

Independent review of timeframes for exit payments in Queensland retirement villages

November 2020



26 November 2020

The Honourable Leeanne Enoch MP
Minister for Communities, Housing, Digital Economy and Minister for the Arts
Shops 3&4, 137 Parkwood Drive
Heathwood QLD 4110

Dear Minister Enoch,

Please find enclosed the report with findings and recommendations from the Panel into the review of timeframes for early payment of exit entitlements and mandatory purchase of freehold units in Queensland retirement villages.

This review conducted over the past six months determined the impact of the 18 month timeframe for payment of exit entitlements and mandatory purchase of units on residents, former residents, families of residents and former residents and scheme operators. The Panel examined this impact in the context of balancing consumer confidence and protection whilst maintaining industry viability. The report also includes the Panel's findings on the financial hardship provision for scheme operators as a ground for seeking an order from the Queensland Civil and Administrative Tribunal (QCAT), as well as the experience of the QCAT application itself.

Retirement villages provide a housing alternative for Queenslanders over a certain age, generally 55 years of age under most schemes. There is great diversity in the types of retirement village schemes available and even within schemes there are a range of contractual agreements providing residents and potential residents with options. There are 322 retirement village schemes currently registered in Queensland. These are spread across 29 local government areas with 223 villages in the urban areas of South East Queensland. There are approximately 30,000 units and 44,000 Queenslanders residing in retirement villages. The average entry age is close to 75 years, with a large number of units occupied by single people and a number of residents reliant on the age pension. The average time to sell a unit is seven and a half months in Queensland. The Panel identified a number of areas within the Terms of Reference where improvements could be made to enhance consumer protection and maintain industry viability.

We would like to thank those who submitted online and written submissions, completed the survey and participated in interviews, meetings and forums. The residents, former residents, their family members or representatives, operators, peak groups, advisers and advocates who volunteered their time to contribute was invaluable in understanding the issues, unintended consequences and opportunities related to retirement village living and, in particular, exiting from a retirement village.

This report has been prepared for internal purposes only and contains confidential information. This report is not to be circulated without consideration and sanitisation of personal data. If this report is to be released from the Minister's office, we request that the appropriate disclaimer be added for information privacy, copyright and indemnity including that the report cannot be relied upon as legal advice.

Yours sincerely,



Therese Wilson
Chair of the Independent Review Panel

Contents

Glossary	5
Chair’s foreword	8
Executive Summary	9
Recommendations	11
1. Introduction	14
1.1 The retirement village sector in Queensland	14
1.2 Terms of Reference	16
1.3 Independent review panel	17
1.4 Approach for undertaking the review	18
2. Timeframe for payment of exit entitlements or mandatory purchase of unit	20
2.1 Why was the 18 month provision introduced?	21
2.2 The timeframe for payment of exit entitlements in other Australian jurisdictions	21
2.3 The exit process	22
2.4 Findings from the analysis of village comparison documents	32
2.5 Impact on the residents and families	35
2.6 Impact on the scheme operators	41
2.7 Recommendations	46
3. Queensland Civil and Administrative Tribunal and the dispute resolution process	48
3.1 Introduction	48
3.2 The financial hardship provision	48
3.3 A fair balance between industry viability and consumer protection	50
3.4 QCAT dispute resolution process	53
3.5 Dispute resolution alternatives	55
3.6 Recommendations	57
4 Resident Operated villages	58
4.1 Summary of the Interim Report	58
4.2 Recommendation	58
5 Complexity of the retirement village product	60
5.1 Legislation and contracts	60
5.2 Exit fees and exit statement	63
5.3 Purpose and structure of the village	65
5.4 Recommendation	67
Appendix 1 – Terms of Reference	68
Appendix 2 – Analysis of Queensland retirement villages	70

Appendix 3 – Key data on the consultation process.....	74
Appendix 4 – Village comparison document	81
Appendix 5 - Case Study: Carinity product	90
Appendix 6 - Case Study: Cooloola Waters Retirement Village.....	91
Appendix 7 – Queensland exit entitlement process.....	96
Appendix 8 – Background to amendment to the Act resulting in the buyback provisions	104
Appendix 9 - Dispute resolution process under the Act	106
Appendix 10 – Summary of retirement village exit payment timeframes for Australian states & territories	108

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Glossary

Key Terms

The Act	<i>Retirement Villages Act 1999 (QLD)</i>
Residential aged care	Accommodation and care for older Australians who can no longer live independently at home. Administered and regulated under the <i>Commonwealth Aged Care Act 1997</i>
Age Pension	The main income support payment for people who have reached Age Pension age. This payment is made by Centrelink, part of Services Australia, Australian Government. As at 23 November 2020, the maximum fortnightly payment for a Couple is \$1,423.60 (combined) and for a Single is \$944.30
ASIC	The Australian Securities & Investments Commission (ASIC) is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC makes information about companies and other bodies available to the public and has been used to gain company information that is used in this report
Body Corporate	A Body Corporate is a legal entity which is created when land is subdivided and registered under the <i>Land Title Act 1994</i> to establish a community titles scheme. All of the owners in a community titles scheme are automatically members of the Body Corporate when they buy their lot
Capital Gain	An increase between the 'purchase' or ingoing amount paid by a resident and the subsequent resident for the unit or right to the unit, less any costs associated with the sale or lease/licence of the unit
Contract	A residence contract or agreement between the resident and scheme operator (or party providing a service) in a retirement village
DMF	The Deferred Management Fee (DMF). This is the percentage of an ingoing contribution or loan amount that is kept by an operator after the resident leaves the village. This percentage is calculated based on the amount of time spent at the village, the services accessed during a resident's stay, and the amount of the ingoing contribution
DHPW	The Department of Housing and Public Works (DHPW), Queensland Government
Exit Entitlements	Section 16 of the <i>Act</i> defines exit entitlements to be the amount that a scheme operator may be liable to pay to, or credit the account of, a former resident under a residence contract arising from - (a) the resident ceasing to reside in the accommodation unit to which contract relates; or (b) the settlement of the sale of the right to reside in the accommodation unit
Exit Fee	Section 15 of the <i>Act</i> defines exit fee to be the amount that a resident may be liable to pay to, or credit the account of, a scheme operator under a residence contract arising from - (a) the resident ceasing to reside in the accommodation unit to which the contract relates; or (b) the settlement of the sale of the right to reside in the accommodation unit
Fair wear and tear	Includes the expected decline in the condition of the unit and/or items within the unit due to normal everyday use
Freehold Tenure	<i>The Land Act 1994</i> defines freehold land to be: (a) land recorded in the freehold land register; and (b) other land that has been granted or vested in fee simple
Independent Living Unit (ILU)	See Unit

Key Stakeholders	As defined by the Terms of Reference for this review: retirement village residents; former residents; families of residents or former residents; scheme operators; and peak or representative groups
Leasehold or Licensed Tenure	Section 4 of the Act defines leasehold interest to be an interest created by an instrument of lease for a lot under the <i>Land Title Act 1994</i>
PID	Public Information Document (PID). Now replaced by Village Comparison Document
Public Trustee	The Public Trustee is a Queensland statutory authority that provides trustee, estate and administration services
QCAT	The Queensland Civil and Administrative Tribunal (QCAT) is an independent, accessible tribunal that resolves disputes on a range of matters
Refurbishment	Also known as renovation work, is defined in Section 59A of the Act to be replacements or repairs other than reinstatement work
Reinstatement	Section 56 of the Act defines reinstatement to be the replacements or repairs that are reasonably necessary to reinstate a former resident's accommodation unit to the condition required under section 58(1) of the Act
Renovation	Section 59A(7) of the Act defines renovation to mean replacements or repairs other than reinstatement work
Resident	Section 9 of the Act, a resident of a retirement village is a person who has a right to reside in the retirement village and a right to receive one or more services in relation to the retirement village under a residence contract
Resident-Operated Villages	Defined in Chapter 4
Retirement Village	Section 5 of the Act defines a retirement village to be: 1) premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units, under a retirement village scheme
Retirement Villages Act 1999 (QLD)	As defined within the Act itself, it is an Act to provide for the establishment and operation of retirement villages, and for other purposes
Retirement Village Land	Section 6 of the Act defines retirement village land if the land is used, or to be used, for a retirement village and, for land included in a community titles scheme within the meaning of the <i>Body Corporate and Community Management Act 1997</i> , includes the lots and common property into which the land is subdivided
Retirement Village Scheme	Section 7 of the Act defines a retirement village scheme as a scheme under which a person (a) enters into a residence contract; and (b) in consideration for paying an ingoing contribution under the residence contract, acquires personally or for someone else, a right to reside in a retirement village, however the right accrues; and (c) on payment of the relevant charge, acquires personally or for someone else, a right to receive one or more services in relation to the retirement village
Retirement Village Scheme Operator	Section 8 of the Act defines a retirement village scheme operator to be a person, alone or with someone else, who controls the scheme's operation or purports to control the scheme's operation
Scheme Operator	See – Retirement Village Scheme Operator
Social Distancing	Also known as physical distancing, is a practice recommended and, in some cases, legislated protocols that were/are being used to slow the spread of viruses, such as coronavirus (COVID-19) which was present at the time of this review, which in many cases prevented members of the Panel from meeting relevant stakeholders in person
Termination Date	Section 56 of the Act defines termination date to be the date a resident's right to reside under a residence contract, including an existing residence contract, in an accommodation unit in a retirement village.
Tribunal	See QCAT

Unit	Also called an accommodation unit, which is defined under Section 4 of the <i>Act</i> , as the part of a retirement village in which a resident has an exclusive right to reside. In this report the term is used as a generic term for resident dwellings in retirement villages, and includes freestanding villas
VCD	A Village Comparison Document (VCD) is defined under Section 4 of the <i>Act</i> and (a) for a scheme to which section 237L applies, the document prepared under that section (b) otherwise, the document that becomes the VCD for the scheme under section 73(3) The VCD pertaining to a village can be amended.

Acronyms

The Act	<i>Retirement Villages Act 1999 (QLD)</i>
ARQRV	Association of Residents of Queensland Retirement Villages
COTAQ	Council on the Ageing Queensland
DAP	Daily Accommodation Payment
DHPW	Department of Housing and Public Works
DMF	Deferred Management Fee
LASA	Leading Age Services Australia
PCA	Property Council of Australia
QCAT	Queensland Civil and Administrative Tribunal
QRVPAS	Queensland Retirement Villages and Parks Advisory Service
RAD	Refundable Accommodation Deposit
VCD	Village Comparison Document

Feedback for the review was obtained by the Panel from stakeholders on a confidential basis. Accordingly quotes in the report have been assigned to the category of stakeholder and an internal reference number, for example 'Resident C-42' or 'Scheme Operator W-1'.

Chair's foreword

The retirement village industry plays an important role in providing a housing alternative to persons who, in the most part, are retired from full time work and under most schemes aged over 55. As the population of Australia and Queensland ages, the housing needs of this demographic will continue to require government focus.

The industry, community and State government worked together on a number of initiatives and reforms to improve the retirement village sector and related legislation in Queensland over the years. This includes the *Queensland Housing Strategy 2017-2027* which aims to ensure confidence in the housing market, consumer protection, and the reform and modernisation of the legislative framework. This resulted in amendments to the *Act*, including those addressed in this report. Providing greater security and confidence to residents, balanced with industry viability, are key drivers of the outcomes of this report.

The Panel heard that residents chose to move into a retirement village to enable down-sizing from their residence, better manage home maintenance requirements and join a community. The Panel also learned that the main reasons for exiting a retirement village are death, entry into an aged care facility, or because the unit is no longer suitable, for example due to the death of a partner or health conditions. There was some evidence from interviews that a small minority of residents leave or wish to leave for other reasons, such as wanting to move closer to family or because they do not enjoy living in the village. Often for these residents there is a feeling of being “stuck” as the current exit terms do not allow the financial means to relocate. In relation to the suitability of a retirement village as a resident ages or after a life event, some retirement villages are integrating services such as meal preparation and care support for a fee.

Retirement villages in Queensland are diverse. They are situated in a range of locales, differ in size and facilities, are operated by a variety of organisations, offer different types of tenure with a range of contracts available that provide varying level of services and financial arrangements. This variety offers choice for residents. Residents' rights are impacted not only by provisions in the *Act* but also by the terms of their contracts, where those terms are consistent with mandatory provisions of the *Act*.

This report reflects the Panel's engagement and consultation with over 450 residents, former residents, families and representatives, scheme operators and their representatives over the past five months. The Panel members also met with peak groups, advisers and regulators from other Australian and New Zealand jurisdictions. Overall the residents, former residents, their families, and scheme operators appeared to be supportive of a timeframe for payment of exit entitlements. The recommendations aim to find the right balance in terms of operationalising the process for the payment and detail surrounding the timeframe.

I believe the adoption of recommendations in this report will support industry viability and consumer confidence and security. There are however ongoing issues concerning the complexity of the retirement village product, a lack of understanding of the regulatory framework by both residents and some scheme operators, and the potential tension between the profit motives of some scheme operators and the social responsibility and care owed to an often vulnerable group in our community, which are beyond the scope of this report to address.

Therese Wilson
Chair of the Independent Panel

Executive Summary

The Queensland Government appointed an independent panel to review the timeframe for payment of exit entitlements and mandatory purchase of units in Queensland retirement villages and provide recommendations to the then Minister for Housing and Public Works by 30 November 2020.

This report presents the Panel's findings and lists four recommendations in relation to the impact of timeframes for payment of exit entitlements and mandatory purchase of units on residents, former residents, families of residents and former residents and scheme operators. When considering this impact, the Panel also contemplated situations where: the residents of the village own and operate the village; the village is owned by a small, local operator without access to the support available to the large, national operators; or where the village may face a range of operational challenges. The report also highlighted interdependent ancillary issues in relation to which the Panel makes three additional recommendations.

The timeframe for payment of exit entitlements and mandatory purchase of units in retirement villages could be improved by further incentivising both scheme operators and residents to act in ways most likely to ensure both consumer protection and industry viability, by providing:

- Regulatory incentives for scheme operators to act to reinstate and sell units as quickly as possible, while also incentivising residents to vacate the premises as soon as possible following termination
- Residents with financial support when they need or want to leave a village
- An alternative to applications to the QCAT for scheme operators seeking an extension of time for payment of exit entitlements or payment of buybacks for unsold freehold units, or for residents to pursue payment of exit entitlements or buybacks due and owing under the *Act*
- In relation to those applications, providing broader grounds than financial hardship on which a scheme operator can apply for the extension for payment, based on an inability to sell despite reasonable efforts, for example due to market conditions, but taking into account the impact on a resident of any extension granted.

This report reflects the Panel's engagement and consultation with residents, former residents, families and representatives, scheme operators and their representatives over the past five months. The Panel also met with peak groups, advisers and regulators from other jurisdictions. The Panel heard from residents or scheme operators from over half the retirement villages in Queensland. That is, 162 retirement villages were represented and this number could be higher as the respondents were not required to share the name or details of their village. The Panel received 368 survey responses, 142 written submissions and conducted over 120 interviews and consultation sessions.

Chapter 1 provides an overview of the retirement village sector in Queensland and details the approach for undertaking the review.

Chapters 2 to 4 outline issues identified by the Terms of Reference. Each chapter summarises key themes and feedback from the Panel's engagement and consultation and presents the main findings and recommendations.

Chapter 5 addresses the complexity of the retirement village product and considers in particular the question of ongoing obligations to pay service fees after vacation of the premises.

Timeframe for payment of the exit entitlement or mandatory purchase of unit (see Chapter 2)

While the 18 month timeframe provides residents and families with a sense of security, residents said that the timeframe is too long. Peak groups representing the scheme operators voiced concern regarding the 18 month timeframe as being too short, but only a few of the scheme operators individually expressed concern.

Both residents and scheme operators said that there is a need for clarity around:

- the commencement date for the 18 month timeframe
- the impact of the process for agreeing to and undertaking reinstatement and/or refurbishment costs, as well as reaching agreement on sale price.

Both residents and scheme operators said that there is a need to ensure that all parties are aware of their rights and responsibilities in relation to the exit process and meet their obligations in a timely manner.

Queensland Civil and Administrative Tribunal & dispute resolution (see Chapter 3)

Residents, former residents, families and scheme operators agreed that QCAT is not an appropriate forum to resolve retirement village disputes due to a lack of expertise in relation to the regulatory regime pertaining to retirement villages. Concerns were expressed regarding the quality of the decision making by QCAT members and the imbalance of power (as operators typically can afford legal representation and have the capacity to appeal to higher courts to seek to overturn QCAT rulings).

Resident-operated retirement villages (see Chapter 4)

A resident-operated retirement village is one where the units are owned as freehold property by residents, and there is no commercial (whether for profit or not-for-profit) scheme operator involved in the operation of the village or sale of units. There are seven such retirement villages in Queensland where all residential units are owned as freehold property by the occupying resident. An interim report was issued by the Panel in September in relation to resident-operated retirement villages.

Imposing the 18 month exit entitlement and mandatory purchase of freehold units by the scheme operator obligation on freehold, resident-operated retirement villages financially burdens residents individually and collectively. The Panel believes the financial burden on individual residents is an unintended consequence of the amended legislation of the *Act*.

The complexity of the retirement village product (see Chapter 5)

In Queensland, there are a wide range of retirement village products on the market. Retirement villages differ in location, accommodation and service offerings and types of contracts. Most scheme operators offer a diverse range of contractual agreements within their villages, in order to give potential residents options. These contracts were described as being individually unique and complex. Residents felt that the diversity and complexity of contracts made it difficult to understand the impact of the exit process on them and others, particularly when multiple contract changes occur during their tenure.

Recommendations

The Panel makes four recommendations addressing the Terms of Reference and three additional recommendations for the Minister to consider. Some recommendations involve amendments to the *Act*. In preparing these recommendations, the Panel aimed to incentivise both scheme operators and residents to act in ways most likely to ensure both consumer protection and industry viability.

In this section the term ‘resident’ includes current and former residents or their representative.

RECOMMENDATIONS

Timeframe for payment of exit entitlements or mandatory purchase of unit (Refer section 2.7)

Recommendation 1: 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 located in South East Queensland.

QCAT and financial hardship provision (Refer section 3.6)

Recommendation 2: Scheme operators can submit an application for an extension of up to six months for the payment of exit entitlements or for the mandatory buyback. 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 and/or the harm and inconvenience to them caused by the extension outweighs the harm and inconvenience likely to be suffered by the scheme operator if the extension is not granted.

More specifically, 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 right to reside in the unit within the time frame for payment of exit entitlements or mandatory buyback, which may include but not be 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 and setting a realistic sale price.

The Panel recommends only one extension up to six months per unit.

Applications for extensions of time for payment of exit entitlements or mandatory buybacks; or for a direction for payment of exit entitlements or mandatory buybacks under the *Act* (Refer section 3.6)

Recommendation 3: The creation of a simple and accessible mechanism for an application for extension of time by the scheme operator; or an application 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 Secretary of the Department of Communities, Housing and Digital Economy (or relevant Department), and decisions on the applications by the Secretary of the Department should be made in a timely manner.

Recommendation for resident-operated retirement villages (Refer section 4.2)

Recommendation 4: Further to the Interim Report presented to the then Minister in September 2020, resident-operated retirement villages should be excluded from the '18 month exit entitlement and mandatory purchase of freehold unit by the scheme operator' obligation or any amended provision imposing an obligation for payment of exit entitlements within a particular timeframe. The exemption should apply where all of the following four criteria are met:

- (a) the scheme operator is not a company with substantial assets or revenue (that is, it is not a company with adequate assets or ability to generate revenue to cover a mandatory purchase of a freehold unit)
- (b) the scheme operator and any related parties do not charge exit fees or DMF including upon sale of a freehold unit
- (c) the unit owner is free to organise their own sale without any interference by the scheme operator and without any requirements for refurbishment, reinstatement and/or renovation
- (d) the resident or their estate is entitled to retain the full proceeds of sale of the freehold unit

ADDITIONAL RECOMMENDATIONS

Ongoing services fees (Refer section 5.4)

Recommendation 5: 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 ongoing contribution upon sale, but capped at a total of six months rather than the nine month cap currently provided under section 104(3)(b).

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

Aged Care Rule - Moving to a residential aged care facility (Refer section 2.7)

Recommendation 6: Where a resident moves into residential aged care, the scheme operator will, upon request by the resident, pay the 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 the resident any entitlement out of which the DAP could be paid, pending sale of the freehold interest or mandatory buyback.

Rent Advance Rule – Accommodation safety net in order to vacate a unit (Refer section 2.7)

Recommendation 7: 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.

OTHER

When developing the above recommendations, the Panel also considered the following issues as requiring attention:

- Improving contract and retirement village literacy of residents, their families or representatives and potential residents on entering, living in and exiting a retirement village. This literacy may include: understanding and navigating the diverse retirement village products; financial, contractual, and legal requirements; and social impacts of living in a village. The Panel recommend continuing financial support for the ARQRV to provide residents and potential residents with support, information and advocacy.
- Proactive enforcement of the requirements of the *Act*. Scheme operators should be required to include accurate data within the VCD; comply with the timeframe to issue an exit statement; and/or charge service fees as outlined in the *Act*.
- For at risk villages, improving or up-skilling management and business knowledge and practice of retirement village scheme operators and village managers. Training focused on understanding market demands and delivering high quality and desirable products is key to industry sustainability.
- Enhancing the accuracy of VCD data, for example by undertaking a routine audit, to ensure the VCDs provide true and accurate information to the community. A number of retirement villages did not have the VCD available on their website, as required by the *Act*. It would also be beneficial if the data contained in the VCDs was available to the public via a central depository. Finally, with the increase in number of contract options available within a retirement village, whilst some scheme operators already do this, there is a need to identify the data in the VCDs to the different contract options.

In addition to the recommendations above, consideration should be given to:

- Ongoing communication and stakeholder engagement in relation to the review and the outcomes
- Engagement of stakeholders during the design and development of any legislative changes including those based on these recommendations, particularly in light of the potential for unintended consequences
- The underlying culture and resident confidence in the onsite manager and/or management team and scheme operator and improvement plans, if required
- The Dispute Resolution review, Code of Conduct and any interdependencies and/or opportunities for alignment
- A post implementation review six to 12 months after implementation of any recommendations to assess whether the objectives have been met and to identify any potential blockers or new issues and actions to resolve and manage them.

1. Introduction

The *Housing Legislation (Building Better Futures) Amendment Act 2017* was passed by Parliament on 25 October 2017 and assented to on 10 November 2017. This legislation contains amendments to the *Act*. These changes included a requirement for retirement village scheme operators to pay residents their exit entitlement 18 months after termination, unless doing so would cause the operator undue financial hardship.

In early 2020, the Queensland Government appointed an Independent Panel to review the timeframes for payment of exit entitlements and mandatory purchase of units from Queensland retirement villages and provide recommendations to the then Minister for Housing and Public Works by 30 November 2020. This is in accordance with Section 225 of the *Act*.

The *Act* was amended to include:

1. The *Housing Legislation (Building Better Futures) Amendment Act 2017* requiring operators to pay residents their exit entitlement 18-months after termination and
2. The *Health and Other Legislation Amendment Act 2019* requiring operators to buy units held by residents under freehold title

In both instances the scheme operator can apply to QCAT to fix a later date for payment of the exit entitlement or purchase of the freehold unit, if QCAT is satisfied that the scheme operator is unlikely to resell the unit, is likely to suffer undue financial hardship, and the order would not be unfair to the former resident.

These amendments were introduced to improve consumer protection for retirement village residents by providing residents certainty regarding the maximum length of time before receiving their funds once they terminate their right to reside in the village. The measures provide security and confidence to residents in cases of delayed resale of their retirement village unit.

The report will refer to exit payments as the payment of a resident's exit entitlement and/or the purchase of unsold freehold units.

1.1 The retirement village sector in Queensland

1.1.1 Background

The first retirement village in Australia was developed by the Brisbane Methodist Church in the 1920s to provide accommodation and support for ageing widows.¹ In the 1950s not-for-profits were incentivised by the Government to build accommodation for widows. By the 1970s private developers leveraged the American lifestyle retirement villages offering affordable units, with a typical resident a retiring World War II veteran who had little cash reserves.

Today retirement villages are premises where a community of seniors live in independent living units or serviced units and share common facilities and amenities.² Retirement villages are regulated by the *Retirement Villages Act 1999 (Qld)*. In Queensland, the then DHPW, and now the Department of Communities, Housing and Digital Economy administers this legislation.

Retirement villages are one of a number of housing options available to older Queenslanders including private housing, residential services (boarding houses, hostels and rental accommodation), manufactured

¹ <https://www.agedcare101.com.au/the-donaldson-sisters/a-potted-history-of-retirement-villages-in-australia/>

² <https://www.qld.gov.au/housing/buying-owning-home/housing-options-in-retirement/retirement-villages>

home parks and residential aged care facilities (also known as nursing homes). Residential aged care facilities are often confused with retirement villages. There are some co-located sites in Queensland (for example retirement village and residential aged care facility managed by one provider, although separate businesses, may share common facilities and amenities). Entry into a residential aged care facility requires an aged care assessment and the facilities are administered and operated under the *Commonwealth Aged Care Act 1997*.

1.1.2 Retirement Villages in Queensland

There are approximately 324 retirement villages in Queensland. 322 of these villages have 30,422 units while the other two villages are vacant land or are de-registered and excluded from the review. There are approximately 44,000 people residing in Queensland retirement villages with a majority of units occupied by single people and the average age of entry approximately 75 years.

Under the *Act*, retirement villages in Queensland are required to have a publicly available VCD on the retirement village's website. The VCD contains general information about the accommodation, facilities and services, including the general costs of moving into, living in and leaving the retirement village. The aim is to enable prospective residents, families and representatives to compare retirement villages.

The analysis of Queensland retirement villages in Appendix 2 shows the range of retirement villages in Queensland based on location, size, scheme operator and tenure. There are additional factors that a resident may consider when exploring entering a retirement village, including the village services and facilities and the options available in relation to contractual arrangements. The VCDs outline 19 general areas and are discussed further in section 2.4 and Appendix 4. Contractual arrangements differ across villages due to the diverse products offered. In addition, within a village there may be different contractual arrangements between individual residents and the scheme operator. This may be due to the contracts available at the time of entry and the options residents selected.

1.1.3 Location of retirement villages in Queensland

The following map highlights the location of retirement villages across Queensland. Further detail is provided in Appendix 2.

For the purposes of this review urban villages are those located in South East Queensland. There are 223 villages in urban areas and 99 villages in regional (non-urban) areas.

1.1.4 Size of retirement villages

Approximately one third of Queensland retirement villages have 50 units or less. For the purposes of this review, the Panel defined a small village to have 50 units or less (37% of villages), a medium village to have between 51 and 100 units (29% of villages) and the remainder to be classified as large villages (34% of villages).



1.1.5 Type of operators of retirement villages

Retirement villages are operated by a scheme operator and may be owned by commercial operators, charitable, religious or other not-for-profit organisations. Operators may run more than one retirement village. There are seven resident-operated villages. There are approximately 107 operators in Queensland.

Sixty percent, or over 18,300 units, in Queensland are held by nine groups of operators. The three largest operators in Queensland run 86 villages with approximately 11,000 units. The remaining 40% or 12,100 units are in 169 villages run by 98 operators.

Resident-operated villages are considered further in Chapter 4.

1.1.6 Tenure of retirement villages

Over half of the retirement village units in Queensland are leasehold, where the operator owns the unit and residents enter into a multi-year lease registered on the title deed for their unit. A licenced arrangement is similar to leasehold however the resident's right to reside is not registered on the title deed. Nearly 90% of units in Queensland are leasehold or licenced. The resident holds the freehold title to their unit in approximately 2,400 units or 8% of units. Some villages may have a mix of tenure types, given market demand and business model changes.

1.2 Terms of Reference

The *Housing Legislation (Building Better Futures) Amendment Act 2017* was passed by Parliament on 25 October 2017 and assented to on 10 November 2017. This legislation contains amendments to the Act, in accordance with Section 225 "Review of operation of s 63(1)(c)³".

These changes included a requirement for retirement village operators to pay residents their exit entitlement 18 months after the termination date, unless doing so would cause the operator undue financial hardship. The changes also included a requirement for a review of the operations of this maximum timeframe to start no later than two years after the commencement of the changes.

The Terms of Reference outlined the purpose of the review and required consideration be given to the balance between industry viability, and resident security and consumer protection. Table 1 outlines the three areas the Panel were required to consider and a quick reference to findings on these areas.

³ Section 63 of the Act is "When former resident's exit entitlement payable".

Table 1. Terms of Reference review area and location of response

Review area	Quick reference
1. Determine the impact of the 18 month timeframe for payment of exit entitlements and purchase of unsold freehold units on residents, former residents, families of residents or former residents and scheme operators	Chapter 2
2. Examine the impact outlined above, where: <ol style="list-style-type: none"> a. the residents of the village own and operate the village b. the village is owned by a small, local operator without access to the support available to large, national operators c. the village may face a range of operational challenges 	Chapter 4 Section 2.6.2 Section 2.6.3
3. Consider whether the capacity for village operators to seek an order from QCAT where the village is likely to suffer undue financial hardship in circumstances where the order would not be unfair to the former resident provides for a fair balance between consumer protection and industry viability	Chapter 3

The entire Terms of Reference are included in Appendix 1.

1.3 Independent review panel

In late 2019 the then Minister for Housing and Public Works via the DHPW sought applications from consultants to support this review. Members for the Independent Review Panel were identified and appointed across the first half of 2020. The Independent Panel members, who were supported by an outsourced Secretariat from Findex, are:

- Associate Professor Therese Wilson (Chair)
- Professor Laurie Buys
- Dr Maree Petersen
- Mrs Jacqueline Carmont

1.4 Approach for undertaking 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. During the planning phase the Panel liaised with peak groups and developed a comprehensive Consultation and Engagement Strategy.

The Panel's guiding principles for the Consultation and Engagement Strategy were:

1. We are independent - the Panel is an independent team appointed by the then Minister to undertake a review of the impact of exit payments for retirement villages (on both scheme operators and residents) in Queensland
2. We seek to consult widely - the Panel and research & secretariat support team heard directly from stakeholders and utilised as many communication mediums as possible. Our aim was to obtain quality information and a balance between the voices
3. We seek to be data led - the Panel and research & secretariat support team were informed by the data obtained to support the findings

The aim of the Panel was to hear from those who have experienced the exit entitlements process in Queensland retirement villages. This was implemented by undertaking an awareness campaign starting in June 2020 and offering stakeholders opportunities to contribute via survey (online and postal), consultation sessions, interviews and written submissions (online and postal).

Due to social distancing restrictions and timing of the consultation and data collection period, larger public consultation sessions, peak body events and city and regional forums were unable to be undertaken. This impacted the awareness campaign and may have reduced the number of contributions. The demographic of many stakeholders has also given rise to some communication challenges, for example, some residents do not use email or are unable to use virtual meeting software, have poor internet and mobile phone coverage, and have hearing or sight issues. Finally, access to former residents was limited given approximately 90% of residents exit on death or to move into a residential aged care facility.

The general campaign involved disseminating communication to peak groups, contacting editors for news articles (for example The Weekly Source, The Senior), social media campaigns, online through government networks and websites, emailing the 29 Queensland local councils with retirement village presence and emailing every scheme operator (this was conducted twice if they didn't respond in the first instance). The DHPW also supported the Panel by contacting approximately 100 stakeholders, mainly residents, former residents, and families of residents and former residents who had communicated with the DHPW in the past few years in relation to exit entitlements.

The Panel considered the factors in Table 2 when undertaking the review and in the targeted communication strategy.

Table 2. Factors considered when analysing retirement villages

Factor	Definition	Category
Location	Physical location	Urban or Regional
Size	Number of units in the village	Small (50 or less units), Medium (51-100), Large (>100)
Operator	Type of scheme operator	Group, Independent, Resident-operated
Tenure	Conditions under which units are held or occupied	Leasehold, licence or freehold

The Panel also reviewed the VCD for each village. More detail is included in section 2.4. As the sale data for retirement village rights are not on public record (that is, leasehold and licenced units are not property transactions), the only data the Panel was able to access was the data disclosed in the VCD. The team was able to access data from a real estate property data base, Core Logic, in relation to real estate transactions for resident-operated freehold units and this information is contained in the Interim Report.

The Panel visited four retirement villages for consultations – a resident-operated village, a 79 unit village, a 180 unit village and a larger site hosting four registered retirement villages with approximately 500 units.

1.4.1 Who provided feedback?

During the four month consultation period to early November 2020, 368 surveys, 122 individual and group interviews, one village forum and 142 written submissions were received from the Queensland retirement village community. This included responses from current and former residents, families or representatives of current and former residents or people who had researched retirement villages, scheme operators, past village managers and advisers.

Key data on the feedback process is included in Appendix 3.

The Panel liaised with over 450 residents from 75 retirement villages. These numbers are indicative as several submissions were submitted on behalf of or signed by a group of residents (for example a Residents' Committee). The team engaged with 31 scheme operator representatives from 125 villages. The 31 scheme operators comprise of seven resident-operated villages, 13 single village scheme operators and 11 operators who operate two or more villages nationally or across Queensland.

In summary, the Panel received submissions (verbal or written) from residents or scheme operators from over half the retirement villages in Queensland. That is, 162 retirement villages were represented. This number is likely to be an underestimate as respondents were not required to share the name or details of their village.

The Panel consulted with New South Wales, South Australian and Victorian representatives who oversee retirement villages in their jurisdiction (equivalent of the DHPW team in Queensland). A consultation session was also held with an adviser in New Zealand. These sessions provided valuable information as well as context on the differences in respective sectors and the relevant legislation.

The Panel met with the peak groups named in the terms of reference and a number of advisers who assist the Queensland retirement village industry, including ARQRV, COTAQ, LASA, National Seniors, PCA, Queensland Law Society, and QRVPAS.

2. Timeframe for payment of exit entitlements or mandatory purchase of unit

Section 63 of the Act provides that the scheme operator must pay the exit entitlement of the former resident or purchase the unsold freehold unit of the former resident, paying the person entitled to receive the exit entitlement or buy back on or before the earliest of listed dates including the day that is 18 months after the termination date or any later day fixed by the tribunal by an order under section 171A.

The term exit payment will be used to describe the payment of exit entitlements or mandatory purchase of a unit.

The following question was asked of residents, former residents, families of residents and former residents and advisers in the survey: *'Are you aware of the amendments to the Retirement Villages Act? The amendments included measures to provide security and confidence to retirement village residents in cases of delayed resale of their retirement village unit, by requiring operators to pay residents their exit entitlement or purchase freehold units 18 months after the resident leaves.'* Over 90% of survey respondents said 'yes' in response to this question.

Scheme operators were asked: *'Have you updated your resident's contract to reflect the amendments to the Retirement Villages Act 1999 that require operators to pay residents their exit entitlement or purchase freehold units 18 months after the resident leaves?'* Eighty eight percent of the scheme operators who responded to this question said 'yes'.

Residents, former residents, their families and the majority of advisers all welcomed the introduction of a timeframe for exit payments.

It's a relief to know that there is an end to all of this. If we had to wait for 3 years, it would become very stressful (Resident C-82)

The average time to sell a unit is seven and a half months in Queensland based on data provided in the VCDs⁴.

The change to legislation in relation to the 18 month timeframe for exit payments addressed an issue of concern to residents, providing certainty in relation to the maximum period for which they would wait to receive exit entitlements after termination. During consultation, three key issues emerged:

1. Whether 18 months is an appropriate timeframe
2. Whether funds should be provided by a scheme operator to move into a residential aged care facility pending payment of exit entitlements
3. Whether there is a regulatory response to residents feeling "stuck" in a unit. Residents related that they were unable to move as they did not have sufficient funds to establish themselves in a new residence when the majority of their capital was the exit payment and cash flow was restricted due to ongoing service fee payments (up to 9 months) following vacation of the unit

These themes and their impacts will be discussed in section 2.5.

Scheme operators provided mixed feedback on the impact of the 18 month timeframe. Some operators, mainly those with existing contractual arrangements that already provided a fixed timeframe, did not express any negative impacts, apart from a request to consider market conditions as a ground for extension of time as an alternative to the financial hardship provision. Other scheme operators and their

⁴ Refer Table 13 in Appendix 4

advocacy groups presented a number of reasons why the 18 month timeframe impacts the financial viability of the sector and limits growth.

2.1 Why was the 18 month provision introduced?

The industry, community and the Government have worked together on a number of initiatives and reforms to improve the retirement village sector and legislation in Queensland over the years. This included the *Queensland Housing Strategy 2017-2027* which aimed to ensure confidence in the housing market, and ensure consumers are protected while reforming and modernising the housing legislative framework. This resulted in amendments to the *Act*, including the requirement for a scheme operator to pay exit entitlements or buyback a freehold unit after a maximum time from when the resident terminates their right to reside. Appendix 8 includes additional background in relation to why the 18 month provision was introduced.

The provision for a maximum timeframe of 18 months was introduced to provide greater security and confidence to residents that they would receive their exit payment, balanced with industry viability.

There is a conflict when you have a profit motive and trying to balance the duty of care to residents and stakeholders. It doesn't seem fair to put all the market risk on the resident; the sale value is dependent upon the overall village. There needs to be some sort of time limit. The 18 month time period – or any time period – creates an incentive for the operator to sell and take some of the risk from the resident. Operators can always fall back on the hardship provision. (Legal adviser C-24)

2.2 The timeframe for payment of exit entitlements in other Australian jurisdictions

In Queensland and South Australia, the maximum period allowed for a refund or repayment of exit entitlements is 18 months, although in South Australia it is possible for a resident to give notice and remain living in the unit for the 18 month period pending repayment of the exit entitlement. If the right to reside in the unit is not sold during that 18 month period, a further three month period from vacating the unit by the resident is allowed for the refund or repayment.

In the Australian Capital Territory, New South Wales, Northern Territory, Tasmania and Victoria the maximum period allowed for a refund or repayment of exit entitlements is six months (or 12 months in NSW for rural areas). In New South Wales, **the six month period does not commence until the property is on the market**. This means that operators do not use up valuable marketing time when residents do not vacate quickly thus delaying reinstatement and/or renovations.

In Western Australia, there is no maximum period so long as the resident is able to appoint their own selling agent. Otherwise, the resident must receive the refund and/or repayment within 45 days of ceasing to reside in the unit or within seven days of the unit being occupied by another person.

Maximum periods for refund or repayment extended to freehold owners of units in retirement villages

In Queensland, the maximum 18 month period is explicitly extended to the exit entitlements (that is, unit buyback) of a freehold owner-resident. In Western Australia, Tasmania, Northern Territory and South Australia there is no explicit inclusion but no exclusion or separate treatment depending upon freehold or leasehold status. In South Australia, only two villages out of 532 villages are freehold and/or strata title.

In the Australian Capital Territory, New South Wales and Victoria, the maximum period for refund and/or repayment does not apply to freehold owner-residents. In those States freehold owner-residents are entitled to their refund and/or repayment within 14 days of sale of the unit or occupation of the unit by another person.

2.3 The exit process

During consultations, to understand the impact of the 18 month exit payment requirement, issues were raised relating to the exit process as a whole. The timeframe attached to the exit payment process is closely linked to a number of issues including understanding the exit process, the nature of the tenure, and the obligations under the contract between the resident and the operator. This section will focus on the exit process and where relevant, identify tenure differences.

The exit process for Queensland retirement villages under the *Act* is set out in Appendix 7. It comprises four key stages:

1. Termination date
2. Reinstatement
3. Negotiation of resale value
4. Sale process

The Panel developed detailed process maps to better understand the flow of decision making in each of these four stages. The maps reflect the complexity of the *Act* and resulting confusion and frustration expressed by all parties. Most concerning was the incorrect information stated by residents, families and even advisers in relation to the specific requirements of the process, for example misunderstandings as to when 'the clock starts' for the 18 month timeframe.

In Appendix 10 the Panel reviewed the exit process across the Australian states and territories. The Panel also spoke with advisers in New Zealand to understand the exit process in this jurisdiction.

The exit process is an area of great concern amongst the residents with whom the Panel consulted. There is potentially some misalignment between what is outlined in the *Act* and what happens in practice. For example, some residents quoted what is specified in their contract and were not aware that the amended legislation overrides some of these contractual provisions.

Residents described a variety of reasons they may exit retirement villages and the reasons some of them felt trapped.

In relation to the exit process in Queensland, a lawyer shared:

*I receive a call per week from family members and residents about the exiting process. There is low level of understanding. For example, I am meeting with **a lady who is very upset with the termination process in her village (...)** she received limited information, the operator has not complied with timeframes, the advertising is wholly insufficient and the reinstatement costs are **really high**. I often review documents and meet with people like this at no charge just to diffuse the situations and give them some practical tips about what to do to get the place sold and how to interact with their operator. I think that if I didn't do this, they would likely turn into buyback disputes. Personally, I think these types of matters are inextricably linked to the mandatory buyback issues – if they were fixed, we would be left with only a small number of genuine buybacks and the industry would be less impacted. (Adviser C-17)*

The consultations found a number of residents did not understand the exit process as set out in the legislation. The Panel asked, “Do you think the residents understand the exit process?” The responses varied:

*If you were to come down to one of our meetings and ask that question, you might get one person to put their hand up and what they might say is probably nothing like the correct interpretation of the law. In other words, **nobody understands the law in this village apart from possibly the manager (...)** creates problems when people leave because of surprises. (Resident C-42)*

2.3.1 Termination

The resident’s termination date is the start of the 18 month buyback period. The Act provides that:

- Upon death, the date of death is the termination date⁵
- If the resident is leaving a village, they must give one month notice⁶
- If the scheme operator is exiting a resident, they must provide notice of 14 days or two months depending on the reason as outlined in the legislation⁷

The PCA advised that residents typically leave a village for the following reasons:

- 30-40% of residents exit to residential aged care
- 6-10% of residents exit to live elsewhere
- the remainder are deceased estates

The Panel learnt through the consultations that residents may choose to leave for a variety of other reasons: declining health; termination of the right to reside under an approved closure plan under section 53(3)(d) of the Act; or issues of affordability.

The exit process assumes vacant possession before reinstatement works in that the reinstatement work is required to be carried out by the scheme operator within 90 days after vacation of the unit under section 59(2)(b)(i) of the Act. There is also a requirement under section 60 of the Act that the scheme operator and resident will negotiate and agree upon a resale value for the right to reside within 30 days of termination, failing which the scheme operator is to obtain a valuation by a valuer within a further 14 days.

The Panel found:

- a. The definition of the termination date was not understood by residents, their families and also some advisers. Some advisers thought the 18 month timeframe started from the time the unit was vacant.
- b. The power imbalance between the operator and resident creates fear and can lead to a resident’s failure to clarify a lack of understanding regarding aspects of the process.

*We are very cautious about saying anything to the retirement village because we are **scared that they will deem my Mum unfit to stay at the village and force her to exit. This is also why they have not asked about whether the 9 months in the contract stands, despite the 18 months as stated by legislation.** (Family of resident C-80)*

*Operators will usually **force or scare the resident into moving out and provide vacant possession, however as per their contract, they may not actually be required to move out** (Resident C-98)*

⁵ Section 55 of the Act

⁶ Section 52 of the Act

⁷ Section 53 of the Act

- c. The process post termination is frustrating for scheme operators. The operators are aware that the 18 month timeframe has commenced but they report that they have little control over the actions of the resident's family or estate in vacating the unit

*What we've found is that somebody dies, however, the family may not live anywhere near. **The unit may sit empty and it may take the family 6 months to come and clean it out before even putting it on the market.** And in all that time, the clock is ticking. That just creates another level of complexity of this issue on the scheme operator. (Scheme Operator C-2)*

- d. The process post termination can also be difficult for residents.

If termination is due to death, the emptying of the unit may not be a top priority for the grieving family.

In addition to families, executors and/or the Public Trustee may be involved. One scheme operator noted that they struggle to contact and engage with some estates. They explained they have to repeatedly try to engage with some estates to organise the removal of personal items.

Scheme operators advise that until vacant possession is achieved it is difficult to reinstate the unit and prepare it for sale. Accordingly, it is recommended below that the legislation be amended to start the timeframe for payment of exit entitlements from the time of vacant possession plus additional business days to allow for reinstatement.

Staying in the residence after providing notice to vacate

There is a cohort of residents who expressed an interest in staying in their unit in the retirement village during the sales process. According to the PCA, approximately 10% of residents leave a village for reasons other than death and a move into aged care. This number could be higher if residents had the financial means to leave.

The timing of the exit payment and the requirement to continue to pay service fees for up to nine months were identified as financial barriers prohibiting residents from exiting a village when it no longer met their needs. The financial barrier relates to the resident not having sufficient revenue to cover new accommodation and fees, in addition to continuing payment of the retirement village fees and waiting for an exit payment. Residents noted that if they could stay in their unit after providing notice to terminate, this would mitigate the need to fund alternative accommodation.

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 C-98)

The request to stay in residence also stemmed from their personal experience of selling property in the past and the fact that they see their "right to reside" as ownership of their retirement village unit. As more than 90% of units in Queensland retirement villages are licenced or leasehold this could have wide impacts.

Residents shouldn't have to move out immediately after termination. Where are these elderly people supposed to live? My husband had to take [redacted] out of his superannuation in order to buy Mum a unit. Now that the unit has sold, Mum can repay my husband's superannuation. (Family of resident C-86)

If you are selling a house, you don't need to give vacant possession, so why do you have to do this for leasehold units? (Resident C-85)

The Panel considered whether a resident should be able to elect to stay in possession while requesting the scheme operator to sell (having the right to appoint their own real estate agent after six months as currently provided under the *Act*), on the basis that any time frame for payment of exit entitlements would not commence until vacant possession. South Australia have a provision which allows residents to stay in possession throughout the 18 month period for payment of exit entitlements, but then gives operators an additional three months with vacant possession if the right to reside is not sold within the 18 months. The Panel's consultation with the DHPW equivalent in South Australia highlighted that whilst the provision is a safety net, it has not been used in practice. The Panel also considered feedback from scheme operators and peak groups who outlined challenges associated with trying to sell a unit with a resident in situ. The PCA advised that:

with the unit not being vacated it makes it difficult to prepare it for sale (i.e. reinstatement or refurbishment) along with scheduling inspections and making sure the unit is presentable. There are concerns that the resident may not be a motivated seller if there is a mandatory exit entitlement payment. Furthermore, the operator may be dealing with a resident who is indecisive about leaving or may suffer from a medical condition.

Accordingly, staying in the residence after providing notice of termination is not an appropriate solution to the challenge.

This issue is discussed further in section 2.5.3.

Termination by the Scheme Operator

Section 53 of the *Act* provides situations in which a scheme operator can terminate a resident's right to reside in a village with notice under the *Act*. The situations include a resident intentionally or recklessly injuring a person or property or where the resident is likely to do so; a resident committing a material breach of the contract; the scheme operator believing that the resident has abandoned the resident's right to reside in village; the resident's type of accommodation now being unsuitable for the resident (in accordance with an aged care assessment); or the operator is implementing an approved closure plan.

The Panel did not hear of any examples of scheme operators terminating a resident's right to reside, and this question was out of scope of the Terms of Reference. However, the Panel found that this issue was raised by some residents and their families as they were aware of the operator's ability to terminate on these grounds. Section 53 of the *Act* creates an imbalance of power as residents are fearful of being 'tossed out'. One family member commented on an under-current of potential bullying by management by using statements like, "you are getting forgetful". Simple statements like this from the operator's representatives (village management) can feel like a threat to the resident, regardless of the manager's intention.

Freehold

Some residents and families understood that when their freehold unit was listed for sale they (the owners) could continue residing in their unit and did not need to vacate. If a resident lists their unit for sale and continues to live in the unit and pay levies, but does not formally give notice of termination in accordance with the *Act* an issue arises as to the commencement of the 18 months period. The resident-owned scheme operators are concerned that the listing itself will trigger the 18 month period, even without notice of termination having been given.

One resident-operated village advised that they have some units coming up to the time for mandatory purchase of freehold units by scheme operators however there are disagreements around termination dates, as some residents did not provide written notice of termination but simply started marketing their unit.

Other Australian jurisdictions

In New South Wales, termination starts once the property can go on the market. In order to prevent operators from slowing down the process, there are requirements that the operator takes all reasonable steps to sell the property coming to market and the burden of proof is on the operator to prove that they did take such steps.

The timeframe for payment of exit entitlements in New South Wales under recent amendments will be from the time that the unit is marketable, whereas in Queensland the time starts to run from termination. Consideration should be given for the requirement of the resident to physically take all their possessions out and give vacant possession, including in the case of deceased estates.

2.3.2 Reinstatement

In February 2019, the *Act* was amended to introduce a clearer and more predictable process for reinstatement or renovation of a unit, supported by entry and exit condition reports. The amendments sought to address issues around extensive work. Extensive work undertaken should be classified as renovation work so the additional time and cost is not incorrectly borne by the resident. Importantly, the impact of extensive work on the timeframe is a potential delay in the unit being marketed for sale. There are ongoing concerns by residents in relation to:

- a. The definition of reinstatement and inclusion of refurbishment, wear and tear or renovation

From experiences I have seen in the village, the operator tries to make the exiting resident pay refurbishment costs, extraordinary reinstatement costs not normal wear and tear. They charge exiting resident for things that should not have to be paid for, even when contract is not a participating capital gains contract. The operator has been doing major upgrades for example replacing all equipment, toilet, oven, air conditioner, fans – everything. They are selling “as new”. (Resident C-50)

- b. The process and timing of the works and the impact that this has on the marketing and sale of a unit and therefore the exit payment and continuing payment of fees by the residents
- c. The imbalance of power between the operator who identifies the reinstatement works required and provides a quote, and may arrange the work, and the residents and their families who feel they do not have a voice in the process. An adviser stated that they had been successful in negotiating a reduction in the cost of reinstatement however most operators have standard costs to reinstate units

Mum’s operator quoted \$40,000 to \$50,000 of reinstatement works and we pushed back. We believe this was to discourage Mum to move out. Following this an itemised list of required works was provided, with a quote of \$27,000. We again pushed back, and the operator eventually allowed to complete the work at a cost of \$5,000. I don’t think Mum could have fought this battle herself. (Family of resident C-86)

- d. The lack of trust that residents have in their village operator that the works are required and will actually take place.

Sometimes an operator will try to put extra fees into refurbishment and/or reinstatement costs if they think they can get away with it. (Representative of a resident and/or former resident C-13)

- e. The financial impact the refurbishment has on the amount of the exit entitlement. For some residents this is a significant loss of capital.

There is feedback from residents that some scheme operators are:

*now clearer in the contract in relation to reinstatement. It results in new carpet and paint (for example \$40,000) and refurbishment (\$80,000 to \$110,000). They claim units are then saleable in a more competitive market. **They pressure the outgoing resident to refurbish stating it will aid the sale.** There is little proof it does. (Resident C-71)*

- f. Not understanding the full impact of the resident's contractual decisions on entry

There are four different types of contracts in my village. If you pay a higher ingoing cost, you may not have to pay any reinstatement. (Resident C-36)

*The cost of refurbishment is shared 50:50 (because shared capital gains). **The scheme operators are encouraging of having the refurbishment done and families agree as they are told it will sell for more.** The scheme operator decides who completes the refurbishments (they are supposed to get three quotes – however this is often not asked for by families). (Adviser C-29)*

The obligations in terms of reinstatement and/or refurbishment of the unit upon exit in other Australian jurisdictions

In Queensland, Australian Capital Territory, and New South Wales, the resident must reinstate the unit to the condition it was in when they entered occupation of the unit, subject to fair wear and tear and approved renovations and/or alterations.

Obligations with respect to reinstatement are provided in the resident's contract in Victoria, Northern Territory, Tasmania and Western Australia.

Obligations with respect to reinstatement are left to be provided in the operator's 'remarketing policy' in South Australia.

2.3.3 Value

Under section 60 of the *Act* the resident and operator must negotiate and agree on a resale value of the right to reside within 30 days after termination if possible, failing which the operator is to obtain a valuation from a valuer within a further 14 day period. There is some evidence that this process is not followed in practice.

*At the start of the 18 months, **families don't dispute the price at the beginning being they are in grief and dealing with it all. And then at the end of the 18 months, they don't dispute the price that is offered by the scheme operator because they just want it all to be over and the estate wrapped up.** (Adviser C-29)*

When asked who decides on the price of the unit, a resident responded, "*I'm not too sure, I guess the retirement villages operators determine the value of it having regard to the market I would think.*"

When asked what would happen if you didn't think that was a fair price, a resident stated: "*well I think there is a small amount of room to negotiate with the village operators, for example it's a bit too high and not going to sell (...) if you can't come up with an agreed value, they make the determination on what it will be sold for.*" (Resident C-41)

Case study 1 (Family of former resident C-86)

The scheme operator valued the unit at \$393,000 on termination. They then asked the resident to reduce to [redacted] because the buyer said they didn't get as much as they wanted for their house sale. The former resident felt the scheme operator kept trying to reduce the agreed price. The resident did ask the operator to buyback the unit, however they would not. The resident was worried that the unit might not sell for a period of time, so she agreed to reduce the price to [redacted] to ensure it would sell. She also didn't want to have to wait for another 12 months (She didn't know of mandatory buyback at 18 months (...) at this stage, 14 months had elapsed since termination). It sold for [redacted] (14-15 months after termination) and she received \$260,000. She could not find an agent to help as no agent would work with this operator. She now wishes she didn't lower the price, because she may have received \$393,000 a few months later.

Case study 1 shows the imbalance of power between the resident and scheme operator in the valuation and sales process. The resident is motivated to sell, and the scheme operator is aware of this.

An adviser saw scheme operators increase prices for the first nine months with little marketing.

*The operator sells the units which are close to the end of the 18 months' time frame first. The operator might advertise a lower price towards the end. The adviser will try to get the operator to agree to provide an exit fee based on the negotiated price (not the reduced sale price). Operators generally don't agree to this. **The adviser might say to his client, "you can fight this, but it'll cost you \$10-\$20,000 in legal fees" but the reduction in price might only be a \$20,000 discount. So, it's not worth it.** Regarding the resale value negotiation, in almost all cases, the operator sets the price reasonably high and family and/or the resident agree immediately with the valuation (because both parties are incentivised to sell at a high price). The adviser has only seen one instance where a valuer was appointed. (Adviser C-13)*

2.3.4 Sale process

Residents in most instances wish to have their unit sold as quickly as possible so that they will receive their exit payment or the net sale proceeds from their freehold unit. The sale, if it occurs within nine months of termination will also end the requirement for the resident to pay, all or a portion of the service fees, and any other requirements under their contract. There are ongoing concerns by residents in relation to the sale process including:

- a. The conflict of interest when operators act as real estate agent, vendor and buyer in the transaction
- b. The resident's lack of control in the sale process

*The sales team don't seem to be worried about selling the unit until they actually have to sell it. Although they do give you 90 days to move out. Units are sold quickly. **Operator usually focusses on selling the new ones first.** (Resident C-67)*

- c. Even though the section 64(2) of the Act allows a resident to appoint a real estate agent after six months on the market, in practice this is constrained as the scheme operator can control the process.

If you engage an external real estate agent, usually the agent is unable to access the property at the time they want. The operator will also send a staff member along with the real estate agent to the inspection – this inhibits the ability of the real estate agent.
(Resident C-88)

In practice it appears that there are few real estate agents who understand the retirement village product and the contracts. It is also difficult to find valuers with appropriate expertise to value a retirement village unit.

Residents assumed some operators may be taking their time to sell, therefore delaying the payment of the exit entitlement. Examples include:

- If a retirement village is selling units in a new development, the operator is prioritising the sale of the newer apartments. The Panel heard of an example where the sales agent for the village stated that their commission on sales of new units was higher than for the sale of existing units. Accordingly, the sales agents prioritised the sale of newer units.
- If more than one unit is available in the retirement village, the operator is prioritising the sale of units in order of those closest to the end of the 18 month timeframe for payment of exit entitlements.
- Operators are taking considerable time to reinstate and market the unit, as they are receiving the fees from the residents (for example general services charge).

However, lawyers who act for scheme operators pointed to current incentives under the Act which motivate scheme operators to sell the right to reside in units in a timely manner, namely:

- The exit fee stops accruing when the resident vacates, so there is no benefit to an operator by delaying the sale to get a higher exit fee.
- After 90 days, the fees from the residents reduce and the operator may now bear a percentage of the fees. Further, after nine months the resident ceases payment of the service fees and the operator must cover them.
- Operators for the most part are actively trying to sell the units and receive the DMF which is their 'profit'. On the topic of appointing a real estate agent after six months, most agents are not familiar with the retirement village product. Scheme operators stated, "*it's not just a property, you are selling a lifestyle*". The operator is considered the most appropriate body to market a unit

A survey respondent provided insights as to why some units sell quicker than others:

- Price can be too high
- Condition of unit - Owner and/or occupiers are required by the village's by-laws to keep the unit up to standard
- Attaining probate can be lengthy

Other relevant matters include:

- External market conditions

External market conditions impact the sale price of these retirement villages in much the same way they impact the wider real estate market. The Panel understands from speaking with residents that many used the funds from the sale of their principal place of residence (i.e. former home) to fund the purchase of their retirement village unit. If residential real estate prices decline in price, this will impact the amount of capital a potential retirement village unit buyer will have to fund the purchase.

- Practice and process

The Panel heard from advisers, residents and scheme operators that there are instances where ‘what happens in practice is not always in line with the Act’. This includes valuers not used for valuations, no agreement on price and some freehold unit owners saying that they are free to engage a real estate agent and set a price for their unit.

The date of sale will be our choice and could occur while we are still living here and vacate the unit on settlement day. There will be no scheme operator exit fees deducted and no DMF or refurbishment fees deducted. (Resident survey comment)

Residents and village stakeholders noted that when the price is unreasonable or not in line with market expectations the unit may stay on the market for a longer period. Recent examples show that when the list price is reduced to meet the market expectations the unit typically sells.

- Resident’s right to choose a longer timeframe

There is an issue concerning the right to sell at a time that suits the owner after the 18 month period. The owner’s ability to control the timing of the sale is impacted by this legislation, in that there may be circumstances in which the resident would like the sale to occur at a time outside of the 18 month buyback period, for example to take advantage of projected market value growth.

- Contract and retirement village literacy of residents, their families or representatives

*The incoming resident knows what they are getting into (often thanks to legal advice), however the families or beneficiaries often don’t understand the process at the outgoing end. There is an education issue for the families. **The families do not understand the contracts and therefore accuse the villages of “ripping off Mum and Dad”** (Scheme Operator C-12)*

The Panel received feedback from residents, their families and representatives, advisers and scheme operators that the exit process can be delayed due to a lack of understanding of the rights and obligations of both the resident and scheme operator under the contract and the Act. This impacts the timeframe as time is taken to resolve misunderstandings and /or educate stakeholders.

Case study 2 Resident W-51, C-54 and W-64

Mr K, a resident of a retirement village [redacted] faced bureaucratic barriers when his request to modify an existing retirement village contract was not granted by the village operator. This resulted in a negative financial impact [redacted]. This case study presents evidence of the imbalance of power between an operator and resident, and the complexity of retirement village contracts.

Background Mr K lived in a unit within a medium-sized, [redacted] retirement village. When Mr K and his wife purchased a right to reside in a licenced tenure unit, both individuals' names appeared on the contract. A time after their entry, the wife passed away and Mr K remained living in the unit. There were no contractual issues that arose from his wife's death.

Mr K formed a relationship with [redacted] Ms K, and after some time, they decided to marry. On marriage they sought to live in one unit together.

Issue For Ms K to live with Mr K in his unit for greater than one month, the couple had to seek permission from the scheme operator. While it is expected that the scheme operator would have allowed this, Ms K and Mr K wanted to ensure that both of their names were on the right-to-reside documentation for the [redacted] unit that they planned to live in together.

The unit was held in the names of Mr K and his deceased wife. Mr K & Ms K were informed by the scheme operator that Mr K would need to "exit" the village, on paper, pay his exit fee and then a new contract could be entered into for this same unit, under the names of Mr & Ms K.

Impact Apart from the emotional stress that the individuals experienced, there was a significant financial impact. Mr K incurred an exit fee [redacted] Ms K a [redacted] fee, to enable them to enter the new residency contract whilst remaining in the unit that Mr K and his late wife purchased years ago.

Conclusion

[redacted] Residents' limited financial assets were impacted significantly, income from the Age Pension, and their quality of life.

Whether it was the complexity of the contracts, the imbalance of power between resident and operator, or a combination of the two – the seemingly simple request for a newly married couple to live together has been dealt with in a harsh bureaucratic manner resulting in unfair consequences for the residents.

2.4 Findings from the analysis of village comparison documents

The scheme operator of a retirement village in Queensland must publish the VCD on the scheme's website for prospective residents to review.⁸ The VCD provides data that enables the prospective residents and their families to view and compare features of different villages. The data in the VCD is self-reported by the scheme operator.

Part 14 of the VCD requires a scheme operator to share exit entitlement information. This includes:

- The formula for calculating the resident's exit entitlement
- Maximum timeframe for the scheme operator to pay the resident the exit entitlement
- Number of units that were vacant at the end of the last financial year
- Number of units that were resold during the last financial year
- Average length of time to sell a unit over the last three financial years

The team analysed the data contained in the 308 VCDs available. The key findings and limitations of the data are outlined below. Appendix 4 includes a summary of the data captured within the VCDs, the VCD information used in the analysis, the data limitations and further detail in relation to the findings.

2.4.1 Key findings

The key findings from the analysis of VCDs are:

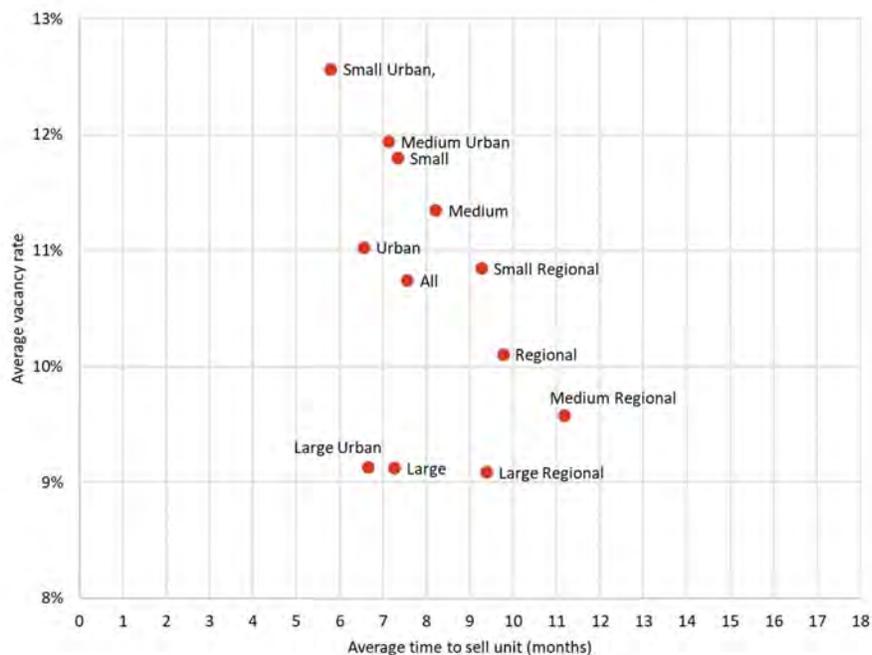
1. **The average time to sell a unit is seven and a half months in Queensland⁹.** This is lower than the national data presented in the 2019 Retirement Census prepared by PwC and PCA that reported it takes an average of 258 days to sell an existing retirement living unit, which includes periods for reinstatement or refurbishment, marketing and settlement.¹⁰
2. Thirty nine percent or 118 villages had a contract option on offer that allowed residents to receive their exit entitlement in 12 months or less.
3. The location and size of the village did not have a material impact on the average vacancy rates of each retirement village and the reported average time to sell units within each retirement village. Figure 1 outlines the findings. While there is anecdotal evidence gathered through consultation sessions, surveys and written submissions suggesting that the 18 month timeframe for payment of exit entitlements or mandatory purchase of unsold units does, or would in the future, cause widespread harm to industry, the aggregate average time to sell of all cohorts represented in Figure 1 is less than 12 months. The average time to sell reported by a village in their VCD is an average over the last three financial years.

⁸ Section 74 of the Act

⁹ Refer Table 13 in Appendix 4

¹⁰ https://www.propertycouncil.com.au/Web/Content/News/RLC/2019/2019_Retirement_Census_snapshot_report_released.aspx

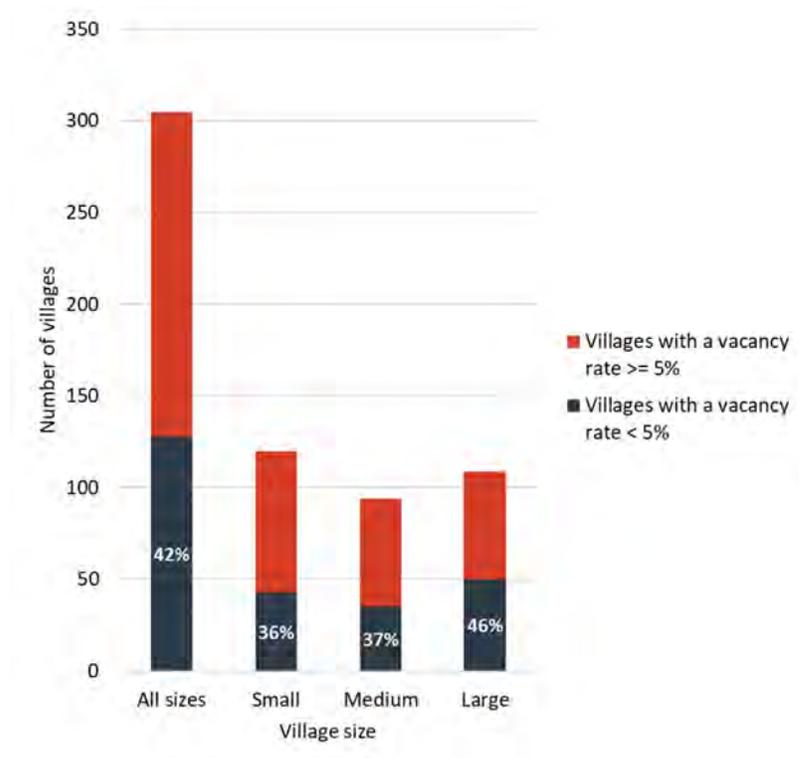
Figure 1. Village size and location on the basis of average vacancy rate and average time to sell



All cohorts that include small villages have an average vacancy rate greater than the average vacancy rate of the population. All cohorts that include large villages have an average vacancy rate less than the average vacancy rate of the population. Although these trends exist, the difference in average vacancy rate is not salient. There is no meaningful average vacancy rate trend amongst the cohorts that discern on location.

As part of the data gathering process, the Panel attempted to liaise with all scheme operators. Scheme operators were invited to provide vacancy data to enable the Panel to explore the impact of the 18 month timeframe. Very little quantitative data was provided by scheme operators or peak groups. An exception to this was a multi-village scheme operator who provided a list of units with the corresponding number of days on market before sale. This very small subset of data (when considering the number of retirement village units in Queensland), showed quite a large range of days units were available for purchase. For example, one village in the group had an average 'days on market' of 443 and a range of 'days on market' of 129 days to 1,160 days.

Figure 2. Village size and vacancy rate



Further average vacancy rate analysis is presented in Figure 2. This outlines where villages have been classified based on an average vacancy rate that is less than 5% or not.

In Figure 2, it is shown that 42% of retirement villages have a vacancy rate that is less than 5%, with larger villages doing better in this category. The percentage shown in the bars of the graph indicate the portion of villages within that size category that have a vacancy rate less than 5%.

2.4.2 Data quality and limitations

The above key findings have been prepared based on data in the VCDs. The following observations were made when analysing the data:

- Some of the data appear to be approximate. An example is provided in Appendix 4, where scheme operators provided approximate answers to the question as to the “[number of] months which was the average length of time to sell a unit over the last three financial years”. The Panel contacted scheme operators that reported what was considered by the Panel to be outlier data to check accuracy and correct the data or gather the reason behind the extraordinary value. Inaccurate data significantly reduces the reliability of insights drawn from analyses of the VCD data.
- VCDs were collected from June to mid-September 2020. The analysis is based on the information contained in these VCDs, some of which may have been updated since. The VCD includes a field that requires the scheme operator to advise the date at which the information in the document is correct. Across the VCDs collected, this date ranged from 2 January 2019 to 28 August 2020. Accordingly, the data set across VCDs is not at the same point in time.
- There are some fields within the VCD document that refer to data “as at the end of the last financial year” or “over the last three financial years”. Given the date range of 2 January 2019 to

28 August 2020, the last financial year may be FY18, FY19 or FY20 and the last three financial years could also range from FY16 through FY20.

This analysis compares the VCD data as if it were from the same period, however consideration is given to conclusions and insights drawn from the data.

- There is only one VCD per village. Some villages have many contract options. Not all contract options are likely to be included in the format of this analysis.
- The residency contract options that appear in each VCD are limited to the contract terms that are currently available for new residents. These contract terms may not be representative of the current contracts to which the scheme operator and current residents are subject.
- Longitudinal VCD data could not be gathered and analysed for this review, meaning that a base case could not be measured and compared to a time period where the effects of the introduction of the 18 month mandatory buyback legislation could be assessed.

2.5 Impact on the residents and families

As outlined above, the consultation process, largely online, made it difficult to engage with older, frailer residents of retirement villages. In some cases, family represented their interests. In line with the purpose to understand the impact of timeframes for exit payments (exit entitlements and mandatory purchase of freehold units), the views and experiences from participants are set out in two overarching sections considering the impact on residents and their families, and the impact on the retirement village scheme operator. The data is organised thematically and commences with feedback on the appropriateness of the 18 month timeframe.

This section will highlight the key impacts shared by residents, former residents and their families or representatives.

2.5.1 Appropriateness of the 18 month timeframe

Residents provided an overwhelming response to the Panel that a timeframe should remain. One adviser related *“balance of power and level playing field is a good thing to come out of this”* (Adviser W-116). There was a fear that the timeframe would be taken away.

Residents and their families said they would prefer a timeframe ranging from immediately to three, six, nine and 12 months. Comments made during interviews that supported a shorter timeframe included:

- *We pay within a reasonable time when we come into the village, **why can't operators pay in a reasonable time when we go out.*** (Resident C-4)
- *There is support for a **clear but short timeframe, prefer four or six months. The industry needs to re-think exit fees concept, other business can turn this into a simple price, this seems like too much complexity.** Prices of retirement village unit verses units under body corporate may not be too different, therefore not getting retirement units at lower prices.* (Adviser C-33)
- ***18 months is a long time when you are 80 years old.*** (Resident C-98)
- ***They take a share of the exit entitlement, and the increase in value.** We pay maintenance and partial maintenance for nine months.* (91 year old resident C-42)

Many residents and families are focused on the lifestyle when entering a village, and so understanding exit fees was not the top priority for many at the time.

*If a friend was to ask me if a retirement village is a good idea, I would advise they fully understood the circumstances because you can't forecast the future. **From a financial perspective, doesn't favour the resident and more so if they have to wait to get their money.** (Resident C-41)*

There are a number of reasons why residents or their families need to access the exit entitlement payment in a timely manner, including:

- Wanting to move to be closer to family and medical assistance
- Needing to move to residential aged care
- Finalisation of a deceased estate

*My wife suffers with dementia, I care for her but am over 80 years old suffering from a chronic health condition. We have a daughter, [redacted] living in another part of Queensland who is keen for us to move near her so she is able to deliver us to medical appointments and shop for us. We are keen to make this move especially at this twilight time of our life, and are wanting to sell our independent living. Our contract states a maximum period of three years in which the village operator has to pay our exit entitlement notwithstanding at the time our contract was signed (June 2018), the Act had been amended to say the exit entitlement must be paid no later than 18 months after the resident left the village. **We think 18 months is too long a time as it gives the operator little incentive to initially put a competitive selling price on our unit and hold out until a keen buyer comes along. A fairer and more commercially realistic time in which the operator should pay the exit entitlement would be nine months.** Further, if I the carer of my wife, predecease her, which is the most common statistic she would probably need to be moved to aged care where, funding that move would be dependent on the proceeds from the sale of our unit. Our other concern is, if the last surviving spouse is living in the unit at the time of their death, the deceased's estate could not be finalised until the operator sells the unit. (Resident W-81)*

Generally, the circumstances in which residents leave retirement villages involve stress for residents and their families. Some families experience additional stress as they perceive that the legislation is unfair, and they are finding it difficult to negotiate with the scheme operator.

*My parents lived in a retirement village for over 20 years. They warned us over many years of the difficulties we may face when the time came for their unit to be sold. My Dad now suffers from a form of dementia and moved into a nursing home in 2019. Mum remained in their unit until she sadly passed away [redacted] Our family removed all their personal possessions, cleared out the unit, completed the necessary paperwork and handed over the keys to Management on [redacted] [redacted] **We received a letter from the scheme operator advising that they would provide an Exit Entitlement figure within 42 days. We are still waiting five months later (end of October). We have hired a lawyer and they have followed up each month and each time the scheme operator have blamed COVID and say they have been unable to obtain the necessary refurbishment costings, which prevents them from providing us with the necessary figures. It feels very much like they are stalling for some reason.** Building and construction has continued in Queensland during COVID and the scheme operator is a large, national and publicly listed organisation. Dad's daily care fees in the nursing home have more than doubled in the last few months, due to the fact that we cannot provide Centrelink with an accurate update of his assets, which means Centrelink are having to make assumptions. The delay in the sale of the unit also means that Dad's funds are tied up in the unit instead of going toward his care in the nursing home. (Family of former resident W-141)*

This is one example of the challenges families face, the need to incentivise the operator to manage the exit process in a timely manner, and the importance of a maximum timeframe. Even though the Act

regulates the exit process, in practice the onus is on the resident, their family or representative to ensure the exit payment occurs. Examples of the impact include:

- Financial cost to the family to hire a lawyer to assist the resident obtain their exit payment
- Financial cost to the family in paying the daily residential aged care accommodation payments and
- The added stress on a grieving family to continually follow-up on the progress of the exit entitlement statement which in turn is holding up the sale of the unit, all whilst dealing with the finalisation of a deceased estate or a parent's decline in health.

Another situation adding to stress and uncertainty for residents was the re-development of existing retirement villages. A resident said that:

there are quite a number of villages that are being rebuilt completely (they are in stage one) that have been vacant for several years. The fair thing would be for the operator to buy these units before doing a full renovation. If there wasn't the 18 months buyback, these residents could be waiting for years. (Resident C-88)

The existence of an exit timeframe provides residents with certainty particularly when they cannot control the development decisions and timing of development releases in their village.

Residents advised the Panel that some operators in Queensland are currently offering shorter buybacks, for example six or nine months. This indicates that some retirement village operators are able to structure their product to meet the needs and expectations of buyers.

Since the 18 month timeframe was legislated, our operator has introduced new residency contracts which promise a mandatory buyback within either 60 days or six 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 C-36)

Many residents queried how the funds that they deposited for entry into the village were being used by the scheme operator, based on their perception that they had given operators 'an interest free loan'.

Some residents see the funds as their money not the operator's money. Operators do not need to keep all or part funds in a trust fund. Residents are now getting angry with the arguments about paying it back. (Resident C-27)

The Panel considered the suggestion by an adviser that scheme operators and residents could negotiate flexibility so that the exit entitlement is released to the resident in a staged manner, where the right to reside in the unit has not been sold within the timeframe for exit payments.

Residents offered the following suggestions in relation to the payment of the exit entitlement to assist with timely receipt of funds:

- Staged payments across the timeframe for exit payments
- A shorter timeframe for exit payments
- Funding entry into a residential aged care facility

The Panel found that the exit timeframe gave residents confidence and a sense of security. The 18 month period appears to be too long a timeframe from a resident, family and representative perspective. This is largely linked to the need for funding residency in an aged care facility.

2.5.2 Funding entry into a residential aged care facility

There is a cloud hanging over you because you know that if you have to go to a nursing home, it's a large bond and you don't have the money. (Resident aged over 70 C-44)

If residential aged care is required, residents need access to funds to cover the costs associated with moving into and living in a residential aged care facility. From the date of entering residential aged care, the new resident has 28 days to determine whether they will pay the facility a lump sum for their accommodation the RAD, or the DAP, or a combination of the two, noting however that you can start by paying a DAP and switch to paying the RAD at any time.

Many residents said that the potential financial impacts of funding entry into a residential aged care facility was causing them stress. The Panel heard of the financial and emotional impact when one spouse needed to enter residential aged care and the other spouse remained in the unit. Participants reported an increase in the number of residents needing to transfer from villages to residential aged care for full time care. The realisation that they may not have the funds to do so, nor the means to raise funds, as they do not qualify for a loan, creates enormous stress.

and has macular degeneration, and is approaching the stage where she cannot live in the village. Financially, she/we would have to borrow money to pay for the management fees. This leads to an emotional impact. Emotional because of the uncertainty of not knowing the outcome. (Resident C-84)

The bond required by an aged care facility is often well beyond the means of aged pensioners many of whom would have invested their life savings to enter the village initially. To be unable to have their entitlement realised within a reasonable timeframe will put a great burden on those residents who will still be responsible for paying the general services fees in the village for up to nine months and as well, either the interest charged by the aged care facility on the bond payable to them or by a daily payment option. (Resident W-41)

Some operators are addressing this issue:

(...) 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 C-12)

There were a few people who needed to get out and move onto a higher level of care. They couldn't get out of here. Even with the 18 months, they don't have the funds to go and put down the RAD or whatever they need to go in. Four residents had been stuck for 2-3 years before the operator offered a program to assist with payments into the co-owned aged care facility. They could no longer care for themselves and they needed to move into the assisted care program. (Resident C-71)

The stress of funding a move into an aged care facility also impacts the families of residents.

A friend needed to go into nursing home. It took 18 months to get her money back. Her son had little money so the daughter paid the amount. This has created a division in the family. (Resident C-74)

In South Australia, if a resident needs to move into a residential aged care facility, it is possible for them to apply for the operator to make payments to the aged care facility on their behalf. Under section 30 of the South Australian *Retirement Villages Act* these payments will be deducted from the exit entitlement. New South Wales is also introducing an aged care rule whereby if a village resident requires an immediate move to an aged care facility, amendments will require the village operator to pay the calculated exit entitlement to the nominated aged care provider as the DAP.¹¹ Under the New South Wales model, the exit payment period will not apply where a scheme operator is paying the DAP.

And if a resident decides to access this aged care rule, then the buyback provision is put on hold. So, they can elect either way to jump with the aged care rule payment which gets them what they need, which is they get into the aged care facility and they're not suffering from not having been paid their exit entitlement. The operator gets to keep the exit entitlements and pay it down gradually until they have more time to resell and everyone's effectively happy. (Adviser C-18)

Residents said they felt it was unfair that they would have to opt for the DAP, when their exit payment may fund a portion, if not all of the RAD. There is a financial implication to the resident in paying the DAP instead of the RAD, as the DAP requires the payment of the current government interest rate of 4.1%. Therefore, there are ramifications for residents in putting the time frame for payment of exit entitlements 'on hold' where the scheme operator is paying a resident's DAP. Ideally, the resident should still be entitled to their balance exit entitlement within the legislated period for payment of exit entitlements, notwithstanding payment of the DAP up until that time.

The Panel assess the aged care rule to be a fair compromise to assist residents who require care in an aged care facility, particularly when, if not for having to wait for payment of their exit entitlement after vacating, they would be in a position to pay the RAD.

The PCA shared with the Panel that the *Aged Care Act* provides hardship arrangements for payment of an accommodation payment for residents of residential aged care services with "unsaleable" houses, apartments and retirement village units. This hardship arrangement means that there is an alternative available should residents prefer not to start to draw upon their exit entitlements to fund the DAP. Residents should have the choice to utilise the hardship arrangements available or to draw on their exit entitlement to fund all or part of the DAP.

2.5.3 Unable to leave a village

A number of residents said that they wanted to leave their retirement village as it no longer suited their needs. Despite many new contracts having a cooling off period, some residents wanted to leave after living in the village for a few years. Over time events occur, such as the loss of a partner or change in village management, which result in the village no longer being suitable for the resident's needs.

As I get older, and COVID has heightened this, I realise I want to be closer to family and medical facilities. (Resident aged over 70 C-27)

There was particular concern for many residents who are dependent on the age pension and do not have the financial resources to fund up to nine months of service fees upon vacating a unit, in the event of their unit remaining unsold. Further, the introduction of levies by some operators to assist in buybacks (which has been recommended to resident-operated retirement villages) is reportedly causing financial hardship to some residents reliant on the age pension. Older people largely do not have avenues to earn extra income.

¹¹ <https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-retirement-village-laws>

I know a couple who paid [redacted] for their unit. Their funds dried up due to the global financial crisis and 2013 real estate crisis. **They are struggling so they wanted to vacate the village, but they can't afford to vacate. They'd have to wait for 18 months. Where do they live for 18 months? They have no-where to go.** No family. They still have to pay for rates. This leaves them no money to pay rent elsewhere. There are numerous cases who are stuck - They can't afford to move and they have nowhere to go to. They are lacking the financial freedom. A past village manager said to me one day that when the electricity bills come in, you can hear a sigh of angst run through the village because the bills had arrived. It was patently clear that a person on the single pension could not afford to live in this village any longer. So many of them, their superannuation and nest eggs got wacked by the 2008 global financial crisis and they have been subsisting ever since. Not a place for the single pension, a double pension can exist. (Resident C-71)

In South Australia, the *Retirement Villages Act* allows a resident to provide an operator with a notice of their intention to vacate the village, but to remain in occupation of the residence while it is being marketed. If the resident remains in the unit they must comply with a number of obligations including inspections, standard of presentation of the unit, and vacating at the end of the 18 month period. The South Australian Office of Ageing Well is responsible for the administration of retirement villages and has sought feedback from operators in relation to residents staying in the unit while it is being sold. The Office of Ageing Well representative advised that:

[scheme operators asked] *well what do we do when either the resident thinks the unit looks wonderful but it's so cluttered or it really needs work, they've been in there long term – that's where we landed on the three months clear vacant possession before payment is due.*

Notably, the Office of Ageing Well, South Australia surveyed operators to understand the relevance and usage of the provision. The general sense is this provision is not used often. However, it was included in the legislation for the protection of residents' rights.

In relation to the burden of paying service fees after vacation of the unit, in New South Wales there will be a 42 day cap on payment of recurrent charges when the unit is put up for sale.

The Panel's key finding is that residents' ability to exit a retirement village is thwarted by the requirement to pay ongoing service fees and waiting to receive their exit entitlements.

2.5.4 Financial literacy

A number of residents interviewed observed that many of the residents were women aged in their eighties and nineties with little experience of managing finances. They said the social roles historically attached to women, limited access to education, and work largely linked to household duties has resulted in limited financial literacy for many women residents. A number of residents, trying to assist their neighbours, are attempting to provide financial advice in the context of exit payments.

2.6 Impact on the scheme operators

The Panel emailed the scheme operators of the 324 retirement villages in Queensland in early July to notify them of the review, request the opportunity for engagement and asked them to share a prepared flyer or notify their residents of the review.

Thirty-four scheme operators responded by undertaking the survey (not all survey responses were complete), 11 written submissions were received, and the Panel held 23 interviews with scheme operators. Additionally, LASA and the PCA provided input on behalf of their members.

Residents who are also the scheme operators of the seven resident-operated retirement villages were also involved in the consultation. Their issues were raised and addressed via the Interim Report (refer Chapter 4) and are not included in this section.

There was less consultation with scheme operators than the Panel sought.

- The level of engagement with the review by scheme operators was low – even after multiple attempts to engage with them
- A number of operators reported that there had been no impact as their contracts provided for exit payments in a shorter timeframe than the 18 months

The Panel found that scheme operators, regardless of size, location or tenure, who offer a competitive product, have not been adversely impacted by the 18 month timeframe for payment of exit entitlements and purchase of unsold freehold units.

Businesses should have been planning a long time ago for this transition, and therefore they should be prepared for this. Legislation was announced a while ago with enough time. (Scheme operator C-7)

*The operators often say that any buyback requirement will bankrupt them...and this has happened in some instances, however they were bought out by another company for a good price and then continue to be operated by the new owner. **If a village goes under, it is because they are not good operators...it makes way for a different operator to take over.*** (Resident C-98)

A large scheme operator advised in November 2020 that retirement village unit demand has increased post COVID-19 as potential residents seek security and see the **benefit and value of living in a community**.

A concern from operators was that, as legislation introducing the 18 month period for payment of exit entitlements was retrospective, it did not give the operators the opportunity to plan and factor in the cost in their contracts.

*The challenge of retrospective buybacks. **After the original sale of the units, operators never provisioned funds for buybacks. Once legislation began, operators needed to recapitalise to provision for mandatory buybacks – not all operators have been able to do that.** The banks are saying that they do not have the security that they once had, therefore banks are not willing to lend more. The existing customers got it for free, but the future customers will have to pay for it.* (Adviser C-19)

Operators and advisers said that good villages have always had a list of potential residents. Therefore, when a unit became available there was a list of people to contact. Conversely, poorly run villages did not have this list, might not have demand for their product, and the retirement village product they had on offer was not suitable for the market.

There is a desire from scheme operators and peak groups who participated in this review, not to disadvantage the scheme operators who are behaving well as a result of a few operators who do not.

2.6.1 Appropriateness of the 18 month timeframe

There was a range of views by scheme operators on the timeframe for exit payments.

*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.** If resident has to go into aged care, the RAD is payable and attracts interest, which hurts residents and families. Also, if resident is deceased, it affects families emotionally because it is a long time to wait to be able to deal with admin side of deceased relative. (Scheme Operator C-7)*

*Six months is too short. For a start-up, business that is growing, we don't have the capital. Ten months is usual turnover. **12 months is a little tight**, as some go beyond the average amount and therefore capital not available. (Scheme Operator C-8)*

*Part property, part services business. They have very lumpy cashflow. Forecasting is very difficult. 10% of stock turnover occurs for villages that are over Ten years. Popular periods to buy – February to March and September to November. **If the operator misses these sales windows, it's very hard to sell. ANZ, CBA, BOQ, a little bit of Bendigo – these are the only financiers who will lend in this space.** (Scheme Operator C-12)*

Consideration was given to the different conditions that apply to urban and regional locations. The retirement village product and reputation are key drivers of the ability to sell within the 18 month time frame regardless of location. However, location issues were raised in relation to the socio economic profile of the village. See, for example, the Cooloola Waters Case Study in Appendix 6.

There were claims that location may impact the time taken to sell in that:

- Reinstatement work may be harder to organise and take longer in regional locations due to the availability and cost of trades people to undertake the work.
- There is a smaller pool of potential buyers in regional areas. However, this could be offset by the lower number of units available.

2.6.2 Small, local operators

The Panel was asked to assess the impact where the village is owned by a small, local operator without access to the funding support available to large, national operators.

It's quite a burden for a smaller operator to understand all of their compliance obligations and then to actually fulfil them properly (...) they really can't afford the burden of the regulatory environment.** Even though they're well intentioned and you'll find most of them probably have the happiest resident cohort (because it's a much more personalised kind of approach). I do think this has swung the pendulum too far the other way and there are now a lot of operators who are under quite a lot of pressure and stress over this buyback regime. It was a bit of a guillotine effect as in saying, 18 months end of story, pay back. And there's not a lot of regard for a whole range of the intricacies and the nuances around that fundamental premise. Including things like the marketplace and COVID. The residential market is so depressed, that it's inevitable that retirement village units are going to struggle to sell. I don't think this legislation that is so black and white has paid any regard to changing market conditions. Some of them actually treat the village like their family effectively. So, they're certainly not full of residents who are not happy. And there are winners and losers and people who struggle with that. **Traditionally the financial model for retirement villages was based on the ingoing contribution funding the exit entitlement. So, operators didn't have to build anything into their model to deal with that fundamentally. What the government have done is come along and said sorry about that, we're going to rewrite your contracts we're going to

impose this buyback on them but you can't change any of your other levers in your contracts that may allow you to adjust your financial feasibility to take that into account. It's been a bit challenging for operators. Going forward they can do that. They can increase exit fees, change their model, get out of operating retirement villages altogether if they want; go to land lease communities. I do have a problem with altering contracts retrospectively like that, particularly if it has a financial impact. I don't think it matters if it's a change that doesn't have a material financial impact on operators but something like this really does, and I think that's challenging. (Adviser C-18)

The ARQRV said that they know of some small operators who are struggling to comply with buybacks at 18 months. One operator allowed owners to rent their units to others while waiting for sale, but this usually only occurred when the operator owned the unit. Operators reported that in the current market they have problems selling in 12 months due to COVID-19 restrictions. Some operators said that a number of operators are moving towards liquidation if they have to pay back exit entitlements. However, many of the issues that have been raised were related to management practices and were not as a result of 18 month buyback period. Villages that experience management challenges report higher levels of trouble selling their units.

A regional operator with a single village advised the Panel that the 18 month timeframe is:

- Diluting the brand of the retirement village industry
- Putting at risk the livelihoods of independent scheme operators who, with freehold units and current contracts, are not in a financial position to buyback unsold units
- Exposing residents, and by extension their families, who are vulnerable if the scheme operator goes into liquidation

2.6.3 Villages facing operational challenges

The Panel defined operational challenges to be issues that impact on the business's profits. Operational challenges include responding to competition, regulation and compliance, uncertainty, staffing, cash flow, managing overheads, monitoring performance and risks and retaining and attracting new residents. Typically, operational challenges have a negative impact on resources, can affect operational performance, cause problems with the execution of strategy, and stand in the way of a business's growth if they aren't addressed.

Some scheme operators do not comply with all obligations under the Act. This has been problematic. For example, scheme operators who say, we do not get involved in the sale of the unit, when they have a legislated role to do so.

Another small operator suggested that *"the period of time to buyback should be based on annual turnover."* (Scheme operator C-52) Whilst this idea could take into account potential operational challenges, it also has scope for structuring and accounting practices to 'manage' a situation.

The Panel heard from scheme operators and residents that vacant units are available for rent. For example, villages experiencing high vacancy rates may convert units into rental properties (three to five year leases) that resemble the private rental market. This example shows that scheme operators are addressing potential operational challenges.

Overall there is no evidence that for retirement villages in Queensland, the buyback scheme is the cause of operational challenges that impact scheme operators to the point that they close down.

2.6.4 Industry viability

The retirement village industry in Australia is forecast to continue growing over the next five years. Industry revenue is forecast to increase at an annualised 3.7% over the five years through 2025-26, to \$6.0 billion.¹² Australia's ageing population is set to underpin significant demand growth. In response, industry operators are anticipated to increase retirement village facilities to ensure that supply meets demand. Operators are also likely to roll-out new integrated retirement village options with various lifestyle, community, health and wellness offerings that reflect the increasingly diverse needs of its customer base.

Higher customer expectations are gradually changing the industry's operating conditions. This has led to the construction of luxury resorts in coastal locations designed for baby-boomers wanting a sea change, alongside new vertical higher-density facilities in inner-city locations. Others are providing integrated product offerings, including co-located retirement villages and aged care facilities.

Australia's ageing population has supported industry operators over the past five years. The share of the population aged 70 and over has increased, creating a larger potential market for industry players. However, while rising fees such as DMF and maintenance fees have boosted industry revenue, they have also attracted public concern over the past five years. Regulatory oversight has consequently intensified following media involving industry player Aveo Group's fees and complex contract arrangements. In response, new funding models, including new pay-as-you-go models have been introduced as industry operators gradually move away from the traditional deferred-fee funding model. New business models have also been introduced to cater to changing expectations and the increasing desire for 'housing for life' options which provide a continuum of care.

Industry viability is impacted by:

- The nature of the retirement village product
- Business management and practices including risk management and modelling terminations

*Amended legislation swung from resident bearing all risk to operator now needing to take on some of the risk. Industry viability argument re short timeframes – **if there is a large delay in getting a new tenant, it is the operator's role to manage risk in relation to re-tenanting, why should it be the resident's risk?** Consider flexibility around the time period – suggest four to six months but have some flexibility, residents have the choice to continue to pay a monthly fee. On operators' side, hardship provisions. (Adviser C-33)*

The Carinity Case Study in Appendix 5 describes how the operator offers a retirement village product that includes a nine month buyback period (two years ago this was changed from six months).

The buyback timing previously did not cause many issues, because we were able to sell properties quickly, however, now it's becoming an issue.

Carinity stated that they have undertaken two buybacks in 2020 and enquiries have slowed since March 2020 due to Covid-19.

Both market conditions and the attractiveness of the product have been identified as impacting on saleability of units.

¹² <https://my.ibisworld.com/au/en/industry-specialized/od5534/industry-at-a-glance>

*Retirement villages are devaluing, because of the mandatory buyback, therefore banks are lending less, so therefore less liquidity is available. DMF is where we make the money, in addition to capital gains. **The reason retirement villages are not selling the unit, it's because the market is down or it's not attractive. The operator is very motivated to sell the unit, because that's how they make money...they are not deliberately delaying.** Financial impacts: Residents like medium sized operators, and the cashflow and liquidity issue this causes will force medium sized operators out (church owned will be fine and public listed will be fine). (Scheme Operator C-12)*

Given the impact of changing market conditions, as opposed to merely financial hardship of an operator, it would be reasonable to consider extensions of time for exit payments on the basis of changing market conditions, for example as a result of COVID-19.

2.6.5 Impact on growth and development

Where scheme operators are funding exit entitlement payments prior to selling the right to reside in a unit, they necessarily have less funds available for growth and development. For that reason, it is appropriate that the exit payment period is not significantly shorter than the time expected to sell.

*Cashflow in the current environment is difficult. **18 months is fair. About half of their turnovers would take longer than six months. It would be very expensive and growth would be slowed and funds would have to be sought from debt or equity providers if there was a six month time framework** – It would be possible but difficult. We would not be able to develop more villages as funds would be needed for buybacks, funding would need to be allocated differently and have to find a different mechanism to borrow against (Scheme Operator C-8)*

*Market conditions significantly impact the ability for the operator to sell. **Ideal situation: clock starts as soon as the unit is actually ready for sale. Operator and resident should be able to freely negotiate for 12 months. After 12 months, operator and resident agree to discount. But no agreement met, if it doesn't sell, regulator or tribunal should assist to allow the price to be discounted. A statutory body should intervene at the 12 month period** – but we don't know who that body is (QCAT is probably too busy). (Scheme Operator C-12)*

*For other villages though, **mandatory buyback is difficult for some operators, because they have to hold capital aside for buybacks, which can stunt their growth.** (Scheme Operator C-7)*

The Panel found that the exit timeframe was problematic to some scheme operators due to its retrospective nature. However, with the time that has passed there have not been the proposed liquidations that media and peak groups predicted when the requirement to pay exit entitlements was introduced into the Act.

Some scheme operators reported that the timeframe changes did not impact them as they already provided buyback assurances in their contracts and other scheme operators have been able to adjust to the new legislation by offering new contract options.

The VCD data suggests that 7.56 months is the average time to sell a unit. Accordingly, there appears to be capacity to meet the timeframe.

2.7 Recommendations

The Panel supports the retention of the buyback timeframe.

Timeframe for payment of exit entitlements or mandatory purchase of unit

Recommendation 1: 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 located in South East Queensland.

The aim of this recommendation is to provide:

- Clarity on the timeframe commencement date
- An incentive for the resident or their family to vacate the unit, addressing some of the scheme operators' challenges
- An incentive for the scheme operator to undertake reinstatement works in a timely matter
- A reasonable time to complete reinstatement works, noting that reinstatement is not renovation work. The difference of 20 business days is proposed to allow for the challenges shared by scheme operators in non-urban areas to access tradesmen for reinstatement works
- The confidence for residents and families that the payment will be made within a fixed period

The Panel considered whether there should be a difference in timeframe for urban and regional villages. It is recommended that 12 months is sufficient for both urban and regional villages as the analysis of the data does not suggest a significant difference in the time taken to sell a unit based on location. The determining factor in relation to the time taken to sell appears to be the nature of the retirement village product offered by the scheme operator and its attractiveness in terms of resident expectations, as well as market conditions and business performance. Some operators noted that they have a waiting list of potential residents who are contacted when a unit becomes available.

The Panel heard that scheme operators are 'hurting' due to the 18 month timeframe, including from the peak group representatives of PCA and LASA. The Panel requested data from peak groups and scheme operators (who mentioned other operators are 'hurting') to support this statement each time it was raised and no information was received by the Panel. The Panel also heard from a limited number of operators, despite the 324 villages in Queensland being contacted twice. The VCD data suggested that the average time to sell a unit in Queensland is 7.56 months and 39% of villages had a contract option on offer that allowed residents to receive their exit entitlement in 12 months or less.

The Panel also considered the available QCAT data. Even in the past five months where the economy has slowed there are only two known cases of an application for an extension for time (which both started pre-COVID). It is acknowledged that the lack of applications may be due to the unwillingness of scheme operators to declare themselves as being in a position of financial hardship. Notably however, there is no evidence of significant adverse impacts causing insolvency amongst scheme operators, with the exception of the two cases mentioned in section 3.2.1.

ADDITIONAL RECOMMENDATIONS

Aged Care Rule - Moving to a residential aged care facility

Recommendation 6: Where a resident moves into residential aged care, the scheme operator will, upon request by the resident, pay the 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 the resident any entitlement out of which the DAP could be paid, pending sale of the freehold interest or mandatory buyback.

The recommended Aged Care Rule is upon request by the resident. This is intended to allow the resident flexibility to obtain financial advice to understand their best payment option. The resident is not required to use the Aged Care Rule and draw on their exit entitlement for DAP. For example, the resident may be entitled to government support for the DAP where they have an illiquid asset such as a retirement village unit.

The Panel also acknowledges the emotional and financial impact of the situation where one spouse needs to enter residential aged care and the partner remains in the unit. This situation was outside the scope of the Terms of Reference for this review however the Panel notes the hardship this situation places on a number of couples in retirement villages.

Rent Advance Rule – Accommodation safety net in order to vacate a unit

Recommendation 7: 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.

Consideration – Education

The complexity and diversity of retirement villages, contracts and services can be confusing and challenging for potential residents, current residents and families. Education and support services can be very beneficial in traversing the range of issues that can arise for potential residents as they explore diverse types of villages and the range of tenures. The ARQRV is an advocacy group that provides peer-to-peer assistance and support to residents and families. The Panel recommends continued financial support be provided to the ARQRV to deliver education, information, advocacy and support to residents and potential residents.

The ARQRV has been suggested on the basis that there is no need to create a new platform to facilitate a peer-to-peer education process.

3. Queensland Civil and Administrative Tribunal and the dispute resolution process

3.1 Introduction

QCAT is an independent, accessible tribunal that efficiently resolves disputes on a range of matters including retirement village disputes. The Tribunal's purpose is to provide a quick, inexpensive avenue to resolve disputes between parties and make decisions.¹³

In Queensland to help resolve retirement village disputes, there is a three way process¹⁴:

Step 1 - Internal negotiation (First step is to try to resolve the dispute within the village)

Step 2 – Mediation (If step 1 does not resolve the dispute, you can apply to attend mediation by QCAT)

Step 3 – Hearing (If step 2 does not resolve the dispute, you can apply to QCAT for a hearing by filling out a form and paying an application fee.)

There are some circumstances where parties can go directly to Step 3 and apply to QCAT for a hearing without going through steps 1 and 2. This includes when an operator *'fails to fulfil requirements regarding exit entitlements and unit resale, and you are materially prejudiced by the failure'*.

Appendix 9 outlines a summary of the processes for a range of retirement villages disputes including an application for extension of time for payment of exit entitlements.

The Terms of Reference requested the Panel *consider whether the capacity for village operators to seek an order from QCAT where the village is likely to suffer undue financial hardship in circumstances where the order would not be unfair to the former resident provides for a fair balance between consumer protection and industry viability.*

Feedback was received from residents, operators and peak groups in relation to the role of QCAT under the financial hardship provisions for an extension to the 18 month exit payment period, and the QCAT dispute resolution process in general. The Panel also consulted with Caxton Legal Centre who operate QRVPAS. The QRVPAS is a free legal service that aims to help residents understand their rights and responsibilities under the *Act* and the *Manufactured Homes (Residential Parks) Act 2003 (Qld)*; obtain the knowledge and skills to present their interests to village and park operators and resolve disputes and have increased access to appropriate legal information and advice.¹⁵

3.2 The financial hardship provision

The *Act* provides that the scheme operator is required to pay the exit entitlement and complete mandatory purchase of units within the 18 month period from termination.

Under s.171A of the *Act*, a scheme operator may apply for an extension of time for payment of the exit entitlement (due under section 63(1)(c)) or to complete a mandatory buyback of a former resident's freehold property under a contract under section 63A.

¹³ <https://www.qcat.qld.gov.au/about-qcat>

¹⁴ <http://www.qcat.qld.gov.au/matter-types/other-civil-disputes/retirement-village-disputes>

¹⁵ <https://caxton.org.au/how-we-can-help/qrvpas/>

QCAT can fix a later day by which the operator must make the exit entitlement payment or buyback the freehold unit, if satisfied that the operator is:

- Unlikely to resell the unit
- Likely to suffer undue financial hardship if required to pay within the 18 month period, and
- The order would not be unfair to the former resident

A scheme operator advised the Panel that he had purchased a village with freehold units and there were unsold units that were required to be bought back. QCAT required a separate hearing and separate application fee per unit. The scheme operator was granted a three month extension for payment for the eight cases of unsold units and spent approximately \$15,000 in legal advice and then \$5,000 per quarter to continue to get extensions from QCAT. The units have now been sold (Scheme operator W-142). Also, a number of scheme operators reported to the Panel that banks will not lend to fund the exit payments because the assets are not mortgageable.

3.2.1 Limited data is available

QCAT data relating to financial hardship applications was difficult to locate despite investigations by the Panel. Specifically:

- QRVPAS indicated that they have not been involved in any applications before QCAT concerning payment of exit entitlements since the 18 month exit entitlement period was introduced
- During the Panel's review including discussions with legal professionals, we located two scheme operators including Cooloola Waters (see Appendix 6), who reported that they had applied for an extension of time on the ground of financial hardship
- There were no responses to the survey question: *"Have you involved QCAT to fix a later date by which you, the operator, must make the exit entitlement payment to the former resident or buy the freehold unit?"*

The QRVPAS are currently undertaking a Dispute Resolution Data Project and shared some findings with the Panel. They reviewed a sample of 93 files¹⁶ which supported the observation that disputes relating to the selling and moving out process have significantly reduced since the introduction of the 18 month buyback provision.

A case study of the process of an operator applying to QCAT due to financial hardship was developed in consultation with Cooloola Waters Retirement Village (see Appendix 6).

Even though scheme operators and residents had little direct experience with QCAT, they shared that they fully understood the process.

3.2.2 Arbitration as a form of dispute resolution in retirement village disputes

An agreement to arbitrate any disputes arising out of a contract, which might include a residence contract for a retirement village unit, amounts to a waiver of a right to take the dispute to a court or tribunal. Generally, arbitration agreements where there is an imbalance of bargaining power (such as between a corporation and a consumer) are regarded as problematic, particularly because the corporation might be much more experienced in arbitration processes including the appointment of an arbitrator.

¹⁶ Sample and not the entirety of our QRVPAS retirement village files from 2017 to 2019

The Act keeps open the possibility of the parties to a retirement village dispute having agreed to arbitrate where, in section 156, it states that a dispute can be referred to mediation so long as arbitration proceedings have not already commenced. This can be contrasted with the Victorian position where under section 42A of the *Retirement Villages Act 1986 (Vic)*, "Any provision in a residence contract or management contract that provides for a process of dealing with management complaints or resident disputes through arbitration is void."

3.3 A fair balance between industry viability and consumer protection

Viability is defined as the ability to survive. From an individual business perspective, the ability to survive is ultimately linked to financial performance and position¹⁷. From an industry perspective, the ability to survive is linked to the ongoing financial performance and position of the collection of the businesses who operate the 322 retirement villages in Queensland.

A business is viable when it is returning a profit that is sufficient to provide a return to the business owner while also meeting its commitments to business creditors; or it has sufficient cash resources to sustain itself through a period when it is not returning a profit.

An important distinction is the viability of a particular retirement village as opposed to industry viability. Retirement villages are structured and operated differently across Queensland. There are a range of tenure types and contracts available; they all offer different financial arrangements. The rights and obligations of the resident and operator vary according to their contractual arrangement. These differences allow for consumer choice. For example, a retirement village may provide a limited range of services and facilities compared to a neighbouring village. This difference provides choice to the consumer based on their requirements and preferences for services and facilities and the price point.

Like all businesses, some may fail from time to time due to a variety of factors, including an unprofitable business model, changing consumer preferences, mis-management and unfortunate business decisions. It is not the responsibility of the legislation or regulations to protect all businesses from failure.

Some villages are failing because they are mis-managed...it should not be the government's responsibility to save every operator. It's good that there was a consolidation around the GFC [global financial crisis], because it knocked out the incompetent operators, as they were bought out by larger more successful operators. (Adviser C-110)

¹⁷ <https://www.ato.gov.au/Calculators-and-tools/Business-viability-assessment-tool/>

3.3.1 Operator reputational risk is a concern

Operators and peak groups stated that they are very reluctant to seek an extension of time to pay exit entitlements on the ground of financial hardship. The operators said that their concern was that this admission would indicate to potential residents and creditors that they were under financial stress, impacting on the financial viability of the village. Further, given that an application would require the operator to demonstrate its inability to pay the exit entitlement within the 18 month timeframe, this could itself be considered an act of insolvency.

s171A, and the use of the phrase "financial hardship" (...) it would assist operators if that phrase was not used (because of the signal it sends). However, there is another good reason for not limiting the provision to situations where the operator is in financial hardship. For instance, if the delay in selling the unit is caused by the conduct of the outgoing resident or their family (for example in failing to vacate within a reasonable time, or failing to negotiate with the operator about the reinstatement works to be completed), then the operator should also be able to apply for an extension. (Adviser C-24)

*The relief provisions have all been cast in terms of financial hardship. So, the minute an operator applies for a hardship provision their village is dead in the water. It's reputation (...) and of course you can't do this confidentially because you've got a resident at the other end or their estate saying I want my exit entitlement please. You got an operator saying I'm having trouble paying this, I'm going to apply to QCAT for an order to extend. That immediately then is out in the marketplace. Out in the village. And then once that gets out you can imagine what it does for the resale of the village and the reputation of the village, it's basically a nail in the coffin. When that gets out into the marketplace and amongst the residents of the village, there's immediate anxiety at the village. Is the operator going broke? And if it's out in the marketplace and if an operator is having trouble selling a unit before they went to the Tribunal for a hardship order, they're going to have a lot more trouble afterwards. It's just then going to be really difficult to then do resales. So, I can tell you right now that every operator will do everything that they could to avoid accessing that provision because at a practical level, it really is not a solution. **The other thing about it all is of course the minute an operator puts their hands up and goes there, it's also potentially an admission of insolvency.** So now we've got these provisions at the moment, the safe harbour provisions, that have been brought in during COVID to give relief to Directors around insolvent trading (...) they're short term. They may be a technical solution to an operator saying no I'm not insolvent, but of course the whole thing just smacks of insolvency. And so, it's really difficult, very difficult for any operator to make. If you take the New South Wales example where a resident can go and make an application to say I want a buyback, and then the operator goes along and has to, I guess, has the onus of proving they have not unreasonably delayed the sale. If we flip that in Queensland, and the operator could make an application, not so much about financial hardship, but more around the fact that they've done everything they could to reasonably sell the unit, bearing in mind all of the circumstances; including market conditions in the region, the behaviour of the resident or their estate, how cooperative they've been. There may be a whole lot of factors that we can't even think about, but they'll be out there potentially. And if an operator can then go along and say I'm making an application for a buyback postponement or a delay or exemption based on a broad range of criteria (...) it's not about not being able to financially afford it, that's not necessarily the issue. I think if you broaden that out it would give operators the ability to then go and put an argument forward. (Adviser C-87)*

In New South Wales under new amendments to their retirement villages legislation, an operator will be able to respond to a resident's application for payment of exit entitlements by seeking an extension where the unit has not sold within the exit payment timeframe and the operator has not unreasonably delayed the sale.

This is not tested on financial hardship, because operators don't want to go to tribunal because it makes them look financially unsteady. The six month (metropolitan Sydney) or 12 month (outside metro Sydney) period for payment of exit entitlements apply from the time the property is placed on the market. The right to payment is not automatic- but from that time residents can apply to the Department Secretary for a decision requiring payment (with appeal rights to Administrative Decisions Tribunal). Application is followed by decision on the papers; there is not an oral hearing. The operator bears the onus of proof in establishing that they did not unreasonably delay the sale. (That is the only ground for defending a resident application for payment or for seeking an extension of time to pay- no financial hardship grounds). Note that once the property is placed on the market the resident can continue to live there until sale. (NSW department C-21)

3.3.2 Circumstances where the extension order would not be unfair to the former resident

Circumstances where the extension order would not be unfair to the former resident requires the operator to also take into account the resident's situation. The definition of "unfair" has been queried by operators and residents. Both operators and residents thought the other had more capacity to pay or wait for payment.

Operators stated that in the case of termination due to a resident's death, the deceased estate had a greater capacity to wait for payment. However, they did acknowledge that a resident having access to funds for residential aged care is an issue.

The tribunal - they've got to look at the hardship for the scheme operator as he can't fund the buyback and the hardship of the person selling the unit. But if the person selling the unit is selling because they don't like their neighbour, then it's hardly a hardship the scheme operator should have to bear. Similarly, if a person dies, and it's possibly only their family that's going to benefit from the resale then that may not be a hardship either. I guess the real issue might be where someone needed to move out of their property into a different level of care, then the sale of the property would be required to fund (...) the tribunal would look at that side of the coin also. (Scheme Operator C-2)

Hardship provisions with QCAT do not work – gives a bad reputation to new residents and banks – which then just proves that you are trading insolvent. By the time you satisfy the hardship provisions, you are already trading insolvent and need to go into administration. There is great cost to gather all the information together for a QCAT hearing. It's likely that a village will not win at QCAT, because the resident may prove that they need the funds more! (Adviser C-61)

Residents had a different view on fairness due to capacity to pay, particularly with regard to aged care payments:

This option should remain, but it is an issue of fairness that it should be recognised that operators have more capacity to borrow to pay the exit entitlement to a resident within the required time, than residents have to borrow to pay a RAD. (Resident W-107)

3.3.3 The need to make an application at the unit level rather than the village level

Cooloola Waters and another scheme operator, the only known QCAT applicants in relation to the hardship provision, complained that they were required to make a separate application seeking an extension of time for each unit. However, such an approach no doubt gives a better opportunity for each affected resident to present their own unique circumstances of hardship in opposing the extension application. A resident's committee from one village noted:

*We believe that **requiring a scheme operator to apply to the Tribunal for each individual case would be much fairer to former residents and their families as it addresses the power imbalance between a large financial entity and an individual.** (Resident W-122)*

3.4 QCAT dispute resolution process

Scheme operators, residents and families described the QCAT process in general as 'not working'. Issues raised included:

1. Concerns regarding the quality of the hearings. Examples were given in relation to applications on a range of retirement village disputes other than extension applications whereby the QCAT tribunal member overseeing the hearing had a lack of retirement village legislation knowledge and experience.

*I think the experience we fundamentally have **with QCAT is that it's a lottery. And the members don't sufficiently have a deep understanding of the legislation or the sector, at all.** We do a lot of work in QCAT in the retirement sector, we have a large dispute management group that deals with QCAT a lot. We always go there basically with a wing and a prayer, saying it can depend on the member. I think the quality of the legal analysis is often quite average (...) and what makes a really important issue in this sector is even though you're going there with one resident, with one contact, arguing one thing. If the outcome of that decision has the ability to impact every contract in the market in Queensland, it has potentially dramatic impacts. So, if you get a bad decision on a Tribunal that might cost the operator \$3,000 paying something back to a resident, multiply that by every resident in Queensland if they hear about the decision and they go to QCAT, and you've got a massive financial impost on the sector. We've had a number of examples on that where ultimately the recourse is to go to the Supreme Court. And in cases where we get a court decision in our opinion and we think we have a really strong prospect, we go to the Supreme Court. We've been to QCAT with some really clear cut legal arguments that we think are straight forward and we get a different decision. And I think it's a little bit challenging given this sector is so niche it would be really good if QCAT had some more retirement village specialists on their Panel. (Adviser C-18)*

2. Concerns about imbalance of power, with large scheme operators having a team of lawyers (including barristers and QCs) and residents being self-represented or having one solicitor.

*I spent three hours on a compulsory conference call and the operator just kept saying no. **The process is too legalistic, lawyers involved and it's like a regular court. The whole procedure has been hijacked by the operator's lawyers!** Residents may have had a win, operators appeal it and reverses previous ruling. Ordinary residents cannot and do not understand law sufficiently to be able to proceed to QCAT. (Resident [redacted] [redacted] C-50)*

QCAT is there, but you have to represent yourself and that is scary and you may not have the resources or ability to do well at QCAT. I tell people to avoid QCAT because it's too stressful for most. (Resident C-98)

The Dispute process is certainly in favour of operators unless the resident has a lot of money to afford barristers and/or QC's and could end up in the Supreme Court. Legal Aid and Caxton Legal in Brisbane (who have a division regarding retirement villages) cannot act for residents as they have not the funds- only to give advice. Normal legal aid offices do not have sufficient understanding of this Act even to give advice (Former resident now renting W-47)

3.4.1 Residents fearful of 'causing problems' and retribution

In some instances, residents were unsure or concerned about raising issues within the village.

Secretariat: Have you spoken to your Village Manager to raise your concern?

Resident: No, I don't want to cause any trouble, I'll call the Department to fix it

Residents who were not comfortable raising the concern with their village's management (i.e. Step 1 of the dispute resolution process), experienced additional issues as more parties become involved over time. A theme within the resident feedback was the need for more empathetic and informed management. In most cases a procedure for dealing with the issue was available, however the issues related more to management behaviour.

3.4.2 Many residents are hesitant to escalate a dispute to QCAT

Residents expressed concern that the QCAT processes are very 'legalistic'. They reported that a high level of understanding of the legislation and framework was needed to navigate the QCAT process. Many residents felt the process was too onerous and they were not confident enough to make a QCAT application or submission. Engaging with the tribunal, the skills and time involved in completing the administrative component, and representing your village is considered to be overwhelming and at odds with their aim to live out their retirement in peace in a village.

QRVPAS advised that in the past, one of the only options available to residents under the *Act* was to apply to QCAT for payment of the exit entitlement if they could demonstrate that they had been "materially prejudiced" by the operator's failure to properly engage in the resale and/or reinstatement process. In their experience, former residents were unwilling to commence that QCAT application process because of the potential time, stress and risk involved.

We were unable to find any record of QCAT dealing with resident-operated villages and the 18 month mandatory purchase of freehold units. We are aware that there is currently one application to QCAT for an extension to the timeframe to buyback a unit. The unit has been vacant for 14 months (resident moved to residential aged care, and subsequently died) which potentially may have to be bought by the scheme operator.

*There also needs to be a dispute and/or appeals process such as an **Ombudsman or similar** which would protect vulnerable older Australians who may not have the capability or resources to contest a service providers ruling.* (Resident W-11)

Also, residents and families who had been involved raised concerns that when findings were made in favour of the resident, the scheme operator had the means to appeal the decisions, extending the time to achieve an outcome and creating additional cost and stress for the resident.

*Penalties against operators are hard to enforce. It has to go to QCAT to actually get the penalties reinforced. Why would a resident take an operator to QCAT out of their own pocket and then for QCAT to collect the penalty? **QCAT process is long and expensive (...)** undesirable by families who are grieving. (Adviser C-13)*

3.4.3 Disputes between residents

It was also noted that from time to time there are disputes between residents. There is no formal mechanism to address these disputes, relying on the process within a retirement village. Participants related that these disputes may impact the quality of life within a village. The ability for some residents to remove themselves from stressful and unhappy circumstances is restricted by the exit timeframe.

*The other area that is really interesting is **resident to resident disputes. It is a much bigger problem than anyone ever acknowledges** and often operators get embroiled in them and they don't want to and they'd rather not, but the dispute resolution provisions under the Act don't deal with resident to resident disputes. (Adviser C-18)*

3.5 Dispute resolution alternatives

3.5.1 Request for an Aged, Elder and/or Retirement Village Ombudsman

The Panel heard from residents and advisers that they would prefer a government appointed, independent mobile arbiter with ombudsman-like functions to address broader issues within the retirement village sector.

***They could attend at each retirement village, with a view to resolving minor disputes on-site and reporting annually to government on systemic problems that residents of retirement villages face** (Adviser W-48)*

A legal professional was asked about the idea of an Ombudsman and responded,

*I think **it's got a lot of merit.** (...) I think expediency would be good in this area.*

A resident was asked about the idea and responded,

*An **ombudsman service is a good idea to empower residents** (and it's free, since not everyone can afford a lawyer) (Resident C-98)*

Other resident comments include:

*There needs to be an Ombudsman – **often elder people won't go to QCAT, there is a cost imbalance between operators and residents. There needs to be a third party to complain to and investigate on behalf of elderly people.** Statistics show a large number of QCAT cases which were dropped because residents may be subject to costs if the operator appeals to the Supreme Court. (Resident C-24)*

3.5.2 The potential role of the DHPW in applications for an extension of time under section 171A

Under the reforms to the New South Wales retirement villages legislation, applications regarding payment of exit entitlements will be made to the Secretary of the Department as decision maker, rather than the New South Wales Civil and Administrative Tribunal. The application will be made by the resident for payment (that is, the time period for payment of exit entitlements is not 'self-executing' and requires an application by a resident). The ground on which a scheme operator can seek to oppose an application for payment of an exit entitlement will be that they have not unreasonably delayed the sale of the unit (as opposed to any ground concerning financial hardship).

3.5.3 The role of the Association of Residents of Queensland Retirement Villages

The ARQRV is the voice of residents in the Queensland retirement village industry. This volunteer association provides support and assistance to association members who have problems with their village operator and assists the families of members who are dealing with the sale of a unit.

The Panel learned that the ARQRV has supported numerous residents and families with issues and plays an important role in providing information and ongoing education to residents. Without the ARQRV many more disputes may require hearings before the Tribunal.

If there is a dispute, residents go through the ARQRV for help. The membership allows residents to enlist the help of ARQRV. (Resident C-44)

3.6 Recommendations

The Panel finds that the capacity for scheme operators to seek an order from QCAT where the village is likely to suffer undue financial hardship in circumstances where the order would not be unfair to the former resident could be improved to enable a fairer balance between consumer protection and industry viability.

Recommendation 2: Scheme operators can submit an application for an extension of up to six months for the payment of exit entitlements or for the mandatory buyback. 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 and/or the harm and inconvenience to them caused by the extension outweighs the harm and inconvenience likely to be suffered by the scheme operator if the extension is not granted.

More specifically, 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 right to reside in the unit within the time frame for payment of exit entitlements or mandatory buyback, which may include but not be 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 and setting a realistic sale price.

The Panel recommends only one extension up to six months per unit.

The Panel heard that scheme operators and their representatives would like to see the grounds for an extension of time extended beyond just financial hardship. It may be difficult to sell a retirement village unit due to market conditions, despite the operator taking all reasonable steps to market and sell the unit.

It was suggested that wording of section 171A be amended to remove the insolvency risk associated with declaring financial hardship, and make it less onerous for scheme operators to bring this type of application. We do not support more drastic changes to these provisions. For example shifting the onus onto residents to apply for the exit payment if the unit is not sold within the mandated timeframe (in the way the onus is shifted in New South Wales), is problematic due to the imbalance of power between the scheme operators and residents. Some residents also lack an understanding of their rights to apply. The exit entitlement payment period should remain self-executing in the sense that the payment becomes due without any application needing to be submitted by a resident.

Recommendation 3: The creation of a simple and accessible mechanism for an application for extension of time by the scheme operator; or an application 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 Secretary of the Department of Communities, Housing and Digital Economy (or relevant Department), and decisions on the applications by the Secretary of the Department should be made in a timely manner.

This option as set out in Recommendations 2 and 3 differs from the QCAT process as it does not require an oral hearing. A written application is prepared by the scheme operator. It is recommended that this process define the evidence required, and define “all reasonable steps”. There should be structure and rigour around what criteria must be satisfied, noting those suggested in Recommendation 2, and how long an extension period would be granted.

4 Resident Operated villages

On 16 September 2020 an Interim Report presented the Panel’s findings and recommendations in relation to the impact of timeframes for exit payments (exit entitlements and mandatory purchase of freehold units) in resident-operated retirement villages.

4.1 Summary of the Interim Report

A resident-operated retirement village is one where the units are owned as freehold property by residents, and there is no commercial (whether for profit or not-for-profit) scheme operator involved in the operation of the village or sale of units. There are seven such retirement villages in Queensland where all residential units are owned as freehold property by the occupying resident.

The findings and recommendation in the Interim Report were informed by targeted consultation with scheme operators and residents of the resident-operated villages as well as families of residents, advisers and other key stakeholders in the retirement village sector.

Consultations were held with stakeholders from all seven resident operated retirement villages. Specifically, over 100 residents from five villages engaged with the Panel via consultation sessions, surveys or written submissions. Residents from all seven villages were given the opportunity to participate. As the meetings and interviews progressed, it became clear to the Panel that the concerns raised by those associated with resident-operated freehold villages were very different in nature to initial themes and feedback shared by the wider retirement village community in Queensland. The Panel also heard that the legislation on timeframes for payment of exit entitlements and mandatory purchase of freehold units in freehold villages has caused significant distress to the residents.

As outlined in the Recommendation section, the Panel recommends that the Minister consider amendments to the *Act* to exclude from the ‘18 month exit entitlement and mandatory purchase of freehold unit by the scheme operator’ obligation, retirement villages where all residential units (land and home package) are owned as freehold property by the occupying resident and there is no commercial (for profit or not- for-profit) scheme operator involved in the operation of the village or sale of units.

Imposing the ‘18 month exit entitlement and mandatory purchase of freehold units by the scheme operator’ obligations on freehold, resident-operated retirement villages financially burdens residents individually and collectively. The Panel believes the financial burden on individual residents is an unintended consequence of the amended legislation in section 63 of the *Act*.

4.2 Recommendation

As resident-operated retirement villages involve freehold property and their contracts have no provisions for payment of exit fees or entitlements, there is no justification or rationale for the scheme operator (effectively the residents) of these villages to be included in the ‘18 month timeframe for payment of exit entitlements and mandatory purchase of freehold units’ obligation under the *Act*.

Recommendation 4: Resident-operated retirement villages should be excluded from the '18 month exit entitlement and mandatory purchase of freehold unit by the scheme operator' obligation or any amended provision imposing an obligation for payment of Exit Entitlements within a particular timeframe. The exemption should apply where all of the following four criteria are met:

- (a) the scheme operator is not a company with substantial assets or revenue (that is, it is not a company with adequate assets or ability to generate revenue to cover a mandatory purchase of a freehold unit)
- (b) the scheme operator and any related parties do not charge exit fees or DMF including upon sale of a freehold unit
- (c) the unit owner is free to organise their own sale without any interference by the scheme operator and without any requirements for refurbishment, reinstatement and/or renovation
- (d) the resident or their estate is entitled to retain the full proceeds of sale of the freehold unit

The recommendation is based on seven unique conditions the Panel identified that apply to resident-operated retirement villages. These conditions have been derived based on consultation as outlined in the report as the Panel have not reviewed scheme operator and resident contracts, and related documents. The rationale includes:

1. Resident-operated retirement villages are entirely comprised of units (consisting of the dwelling and land) owned as freehold by the individual residents
2. Common areas are owned and operated by a Body Corporate. Residents pay monthly fees to the Body Corporate
3. The scheme operator company (scheme operator) is not a commercial company operating the village as a business
4. The scheme operator company is commonly owned by the residents – typically each resident owns a share in the company. The office bearers of the scheme operator company are also residents
5. The scheme operator does not charge the resident an exit fee or any DMF, nor is there an exit entitlement payable to the resident
6. Residents sell their unit without interference or engagement by the scheme operator, and retain the full sale proceeds without any deductions by the scheme operator
7. Residents purchase their unit without engagement with the scheme operator (except to confirm age and intention to reside in the unit as a principal place of residence)

The resident-operated retirement villages were typically constructed by a 'developer', who established a Body Corporate and retirement village status in accordance with the *Act*. Land and home packages in these villages were sold under freehold title to new owners, and common grounds were and are owned by the Body Corporate. Once the sales of the land in the village were complete, the shares in the scheme operator company were transferred from the developer to the village residents (owners).

These arrangements are fundamentally different to the 315 other retirement villages in Queensland. In the other retirement villages, the scheme operator is a profit or not-for-profit organisation operating the village as a business, residents have a 'right to reside' contract, there are reinstatement requirements, exit fees and there are exit entitlements.

5 Complexity of the retirement village product

The retirement village product is a contract or contracts that effectively provide the resident with a right to reside in a unit in that village. The contract sets out the rights and obligations of the scheme operator and the resident. The contract together with the *Act* govern this arrangement.

The retirement village product is often less expensive than purchasing a comparable property. It can be less expensive as the initial upfront cost is reduced by payment of an exit fee. There are different fees and charges that a resident may be required to pay to enter, live in and exit a retirement village.

Responses to the review suggest that the experience and information understood by a resident upon entering a retirement village, directly impacts the process and experience of a resident and their family when they prepare for exit. The issues and themes generally fell into three key areas:

- The complexity of contracts and legislation. The specific terms of a resident's contract will set out the rights and obligations of the operator and resident and determine the exit fee. The *Act* also governs the arrangement between the resident and operator.
- The understanding, or lack thereof, of the retirement village product creates a foundation of confusion and frustration. There are numerous retirement village product options available across the sector and even within a village.
- The purpose and structure of the retirement village and the balance between business performance, property investment and care of residents.

These concerns are not new and the Government has implemented numerous initiatives to address these issues, including changes to the *Act* and giving the public access to information to better inform decision-making. The introduction of the VCD and Prospective Costs Document provide access to such information. The time at which residents and their families consider entry into a retirement village is an important time for gaining understanding of the product. It is also considered that this knowledge will reduce frustration at the time of exit.

The Panel learned of many issues that are out of scope of this review. Some of these issues were shared with the DHPW for follow-up.

5.1 Legislation and contracts

The *Act* and the resident's contract collectively govern the arrangement between the scheme operator and resident. Feedback indicates that both the legislation and contracts are complex. A legal adviser representing residents noted:

The complexity of the Act is too great. A letter of advice is 18 pages long, elderly clients cannot understand it and they say that they can't understand it. I used to be able to go through the contract with the residents very simply and they were able to understand it. It used to only take 20 minutes of discussion with a resident, now it's 18 pages. How are residents actually able to understand these contracts even when a lawyer provides a summary and advice? There are no operators who want to make this process hard for the residents, they want residents to have a good experience. (Adviser C-77)

The Panel heard that residents have a variety of experiences, and differing recollections as to the advice they received on entry into the village and the documents they signed. One 91 year old resident shared

I don't have a contract – I have a right to reside form and a PID. (Resident C-42)

The types of documents a resident signs will depend on the retirement village and scheme operator, tenure, services on offer, financial arrangements and date of entry.

Everyone that I have dealt with in my village has had a different contract. (Resident C-98)

The tenure of the village will determine the type of documents required for example a licenced arrangement may require an agreement to occupy the unit whilst a leasehold arrangement may offer a 99 year lease, lease/loan arrangement with an interest free loan. Then, when a resident exits, they 'repay' the loan. The resident may choose additional services such as meals, housekeeping or higher care which require an agreement.

I find the documents are difficult to understand. I have been through documentation to help residents. In my experience, people don't know where to get advice. Even families and other lawyers don't know where to go. (Family of a former resident C-15)

During the consultation period, current residents and families repeatedly referred to the investment in the retirement village unit as "their property". The combination of associating the investment in the retirement village unit with a freehold property purchase and the lack of awareness of the rights and obligations of the operator and resident, particularly in relation to the exit process and payment, creates a situation of confusion, distrust and frustration.

It's like a minefield reading any of those documents. (Resident C-82)

An adviser expressed concern over the imbalance of power between the operator and resident

Retirement villages legislation needs to take into account the unequal bargaining power of residents and operators. Operators seem to think that there is some kind of even playing field in evidence, and treat residents as if they have the same resources of information, legal expertise, and access to finance that they have. On the contrary, the one thing that is most clear to me as a consultant in the field is that the power differential between residents and operators is substantial, and sometimes insurmountable. Operators do little to redress that balance, other than provide the window-dressing of newsletters and other communications that offer nothing of substance, and responses to queries featuring obfuscation and errors. The one thing that has affected me most in my work is seeing vulnerable, older, mostly female, residents living in fear of what they imagine operators can do to them if they raise a complaint or make a query. An industry that engenders fear in the vulnerable is not one I would characterise as a success (Adviser C-98)

The Panel also heard that residents found it hard to keep up with changes in contracts and legislation affecting them. Residents related:

Operators do not inform residents when there are changes in their contracts that affect them. They seldom speak of legislative changes. (Resident C-98)

It is one requirement to have a contract in place for a prospective resident to review and execute. Not only is the complexity of the contract a concern, it is also the process and behaviours of operator's representatives when engaging with prospective residents:

I was presented with a blank contract to sign and the sales agent said that she would fill in the details later (Resident C-98)

and the imbalance of bargaining power between the resident and operator. Operators typically have the funds to engage expert advice to prepare a favourable arrangement. Residents may not have the resources for appropriate legal advice. One resident stated that she spent \$5,000 having her contract reviewed by a lawyer. Another resident noted:

*When I entered this village, I read the contract myself (as a lawyer) and also had similarly high-powered lawyers (to match those of the operator's) review the contract. **Most of the contracts I have seen are poor in quality and a bit dodgy.*** (Resident C-98)

The Panel acknowledged that the terms and format of the contract are out of scope for this review and are aware of a Government initiative reviewing contracts. However, the key learnings relevant to this review include that the retirement village is a complex financial product and the financial details are daunting for residents. Both points are discussed below.

5.1.1 The retirement village contract is a complex financial product

Residents, their families and families of former residents with whom the Panel consulted, spoke of the complexity and variety of contracts available. There has been increasing complexity as options are being added, for example, a resident may elect to participate in a capital gain or loss (i.e. the difference between the “sale” price and the price paid by the resident on entry). The complexity may result in different financial outcomes for the resident.

Typically, the retirement village product is considered a property transaction by the resident, that is, the entry into a retirement village is likened to the purchase or rental of a property. Two experts not aligned to the scheme operator sector provided a view that the retirement village contracts should be more appropriately categorised as complex financial products.

Dr Timothy Kyng, a Mathematician and Actuary from Macquarie University, has undertaken extensive research in the retirement village sector and suggested that the retirement village contract is not a simple property transaction, but rather a complex financial product. The contract includes a combination of financial commitments and there are decisions that residents make upon entry that impact the financial outcome on exit. For example, the choice to participate in the capital gains (or losses) and the impact this has not only on the entry price, but also on the allocation of other fees.

Gerard Brody, CEO of the Consumer Action Law Centre, noted that contracts in retirement villages are very complex arrangements which are particularly challenging for elderly consumers. The role of the regulator should be more of a protector, not just responding reactively as issues arise, similarly to the way in which ASIC is empowered to monitor and regulate against aspects of financial products that would cause harm.

The retirement village contract is a financial product. Without acknowledging the contract is a financial product, a resident may not appreciate the complexity nor see the need to obtain appropriate advice. A mindset of “just like buying or renting a house” will hinder a resident’s ability to make an informed decision.

5.1.2 Residents may not fully appreciate the financial implications of the arrangements into which they have entered

The Panel heard that many residents were shocked by the financial implications of the contracts they had signed, particularly in relation to the exit fees.

Upon coming to better understand the contract that they had signed, the Panel were told that

***residents feel like serfs on a feudal estate and are treated as such (...)** The leasehold feudal model has to end.* (Resident)

*I don't think people are aware of the long term consequences of their loss of capital. The law is quite predatory for older people. The contract clearly stated that **30% (DMF)**. This contract was a five page document and this **was just one paragraph. The maximum is too high.***

These contracts should be sighted by a solicitor and clearly understood by residents. There should be education for people who are signing these contracts so that they really understand what they are getting themselves into. (Family of former resident C-97)

As a result of prior feedback some operators and advisers are requesting that residents obtain appropriate legal advice. However, this can be an issue if the lawyer is not familiar with the legislation, operations of a retirement village and the scheme operator. The Panel received feedback that potential residents often seek advice from solicitors who are not familiar with the Act.

Without understanding the terms of the contract they have signed, a resident has limited information with which to ask questions and negotiate more suitable terms.

New South Wales representatives advised that they are considering a requirement for operators to sit with residents and their adviser and/or family every year to take them through any changes.

5.2 Exit fees and exit statement

The exit entitlement is calculated as the amount paid on entry to the village (the ingoing contribution), less the exit fee and any other deductions provided under the contract and legislation. An exit fee is defined in section 15 of the Act to be the amount a resident may be liable to pay to a scheme operator under a residence contract, from the resident ceasing to reside in the unit to which the contract relates; or the settlement of the sale of the right to reside in the unit.

The retirement village product is often less expensive than purchasing a comparable property. It can be less expensive as the initial upfront cost is reduced by payment of an exit fee, sometimes referred to as a DMF or departure fee. The exit fee is a one-off cost which isn't payable until the resident leaves the village.

The resident's contract sets out the exit fees and other charges that may be payable when a resident leaves the village. There is no standard for exit fees, and residents advised that the exit fee could be anywhere from 10% to 60% and varies based on factors including the size of the entry fee and how long the resident has lived in the village. The exit fee is typically calculated on the basis of the time spent as a resident. Section 53A of the Act, outlines the formula for calculating the exit fee for a retirement village unit in Queensland. If a contract is entered into after commencement of this section it must be calculated on a daily basis and stops accruing when the resident vacates.

A resident is entitled to ask for an estimate statement of their exit entitlement.¹⁸ The exit statement outlines the fees deducted from a resident's exit entitlement and includes the exit fee, accrued general services charges, outstanding services charges, fund contributions, expenses accrued in relation to the resale (for example legal costs, marketing costs) and any other payments stated in the contract.¹⁹ Advisers noted that some residents were not aware that they could request an estimate.

5.2.1 The amount of the exit fee is unfair

During consultations with residents and their families in relation to the timeframe for payment of exit entitlements, there was considerable focus on the size of the exit fee and its relevance in today's market where often the price paid for the right to reside is not dissimilar to the price that would be paid for a comparable property outside of a retirement village. The sentiment was that the exit fee is 'unfair'. However, many agreed that they had signed a contract and though they may not have paid attention to the relevant section, the exit fee arrangement was in the contract.

¹⁸ Section 54 of the Act

¹⁹ Section 63(5) of the Act

One resident stated:

I trusted the operator to do the right thing. (Resident C-62)

There were two options at the start of the contract – we chose the cheaper entry fee but large exit fee of 45% (Resident C-89)

A resident provided a calculation that showed for every \$50,000 increase in sale price, the beneficiaries only receive an additional \$10,000. (Resident C-29)

Many residents asked their operator what this fee funds. Some stated that they were advised it was to be used to fund charitable activity or further growth.

5.2.2 Amounts on the exit statement

Former residents and those who had seen or supported residents exiting a retirement village expressed surprise at the types of fees and charges listed on the exit statement, such as legal costs. An item that was raised consistently was the accrued general services charge.

After I leave, I pay fees for three months and for another six months shared payment on the same basis as I share gain on resale of the unit. After nine months operators stop charging fees. (Resident C-24)

If I am not living there, then why do I need to pay it? The fee is \$400 per month (Resident C-34)

The accrued general services charge was identified as a barrier to a resident exiting a village if their circumstances changed. Another resident paid:

\$500 per month which goes towards maintenance reserve and operating costs (Resident C-93)

Some noted the general services charges are still required by the operator to run the complex, so it makes sense to keep charging them. The ongoing fees stop upon sale of the right to reside in the unit, which is good for the resident where the right to reside sells quickly.

A scheme operator was asked for their perspective on reducing the time payment for services fee and responded, ***“it provides motivation for the operator to sell, which is good”***. (Scheme operator C-90)

Case study 3 - Resident moved from an independent living unit into a serviced apartment within the same retirement village and incurred double services fees

A resident moved from an independent living unit into the serviced apartments of a retirement village to receive more care. The resident was charged fees for the apartment and fees for the unit. The manager said that this was allowed under the Act. The other residents did not feel that this should be allowed.

It’s all about the money at these end of life living places. I understand that it’s a business, but to blatantly rip people off at this stage in their life is just terrible. It’s hard to fight with management because they are nasty. They can make life difficult for you. The last resident’s committee meeting, we brought the operator’s manager into the meeting and asked, “how long does it usually take for residents to get their entitlements?” – manager answered “90 days” (...) I don’t know if this is true or not. Sometimes it seems that the management are being spiteful to residents that need more help or assistance. The manager can be really great with some things, going out of their way to help, but if you are on their bad side, they can make your life difficult. This is elder abuse. (Resident C-88)

The keys findings in relation to the exit fee and exit statement as they relate to the 18 month timeframe for payment of exit entitlements are:

- Some residents felt they were ‘stuck’, unable to leave the village because the net cash amount they would receive upon exiting the village, the timing of this payment (i.e. may have to wait 18 months) and requirement to pay ongoing general services charges for up to nine months impacted their ability to move. This is discussed in further detail in section 2.5.3
- Residents and families need to undertake sufficient research prior to entering into any contracts and understand the terms of the contract they have signed

Case study 4

We spoke to Mr G, a resident of a retirement village about his experience as the Power of Attorney for [redacted] Mr H, who moved into a residential aged care facility. Mr H terminated his right to reside in the retirement village officially on 31 May 2020.

Mr G funded the RAD by extracting [redacted] for Mr H’s superannuation account to fund entry into the residential aged care facility. Mr G is currently struggling to meet Mr H’s monthly expenses from his pension and super payments. He is paying retirement village service fees, sinking fund and body corporate fees. The general services payments were paid for 90 days and then reduced. He is still required to pay water (\$300 per quarter), council rates (\$1,400) and a small amount for electricity outgoings.

Mr G has been waiting for this large, national operator to provide an exit entitlement assessment since [redacted] Mr G expected it within 14 days of Mr H’s leaving. The operator and Mr G have agreed a price of [redacted] Mr H paid [redacted] in 2005 (noting that nothing was done to unit when he moved in. The former resident moved out in the morning and Mr H moved in in the evening so there was no cleaning, new carpet or painting undertaken). Mr H spent [redacted] on improvements over time. The operator’s best estimate is [redacted] after spending \$35,000 on reinstatement works. And the exit fee will be based on [redacted]

As the operator has not started reinstatement work, and no potential residents have inspected the unit. (Resident C-71)

5.3 Purpose and structure of the village

A point of conflict which came to light during the consultation period was the differing views and expectations of retirement village stakeholders – scheme operators and residents.

Residents

Residents focused on their experience, the images sold by marketing during the entry process and the care.

*This is a good place to live but the management is rubbish – this is the problem with retirement villages. **The operators lack experience to manage this place. Management don’t understand that the residents are customers*** (Resident C-85)

Operators

This category contains many different stakeholders who may include directors of the scheme operator, shareholders, village management, village employees, and head office for villages within a group.

There are currently 315 retirement villages in Queensland that are in the business of operating a village (322 less 7 resident-operated retirement villages). However, they each have their own strategy, structure, processes, people, culture and performance measures and rewards. These elements form the business and operating model of the village.

For example, management of a village established for revenue generation purposes may make different business decisions compared to a village established to provide care and support. A village with ongoing development of new stages in the village will have different needs compared to an established village. The different business and operating models of retirement villages result in varying retirement village products.

As outlined in Appendix 5, Carinity which operates seven retirement villages with 302 units, ranging from 12-62 units per village, in both urban and regional locations in Queensland, have the following buyback commitment on their website:

*After your unit is on the market for a certain period of time, we'll reduce your village fees, **and if we haven't sold your unit within nine months, we'll buy it back from you. And, if you enter a Carinity residential aged care facility, we will pay your exit entitlement immediately for the peace of mind of you and your family.***²⁰

This commitment is a positive example of how operators can meet and exceed the Act's requirements and not experience financial hardship. However, it is acknowledged that this liability may be built into their business model, and would not be a retrospective obligation.

The Panel also learned that some operators have responded to the community interest in buybacks and are using it as a marketing tool and option in contractual arrangements, for example Lend Lease's four options are as outlined below:

1. Prepaid plan – upfront payment of management fees whilst retaining any capital gain on exit
2. Refundable contribution – where the entry amount is repaid to you within **60 days of exit**. Note there is no upfront management fee or exit fee under this option
3. Pay As You Go – where you pay in monthly instalments
4. DMF – the traditional model with payment of management fees at exit²¹

Lend Lease also offer a cap on ongoing service fees - 90 days after vacant possession with no more service fees irrespective of the time the property takes to sell.

A key finding is that retirement village operators have choices and can control the decisions they make in relation to their business and operating model. They can control the retirement village product they offer the market and those operators who have responded to market needs and continue to innovate will attract new residents and, most importantly, give themselves the best chance of selling available units within the 18 month timeframe.

²⁰ <https://carinity.org.au/our-services/retirement-living/retirement-living-fees-charges-explained/>

²¹ <https://www.retirementbylendlease.com.au/blog/exit-fees/>

5.4 Recommendation

Ongoing services fees

Recommendation 5: 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 section 104(3)(b).

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

This reduction by three months is designed to encourage a quicker sale, but still within a reasonable time frame. (s104)

This recommendation seeks to address the feedback from residents and families that operators are charging residents who have terminated residence in a retirement village, the full service fee and for longer than the 90 days and even longer than nine months. This is linked to the consideration for enhanced education in section 2.7. The complexity and diversity of retirement villages, contracts and services can be confusing and challenging for residents and families. Education and support services can be very beneficial in traversing the range of issues that can arise during residential exploration and/or tenure, including awareness of a resident's rights and obligations, the process to check or rectify the situation and seeking assistance to enforce the *Act*. There is also a need for training for current and potential scheme operators to understand the industry requirements.

Appendix 1 – Terms of Reference

1.1 Background

The Queensland *Housing Strategy 2017-2027* aims to ensure confidence in housing markets, ensure consumers are protected and reform and modernise the housing legislative framework.

Under the *Housing Strategy 2017-2020 Action Plan*, amendments to the *Retirement Villages Act 1999* (RV Act) were made by the *Housing Legislation (Building Better Futures) Amendment Act 2017* (HLA Act) to increase transparency in the relationships between operators and residents, and provide greater security and confidence to residents, balanced with industry viability.

These amendments included measures to provide security and confidence to retirement village residents in cases of delayed resale of their retirement village unit, by requiring operators to pay residents their exit entitlement 18 months after the resident leaves, unless doing so would cause the operator undue hardship. The *Health and Other Legislation Amendment Act 2019* subsequently amended the RV Act to apply this policy to retirement villages with units held by former residents under freehold title.

The amendments provide that the Queensland Civil and Administrative Tribunal (QCAT) may fix a later day by which the operator must make the exit entitlement payment to the former resident, or buy their freehold unit, if satisfied the operator is unlikely to resell the unit, is likely to suffer undue financial hardship and the order would not be unfair to the former resident.

Payments to former residents commenced on 10 May 2019 (payment of former residents' exit entitlement for units held under lease and licence tenure), and on 23 May 2019 (operator purchase of units held by former residents under freehold tenure).

1.2 Purpose and role

Section 225 of the RV Act (inserted by the HLA Act and commencing on Assent on 10 November 2017) provides that a review of the 18-month timeframe for payment of resident exit entitlements must start two years after the relevant section commenced.

The purpose of the review is to determine the impact of the 18-month timeframe for payment of exit entitlements on residents, former residents, families of residents or former residents and scheme operators.

In considering this impact, the review Panel should examine how providing confidence to retirement village residents and their families that they will receive their payment and industry viability can be maintained:

- where the residents of the village own and operate the village
- where the village is owned by a small, local operator without access to the support available to large, national operators
- where the village may face a range of operational challenges

The review should also consider whether the capacity for scheme operators to seek an order from QCAT where the village is likely to suffer undue financial hardship in circumstances where the order would not be unfair to the former resident provides for a fair balance between consumer protection and industry viability.

1.3 Findings and recommendations

The review Panel will provide a report with findings and recommendations to the Minister by 30 November 2020. The review Panel will operate until 30 November 2020, subject to review.

1.4 Consultation

The review Panel will develop a communication and engagement strategy to ensure consultation and engagement with:

- retirement village residents
- former residents
- families of residents or former residents and
- scheme operators and their representative groups

This consultation should seek input from these groups drawn from a cross-section of retirement villages including

- large and small villages
- regional and urban villages
- villages with freehold, leasehold and/or licence tenure
- independent and resident-operated villages

This consultation and engagement should ensure views are sought from peak groups including but not limited to:

- Association of Residents of Queensland Retirement Villages
- COTAQ
- Leading Age Services Australia
- National Seniors
- Property Council of Australia
- Queensland Law Society
- Queensland Retirement Villages and Parks Advisory Service

Appendix 2 – Analysis of Queensland retirement villages

The DHPW provided the Panel with a list of the 324 registered retirement villages in Queensland as at March 2020. Of the 324 villages, 322 managed a total of 30,422 units. The remaining two of the 324 villages were vacant land or de-registered and therefore excluded from the review. The ARQRV estimates there are approximately 44,000 people residing in Queensland retirement villages with a majority of units occupied by single people and the average age of entry around 75 years of age.

Size of retirement villages

Approximately one third of Queensland retirement villages have 50 units or less. For the purposes of this review, the Panel defined a small village to have 50 units or less, a medium village to have between 51 and 100 units (29% of villages) and the remainder to be classified as a large village.

Table 3. Allocation of Queensland retirement villages and number of units

Number of units	<20	20 - 50	51 - <100	100 - <200	200 - <300	300- <400	400 +
Number of villages	53	66	94	82	17	5	7
Number of units in these villages	624	2,262	6,757	11,514	4,299	1,704	3,262
% of units	2%	7%	22%	38%	14%	6%	11%
% of villages	37%		29%	25%	5%	2%	2%

The Panel also considered the size of the operator for classification purposes based on the number of villages and/or units. There are 161 unique scheme operators operating the 324 retirement villages. In some instances, a group may have a number of entities registered as scheme operator for a retirement village. If we group scheme operators, there are 24 group operating two or more villages, with over 200 units. Accordingly, the 161 unique scheme operators reduces to 107 scheme operators (reduced for groups).

The Panel represent the grouped scheme operator data in Table 4. In Queensland, 36% of units are villages run by three operators – Aveo, Lend Lease and the Uniting Church. These three groups of operators have a minimum of 3,000 units each.

The next group of operators have between 1,658 and 900 units. These six groups of operators hold 24% of the units in Queensland. Accordingly, 60% of units in Queensland are held by nine groups of operators.

Table 4. Ranking of operator groups in Queensland by number of units into quartiles.

Quartile based on units	Number of units and villages (% of total)	Range of units	Operator group
1st quartile	10,940 units (36%) and 86 villages (27%)	4,500+ - 3,000	1. Aveo 2. Lend Lease 3. Uniting / Bluecare
2nd quartile	7,372 units (24%) and 69 villages (21%)	1,658 - 900	1. Bolton Clarke 2. Stockland 3. Church of Christ Queensland 4. Seasons Aged Care/PUCSLA 5. Tricare 6. The Village Retirement Group

3 rd quartile	6,879 units (23%) and 80 villages (25%)	809 - 200	20 operator groups or single operators with over 200 units. Include Retire Australia, Oaktree, Lutheran, Carinity, Southern Cross Care, Regis, IRT, Sundale, Seventh Day Adv, St Vincent's, Aura
4 th quartile	5,231 units (17%) and 89 villages (27%)	Under 200 units	79 operator groups or single operators

Location: Urban and regional retirement villages

For the purposes of this review we define urban villages to be those that are located in South East Queensland and regional villages are those located outside South East Queensland.

Table 5. Number of retirement villages in local government areas divided into urban and regional locations

Regional location	Number of villages
Toowoomba	22
Fraser Coast	11
Mackay	10
Bundaberg	9
Rockhampton	11
Townsville	7
Cairns	7
Other	22
Total	99
Urban location	Number of villages
Brisbane City Council	76
Sunshine Coast	51
Moreton Bay	29
Gold Coast	28
Logan	15
Redland	17
Ipswich	9
Total	225

Tenure: Villages with freehold, leasehold and/or licence tenure

Types of tenure:

- Leasehold: Over half of the retirement village units in Queensland are leasehold, where the operator owns the unit and residents enter into a multi-year lease registered on the title deed for their unit
- Licence: A licenced arrangement is similar to leasehold however the resident's right to reside is not registered on the title deed
- Freehold: are units where the residents hold the freehold title to their unit

The participants told the Panel that some villages have a mix of tenure types, given demand by the market at different points in time and also as operators business models have changed.

Table 6. Allocation of units by tenure in Queensland retirement villages

Total number of units	Freehold	Leased	Licensed	Other
30,422	2,426	17,702	9,514	780

- 16 villages are Freehold only (1,573 units)
- 114 villages are Leased only (16,290 units)
- 132 villages are Licensed only (6,957 units)
- 61 villages have a mix of units (5,602 units)
- 1 village with no units was in the process of being deregistered

The largest 15 villages by total number of units are listed in Table 7. This sample highlights that the majority of units are leased by residents, and 11 of the villages are operated by group operators. Accordingly, four of the villages are run by sole operators (i.e. scheme operator is not part of a larger group and based in one location).

Table 7. Fifteen largest retirement villages in Queensland by total number of units

Village name	Scheme operator	Total # of units	Tenure	Local government (Council)
AVEO DURACK	AVEO HEALTHCARE LIMITED	626	Leased	Brisbane City
EARLE HAVEN	MILLER ENTERPRISES PTY LTD	506	Leased	Gold Coast City
BELLFLOWER RETIREMENT RESORT	LENDLEASE RL WA AND QLD PTY LTD	461	Leased	Sunshine Coast Regional
CARLYLE GARDENS TOWNSVILLE	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	458	Leased	Townsville City
ARGYLE GARDENS VILLAGE	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	405	Leased	Bundaberg Regional
HIBISCUS RETIREMENT RESORT CHANCELLOR PARK	LENDLEASE RL WA AND QLD PTY LTD	404	Leased	Sunshine Coast Regional
BUDERIM GARDENS RETIREMENT VILLAGE	LENDLEASE RL WA AND QLD PTY LTD	402	Leased	Sunshine Coast Regional
AVEO ALBANY CREEK	AVEO HEALTHCARE LIMITED	387	Leased	Brisbane City
NORTH LAKES RETIREMENT RESORT	STOCKLAND PROPERTY SERVICES PTY LIMITED	356	Leased	Moreton Bay Regional
WHELLER ON THE PARK RETIREMENT VILLAGE	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	340	Leased (334) Licensed (1) Other (5)	Brisbane City
RENAISSANCE VICTORIA POINT	RENAISSANCE VP PTY LTD	311	Leased	Redland City
THE LAKES RETIREMENT VILLAGE	LENDLEASE RL WA AND QLD PTY LTD	310	Freehold	Bundaberg Regional
COMPTON GARDENS RETIREMENT COMMUNITY	TRICARE (ASPLEY) LIMITED	294	Leased	Brisbane City
THE VILLAGE REDCLIFFE	BARCLIFFE PTY LTD	294	Leased	Moreton Bay Regional
CARLYLE GARDENS RETIREMENT VILLAGE	CARLYLE GARDENS RETIREMENT VILLAGE BARGARA PTY LTD	293	Leased	Bundaberg Regional Council
BALLYCARA RETIREMENT VILLAGE	HIBERNIAN (QLD) FRIENDLY SOCIETY LTD	290	Licensed	Moreton Bay Regional

Resident operated retirement villages

There are seven villages in Queensland identified as resident-operated retirement villages. These villages were identified by all of the following four criteria:

- (a) the scheme operator is not a company with substantial assets or revenue AND
- (b) the scheme operator and any related parties do not charge exit fees or DMF including upon sale of a freehold unit AND
- (c) the unit owner is free to organise their own sale without any interference by the scheme operator and without any requirements for refurbishment, reinstatement and/or renovation AND
- (d) the resident or their estate is entitled to retain the full proceeds of sale of the freehold unit

Appendix 3 – Key data on the consultation process

Summary of responses received from July to October 2020

The Panel received responses from over 450 residents. This numbers is indicative as several submissions were submitted on behalf of or signed by a group of residents (for example a Resident’s Committee, a forum attended by 60 people and one written submission was signed by 68 residents).

Table 8. Responses received by stakeholder by engagement type

Stakeholder / Engagement type	Survey	Written submission	Interview & Forum
Scheme operators	34	11	23
Current residents	233	106	51
Former residents	18	4	5
Families of current & former residents	52	7	15
Advisers and others*	31	14	28
Total	368	142	122

*Others include potential residents, past village managers, advocates

On the understanding that less than 10% of residents leave a retirement village for reasons other than death or to enter a residential aged care facility, the ‘former resident’ category is not large in number. Whilst some former residents engaged with a written submission or survey, they declined to take part in an interview or meeting due to the stress and emotional toll the exit of their former retirement village caused.

Overall the team engaged with 31 operator representatives from 125 villages. The 31 operators comprise of seven resident-operated villages, 13 single village scheme operators and 11 operators who operate two or more villages nationally or across Queensland. (The survey number is higher than 31, at 34 for scheme operator, as retirement villages from the same operator responded.)

‘Advisers and others’ included peak groups as outlined in the Terms of Reference (refer Appendix 1). The Terms of Reference stated this consultation and engagement should ensure views are sought from the seven peak groups listed in Table 9. The table includes engagement dates to confirm engagement.

Table 9. Engagement with peak groups (per Terms of Reference)

Peak Group	Written submission	Interview & Meetings
ARQRV	19 & 27 July	10 Jun, 11 Aug, 19 Aug 25 Oct
COTA	-	(29 Jun & 1 Jul emails)
LASA	16 Sep	12 Jun, 9 Aug, 26 Oct
National Seniors	-	(3 Aug email)
PCA	27 July, 16 Sep, 11 & 12 Nov	9 Jun, 4 Sep, 24 Sep, 27 Oct, 11 Nov
Queensland Law Society	-	11 Jun, 22 Jul
QRVPAS	16 Sep	16 Jun, 4 Aug
UDI	-	16 Jun

Geographic and size distribution of responses from scheme operators

Table 10. Summary of resident and scheme operator responses by location

Regional (Local government)	Villages in this area	Responses from resident's who identified a village	Responses from scheme operators	Cross-over	Unique village responses
Toowoomba	22	1	10	1	10
Fraser Coast	11	3	4	2	5
Mackay	10	2	5	0	7
Bundaberg	9	3	3	1	5
Rockhampton	11	1	6	0	7
Townsville	7	1	4	1	4
Cairns	7	1	4	1	4
Other	22	2	4	1	5
Total Regional	99	14	40	7	47
Urban					
Brisbane City Council	76	10	28	5	33
Sunshine Coast	51	15	14	4	25
Moreton Bay	29	13	10	7	16
Gold Coast	27	10	11	5	16
Logan	14	2	6	2	6
Redland	17	9	10	6	13
Ipswich	9	2	6	2	6
Total Urban	223	61	85	31	115
Total Villages	322	75	125	38	162

The Panel heard from residents or scheme operators from over half the retirement villages in Queensland. That is, 162 retirement villages were represented and this number could be higher as the respondents were not required to share the name or details of their village.

Table 11. Summary of villages known to have a resident, scheme operator or both, participate in the review

Village name	Postcode	Scheme operator	Local government
ADVENTIST RETIREMENT VILLAGE VICTORIA PT	4165	SEVENTH-DAY ADVENTIST AGED CARE (SOUTH QUEENSLAND) LTD	Redland City Council
ARGYLE GARDENS VILLAGE	4670	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Bundaberg Regional Council
AVEO AMITY GARDENS	4214	AVEO LEISURE SERVICES PTY LTD	Gold Coast City Council
AVEO ASPLEY COURT	4034	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO CLAYFIELD	4011	AVEO HEALTHCARE LIMITED	Brisbane City Council
AVEO CLEVELAND GARDENS (INDEPENDENT LIVING UNITS)	4160	AVEO CLEVELAND GARDENS PTY LTD	Redland City Council
AVEO DURACK	4077	AVEO HEALTHCARE LIMITED	Brisbane City Council
AVEO MANLY GARDENS	4179	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO THE DOMAIN COUNTRY CLUB (INDEPENDANT LIVING SCHEME TWO)	4214	AVEO RETIREMENT HOMES (NO 2) PTY LTD	Gold Coast City Council
AVEO THE DOMAIN COUNTRY CLUB (INDEPENDANT LIVING UNITS SCHEME ONE)	4214	AVEO RETIREMENT HOMES (NO 2) PTY LTD ACN 069 131 111	Gold Coast City Council
AVEO THE DOMAIN COUNTRY CLUB SERVICED APARTMENTS	4214	AVEO RETIREMENT HOMES (NO 2) PTY LTD	Gold Coast City Council

AZURE BLUE LIFESTYLE COMMUNITIES REDCLIFFE	4020	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Moreton Bay Regional Council
BALLYCARA RETIREMENT VILLAGE	4020	HIBERNIAN (QLD) FRIENDLY SOCIETY LTD	Moreton Bay Regional Council
BELLFLOWER RETIREMENT RESORT	4556	LENDLEASE RL WA AND QLD PTY LTD	Sunshine Coast Regional Council
BROOKLEA LIFESTYLE VILLAGE	4814	AUSTRALIAN RETIREMENT LIVING PTY LTD	Townsville City Council
BUDERIM GARDENS RETIREMENT VILLAGE	4556	LENDLEASE RL WA AND QLD PTY LTD	Sunshine Coast Regional Council
CABANDA RETIREMENT VILLAGE	4340	CABANDA CARE INC	Ipswich City Council
CALOUNDRA RETIREMENT VILLAGE	4551	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Sunshine Coast Regional Council
CALOUNDRA RISE RETIREMENT ESTATE	4551	SOUTHERN CROSS CARE (QLD) LTD	Sunshine Coast Regional Council
CAPRICORN ADVENTIST RETIREMENT VILLAGE	4703	SEVENTH-DAY ADVENTIST AGED CARE (SOUTH QUEENSLAND) LTD	Rockhampton City Council
CARLYLE GARDENS MACKAY RETIREMENT VILLAGE	4740	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Mackay Regional Council
CARLYLE GARDENS RETIREMENT VILLAGE	4670	CARLYLE GARDENS RETIREMENT VILLAGE BARGARA PTY LTD	Bundaberg Regional Council
CASCADE GARDENS LEISURE AND RETIREMENT VILLAGE	4305	CASCADE GARDENS VILLAGE PTY LTD	Ipswich City Council
CLEVELAND MANOR RETIREMENT VILLAGE	4163	HATWAY HOLDINGS PTY LTD	Redland City Council
COMPTON GARDENS RETIREMENT COMMUNITY	4034	TRICARE (ASPLEY) LIMITED	Brisbane City Council
COOLOOLA WATERS RETIREMENT VILLAGE	4580	COOLOOLA WATERS MANAGEMENT PTY. LTD.	Fraser Coast Regional Council
COOLUM BEACH RETIREMENT COMMUNITY	4573	SUNDALE LTD	Sunshine Coast Regional Council
DE PAUL MANOR ESTATE	4214	THE CORPORATION OF THE TRUSTEES OF THE ROMAN CATHOLIC ARCHDIOCESE OF BRISBANE	Gold Coast City Council
EARLE HAVEN RETIREMENT VILLAGE	4211	MILLER ENTERPRISES PTY LTD	Gold Coast City Council
FARRINGTON GROVE RETIREMENT ESTATE	4055	STOCKLAND FARRINGTON GROVE RETIREMENT VILLAGE PTY LTD	Brisbane City Council
FIG TREE VILLAGE	4503	STOCKLAND PROPERTY SERVICES PTY LIMITED	Moreton Bay Regional Council
FREEDOM AGED CARE CLEVELAND	4160	AVEO CLEVELAND GARDENS PTY LTD	Redland City Council
FREEDOM AGED CARE MORAYFIELD	4510	FREEDOM AGED CARE MORAYFIELD (OPERATIONS) PTY LTD	Moreton Bay Regional Council
HIBISCUS RETIREMENT RESORT NOOSA OUTLOOK	4565	LENDLEASE RL WA AND QLD PTY LTD	Sunshine Coast Regional Council
IMMANUEL GARDENS RETIREMENT VILLAGE	4556	LUTHERAN CHURCH OF AUSTRALIA QUEENSLAND DISTRICT	Sunshine Coast Regional Council
INGENIA GARDENS GLADSTONE	4680	INA GARDEN VILLAGES PTY LIMITED	Gladstone Regional Council
IRT THE PALMS	4556	ILLAWARRA RETIREMENT TRUST	Sunshine Coast Regional Council
KAWANA ISLAND RETIREMENT VILLAGE	4575	KAWANA ISLAND RETIREMENT VILLAGE PTY LTD	Sunshine Coast Regional Council
KENSINGTON GARDENS RETIREMENT VILLAGE	4556	KENSINGTON GARDENS MANAGEMENT PTY LTD	Sunshine Coast Regional Council
KEPERRA SANCTUARY RETIREMENT VILLAGE	4054	LENDLEASE RL WA AND QLD PTY LTD	Brisbane City Council
LAGUNA RETIREMENT ESTATE	4566	LAGUNA ESTATE (AUST) PTY LTD AS TRUSTEE FOR BARCLAY HARTNETT TRUST	Sunshine Coast Regional Council
MALENY GROVE	4552	MALENY GROVE PTY LTD	Sunshine Coast Regional Council
MORETON SHORES RETIREMENT COMMUNITY	4164	RSL CARE RDNS LIMITED	Redland City Council
NOOSA DOMAIN VILLAGE	4566	NOOSA DOMAIN PTY LTD	Sunshine Coast Regional Council

NOOSA WATERS RETIREMENT ESTATE	4567	SOUTHERN CROSS CARE (QLD) LTD	Sunshine Coast Regional Council
NORTH LAKES RETIREMENT RESORT	4509	STOCKLAND PROPERTY SERVICES PTY LIMITED	Moreton Bay Regional Council
NORTH PINE VILLAGE	4501	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Moreton Bay Regional Council
NOYEA RIVERSIDE RETIREMENT VILLAGE	4207	NOYEA OPERATIONS PTY LTD	Logan City Council
OAK TREE LIFESTYLE RESORT WARWICK	4370	OAK TREE RETIREMENT VILLAGES WARWICK OPERATIONS PTY LTD	Southern Downs Regional Council
OAK TREE RETIREMENT VILLAGE BURPENGARY	4505	OAK TREE RETIREMENT VILLAGES BURPENGARY PTY LTD	Moreton Bay Regional Council
OAK TREE RETIREMENT VILLAGE CAIRNS SOUTH	4868	OAK TREE RETIREMENT VILLAGES CAIRNS PTY LTD	Cairns Regional Council
OAK TREE RETIREMENT VILLAGE TOOWOOMBA	4350	OAK TREE RETIREMENT VILLAGE TOOWOOMBA PTY LTD	Toowoomba Regional Council
PALM LAKE RESORT BEACHMERE SANDS	4510	PALM LAKE RESORT PTY LTD	Moreton Bay Regional Council
PALMVIEW VILLAGE	4740	PALMVIEW VILLAGE PTY LTD	Mackay Regional Council
PARKLANDS RETIREMENT HAVEN	4655	TORBAY LIFESTYLE AND CARE LIMITED	Fraser Coast Regional Council
PARQUE VISTA ON SEVILLE	4121	SOUTHERN CROSS CARE (QLD) LTD	Brisbane City Council
PEBBLE BEACH RETIREMENT VILLAGE	4511	PEBBLE BEACH MANAGEMENT PTY LTD	Moreton Bay Regional Council
PENINSULA GARDENS RETIREMENT VILLAGE	4021	PENINSULA GARDENS KIPPA-RING LTD	Moreton Bay Regional Council
PENINSULA PARK RETIREMENT ESTATE	4022	PEN PARK PTY LTD	Moreton Bay Regional Council
PENINSULA TERRACES & PENINSULA HAVEN RETIREMENT COMPLEX	4020	TERRACE HAVEN PTY LTD	Moreton Bay Regional Council
RENAISSANCE VICTORIA POINT	4165	RENAISSANCE VP PTY LTD	Redland City Council
RUNAWAY BAY RETIREMENT COMMUNITY	4216	RUNAWAY BAY (HOLDINGS) LIMITED	Gold Coast City Council
SALFORD WATERS RETIREMENT ESTATE	4165	SALFORD LIVING PTY LTD	Redland City Council
SANCTUARY PARK RETIREMENT COMMUNITY	4560	CHURCHES OF CHRIST IN QUEENSLAND	Sunshine Coast Regional Council
SAPPHIRE ON THE ESPLANADE RETIREMENT COMMUNITY	4655	RSL CARE RDNS LIMITED	Fraser Coast Regional Council
SEASONS MANGO HILL SUPPORTED LIVING COMMUNITY	4509	SEASONS LIVING AUSTRALIA PTY LTD	Moreton Bay Regional Council
SOUTHERN CROSS RETIREMENT VILLAGE - EDEN'S LANDING	4207	SOUTHERN CROSS CARE (QLD) LTD	Logan City Council
ST ANDREWS LUTHERAN AGED CARE	4228	LUTHERAN CHURCH OF AUSTRALIA QUEENSLAND DISTRICT	Gold Coast City Council
SUNNY RIDGE GARDENS RETIREMENT VILLAGE	4216	SRG MANAGEMENT SERVICES PTY LTD	Gold Coast City Council
THE GARDENS ON LINDFIELD	4212	LENLEASE RL WA AND QLD PTY LTD	Gold Coast City Council
THE LAKES RETIREMENT VILLAGE	4670	LENLEASE RL WA AND QLD PTY LTD	Bundaberg Regional Council
THE TERRACES AT FOREST LAKE	4078	LENLEASE RL WA AND QLD PTY LTD	Brisbane City Council
TRANQUIL WATERS RETIREMENT VILLAGE	4165	TRANQUIL WATERS RETIREMENT VILLAGE PTY LTD	Redland City Council
WELLINGTON MANOR RETIREMENT VILLAGE	4159	WELLINGTON MANOR PTY LTD	Redland City Council
WHELLER ON THE PARK RETIREMENT VILLAGE	4032	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.)	Brisbane City Council
ARBOR SHERWOOD RETIREMENT VILLAGE	4075	BRISBANE HOUSING COMPANY LIMITED	Brisbane City Council
AVEO ALBANY CREEK	4035	AVEO HEALTHCARE LIMITED	Brisbane City Council
AVEO BRIDGEMAN DOWNS (INDEPENDENT LIVING UNIT SCHEME TWO)	4035	AVEO CLEVELAND GARDENS PTY LTD	Brisbane City Council

AVEO BRIDGEMAN DOWNS (INDEPENDENT LIVING UNITS SCHEME ONE)	4035	AVEO CLEVELAND GARDENS PTY LTD	Brisbane City Council
AVEO BRIDGEMAN DOWNS (SERVICED APARTMENTS SCHEME)	4035	AVEO CLEVELAND GARDENS PTY LTD	Brisbane City Council
AVEO CARINDALE	4152	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO CLEVELAND	4163	AVEO HEALTHCARE LIMITED	Redland City Council
AVEO LINDSAY GARDENS	4556	AVEO RETIREMENT HOMES LIMITED	Sunshine Coast Regional Council
AVEO PALMVIEW	4553	AVEO RETIREMENT HOMES (NO.2) PTY LTD	Sunshine Coast Regional Council
AVEO PARKLAND NEWMARKET	4051	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO PEREGIAN SPRINGS COUNTRY CLUB	4573	AVEO RETIREMENT HOMES LIMITED	Sunshine Coast Regional Council
AVEO ROBERTSON PARK	4109	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO ROBINA	4226	AVEO RETIREMENT HOMES LIMITED	Gold Coast City Council
AVEO SOUTHPORT GARDENS	4215	AVEO LEISURE SERVICES PTY LTD	Gold Coast City Council
AVEO SPRINGFIELD	4300	AVEO RETIREMENT HOMES (NO 2) PTY LTD	Ipswich City Council
AVEO SUNNYBANK GREEN	4109	AVEO RETIREMENT HOMES LIMITED	Brisbane City Council
AVEO TARINGA	4068	AVEO HEALTHCARE LIMITED	Brisbane City Council
AVEO THE PARKS	4870	AVEO RETIREMENT HOMES LIMITED	Cairns Regional Council
AVEO TRANQUILITY GARDENS	4212	AVEO LEISURE SERVICES PTY LTD	Gold Coast City Council
BALDWIN LIVING NORTHSIDE	4018	BALDWIN CARE RETIREMENT PTY LTD	Brisbane City Council
BALDWIN LIVING SEQUANA	4209	BALDWIN CARE (SEQUANA) RETIREMENT PTY LTD	Gold Coast City Council
BAYCREST	4655	RSL CARE RDNS LIMITED	Fraser Coast Regional Council
BICENTENNIAL	4740	RSL CARE RDNS LIMITED	Mackay Regional Council
BONGAREE	4507	RSL CARE RDNS LIMITED	Sunshine Coast Regional Council
BRAMPTON VILLAS	4740	GOOD SHEPHERD LODGE LIMITED	Mackay Regional Council
BREEZES	4740	RSL CARE RDNS LIMITED	Mackay Regional Council
BRODRIBB RETIREMENT VILLAGE	4350	BRODRIBB HOME INCORPORATED	Toowoomba Regional Council
CARINITY LIFESTYLE - BROOKFIELD VILLAGE	4069	CARINITY	Brisbane City Council
CARINITY LIFESTYLE - BROWNSHOLME VILLAGE	4352	CARINITY	Toowoomba Regional Council
CARINITY LIFESTYLE - ELIM	4305	CARINITY	Ipswich City Council
CARINITY LIFESTYLE - HILLTOP	4059	CARINITY	Brisbane City Council
CARINITY LIFESTYLE - KEPNOCK GROVE	4670	THE BAPTIST UNION OF QUEENSLAND	Bundaberg Regional Council
CARINITY LIFESTYLE - SHALOM	4700	CARINITY	Rockhampton City Council
CARINITY LIFESTYLE - WISHART	4122	CARINITY	Brisbane City Council
CARRINGTON	4115	RSL CARE RDNS LIMITED	Brisbane City Council
CAZNA GARDENS	4109	RSL CARE RDNS LIMITED	Brisbane City Council
CHELSEA	4650	RSL CARE RDNS LIMITED	Fraser Coast Regional Council
CURRIMUNDI GARDENS RETIREMENT VILLAGE	4551	OZCARE	Sunshine Coast Regional Council
DRAYTON VILLAS RETIREMENT VILLAGE	4350	DRAYTON VILLAS PTY. LTD.	Toowoomba Regional Council
FAIRVIEW	4069	RSL CARE RDNS LIMITED	Brisbane City Council
FAIRWAYS	4670	RSL CARE RDNS LIMITED	Bundaberg Regional Council
FERNHILL	4510	RSL CARE RDNS LIMITED	Moreton Bay Regional Council
FREEDOM AGED CARE - BRIDGE STREET	4350	FREEDOM AGED CARE TOOWOOMBA (OPERATIONS) PTY LTD	Toowoomba Regional Council
FREEDOM AGED CARE - TAYLOR STREET	4350	FREEDOM AGED CARE TOOWOOMBA (OPERATIONS) PTY LTD	Toowoomba Regional Council

FREEDOM AGED CARE CLAYFIELD	4011	FREEDOM AGED CARE CLAYFIELD (PROPERTIES) PTY LTD	Brisbane City Council
FREEDOM AGED CARE REDLAND BAY	4165	FREEDOM AGED CARE REDLAND BAY (OPERATIONS) PTY. LTD.	Redland City Council
FREEDOM AGED CARE ROCHEDALE	4123	FREEDOM AGED CARE ROCHEDALE (OPERATIONS) PTY. LTD.	Logan City Council
FREEDOM AGED CARE TANAH MERAH	4127	FREEDOM AGED CARE TANAH MERAH (OPERATIONS) PTY LTD	Logan City Council
GALLEON GARDENS	4223	RSL CARE RDNS LIMITED	Gold Coast City Council
GALLEON HARBOUR RETIREMENT AND LEISURE RESORT	4223	NASHWARE PTY LTD	Gold Coast City Council
GLENFIELD GRANGE RETIREMENT VILLAGE	4350	GLENFIELD GRANGE ESTATES PTY LTD	Toowoomba Regional Council
GOOD SHEPHERD VILLAGE	4740	GOOD SHEPHERD LODGE LTD AS TRUSTEE FOR THE GOOD SHEPHERD LODGE CHARITABLE TRUST	Mackay Regional Council
HERITAGE GARDENS RETIREMENT VILLAGE	4870	SAUL FINANCIAL PTY LTD	Cairns Regional Council
INVERPINE	4503	RSL CARE RDNS LIMITED	Moreton Bay Regional Council
IRT PARKLANDS	4551	ILLAWARRA RETIREMENT TRUST	Sunshine Coast Regional Council
IRT THE RIDGE	4017	ILLAWARRA RETIREMENT TRUST	Brisbane City Council
IRT WOODLANDS	4551	ILLAWARRA RETIREMENT TRUST	Sunshine Coast Regional Council
KERRISDALE GARDENS RETIREMENT VILLAGE	4740	GOOD SHEPHERD LODGE LTD AS TRUSTEE FOR THE GOOD SHEPHERD LODGE CHARITABLE TRUST	Mackay Regional Council
KINGSFORD TERRACE AT CORINDA	4075	AURA AUSTRALIA MANAGEMENT PTY LTD	Brisbane City Council
MILFORD GRANGE	4305	RSL CARE RDNS LIMITED	Ipswich City Council
OAK TREE LIFESTYLE VILLAGE YEPPON	4703	OAK TREE RETIREMENT VILLAGES YEPPON ONE PTY LTD	Rockhampton City Council
OAK TREE RETIREMENT VILLAGE BORONIA HEIGHTS	4124	OAK TREE RETIREMENT VILLAGES BORONIA PTY LTD	Logan City Council
OAK TREE RETIREMENT VILLAGE CAPRICORN COAST	4703	OAK TREE RETIREMENT VILLAGES BARMARYEE YEPPON PTY LTD	Rockhampton City Council
OAK TREE RETIREMENT VILLAGE DARLING HEIGHTS	4350	OAK TREE RETIREMENT VILLAGES TOOWOOMBA PTY LTD	Toowoomba Regional Council
OAK TREE RETIREMENT VILLAGE GOODNA	4300	OAK TREE RETIREMENT VILLAGE GOODNA PTY LTD	Ipswich City Council
OAK TREE RETIREMENT VILLAGE GOONDIWINDI	4390	OAK TREE RETIREMENT VILLAGES GOONDIWINDI PTY LTD	Goondiwindi Regional Council
OAK TREE RETIREMENT VILLAGE PARK AVENUE	4701	OAK TREE RETIREMENT VILLAGES ROCKHAMPTON PTY LTD	Rockhampton City Council
OAK TREE RETIREMENT VILLAGE RIVERWAY	4815	OAK TREE RETIREMENT VILLAGES TOWNSVILLE TWO PTY LTD	Townsville City Council
OAK TREE RETIREMENT VILLAGE VICTORIA POINT	4165	OAK TREE RETIREMENT VILLAGE VICTORIA POINT PTY LTD	Redland City Council
OAK TREE RETIREMENT VILLAGES NORMAN GARDENS	4701	OAK TREE RETIREMENT VILLAGES NORMAN ROAD PTY LTD	Rockhampton City Council
PALM LAKE RETIREMENT VILLAGE REDLAND BAY	4165	PALM LAKE CARE PROPERTIES PTY LTD	Redland City Council
PIONEERS	4730	RSL CARE RDNS LIMITED	Longreach Regional Council
REGIS BRAMBLE BAY RETIREMENT VILLAGE	4017	REGIS AGED CARE PTY LTD	Brisbane City Council
REGIS CORINTHIAN COURT RETIREMENT VILLAGE	4817	REGIS AGED CARE PTY LTD	Townsville City Council
REGIS McDONALD COURT RETIREMENT VILLAGE	4883	REGIS AGED CARE PTY LTD	Tablelands Regional Council
REGIS TALLOWWOOD LODGE RETIREMENT VILLAGE	4355	REGIS AGED CARE PTY LTD	Toowoomba Regional Council

REGIS WOODWARD RETIREMENT VILLAGE	4870	REGIS AGED CARE PTY LTD	Cairns Regional Council
ROWES BAY	4810	RSL CARE RDNS LIMITED	Townsville City Council
SEACHANGE RETIREMENT VILLAGE	4551	SEACHANGE RETIREMENT VILLAGE MANAGEMENT PTY LTD	Sunshine Coast Regional Council
STRETTON GARDENS RETIREMENT ESTATE	4116	SOUTHERN CROSS CARE (QLD) LTD	Brisbane City Council
SUNSET RIDGE	4710	RSL CARE RDNS LIMITED	Rockhampton City Council
TALBARRA RETIREMENT COMMUNITY	4133	RSL CARE RDNS LIMITED	Logan City Council
TANTULA RISE	4572	RSL CARE RDNS LIMITED	Sunshine Coast Regional Council
THE ATRIUM LUTWYCHE	4030	AURA HIGH STREET MANAGEMENT PTY LTD	Brisbane City Council
THE AVENUE MAROOCHYDORE	4558	AURA THE AVENUE MANAGEMENT PTY LTD	Sunshine Coast Regional Council
WESTHAVEN	4350	RSL CARE RDNS LIMITED	Toowoomba Regional Council
WOODFORD COUNTRY RETIREMENT VILLAS	4514	WOODFORD AGED CARE ASSOCIATION INC.	Moreton Bay Regional Council

Appendix 4 – Village comparison document

The VCD contains general information about the retirement village accommodation, facilities and services, including the general costs associated with entry into, occupancy of and exit from a retirement village. The document is intended to be in a standard format to assist prospective residents comparing the facilities and fees associated with different retirement villages. The DHPW provides a template on their website (available [here](#) at the time of writing) which can be downloaded by scheme operators, filled out with village specific details and then published and distributed by the scheme operator.

Section 74 of the Act requires a retirement village scheme operator to provide a copy of the current VCD to prospective residents, with any promotional material given to a person (except when provided through general distribution). In addition, the VCD is to be available on the retirement village's website.

The following outlines a summary of the data captured within the VCDs, the VCD information used in the analysis and a summary of findings.

Data captured within VCDs

Below are the parts contained in the VCD template provided by the DHPW (effective from 1 February 2019), and the key information that the scheme operator is expected to provide under each part:

- Part 1 – Operator and management details
 - Village location; Land owner; Legal entity which operates the village; Information about the onsite management
- Part 2 – Age limits
 - Any age limits that apply to residents in the village (for example residents must be over 65 years of age to reside at the village)
- Part 3 – Accommodation units
 - Nature of ownership or tenure; Accommodation types (for example number of two-bedroom independent living units contained in the complex); Disability access features
- Part 4 – Parking for residents and visitors
 - Car parking availability and location for residents and their visitors
- Part 5 – Planning and development
 - Details of current and proposed development to village facilities and additional units
- Part 6 – Facilities onsite at the village
 - Common facilities available to residents (for example swimming pool, village bus, community centre); Existence of an onsite or co-located aged care facility
- Part 7 – Services
 - Any services provided to residents that are funded by the general services charge; Additional service available on a user-pays basis
- Part 8 – Security and emergency systems
- Part 9 – Ingoing contribution – entry costs to live in the village
 - Range of estimated ingoing contributions for each type of unit; Financial options available for the payment of the ingoing contribution; Other entry costs
- Part 10 – Ongoing Costs
 - Current weekly rate of the general services charges and maintenance reserve fund contributions and summary of how these have changed over the last three years; Ongoing costs that are not covered by the general services charge; Details of unit maintenance
- Part 11 – Exit fees

- Exit fee percentage or amount charged based on occupancy duration; Other additional costs associated with exiting the unit/contract
- Part 12 – Reinstatement and renovation of the unit
 - The degree to which the outgoing resident is responsible for the cost of reinstatement and renovation of their unit
- Part 13 – Capital gain or losses
 - The degree to which the outgoing resident is entitled to or responsible for capital gain or loss on the unit
- Part 14 – Exit entitlement
 - The formula for calculating the resident’s exit entitlement; Maximum timeframe for the scheme operator to pay the resident (or their estate) the exit entitlement; Number of units that were vacant at the end of the last financial year; Number of units that were resold during the last financial year; Average length of time to sell a unit over the last three financial years
- Part 15 – Financial management of the village
 - Recent balance of the maintenance reserve fund and capital replacement fund
- Part 16 – Insurance
 - The types of insurance which the resident is responsible for
- Part 17 – Living in the village
 - Trial period and associated costs, General village rules
- Part 18 – Accreditation
 - The village’s accreditation with an industry-based scheme
- Part 19 – Waiting list
 - The existence of a waiting list facility and associated costs to a resident who is on the waiting list
- Access to documents - A list of documents that the scheme operator may supply a prospective resident upon request
- Further information - Website links and contact information of Government and other organisations that may provide useful information or services to retirement village residents and families

Collection and compilation of VCDs

The team sought to collect VCDs from the 322 registered retirement villages in Queensland. The VCDs contained material relevant to this review not available publicly in any other form.

The *Act* requires scheme operators to have a copy of the current VCD available on their website, including a prominent link to the VCD on any page of their website that contains marketing material. While the majority of scheme operators’ VCDs were easily located on their websites, the panel had to obtain some VCDs by directly contacting the village.

The analysis contains data from 308 VCDs. Of the 324 villages, VCDs from 16 retirement villages were not included because:

- Seven relate to Resident-Operated villages and included in the Interim Report (refer Chapter 4)
- Two had no data and another two have since been de-registered
- Two are changing structure, one is merging with another village and another is vacant land
- One village did not respond to the Panel’s repeated requests for a VCD

Whilst 308 VCDs were reviewed, not all parts of these VCDs had data that could be analysed. For example, Part 14 Exit Entitlement has a data point “average time to sell (months) over the last three financial years”. The findings above include 298 VCDs for this datapoint, that is, it excludes 10 VCDs from this set due to:

- Five provided answers ‘not applicable’ or was left blank
- Four answered ‘due to the recent completion of construction of the village, average time to sell could not be determined or no units had been sold yet’
- One village was under construction

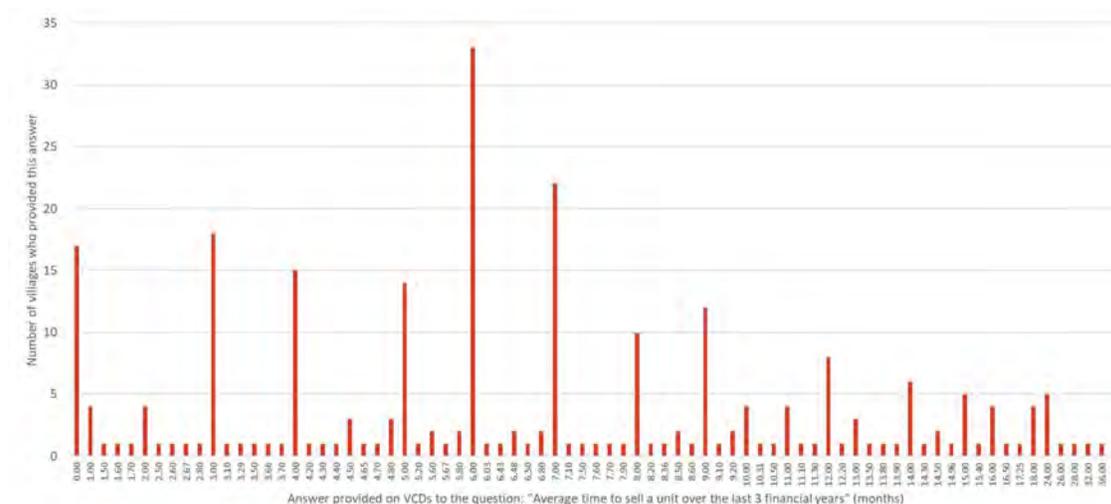
Limitations of the data and assumptions made

Limitation 1: Data accuracy and quality

Through analysis of the data, it is clear that in many instances, figures given on the VCDs by scheme operators are approximate. This is evident in the following example:

To the question “[number of] months was the average length of time to sell a unit over the last three financial years”, 37 villages reported values as a range (for example “three to five months”) rather than a single average value (for example four months). Figure 3, below, totals the number of villages that stated a specific value as the answer to the question “[number of] months was the average length of time to sell a unit over the last three financial years” (for example 18 different villages stated their average time to sell a unit as “three months” while only one village stated their average time to sell a unit as “3.10 months”). Figure 3, below, illustrates there is a strong trend for scheme operators to answer this question with an integer (whole number of months). This may be due to an inaccuracy in measurement or due to rounding undertaken by scheme operators. Regardless of the reason, it highlights the fact that there may be unreliable figures with this data.

Figure 3. The number of retirement villages who answered the VCD question – Average time to sell a unit over the past three financial years



This is one example of a data point captured in the VCDs that may be inaccurate due to:

- self-reporting from scheme operators
- a lack of consistency in answer format
- a lack of extensive auditing of answers by a central body or independent auditor

Through consultation with scheme operators, it was made know to the Panel that villages experiencing high vacancy rates may convert units into rental properties (three to five year leases) that resemble the private rental market, both in payment format and amount. In this instance, the unit would not be reported vacant, however the circumstances that would lead an operator to take this action would usually be difficultly in selling the unit as a retirement village unit with a lump sum ingoing contribution, which may be accompanied by long period of vacancy prior to the conversion.

Scheme operators also shared that systems and tools to track data required in the VCD may be lacking. A scheme operator reported there is no technology provider on the market offering an end to end management tool for retirement villages. Management data and reporting is also hindered by the state based legislation and frequency of legislative changes.

All other data points within the VCD may be inaccurate for the previously mentioned reasons. In order to effectively use this data, the analysis takes the data presented in the VCDs on face value and corrects or removes figures that are deemed to be incorrect (based on their illogical nature or degree to which the figure is an outlier from peers).

Limitation 2: Timing of reporting

VCDs state the date at which the information in the document is correct. Across the VCDs collected, this date ranged from 2 January 2019 to 28 August 2020, therefore any comparisons made between the VCD documents are not made between data at the same point in time.

There are some fields within the VCD document that refer to data “as at the end of the last financial year” or “over the last three financial years”. Given the date range mentioned previously, the last financial year may be FY18, FY19 or FY20 and the last three financial years could also range from FY16 through FY20.

This analysis compares the VCDs’ data as if it were from the same period, however consideration is given to conclusions and insights drawn from the data.

Limitation 3: Multiple contract options

Many of the villages offer multiple contract options which are designed to meet the varying needs of different residents and their circumstances (such as age, access to cash, tolerance for risk and preferred tenure). The different contracts on offer presented in each VCD may vary on a number of items – those items that are most key to this analysis are the following:

- Average ingoing contribution
- Exit fee percentage (for each year residency is held)
- Entry costs
- General services charge
- Maintenance reserve fund contribution
- Residents’ responsibility for sale, legal and exit costs
- Residents’ responsibility for reinstatement, renovation and capital loss
- Residents’ entitlement to capital gain
- Formula used for the calculation of exit entitlements

Due to the vast range of contracts across all retirement villages in Queensland, only one contract type could be considered per village. For all available VCDs, either the most balanced contract (considering

ingoing contribution versus exit fee percentage) or the most standard contract (least customisation) was recorded for analysis.

Also note that the contracts presented in the VCD are the current contracts on offer to prospective residents, not the contracts that the operator and current residents are subject to. Contracts that current residents and operators are currently subject to may include:

- Contracts that are no longer offered by the operator (some residents have stated that their contracts are more than 25 years old)
- Contracts that were offered by previous village owners before the current owner purchased the village
- Contracts currently on offer

Due to the limitations regarding contracts discussed above, the data collected from VCDs does not provide an accurate summary of the contracts that residents and operators are currently parties to. Note that the VCD is not designed for this purpose, it is designed to provide prospective residents with a summary of available options.

Limitation 4: Lack of longitudinal data

Longitudinal VCD data could not be gathered and analysed for this review, meaning that a baseline could not be measured and compared to a time period where the effects of the introduction of the 18 month mandatory buyback legislation could be assessed.

Vacancy rate and time to sell units

This section discusses retirement village vacancy rate and time taken to sell units as it was recorded in the VCDs (note the limitations stated previously). Table 12 outlines the method of calculation or definition for the terms used in this section.

Table 12. The method of calculation or definition for the terms used in this section

Term	Calculation method / Definition
Vacancy rate	Number of retirement village units that were vacant at the end of the last financial year <i>divided by</i> total number of retirement village units in the village.
Average vacancy rate	The <i>sum</i> of the vacancy rates of each of the retirement villages in the group <i>divided by</i> the number of retirement villages in that group. Therefore note, that average vacancy rate does not consider the number of units in a specific village. This method of calculation was decided to ensure that small village vacancy rates were weighted evenly with large villages as the impact of the vacancy rate per village is of greater importance than the industry's or group's vacancy rate as a whole, for this analysis.
Villages with recently constructed units	Vacancy data may be skewed by recently constructed units. The completion of a new stage of units may add a set of units to the vacancy pool all at once, thus increasing the vacancy rate beyond the usual rate experienced by the village To determine which villages may be impacted in this way, VCD data was used to determine if recent developments may have affected the vacancies reported (note that only villages with vacancy rates of 20% or greater were examined for recent development effects). Villages that were deemed to be affected were then marked as "villages with recently constructed units". Some analyses excludes these villages as an attempt to normalise the data.
Average time to sell	This is the number of months reported on the VCD as the months to sell a unit on average over the last three financial years. In the instances where operators provided a range of months (for example "4 to 6 months"), the mean of the answers is applied as that village's average (for example five months).

The following table shows the vacancy rates and average time to sell for the different sized villages, as categorised in Appendix 2.

Table 13. Vacancy rates and average time to sell by village size

Calculation	All sizes	Small (<51 units)	Medium (51-100 units)	Large (>100 units)
Average vacancy rate	10.7%	11.8%	11.3%	9.1%
Average vacancy rate excluding villages with recently constructed units	9.8%	11.0%	10.0%	8.5%
Average time to sell (months)	7.56	7.33	8.20	7.26
Average time to sell excluding villages with recently constructed units (months)	7.63	7.37	8.34	7.31

The analysis showed that larger villages had lower vacancy rates than smaller villages with no change to this trend noted when the villages with recently constructed units were excluded. The exclusion of the villages with recently constructed units reveals a lower average vacancy rate across all sizes of villages, which is to be expected as it's likely that these new units come online in grouped stages, not gradually.

Anecdotal evidence suggests that new units sell faster (as they are more desirable) – this trend is evident in the data, as the exclusion of the newly constructed units results in a longer average time to sell. While this trend is very slight, note that villages were only classified as a “village with recently constructed units” if the vacancy rate for the village was 20% or greater and information could be found within the VCD that additional vacancies were recorded due to the recent construction of units. There may be some villages that contain newly constructed units with vacancy rates less than 20% which, if categorised to be excluded from the final row of the table, would result in a wider gap in average time to sell.

Average time to sell appears to be greatest for the medium sized villages, approximately one and one quarter more months than the other size categories.

Table 14 compares the vacancy rates and average time to sell for villages located in urban and regional areas, as categorised in Appendix 2.

Table 14. Comparison of vacancy rates and average time to sell by village location

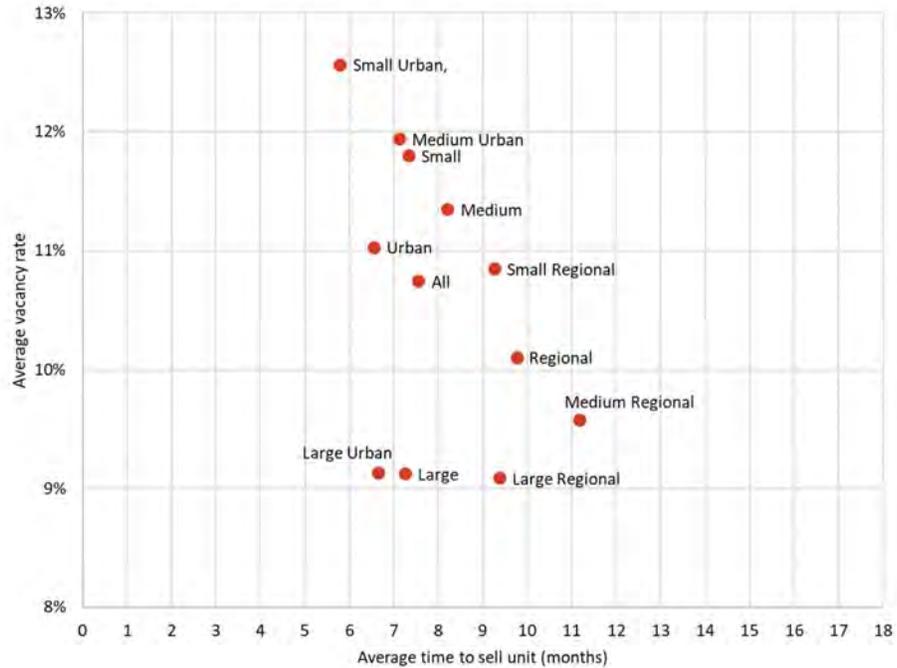
Calculation	All QLD	Urban	Regional
Average vacancy rate	10.7%	11.0%	10.1%
Average vacancy rate excluding villages with recently constructed units	9.8%	9.8%	9.9%
Average time to sell (months)	7.83	6.58	10.53
Average time to sell excluding villages with recently constructed units (months)	7.90	6.64	10.59

While average vacancy rate is slightly higher in urban areas, this is likely to be linked to higher vacancy rates at villages with newly constructed units.

Average time to sell is almost four months longer in regional areas than urban. Data collected in interviews and consultation suggests that this effect is due to a slower property market and lower demand in general.

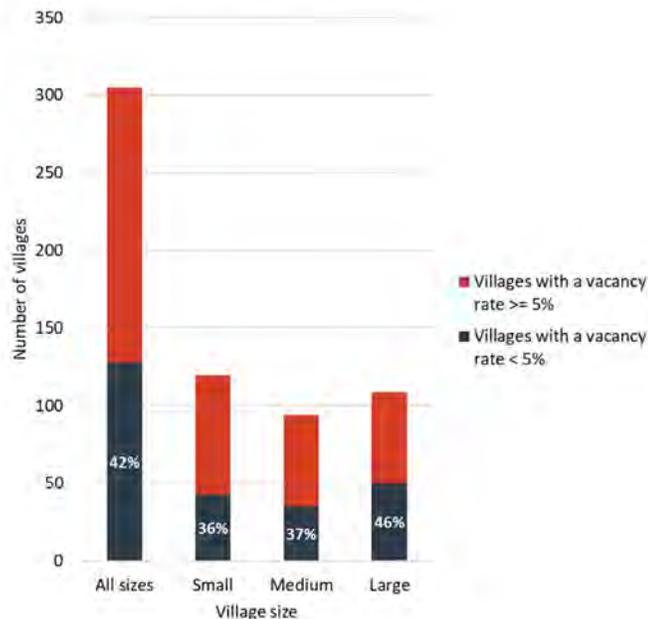
Figure 4 compares the various combinations of village size and location (urban or regional) on the basis of average vacancy rate and average time to sell. For example, the average vacancy rate for small villages in regional areas is 10.8% and the average time to sell a unit is 9.26 months (with this position plotted towards the centre of the graph and labelled “Small Regional”).

Figure 4. Village size and location on the basis of average vacancy rate and average time to sell



In Figure 5, 42% of retirement villages have a vacancy rate that is less than 5%, with larger villages having less vacancies in this category. The percentage shown in the bars of the graph indicate the portion of villages within that size category that have a vacancy rate less than 5%.

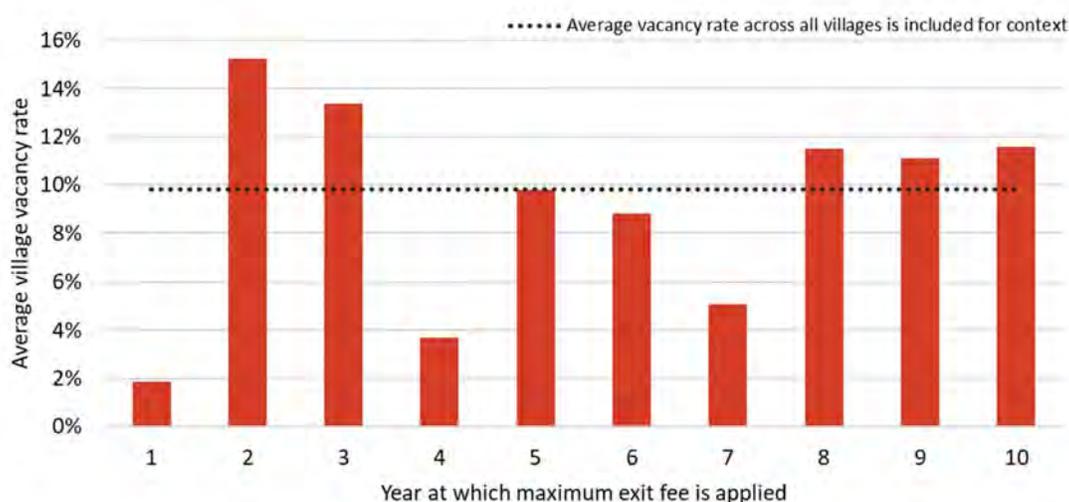
Figure 5. Village size and vacancy rate



The VCDs allow scheme operators to state the percentage of the ingoing contribution that is to be paid as an exit fee based on the length of residency at the village. Some contracts increase the exit fee percentage gradually each year for 10 years until reaching a maximum exit fee percentage, while some contracts reach the maximum percentage after three years, whereby a resident is required to pay the maximum exit fee percentage if they exit after three years or nine years, for example. Across the industry, the rate at which the exit fee percentages increase over the residency ranges greatly, with many villages having multiple contract options that offer different slopes and other differing contract terms to suit residents' varying preferences and circumstances.

An analysis of the VCDs allowed an examination of the exit fee percentages. For each village examined, it was noted at what year through a residency the maximum exit fee percentage was reached. Figure 6 shows the average village vacancy rate for each group of villages where the year that their exit fee percentage reaches its maximum is the same. For example, the group of villages where the maximum exit fee percentage was reached after five years (x-axis) of residency had an average vacancy rate of 10% (y-axis). Note that the data contained in Figure 6 excludes villages with recently constructed units.

Figure 6. Average village vacancy rate and year at which the maximum exit fee is applied



When considering Figure 6, it is important to take note of the limitations in the data and data collection noted previously. While no clear trend is shown, it appears for villages where the maximum exit fee percentage is reached in years two and three, the vacancy rate is higher. The industry and regulators would benefit from an analysis similar to the above using a more accurate data source and collection method to conclude if there are any material trends. This would aid significantly in future product (contract) design if the minimisation of vacancy rates is a desired goal.

It has been gathered, anecdotally, that a more gradual exit fee increase is preferable however in most instances, there are other varying contract terms applied. For example, a contract where the maximum exit fee percentage is reached in year three of the residency may be accompanied by a lower ingoing contribution amount required upfront. These differing contract options provide consumers with choices that better suit their preferences and circumstances while also allowing the scheme operator to further their organisational or business goals.

Villages with an option for residents to receive exit entitlement sooner than legislated

Many retirement villages have multiple contract options that shift financial and liquidity risk between scheme operator and resident. While the *Act* currently requires scheme operators to pay exit entitlements by 18 months after termination regardless of whether the unit (or right to reside) has been sold, many villages offer contract options that force the operator to pay the exit entitlement sooner than the legislation requires.

Through this analysis, it was found that 118 villages had a contract option on offer that allowed residents to receive their exit entitlement sooner than 18 months, all of which allowed an option to receive the exit entitlement in 12 months or less. This represents 39% of all Queensland villages.

It is important to note that contracts that enable a sooner than legislated mandatory payment of the exit entitlement to the resident, often contain other contract terms that benefit the scheme operator and assumedly compensate the scheme operator for carrying more of the liquidity risk.

Analysis considering the impact of the largest, national operators

As mentioned in section 1.1.5, 60% or over 18,300 units in Queensland are held by nine groups of operators. The three largest operators in Queensland run 86 villages with approximately 11,000 units. The remaining 40% or 12,100 units are in 169 villages run by 98 operators.

The results of three key calculations are presented in Table 15 for all retirement villages in Queensland (repeated from Table 14) and all Queensland retirement villages excluding the three largest operators.

Table 15. Comparison of vacancy rates and average time to sell for all Queensland retirement villages and the exclusion of the largest three villages.

Calculation	All Queensland	Queensland excluding 3 largest operators
Average vacancy rate	10.7%	10.6%
Average vacancy rate excluding villages with recently constructed units	9.8%	9.5%
Average time to sell (months)	7.83	7.82

The exclusion of the largest three villages does not result in materially different results in the vacancy rate.

Appendix 5 - Case Study: Carinity product

Carinity, a not-for-profit provider (formerly Baptist Care) operates seven retirement villages with 302 licenced units in Queensland. In addition, they are responsible for residential aged care facilities and welfare services.

Carinity's villages offer:

- A unit secured under a 'License to Occupy' tenure, which gives the resident the right to live in the unit as long as they are able to live independently, or are able to remain safely in the villa with in-home support services
- Service fees are payable each fortnight and covers the day to day operating costs of the village and maintenance of capital items. The amount is calculated based on the village's annual budget and is determined in consultation with residents each year
- The Exit Fee is dependent on the individual contract

The website includes an exit entitlement calculator which a prospective resident can use to determine their exit entitlement under the independent living residence contract²². An example based on an entry price of \$250,000 is:

Exit entitlement	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
	\$235,000	\$220,000	\$205,000	\$195,000	\$185,000	\$175,000
Deferred payment	6% \$15,000	12% \$30,000	18% \$45,000	22% \$55,000	26% \$65,000	30% \$75,000

Buyback Commitment

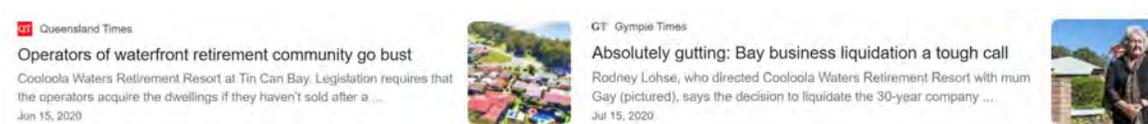
Carinity advertises that if a resident's unit is on the market for a certain period of time monthly fees will be reduced and they have a buyback period of nine months. Further, if the resident is transferring to a Carinity residential aged care facility the exit entitlement is paid immediately.

The scheme operator related that contracts historically had a mandatory buyback period of six months. However, two years ago this was increased to nine months. The Panel was advised this did not result in any concerns as units were sold within this time period. However, with the downturn in the market due to COVID-19 Carinity has undertaken two buybacks in 2020. The scheme operator also notes enquiries for retirement living have slowed since March 2020 (primarily due to Covid-19).

Carinity also pays reinstatement to ensure the unit is of market standard. Carinity sets the value for sale price. Residents receive the incoming contribution (what they paid at the start of the contract to get into the unit) minus the exit fee upon leaving the village. As a result, residents are not concerned of the unit's sale price. Carinity, as operator, takes the capital gain or loss on sale.

²² <https://carinity.org.au/our-services/retirement-living/retirement-living-fees-charges-explained/>

Appendix 6 - Case Study: Cooloola Waters Retirement Village



Introduction

In September 2020 the Panel consulted with the directors of the scheme operator of Cooloola Waters Retirement Village at Tin Can Bay. The directors responded to the request for input into the review with a written submission and survey response. The purpose of the consultation was to gain insight into the impact the 18-month exit payment requirement had on the directors and their business, to inform the Panel's recommendations.

The Panel also received written submissions from [redacted] residents of Cooloola Waters [redacted] [redacted] highlighting the impact of the exit payment requirement on residents.

Cooloola Waters Retirement Village at Tin Can Bay

Tin Can Bay is a coastal town in the Gympie Region with a population of approximately 2,000 people. It is over 200km from Brisbane and over 50km from Gympie. It is also approximately 100km from Noosa Hospital and 150km from the Sunshine Coast Hospital.

Cooloola Waters Retirement Village (Cooloola Waters) has 44 units and contains a large club house with commercial kitchen, indoor heated pool, outdoor pool, croquet field, billiards room, hall, library and workshop. Title to the land on which Cooloola Waters stands is freehold. Units in Stage 1 (Units 1 -30) are purchased by way of a 99-year lease registered in the resident's name with the Queensland Department of Natural Resources, Mines and Energy. Units in the other two stages have individual freehold titles as part of community titles schemes, which are each governed by a Body Corporate. There are 15 units under freehold title and 29 units are leasehold. Residents' title, whether leasehold or freehold, is protected by a statutory Government charge held over the retirement village title. Residents are entitled to 100% of capital gain on resale of their unit and there is no exit fee.

Figure 7. Excerpt from Cooloola Waters Village Comparison Document

1.1 Retirement village location	Retirement Village Name: Cooloola Waters Retirement Village Street Address: 34 Toolara Road Suburb: Tin Can Bay State: Queensland Post Code: 4580
1.2 Owner of the land on which the retirement village scheme is located	Name of land owner: Cooloola Waters Retirement Village Pty Ltd Australian Company Number (ACN): 010 977 849 Street Address: 34 Toolara Road Suburb: Tin Can Bay State: Queensland Post Code: 4580
1.3 Village operator	Name of entity that operates the retirement village (Scheme Operator): Cooloola Waters Management Pty Ltd Australian Company Number (ACN) 011 032 787 Street Address: 34 Toolara Road Suburb: Tin Can Bay State: Queensland Post Code: 4580 Date entity became operator 11 April 1990
1.4 Village management and onsite availability	Name of village management entity and contact details: Cooloola Waters Management Pty Ltd Australian Company Number (ACN) 011 032 787

Cooloola Waters Management Pty Limited (CW Management) has been the scheme operator since 1990. The Directors of CW Management are Lorraine (Gay) Lohse [redacted] Rodney Lohse, and [redacted] Lea-Anne Lohse. CW Management is owned by two shareholders – Cooloola Waters Retirement Village Pty Limited (9,999 shares) and an individual with one share.

Cooloola Waters was established in 1989 by an accountant who raised funds from a number of small investors to create a retirement village. Cooloola Waters Retirement Village Pty Limited's directors are Gay and Rodney Lohse and is under external administration. Cooloola Waters Retirement Village Pty Limited is owned by a mix of 46 shareholdings, investors including plumbers, builders, a florist, a local councillor, a doctor, the accountant himself and some local farmers. The initial capital raising bought land on the waterfront at Tin Can Bay.

The village has operated with minimal costs and low fees due to the directors [redacted] [redacted] working in a voluntary capacity.

The scheme operator has no new development units for sale. The only units for sale are existing units.

Some residents have been living in the village for 30 years. Vacancies rose sharply when the original residents reached 80 years of age, two residents died, and two residents moved to residential aged care in the same time period. These vacancies coincided with the introduction of the 18 month buyback.

The exit payment process at Cooloola Waters

There were two different contract options at Cooloola Waters. One with a lower upfront fee and then an exit fee. There was another contract option that was a larger upfront fee, and low/no exit fee where the resident takes the capital gain. The details of the exit process:

1. Monthly fees are payable for nine months after termination
2. Reinstatement is the responsibility of the resident. The scheme operator has no involvement.
3. The resident sets the sale price for the unit

Recently a valuer was appointed to agree on a value. This created disharmony between the residents and operators, because the residents are attempting to sell the unit at a high price, and with the appointment of a valuer it was perceived by residents that the operator intends to sell the units for less than they are worth

4. The residents appoints an agent and manages the sale process

Marketing and Sales before stewardship of current directors

A specialist real estate agent conducted the marketing and sale of units. The turnover for the units was approximately two to three units per year over the previous five years. It was taking more than 18 months for the units to sell. For example, one unit has been on the market for more than three years.

Marketing and Sales since stewardship of the current directors

Rodney and Lea-Anne appointed a local agent familiar with retirement village products. This agent was retained as the main sales agent. The scheme operator does not restrict resident owners from using external agents however they do warn that most real estate agents don't understand the product.

Rodney advised the Panel that new residents dislike exit fees, so the scheme operator changed the new contracts to include a larger upfront fee. Rodney supported this arrangement as cash was needed for the upcoming buybacks. As at September 2020, 12-14 units were vacant.

The impact of the 18 month exit payment requirement – On the Scheme Operator

As a family-owned village, in a low socioeconomic area of regional Queensland, the business model and retrospective nature of the 18 month requirement has been detrimental for Cooloola Waters.

Units remain unsold for 18 months due to a number of factors including:

1. Price of the unit
2. Location, and facilities of the village (and many other items listed in the VCD that impact the attractiveness of the product)
3. Location, size, tenure and presentation of the unit (particularly given that the scheme operator has no involvement in and takes no responsibility for reinstatement)
4. The regional location of the village and the distance from medical facilities and residential aged care facilities

There is a trend where residents are entering retirement villages at an older age than before, therefore proximity to medical services is more important than “resort-style living”

While locals possess the desire to reside in retirement village units in this area, many of these potential residents are of a low socioeconomic background and are unable to afford the purchase price of approximately \$200,000.

The retrospective nature of the 18 month buyback legislation resulted in a financial burden for Cooloola Waters. As soon as the legislation was brought in, the operator’s lawyers told the operator that they had to make an immediate buyback or they could be fined – the operator did not have time to apply to QCAT, so the operators took out a personal loan.

Factors that have a direct correlation on the impact

1. Confusion around contracts and retirement village - Residents often do not understand the contract they have signed. This confusion translates to frustration with the process and outcome by residents and resident’s families
2. Families delay sales - Once the 18 month timeframe for exit commences, operators may not be able to begin the sales process or market the property immediately. In one example, 4-5 months after the termination date, the unit still contained furniture
3. Location of this village - In regional towns where property turnover is low, tailored consideration in relation to the buyback period is needed

Path to insolvency

There were six units for sale and this increased to 14 units in a few months. By March 2020, when COVID-19 impacts were felt in the local real estate market, the settlement of two units’ sales were cancelled due to the buyers’ circumstances and QCAT gave an extension of time for the operator to pay the exit entitlement to the outgoing residents. The 18 month mandatory buyback can result in vacant units becoming contingent liabilities. Advice was provided to the operator that contingent liabilities were greater than the value of the village assets (approximately \$2 million). Since the village residents are the first creditors; banks do not have the appetite to lend against the village. The village shareholders voted to enter voluntary administration (in order to avoid trading insolvent).

Cooloola Waters Retirement Village Pty Limited is under external administration and in liquidation. The management rights cannot be transferred to the liquidators because of a restriction in the Act. The liquidators have applied to the government to attempt to take control, but it is taking longer than expected (four months as at October 2020).

The directors advised the Panel that the 18 month buyback requirement is the sole reason for Cooloola Waters Retirement Village Pty Limited going into liquidation. Shareholders have never seen a return on their investment.

Directors wrote to the DHPW, who referred the operators to QCAT. QCAT's decision allowed the operator an additional 8 months extension of the payment of the exit entitlements.

Significant legal fees [] were incurred by the operator for services related to the introduction of the 18 month mandatory buyback through to entrance into voluntary administration. The previous change to regulation that required the switch from PIDs and VCDs cost the operator [] in legal fees to have the document prepared.

The impact on the residents

The residents committee of Cooloola Waters Retirement Resort thought it important that the Panel know that 18 month mandatory buyback legislation impacted on the village's fall into voluntary administration.

The administrators met with residents in mid-June 2020 and advised that this situation is due to the Directors not having necessary funds to buyback properties. The residents were aware that earlier in the year the directors had borrowed money (it is unknown if this was in a personal name) for one "buyback" which was subsequently sold prior to voluntary administration.

The Village is now being run by a new manager, under instructions from the administrators until it sells. This is a major setback for the residents as there are now ten more vacant units. With no interest from potential buyers, the remaining residents are worried about their futures.

The application to QCAT for undue financial hardship

The lawyers assisting Cooloola Waters with their application to QCAT advised they were unaware of any other applications to QCAT for time extensions. The only applications they are aware of are those related to Cooloola Waters.

Gay reported:

We had two applications before QCAT. From our experience, QCAT would only set hard deadlines. In our first instance, the QCAT Member allowed the respondent to determine the extension period to be six months. It was only when we indicated this would force us into administration that we were sent for compulsory conference. At that compulsory conference we were given a 12-month extension. Whilst deferral addresses the cash impacts of the buyback, neither the legislation nor the QCAT process addresses the issue of the buyback as a contingent liability and the associated impact on the Financial Statements with respect to solvency. Ultimately the decision was made to put the Village into voluntary liquidation.

Being forced to apply to QCAT for every unit due for buyback made the operation by voluntary directors impossible. Preparing for court and the expense of getting valuations turned it into a full-time job and a cost which would have quickly drained the [] we had set aside. It also placed the directors at risk of trading insolvent, meaning they themselves were at risk of being pursued personally for costs incurred.

For the first case before QCAT, Lea-Anne started the first application. Lea-Anne sought advice from the DHPW in relation to the need to provide the village's financial statements to the respondent (unit owner). Lea-Anne had reservations about providing the financial statements to the unit owner, in case the documents were released to village residents and thereby adversely impacted future sales. A concern was privacy and non-disclosure. In response to this, Lea-Anne was told by DHPW to get permission from QCAT

to not provide information to the resident. QCAT ultimately said that the financial statements did in fact have to be provided to the respondent.

QCAT contacted the respondent to make sure that the financial statements had been provided. The respondent contacted the operator about the financial statements. Lea-Anne believes that the QCAT member should be able to determine financial hardship themselves and that the unit owner should not need to view the financial statements. However, QCAT said that this would be treated just like other QCAT hearings (treated as a dispute between two parties, where all information needs to be shared).

The resident (respondent) was totally in charge of the sale process – the operator did not and was unable to interfere with the process. The unit had not been refurbished, for example the kitchen was 30 years old, which is one of the reasons why the unit would not sell. Under the contract between the village and resident, the resident was entitled to the capital gain.

Issues highlighted in the case

The experience at Cooloola Waters highlight some current limitations of the financial hardship requirements and QCAT process.

- Retrospective nature of the legislation combined with contractual arrangements

The retrospective nature of the legislation did not provide the scheme owner with time to change its business model, contractual arrangements and prepare cash reserves.

The scheme operator is not involved in the reinstatement, value or sale of the unit. Accordingly, their ability to influence the timing of any sale is limited. (This could be amended going forward).

- Separate application required for each unit in the retirement village

Each buyback is a separate hearing with QCAT – so for each accommodation unit that requires a time extension for the mandatory buyback, the operator must apply to QCAT separately. Noting that whilst the Operators financial hardship position will be consistent, the position of the former resident will differ from unit to unit.

- Costs of a QCAT hearing

Whilst the QCAT application fee is minimal, the use of lawyers significantly increases the costs of applying to QCAT.

- Financial hardship provision

The size, type and business model of scheme operators differ across the Queensland retirement village industry. Cooloola Waters is a small, single site, family-operated, regional retirement village. It was developed for the local community. It does not have exit fees.

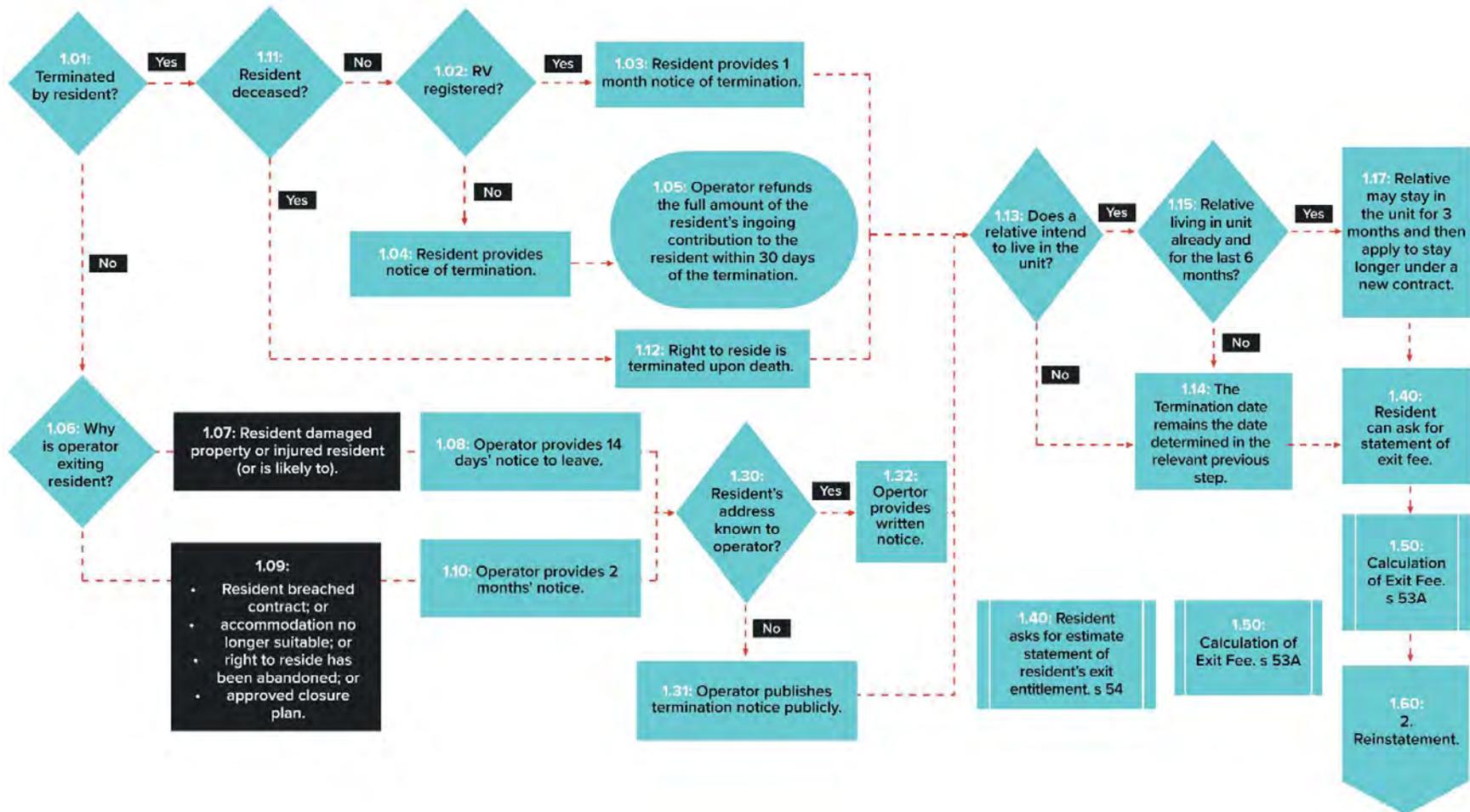
The experiences of residents also raised concern about the impact of the 18 month timeframe on the solvency of smaller regional villages. The legislation has meant that vacant units can become contingent liabilities, which threatens the solvency of the village.

The time extension does not solve the problem if an operator does not have the cash. Until the unit is sold the operator will not have the cash to fund the buyback.

In summary, the example of Cooloola Waters highlights the challenges faced by small, single site, operators in regional areas. All scheme operators need to consider a business model that fits with the current legislation.

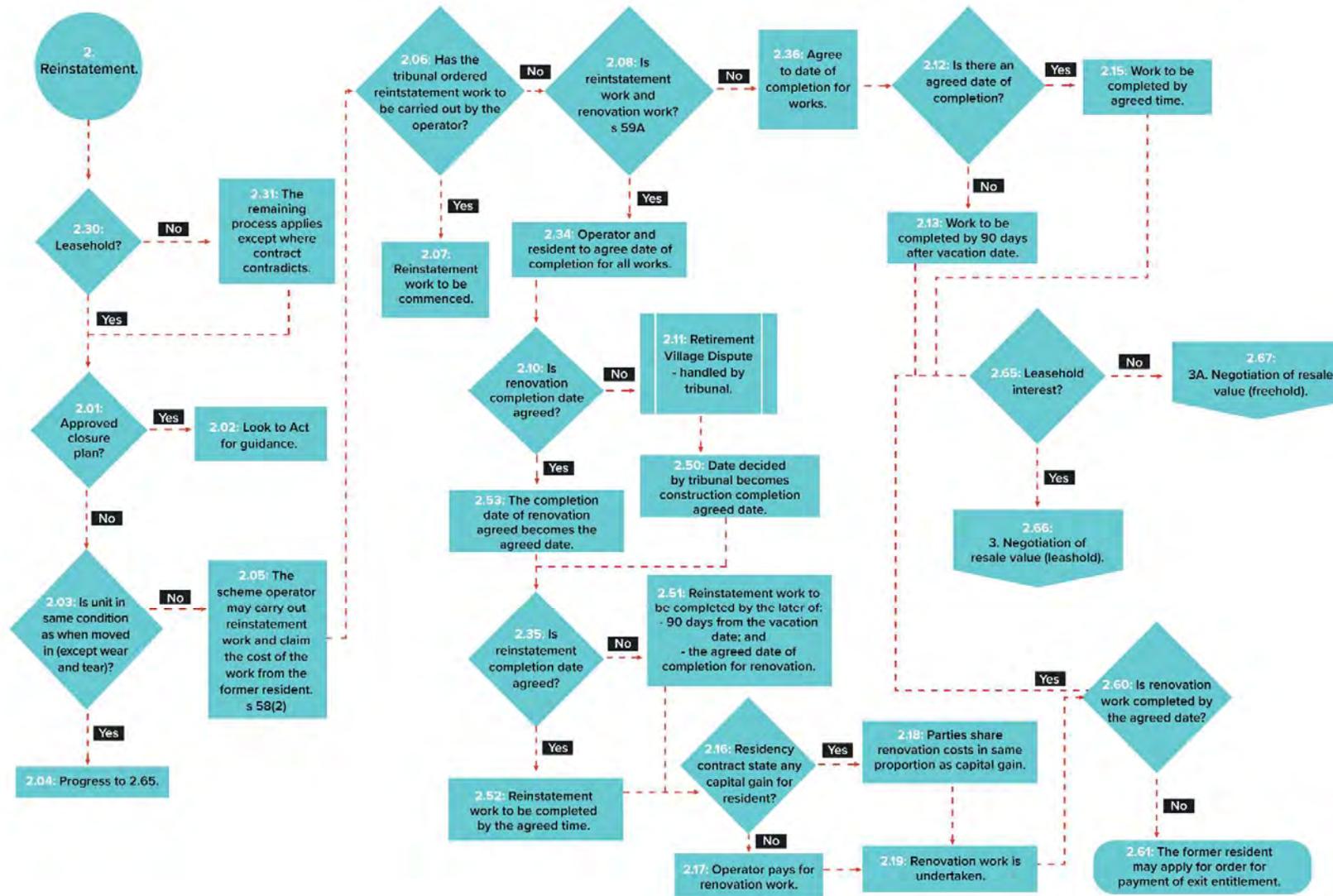
Appendix 7 – Queensland exit entitlement process

1. Termination



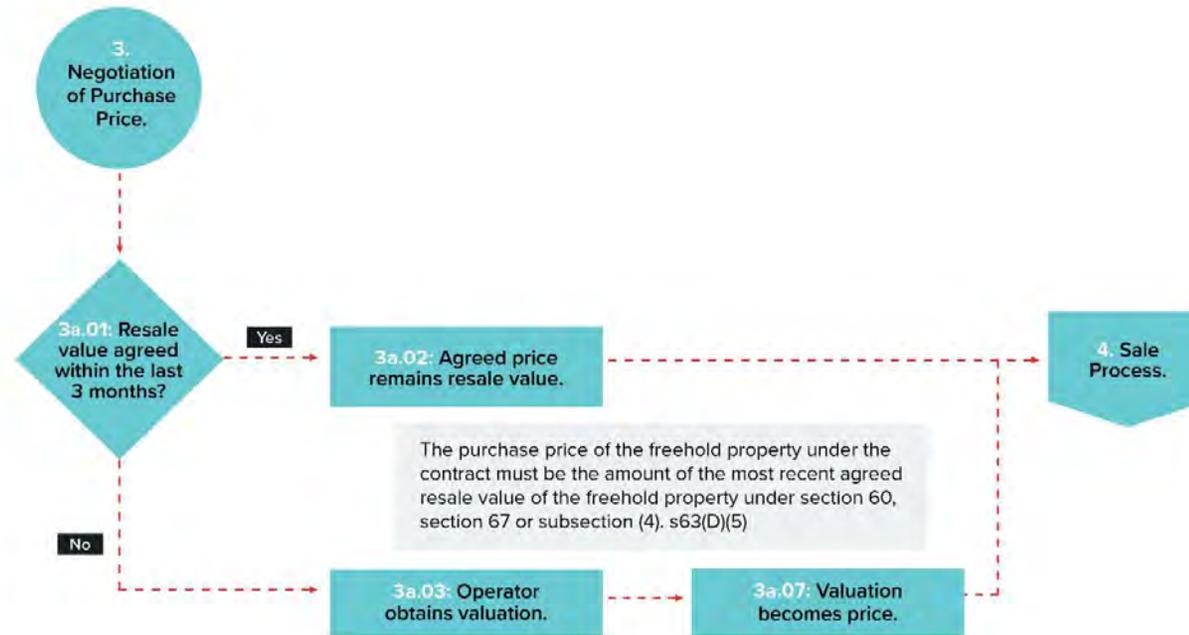
1.01: Is the termination by the resident?	1.12: The right to reside in a RV is automatically terminated on the resident's death. s 55
1.02: Is the retirement village registered?	1.13: Does a relative intend to continue living in the unit after the termination date determined in prior steps? div 5A
1.03: Termination by Resident - A resident may terminate the resident's right to reside in a retirement village by one month's written notice given to the scheme operator. s 52(1)	1.14: The Termination date remains the date determined in the relevant previous step.
1.04: Termination by Resident - Resident provides written notice to scheme operator (within 14 days of resident becoming aware that village scheme is not registered) that states the day that the termination takes effect (which can be any day after the date of the written notice). s 52(2)-(3)	1.15: Was the relative of the resident living in the accommodation unit when the resident contract was terminated; and has the relative lived in the accommodation unit for at least six months immediately before the residence contract was terminated? s 70B(1)
1.05: Scheme operator refunds the full amount of the resident's ingoing contribution to the resident within 30 days of the termination. If the scheme operator fails to do this, a resident may recover the amount owing as a debt owed. s 53(4)-(5)	1.17: The relative has a right to reside in the accommodation unit for three months after the day the residence contract is terminated if the relative agrees to be bound by the terms of the resident's residence contract while the relative continues to live in the accommodation unit. The relative's agreement must be in writing and given to the scheme operator within 14 days after the day the residence contract is terminated. During the three months, the relative has all the rights and liabilities of a resident under this Act. s 70B(2)-(4) s70B(5)-(6) discusses the relative potentially entering into a new residency contract for this unit post the three months. This is out of the scope of this analysis.
1.06: On what grounds is the resident's right to reside being terminated by the operator? s 53	1.30: Does scheme operator know the resident's address? s 53(5)
1.07: Resident has intentionally or recklessly: - injured a person while the person is in the Retirement Village; or - seriously damaged the resident's accommodation unit; or - seriously damaged property of another person in the RV; Or the resident is likely to do one of the actions mentioned above. s 53(1)-(2)	1.31: Since resident address is unknown, scheme operator may give the notice by publishing the notice in— (a) a newspaper circulating throughout the State; and (b) a newspaper circulating throughout Australia. The scheme operator must not include the grounds for the termination in the newspaper notice. If grounds are published, maximum penalty: 50 penalty units.
1.08: Scheme operator is to provide 14 days written notice to terminate a resident's right to reside in the RV. s 53(2) Written notice states the grounds for termination and the day resident must vacate. s 53(4)	1.32: Written Notice to terminate resident's right to reside in RV to be provided to the resident.
1.09: - Resident has committed a material breach of the contract; or - the scheme operator reasonably believes the resident has abandoned the resident's right to reside in the retirement village; or - the scheme operator and a person who has assessed the resident's care needs under the Aged Care Act 1997 (Cwlth), section 22.4 reasonably believe the resident's type of accommodation is now unsuitable for the resident; or - the operator is implementing an approved closure plan. s 53(3)	1.40: Resident may ask for estimate statement of resident's exit entitlement. s 54
1.10: Scheme operator is to provide two months written notice to terminate a resident's right to reside in the RV. s 53 (3) Written notice states the grounds for termination and the day resident must vacate. s 53(4)	1.50: Calculation of Exit Fee. s 53A
1.11: Is the resident deceased?	1.60: 2. Reinstatement

2. Reinstatement



2.01: Is there an approved closure plan being implemented? (RV is being closed down)	2.19: Renovation work is undertaken
2.02: Look to Act for guidance	2.30: Is the unit held as a leasehold interest?
2.03: At the end of the residency, has the unit been left in the same condition as it was prior to that resident's occupation of it, apart from fair wear and tear; and changes carried out with agreement of the resident and scheme operator? s58(1)	2.31: The following process applies to freehold interests except for particular matters where the freehold contract states otherwise. Note that references to a resident or former resident include the holder of the freehold interest also. s 56(2)
2.04: Progress to 2.65	2.34: Operator and resident to discuss an agreed date of completion for reinstatement and renovation works.
2.05: The scheme operator may carry out reinstatement work and claim the cost of the work from the former resident. s58(2) If under s70B(5), a relative is to enter a residency contract for the unit and has notified the scheme operator under the requirements of 70B(5)(d), the scheme operator may claim the cost of reinstatement work from the relative as if the relative were the former resident. The scheme operator must ensure the reinstatement work is done with as little inconvenience to the relative as is reasonably possible. (s58(3))	2.35: Has a date for completion of reinstatement work been agreed between operator and resident?
2.06: Has the tribunal ordered reinstatement work to be carried out by the operator?	2.36: Operator and former resident to discuss an agreed date of completion for reinstatement work.
2.07: Reinstatement work to be commenced and then completed by the period fixed by the tribunal. s59(3)	2.50: Date decided by tribunal becomes construction completion agreed date.
2.08: Is reinstatement work being carried out in conjunction with renovation work? s59A	2.51: Reinstatement work to be completed by the later of: - 90 days from the vacation date; and - the agreed date of completion for renovation work. s 59(2)(b)
2.10: Is completion date of renovations agreed upon between resident and operator?	2.52: Reinstatement work to be commenced and then completed by the agreed time. s 59(2)(a)
2.12: Have the former resident and scheme operator agreed on a time for reinstatement work to be completed?	2.53: The completion date of renovation agreed upon between the operator and resident becomes the agreed date.
2.11: Retirement Village Dispute - handled by tribunal s59A(3)	2.60: Is renovation work completed by the agreed date? s 59A(4)
2.13: Reinstatement work to be commenced and then completed by 90 days after the vacation date. s59(2)(c)	2.61: The former resident may apply for order for payment of exit entitlement. s 171. Section 171 applies if— (a) a retirement village scheme operator fails to comply with former section 58(2) or section 59A(4), 60(2), 65 or 67(2); and (b) a former resident of the retirement village is materially prejudiced by the failure. The former resident may apply to the tribunal for an order that the operator pay to the former resident the former resident's exit entitlement. s 171
2.15: Reinstatement work to be commenced and then completed by the agreed time. s59(2)(a)	2.65: Is the unit held as a leasehold interest?
2.16: Does the residency contract state that former resident and operator are to share any capital gain on the sale of the unit?	2.67: 3A. Negotiation of resale value (freehold)
2.17: Operator pays for renovation work. s 59A(5)(b)	2.66: 3. Negotiation of resale value (leasehold)
2.18: Former resident and operator share renovation costs in same proportion as capital gain is to be shared, as per contract. s 59A(5)(a)	

3A. Negotiation of Resale Value - Freehold



Detailed Process Explanation

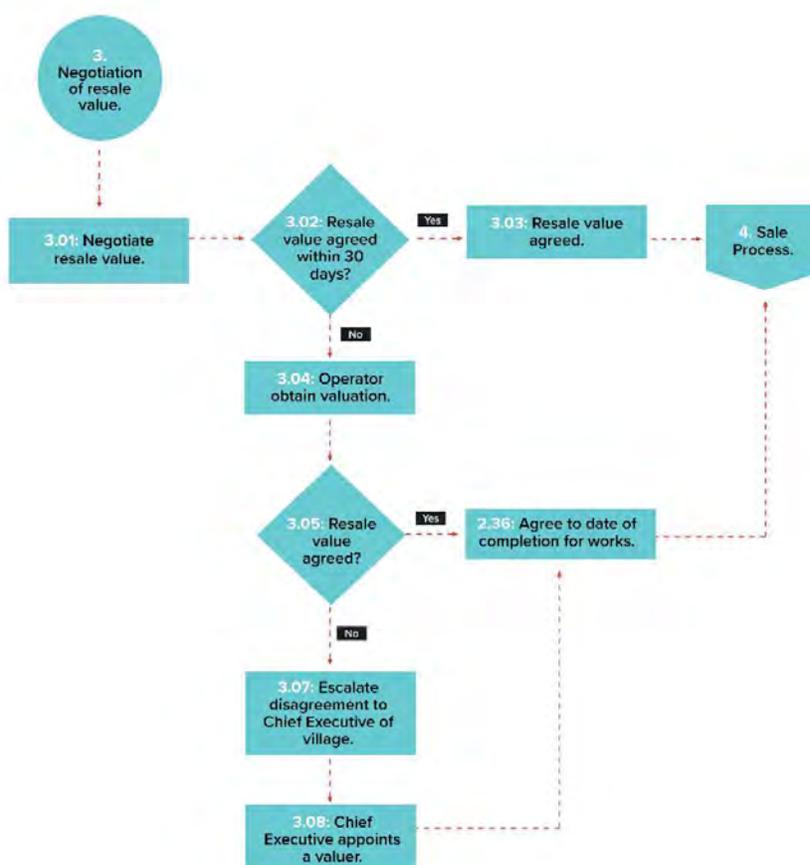
3a.01: Have the scheme operator and the former resident agreed on the resale value of the freehold property within the previous three months? s63(D)(3)

3a.02: The price that is agreed between resident and operator becomes the agreed price. s63(D)(5)

3a.03: The operator must obtain a valuation of the freehold property from a valuer. s63(D)(3)

3a.07: The valuation is completed and this becomes the agreed resale value. S63(D)(4)

3. Negotiation of Resale Value



Detailed Process Explanation

3.01: Within 30 days after the termination date, the former resident and the scheme operator are to negotiate in good faith and, if possible, agree in writing on the resale value of the right to reside in the accommodation unit. s60(1)

3.02: Have the former resident and operator agreed on resale value?

3.03: The price that is agreed between resident and operator becomes the agreed price. s60(1)

3.04: The operator is to obtain a valuation of the right to reside in the unit within the next 14 days. s60(2)

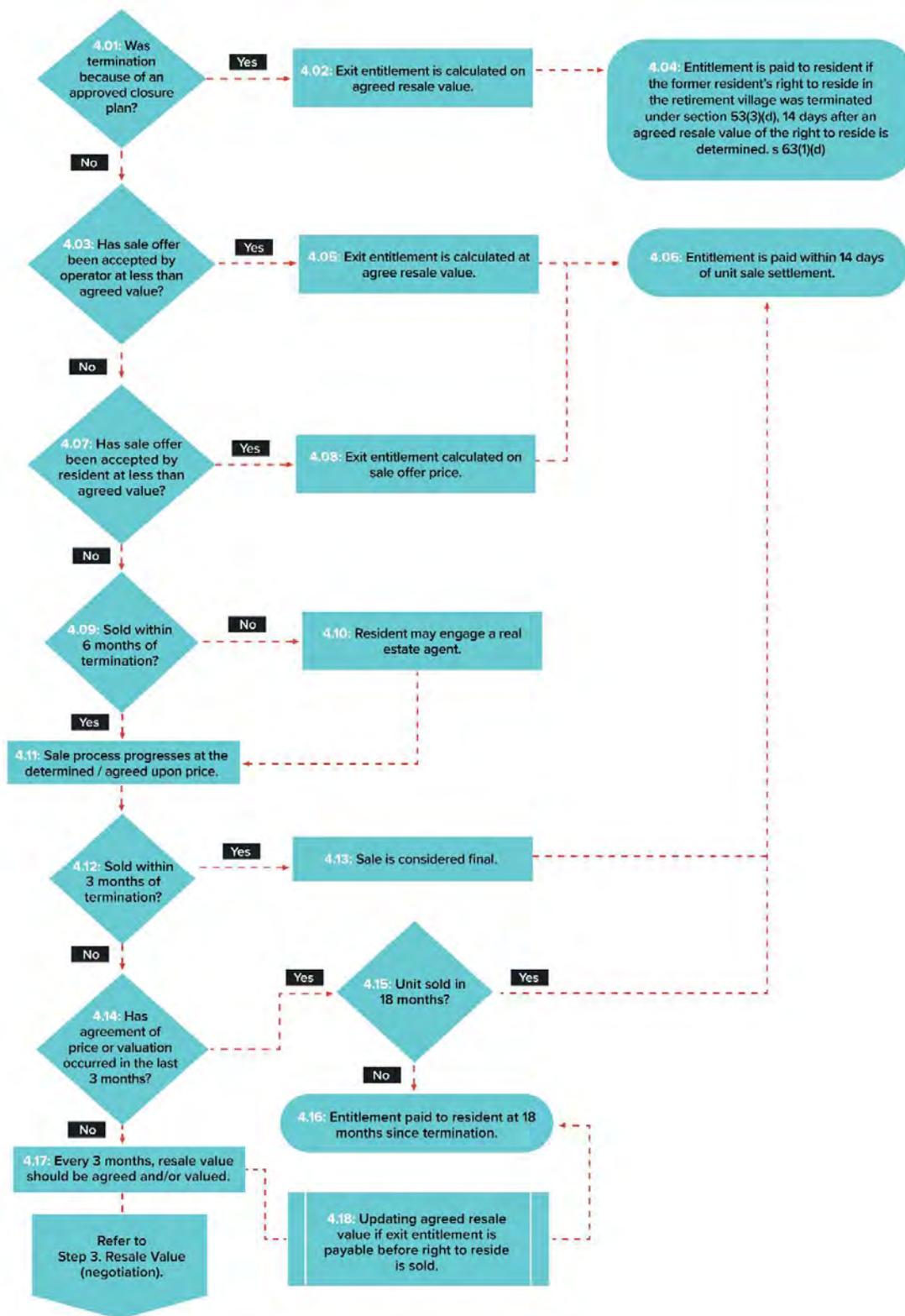
3.05: Have the scheme operator and former resident agreed on the valuer?

3.06: The valuation is completed and this becomes the agreed resale value. s60(3)

3.07: The scheme operator or the former resident must immediately tell the chief executive by written notice s70(2)(a)

3.08: The valuer is to be a registered valuer decided by the chief executive within 14 days after the chief executive receives the notice mentioned above s70(2)(b)

4. Sale Process



Definitions

Capital Gain sharing arrangements means the provisions of the residence contract that state how the resident or former resident, and the scheme operator, are to share any capital gain on the sale of the resident or former resident's interest in the accommodation unit.

Detailed Process Explanation

4.01: Was the former resident's right to reside in the retirement village was terminated under s53(3)(d) "*the operator is implementing an approved closure plan.*"? s66(3)

4.02: The former resident's exit entitlement is to be worked out as if the right to reside was sold at the agreed resale value. s64(1)(2)

4.03: Has the scheme operator accepted an offer for a right to reside less than the agreed value for the right? s66(1)

4.04: Entitlement is paid to resident if the former resident's right to reside in the retirement village was terminated under section 53(3)(d), 14 days after an agreed resale value of the right to reside is determined. s63(1)(d)

4.05: The former resident's exit entitlement is to be worked out as if the right to reside was sold at the agreed value. s66(1)

4.06: Entitlement is paid to resident within 14 days of unit sale settlement. s63(1)(b)

4.07: Has the former resident accepted an offer for a right to reside less than the agreed value? s66(1)

4.08: The former resident's exit entitlement is to be worked out on the amount of the offer. s66(2)

4.09: Has the former resident's right to reside in a particular accommodation unit not sold within 6 months after the termination date? s64(1)(2)

4.10: Resident may engage a real estate agent (cost paid by resident s68(2)). s64(2)

4.11: Sale process progresses at the determined and/or agreed upon price.

4.12: Has the former resident's right to reside in a particular accommodation unit sold within three months after the termination date? s67(1)(a)(i)

4.13: Sale is considered final.

4.14: Has an agreement on price between resident and operator occurred (or a valuation occurred) within the last three months?

4.15: Unit sold in 18 months?

4.16: Entitlement is paid to resident the day that is 18 months after the termination date. s63(1)(c)

4.17: The former resident and the scheme operator are to reconsider the resale value of the right to reside at least every three months and, if possible, agree in writing on a new resale value, which may be the same value. s67(2)

4.18: Updating agreed resale value if exit entitlement is payable before right to reside is sold.

The operator must obtain a valuation of the right to reside from a valuer before, but not more than 14 days before, the day the operator is required to pay the exit entitlement. s67A(2)

A valuation obtained under subsection 67A(2) is taken to be the agreed resale value of the right to reside. s67A(4)

Appendix 8 – Background to amendment to the Act resulting in the buyback provisions

Given the inconsistent nature of reforms to legislation across the eight Australian jurisdictions, the Productivity Commission recommended in its 2011 report, *Caring for Older Australians*, that state and territory governments should pursue nationally consistent retirement village legislation.

The Panel’s review of the differences between the various state and territory legislation in Australia has confirmed this recommendation, with continuing, significant differences between states and territories with respect to exit entitlements.

In Queensland, under s63(1) of the *Act* scheme operators are required to pay former residents their exit entitlements within 18 months of termination (subject to extension upon operator application to QCAT). The rationale for the 18-month period appears to be about achieving balance between resident and operator interests.

Queensland amendments and rationale

An exit entitlement is the amount retirement village scheme operators must pay to, or credit, the former resident when the right to reside in the village is terminated. Debate on the timeframes associated with this payment, focus on the balance of commerciality for scheme operators, given the nature of their business model, and the commonly cited urgent requirement for residents and/or family members to have access to the substantial capital held by the scheme operators.

Cited as the most common cause of distress for elderly former residents and their families by the ARQRV, significant delays in repayment due to extended periods between ownership of the “unit” affect the ability of residents to fund residential aged care deposits or use their capital for alternate housing requirements.²³ The exit fees, or DMF, deducted from exit entitlements represent scheme operators’ primary source of profit, as the profitability of a retirement village is related to the frequency of turnover in units.

In response to this, new provisions on the early payment of resident exit entitlements have been enacted. The *Housing Legislation (Building Better Futures) Amendment Act 2017* amended section 63 of the *Retirement Villages Act 1999* to provide for a maximum period of repayment of the exit entitlement of a former resident of 18 months after the termination date (or such further period as allowed by QCAT on the basis of financial hardship posed to the operator). Subsequently, under the *Health and Other Legislation Amendment Act 2019*, sections 63A and 63B were inserted into the *Retirement Villages Act 1999* to also provide that a freehold owner-resident’s interest must be purchased by the scheme operator within 18 months after the termination date.

The *Health and Other Legislation Amendment Act 2019* also inserted section 171A into the *Retirement Villages Act 1999* to enable scheme operators to apply to the Queensland Civil and Administrative Tribunal for an order extending the period of time for payment of exit entitlements beyond 18 months. Such an order can be made only if QCAT is satisfied that that operator is unlikely to sell the right to reside within that period, and is likely to suffer undue financial hardship if required to pay within that period, and further that the extension would not be unfair to the former resident in terms of the hardship likely to be experienced by the former resident if the extension is granted.

²³ ARQRV Submissions For Review Of The Retirement Villages Act 1999 (QLD.) – Submission 5.
https://www.parliament.qld.gov.au/documents/committees/THLGC/2012/INQ-RVA/submissions/RVA_120920_Submission_5.pdf

In relation to the amendments related to payment of exit entitlements under *the Retirement Villages Act 1999*, the Queensland government has noted the aims of greater clarity and improved processes regarding unit reinstatement and agreeing on a resale value.²⁴

The objectives of the amendments have also been stated as ensuring fairness and consumer protections for people who are either living in, leaving or considering moving into retirement villages, while enabling the continued viability of the industry.²⁵

There is no clear explanation given for the choice of 18 months as the maximum period for repayment of exit entitlements. It is noted that in the Parliamentary Committee *Review of the Retirement Villages Act 1999* published in November 2012, it had been recommended (as Recommendation 34) that the *Act* be amended to ensure that residents receive their exit entitlement from an operator within six months of terminating their right to reside. Further this was only to apply in exceptional circumstances, where the residents would experience severe hardship if they did not receive their entitlements within such period. A six month maximum period for repayment of entitlements applies in the Australian Capital Territory, New South Wales, Northern Territory, Victoria and Tasmania, subject to a maximum further extension in Tasmania of 12 months upon application by the operator to the Director of Consumer Affairs and Fair Trading.

It is assumed that the 18-month repayment period in Queensland was regarded as the most appropriate period to achieve a balance between the interests of both residents and operators, to “provide greater security to residents, balanced against ongoing industry viability.”²⁶

²⁴ See Housing Legislation (Building Better Futures) Amendment Act (QLD) 2017, <https://www.hpw.qld.gov.au/news-publications/legislation/retirement-villages>

²⁵ Retirement Villages (Transitional) Regulation 2019 Explanatory notes for Subordinate Legislation 2019 No. 256 made under the Retirement Villages Act 1999 <https://www.legislation.qld.gov.au/view/pdf/published.exp/sl-2019-0256>

²⁶ Report No. 48, 55th Parliament- Housing Legislation (Building Better Futures) Amendment Bill 2017, <https://www.parliament.qld.gov.au/work-of-committees/former-committees/TUC/inquiries/past-inquiries/l48HsngBetterFutures>

Appendix 9 - Dispute resolution process under the Act

Table 16. Summary of the process and remedy for different types of disputes under the Act.

Type of dispute/ issue	Process	Remedy
1. Scheme operator seeking extension of time to pay exit entitlements due under section 63, or to purchase freehold interest as required under section 63A, making the application under section 171A	Scheme operator applies to QCAT under section 171A for an order extending the time by which the operator must pay the exit entitlement or complete the purchase of the freehold interest	Under sections 171A and 195, QCAT makes an order fixing a later day for payment (including possibly an order to pay by instalments) if satisfied that: <ul style="list-style-type: none"> (a) The operator is unlikely to be able to sell the right to reside before the payment date; AND (b) If the order is not made, the operator is likely to suffer undue financial hardship; AND (c) The order would not be unfair to the former resident, in terms of hardship he or she is likely to suffer if the order is made.
2. Former resident seeking order for payment of exit entitlement under section 171	Resident applies to QCAT for an order that the operator pay the former resident's exit entitlement under section 171, where the operator has failed to undertake renovation work as agreed in accordance with section 59A; or the operator has failed to obtain a valuation as required where the parties can't agree in accordance with section 60A(2); or the operator has failed to inform the resident of offers received and steps taken to promote the sale etc in accordance with section 65.	Under section 171(1)(b), the order can only be made where the former resident is materially prejudiced by the failure of the operator to meet its obligations. Under section 194 when making the order QCAT must base the exit entitlement on a resale value agreed by the operator and resident or the tribunal must obtain an independent valuation of the right to reside.
3. Under section 167 (2), a party to a building work dispute or mandatory buyback dispute may apply to QCAT (even if they have not first attempted to resolve through negotiation and mediation as required for other types of residential village disputes under section 167)	Operator or resident who are parties to a mandatory buy-back dispute can apply to QCAT for an order under section 167(2)	Under section 191, QCAT may make the orders it considers just to resolve the issue, including for example an enforcement order or payment order.

Type of dispute/ issue	Process	Remedy
<p>4. Resident seeking order in response to threat of removal from village, deprivation of right to reside in village or restricted use of village land, under section 169</p>	<p>Resident applies to QCAT for an order 'that the scheme operator do, or not do, a stated thing' under section 169(1)</p>	<p>Under section 192, QCAT can make the order sought if satisfied that:</p> <ul style="list-style-type: none"> (a) The threatened removal etc would be a breach of the residence contract; OR (b) It would not be reasonably justified. <p>QCAT may have regard to the rights and interest of all persons who may be affected if the order is made.</p>
<p>5. Resident seeking order to have the residence contract set aside under section 170, where the operator has not disclosed prescribed information as required under section 84, or has engaged in misleading or deceptive conduct under section 86.</p>	<p>Resident applies to QCAT under section 193 for the order to have the residence contract set aside.</p>	<p>Under section 193, QCAT can make the order setting aside the contract and such other orders as it considers appropriate including for the refund of any ingoing contribution or other amount paid under the contract or for compensation for loss caused by the operator's contravention.</p>
<p>6. Any other retirement village dispute- section 21 defines a retirement village dispute as a dispute between a scheme operator and a resident of a retirement village about the parties' rights and obligations under the resident's residence contract or the Act.</p>	<p>Parties to the dispute must first attempt to resolve through negotiation under section 154. The dispute can then be referred to QCAT for mediation under section 156. (Under section 158 the mediator is to be appointed within 14 days of receipt of the dispute notice by the QCAT registrar, and 7 days' notice of the mediation conference must be given). Section 161 provides that a party to a dispute cannot be compelled to attend a mediation conference. If a party does not attend or the mediation does not resolve the dispute, (or the matter is not settled within four months of the dispute notice being filed) then under section 167, a party to the dispute may apply to QCAT.</p>	<p>If matter proceeds to an application to QCAT, under section 191 QCAT may make the orders it considers just to resolve the issue, including for example an enforcement order or payment order.</p>

Appendix 10 – Summary of retirement village exit payment timeframes for Australian states & territories

Table 17. Comparative analysis of the legislation that governs the timing of exit entitlement payments in Australian states and territories.

State / Territory	Timing regarding payment of exit entitlements	Website	Relevant Legislation
QLD	<p>Under section 63, exit entitlements must be paid to former residents upon the date which is the earliest of: the day it must be paid under the residence contract; 14 days after settlement of the sale of the right to reside; or 18 months after termination of the right to reside unless that period is extended by QCAT (therefore 18 months after termination is the latest date for payment of the exit entitlement subject only to extension by QCAT).</p> <p>Note that the resident's exit entitlement is protected by a charge under section 118 and a resident may seek a court order for payment, and then an order for the land to be sold to enable payment (if payment under the original order is not made within six months), under section 120, provided the amount secured by the charge is at least \$10,000.</p> <p>Under section 63A, in the case of termination of a former resident's freehold interest in the accommodation, the operator must enter into a contract to purchase the residence on whichever is the latest date of: 14 days after sighting probate of deceased former resident, 18 months after termination or date fixed by QCAT (unless the property is sold to a person other than the operator before such date).</p>	<p>https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/operating-retirement-village</p>	<p>Retirement Villages Act 1999 (as amended)</p>
ACT	<p>Under section 235, where former residents are registered interest holders (registered owners of freehold or registered long term sub-lease- 50 years or more)- within 14 days of sale of premises or purchase by the operator, or within 14 days of a person taking up residence with the operator's consent, operator must make payment to former resident of amounts owing.</p> <p>Under section 238, where not registered interest holders, refund relating to ingoing contribution (what is called an exit entitlement under Qld legislation), on the earliest of: date stated in agreement, 14 days after receiving payment from incoming resident, 14 days after entering into tenancy agreement with incoming resident, 6 months after former resident delivered up vacant possession. Also note that in the case of residents who are not registered interest holders, section 242 provides that the refundable part of the ingoing contribution is protected by a charge over the land in the retirement village. (where that refundable part exceeds \$10,000 in accordance with section 58 of the Retirement Villages Regulation 2013).</p>	<p>https://www.accesscanberra.act.gov.au</p>	<p>Retirement Villages Act 2012</p>

State / Territory	Timing regarding payment of exit entitlements	Website	Relevant Legislation
NSW	<p>Under section 180, where registered interest holders (registered owner of freehold or has a registered long term lease – 50 years or more), within 14 days of sale of premises or purchase by the operator, or within 14 days of a person taking up residence with the operator’s consent, operator must make payment to former resident.²⁷</p> <p>Under section 181, where not registered interest holders, refund relating to ingoing contribution (what is called an exit entitlement under Qld legislation), on the earliest of: date stated in agreement, 14 days after receiving payment from incoming resident, 14 days after entering into tenancy agreement with incoming resident, six months after former resident delivered up vacant possession. Also note that in the case of residents who are not registered interest holders, section 182B provides that the refundable part of the ingoing contribution is protected by a charge over the land in the retirement village (where that refundable part exceeds \$10,000 in accordance with section 50 of the Retirement Villages Regulation 2017).</p>	https://www.fairtrading.nsw.gov.au/housing-and-property/retirement-villages/leaving-a-retirement-village	Retirement Villages Act 1999
NT	<p>The part of the ‘premium’ paid by resident (for admission as a resident or for purchase) that resident is entitled to recover (cf exit entitlement) operates as a charge on the land under section 12(4), and under the Retirement Villages Regulations 1995 is payable at the earliest of the following times: where the resident has terminated: within six months of receiving notice of intention to terminate; or within 14 days of the premises being occupied by a resident who has paid to enter the village. (section 36, Regulations)</p>	<p>No government website with information available</p>	Retirement Villages Act 1995
SA	<p>Under section 27, exit entitlements are payable on the earliest of: specified contract conditions being fulfilled; a period of 18 months since the resident ceased to reside in the retirement village; a period of not less than 18 months since the resident gave notice that they intended to cease to reside in the retirement village but wished to remain in occupation until the exit entitlement had become payable, and it has been not less than three months since vacant possession; the operator agrees to pay. The 18-month period may be extended by the SA Civil and Administrative Tribunal on the basis of financial hardship being likely to be suffered by the operator.</p>	https://www.sa.gov.au/_data/assets/pdf_file/0008/392840/Operator-Exit-Entitlements.pdf	Retirement Villages Act 2016
TAS	<p>Under section 12, the operator must refund the amount to which the resident is entitled on the earliest of: within six months after resident dies, or within 6 months of the notice of termination of contract or, under section 13, such extended period as granted by the Director of Consumer Affairs and Fair Trading (not exceeding a further period of 12 months) on grounds of serious</p>	https://www.cbos.tas.gov.au/topics/housing/retirement-villages#What-happens-when-you-leave-a-retirement-village?	Retirement Villages Act 2004

²⁷ Reforms will stipulate a buyback period of **six months for metropolitan areas and 12 months for regional areas**. (Legislative reforms by Minister for Better Regulation to be enacted in late 2020. <https://www.nsw.gov.au/media-releases/reforms-deliver-fairer-simpler-retirement-village-fees>)

State / Territory	Timing regarding payment of exit entitlements	Website	Relevant Legislation
	hardship of the operator, or within 30 days after resale or reoccupation of the residential premises. Under section 12, the operator must also take all reasonable steps for resale or reoccupation of the residential premises.		
VIC	<p>Where a refundable in-going contribution is paid for a residence right (not freehold) in a retirement village, a charge to secure that contribution is created under section 29. Under section 26(2)(b), for a non-owner resident, entitled to recover in-going contribution not more than 14 days of payment being made under a residence contract at least equivalent to amount owed to non-owner resident after non-owner resident has delivered up vacant possession; OR not more than 14 days after day on which another person takes up residence after non-owner has delivered vacant possession; OR on a day not more than six months after non-owner resident has delivered vacant possession.</p> <p>Under section 26(2)(a), for owner-resident, entitled to recover amount not more than 14 days after purchase from owner resident is completed; OR not more than 14 days after a person takes up residence in accordance with the contract for the purchase of the residence.</p>	https://www.consumer.vic.gov.au/housing/retirement-villages/fees-and-charges/fees-and-charges-leaving-a-retirement-village	Retirement Villages Act 1986
WA	Section 18 refers to 'premium' (payment for admission as a resident including purchase of residential premises) which under section 20 gives rise to a charge on the land for non-owner residents. Premium will be repaid under section 19 where place formerly occupied by resident is subsequently occupied by another person- within seven days of that person taking occupation; or within 45 days of day on which resident ceases to reside at that place; PROVIDED contract has been terminated in accordance with the contract AND the resident does not have a right to appoint to appoint their own agent to dispose of the resident's interest.	https://www.commerce.wa.gov.au/consumer-protection/moving-out-retirement-village	Retirement Villages Act 1992

Table 18. Comparative analysis of exit payment processes for Australian states and territories.

State / Territory	Other aspects of process
a. Termination	
QLD	Section 52 provides that a resident may terminate their right to reside by one month's written notice to the scheme operator; and section 53 provides that a scheme operator may terminate a resident's right to reside on 14 days' notice where the resident has intentionally or recklessly injured or harmed persons or property, or on two months' notice where the resident has committed a material breach of contract, the resident has abandoned their right to reside or the accommodation is unsuitable given aged care needs, or the operator is implementing an approved closure plan.
ACT	Under section 182, if the resident is a registered interest holder (registered owners of freehold or registered long term lease- 50 years or more) then the contract ends when the sale of the premises is completed. If the resident is not a registered interest holder, the contract ends on the day the resident permanently vacates the residence. The resident must provide the operator with at least one month's written notice of the intention to vacate the premises.
NSW	Under section 129 (1) and (1A) if the resident is a registered interest holder (registered owner of freehold or has a registered long term lease – 50 years or more), the residence right ends when the sale of the premises is completed, or the long-term lease is assigned. Under section 129(2) if the resident is not a registered interest holder, the residence right terminates when the resident vacated the premises or on death of the last surviving resident of the premises.
NT	Under section 14, the resident's right of occupation is terminated when they die, when they terminate in accordance with their residence contract, when they abandon the premises or the residence is terminated by the Court (for example on medical grounds or for breach of contract).
SA	Under section 44, a resident's right of occupation is terminated by the resident dying, the resident terminating the contract or ceasing to reside in the village, or the operator terminates for example due to breach of contract by the resident or the residence becoming unsuitable due to the resident's mental or physical incapacity.
TAS	Under section 8, a resident's right of occupation is terminated by the resident dying, terminating the residence contract or ceasing to reside in the retirement village; or by the operator for example where the resident commits a serious breach of contract or the residence becomes unsuitable for the resident due to mental or physical incapacity.
VIC	Under section 16, the owner may terminate on 28 days' notice for breach of contract, or 14 days' notice where the residence is unsuitable for the resident's health needs, or on six months' notice where the resident's right is under a periodic tenancy. Under section 11(2) (r) of the Regulations, the residence contract must stipulate how the contract may be terminated including any minimum advance notice.

WA	Under section 17, The resident’s right of occupation can be terminated when the resident dies, the resident abandons the premises, the contract is terminated by the resident, or the contract is terminated by the State Administrative Tribunal.
b. Reinstatement	
QLD	Under section 58, the former resident must leave the unit in the same condition as it was in when the former resident started occupation, subject to fair wear and tear and approved renovations/ changes (unless the right to reside was terminated by the scheme operator under an approved closure plan). This does not apply to a residence contract in effect before commencement of the 2017 amendments- the previous (now repealed) section 58 applies which required a reinstatement to ‘marketable condition’ having regard to the age of the unit and its general condition compared with other units in the village. Under section 59, the reinstatement work must be carried out within 90 days of the vacation date or such later time as agreed by the resident and operator.
ACT	Under section 219 a former occupant must leave the premises as nearly as possible in the same condition as set out in the condition report (completed at the commencement of occupation), excluding fair wear and tear and consented to renovations/ alterations. This does not apply to a former occupant who is a registered interest holder (registered owners of freehold or registered long term lease- 50 years or more).
NSW	Under section 163, a former occupant must leave the premises in as nearly as possible the same condition as at the beginning of the residence contract, consistent with the condition report, allowing for fair wear and tear and consented to renovations/ alterations. This does not apply to a former occupant who is a registered interest holder (registered owners of freehold or registered long term lease- 50 years or more).
NT	Under the Retirement Villages Code of Practice, which is Schedule 2 to the Retirement Villages Regulations 1995, the operator must disclose “who bears the cost of capital replacement, major repairs and long terms maintenance in individual units.”
SA	Under the Retirement Villages Regulations 2017, section 17, the operator’s remarketing policy must set out procedures to identify any work that should be undertaken to ensure that the residence is in a reasonable condition for remarketing, and to determine when and how such work will be done and who will be responsible for the work and its cost. Section 16 requires a vacated premises report to be completed by the operator not more than 10 business days after a person ceases to reside in a residence, providing detailed information about the condition of the fixtures, fitting and furnishings. Under section 23 of the Act there must be a premises condition report completed not more than 10 business days after a person enters into occupation of a residence, providing at that time detailed information about the condition of the fixtures, fittings and furnishings provided in the residence.
TAS	Neither the Act nor the Retirement Villages Regulations 2015 provide for reinstatement. Schedule 1 to the Act sets out matters to be dealt with in the residence contract including the refund amount will be calculated under section 12.
VIC	The Retirement Villages Act 1986 does not regulate unit reinstatement or renovation when a resident departs a village. However, the Retirement Villages (Contractual Arrangements) Regulations 2017 provide in section 11(2)(q) that the residence contract must provide for what renovation or reinstatement of the resident’s premises will be required and who is liable for the cost.

WA	Under section 7G of the Retirement Villages Regulations 1992, the residence contract must include a provision setting out who is responsible for arranging to refurbish the residential premises if the resident permanently vacates the premises.
c. Resale Value	
QLD	Under section 60, within 30 days of the termination date, the operator and former resident are to agree on the resale value. If they cannot agree the scheme operator is to obtain a valuation from a valuer within a further 14 days. Under section 67, the operator and former resident are to agree the resale value every three months and if they cannot agree, the operator is to obtain a valuation within a further 14 days.
ACT	Under section 223, the former resident who is a registered interest owner may set the sale price.
NSW	Under section 168, the former resident who is a registered interest owner may set the sale price.
NT	Under the Retirement Villages Code of Practice, which is Schedule 2 to the Retirement Villages Regulations 1995, the operator must disclose whether there are “any restrictions on the resident on the sale of her/ his unit? What happens if there is a dispute over the sale price?”
SA	Under section 27(16), if a resident of a retirement village disagrees with the operator’s determination of the market value of the right to reside in a residence made for the purposes of determining an exit entitlement, the resident may require the operator to obtain an independent valuation (half of the costs of which are recoverable from the resident).
TAS	Not specified.
VIC	Under section 32B the owner-resident may set the sale price and appoint a selling agent of their choice or may appoint the manager of the retirement village and may (but is not obliged to) let the manager set the sale price.
WA	Not explicitly dealt with. Under section 7F Regulations the residence contract must set out how the repayment of any premium on termination of the residence contract is to be calculated. (Premium can include residential purchase price).