General to explore options to ensure timely and effective dispute resolution while retaining the independent tribunal as decision maker for resolving retirement village disputes.

Recommendation 4: Recommendation for resident-operated retirement villages

The review panel provided an interim report regarding the impact of the mandatory buyback requirement on freehold resident-operated retirement villages. Recommendation 4 is the interim report's recommendation that relevant villages be exempted from the mandatory buyback requirement where they meet certain criteria.

Government response:

Recommendation 4 was a priority Government election commitment and was implemented through the Housing Legislation Amendment Act 2021.

Additional recommendations

The panel made three additional recommendations to the Queensland Government outside the scope of the review's Terms of Reference. The Queensland Government acknowledges these additional recommendations and seeks stakeholder feedback to inform further consideration of their merits.

Additional recommendation: Ongoing service fees

Upon vacant possession of the unit, the length of time the resident pays the general services charge and maintenance reserve fund contribution be limited to six months. That is, the current 90 days provided for under section 104 of the Act at full rate followed by payment at a proportionate rate based on entitlement to a share of gross ingoing contribution upon sale but capped at a total of six months rather than the nine-month cap currently provided under the Act.

Resident payment of general services charge and maintenance reserve fund payments should be deducted from their exit entitlement.

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

Where a resident moves into residential aged care, the scheme operator will, upon request by the resident, pay the Daily Accommodation Payment (DAP) which is payable to the residential aged care facility by the resident. The amount of DAP paid shall be deducted from the exit entitlement payable to the resident. Payment of the DAP by the scheme operator continues until the resident receives their exit entitlement or payments have reached 85% of the exit entitlement.

The Aged Care Rule should not apply to freehold tenure because based on the contractual arrangement, the scheme operator does not owe a resident with freehold tenure any entitlement out of which the DAP could be paid, pending sale of the freehold interest or mandatory buyback.

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

For residents in a leasehold or licence arrangement, who want to leave the village, the scheme operator will provide the resident with a pre-payment of their exit entitlement via payment of weekly rental costs (similar to the Aged Care Rule above). The amount paid for rent shall be deducted from the exit entitlement payable to the resident. Payment of rent by the scheme operator continues until the resident receives their exit entitlement or payments have reached 85% of the exit entitlement.

Government response to additional recommendations:

Without committing to acceptance, the Queensland Government seeks feedback from stakeholders on the three additional recommendations and their costs and benefits for residents, villages and government.

Additional considerations

The panel also outlined a series of additional considerations for the Queensland Government, including improving the contract literacy of residents, more proactive compliance management, improving the management and business knowledge of 'at-risk' operators, and enhancing the accuracy of data recorded in Village Comparison Documents. These are generally consistent with existing policy priorities, including the *Queensland Housing and Homelessness Action Plan 2021-2025*.

The panel also thought that consideration should be given to matters including, for example, ongoing communication about the review outcomes, stakeholder engagement in implementation, village management issues, and interdependencies with other ongoing work including the review of dispute resolution arrangements under *Queensland Housing and Homelessness Action Plan 2021-2025*.

Government response:

The Queensland Government will discuss with stakeholders how these initiatives can strengthen a robust regulatory framework to support people who live in Queensland retirement villages.

Next steps

The Queensland Government invites retirement village residents, operators and other interested parties to provide their feedback to inform implementation of the Queensland Government's response to the review's recommendations. The Department of Communities, Housing and Digital Economy will also be engaging with groups representing retirement village residents and operators, seniors groups and legal organisations to progress the Government's response.

Feedback can be provided by email to rvconsult@chde.qld.gov.au by 20 May 2022.

Further information is available at: www.qld.gov.au/housing

What do stakeholders think?

The review asked retirement village residents, scheme operators and other stakeholders about how the mandatory timeframe was working and what its impacts had been.

"Since the 18-month timeframe was legislated, our operator has introduced new residency contracts which promise a mandatory buyback within either 60 days or 6 months. In order to get the 60 days buyback contract, you have to pay a larger ingoing contribution. The more expensive and shorter buyback option has been very popular." – ***Resident***

"Twelve months considered to be the right timeframe, 18-month timeframe is too long. Dealing with families that want to move on quickly, it becomes too long." – ***Scheme operator***

"It is ridiculous that residents must be forced out and have to rent elsewhere while their unit is sold, even though they have to continue paying fees." - **Resident**

"Balance of power and level playing field is a good thing to come out of this." – **Adviser referencing 18-month timeframe**

"If a resident needs to move to aged care and can't afford it, our retirement village will pay for the DAP to the aged care facility on behalf of the family until the exit entitlement is paid (with the understanding that the amount paid for daily accommodation will be deducted from the exit entitlement payable)." – **Scheme operator**