

13 February 2025

To: Byron Karemba
Department of Energy, Mines, Industry Regulation and Safety
Consumer Protection Division
140 William Street, Perth WA 6000

Dear Byron,

RE: Retirement Village Regulations – Consultation Paper #4

Thank you for the invitation to provide a submission on the Retirement Village Regulations Consultation Paper #4 covering:

- Exit entitlements and buybacks.
- Reinstatement and renovation of residential premises.
- Property condition reports.

Ageing Australia is the national industry association for over 1,000 aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

The intent behind the proposed regulations is acknowledged, particularly in enhancing transparency and consumer protections. However, aspects of the changes could create unintended administrative challenges for operators. Clarification in certain areas would help ensure the requirements are both practical and sustainable, without imposing unnecessary costs on operators or residents. Below, we outline our responses to the consultation questions with a focus on workable and balanced solutions.

Payment of exit entitlements – information to be contained in an exit entitlement statement

Question 1: Do you agree with the information proposed to be included in an exit entitlement statement?

Timing of payment and considerations for estates and probate

We acknowledge the intent of the proposed regulations to enhance transparency in the calculation of exit entitlements. However, we seek further consideration on several key issues.

The proposed regulations outline the information required in an exit entitlement statement but do not specify when payment of the exit entitlement must occur. There is a need for clear provisions addressing situations where the former resident has passed away, and probate has not yet been granted. Some operators currently delay payment until probate is finalised, which can significantly impact the estate's ability to manage financial affairs. We request further clarification on whether this has been considered and whether provisions will be included to ensure timely payment.

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Additionally, we recommend provisions that address:

- The timeframe for payment of the exit entitlement.
- Requirements for operators to release payments in stages or provide interim payments where probate is delayed.
- Whether operators can impose additional conditions or delays based on probate finalisation.

We note that ongoing recurrent charges remain payable while probate is pending. In some cases, such delays can be prolonged due to complexities in managing international estates. We are aware of various examples where a deceased resident's estate is managed by distant family in other countries, with the probate process extending beyond eight months.

In such cases, village operators continue to bear the costs associated with maintaining the premises, including garden upkeep and general presentation to facilitate resale. However, there is no clear provision for recouping these costs when the estate is delayed due to external factors.

Clarification on terminology – “former resident” vs. “exiting resident”

The proposed regulations state that the exit fee is payable by the “former resident”. We believe this terminology requires revision, as it may not be appropriate when the resident has passed away.

We propose the term “exiting resident” be used instead, as it better captures the context of a resident leaving the village, regardless of whether they are alive or deceased. The clarification ensures that the regulations reflect the legal and operational realities of managing exit entitlements.

Interest rate on recurrent charges where a former resident opts to pay charges via a deduction from an exit entitlement

Question 2: Do you agree that the prescribed rate should continue to be determined with reference to the maximum permissible interest rate worked out in accordance with the Fees and Payments Principles made under section 96-1 of the Aged Care Act 1997 (Cth)?

Our members are satisfied with maintaining consistency across Retirement Living and Residential Aged Care. However, with the new Aged Care Act coming into effect in July this year, there is some uncertainty as key rules and regulations are yet to be released.

Having a single prescribed rate ensures clarity and uniformity for all stakeholders. If an operator wishes to apply a lesser rate, that should be at their discretion.

A key concern is in cases where a resident passes away unexpectedly, families are often unprepared to handle immediate financial matters – including payment of recurrent charges. The ability to defer these payments and deduct them from the exit entitlement allows families to focus on more pressing issues, such as estate management and personal arrangements. We support the continuation of this approach as it provides necessary financial flexibility.

Operator's payment of exit entitlement for aged care

Question 3: Do you agree with the proposed regulations to enable a resident to request an exit entitlement to be paid to an aged care facility?

Are there any unintended consequences you have identified from the regulations proposed in this context.

We agree with the intention of the proposed regulations to enable a resident to request an operator to advance an unpaid exit entitlement to an aged care provider for daily accommodation payments. However, several areas require further clarity and refinement to ensure fair and practical implementation

Clarity on eligibility and timing

- There needs to be a clear distinction that these payments are not an operator's payment of an exit entitlement for aged care but rather the utilisation of the exit entitlement for accommodation charges.
- It should be explicitly stated whether the resident must be the last occupant of the unit before such a request can be made.
- The regulation should clearly state that payments should only commence once the resident has entered aged care as a permanent aged care resident.
- The provision that requires operators to pay daily accommodation charges 28 days in advance should be removed, as operators should not be required to make payments before a resident has actually entered aged care.
- If a resident entering aged care is paying a means-tested care fee (meaning that they have been assessed by Services Australia as having adequate income and assets over and above the family home to pay a means tested fee), they should not be eligible for this provision. Additionally, it is unreasonable for operators to pay a resident's daily accommodation payment if the resident qualifies for admission as a supported resident (meaning that this payment is partly or wholly subsidised by federal government).

Consent, capacity and legal considerations

- The regulations should specify that requests for exit entitlement payments must be made using an approved consent form, which should be provided by the regulator.
- There must be explicit provisions addressing residents with diminished capacity, ensuring appropriate legal authorisation is in place before payments are made.
- There should be clear safeguards for operators if probate is required, particularly if an estate dispute arises.

Operational and financial considerations for operators

- The requirement for an operator to make payments until 85% of the estimated exit entitlement is reached may not be practical. Exit entitlements often require refurbishment and sale of the unit, meaning the actual value may not be determined for some time.
- The 85% threshold is overly broad and may be interpreted to include all fees or exit fees. This lack of clarity could lead to disputes between operators and residents.
- The regulation should allow payments to commence within 28 days of the resident entering aged care rather than being based on an arbitrary estimate

- The financial burden of processing these payments should be considered, particularly for small operators. We propose the introduction of an administration fee to recover reasonable costs associated with managing these transactions.
- In WA, hospitals and transition care services are placing increasing pressure on families to move residents quickly, and operators are often left to manage financial complexities that families are unprepared for.
- Retirement village operators should not be responsible for monitoring residents' circumstances to determine when payments are due. While this may be more manageable for operators who also provide residential care or are part of a co-located facility, the administrative burden is unreasonable for smaller operators and those without affiliated aged care services.

The proposed regulations place operators in a position where they effectively act as financial intermediaries or 'bankers' for residents transitioning into aged care. Operators are required to advance payments on behalf of former residents before receiving funds from the exit entitlement. This creates financial and administrative burdens, particularly for smaller operators who must manage these transactions without immediate access to the necessary funds.

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

Question 4: Do you agree with the information to be included in a renovation plan outlined in Attachment A.

We acknowledge the proposed renovation plan requirements - however, we raise several key concerns regarding timelines, legal clarity and definitions that may impact operators and residents.

Timelines and constraints

- The requirement to complete a renovation plan within 60 days before the operator is required to pay the exit entitlement is problematic in cases where probate or public advocates are involved. There must be provisions to address delays caused by external factors beyond the control of the operator.
- The effective sales period for operators is reduced from 12 months to approximately 10 months, as the 60-day timeline compresses the available window for preparing and marketing the premises.

Legal considerations for residents

- There is no time constraint on residents to sign off on the renovation plan, which could cause indefinite delays. A mechanism should be introduced where, if a resident does not respond within a reasonable timeframe, the plan is deemed not accepted.
- Provisions should be included to prevent indefinite extensions due to instances where residents need to consult with legal representatives which could take a long period of time.

Clarity on reinstatement vs. renovation

- The definitions of reinstatement and renovation need to be more precise to avoid ambiguity.
- Reinstatement should cover returning the premises to the condition they were in when the resident moved in, excluding fair wear and tear.
- Renovation should clearly apply only to improvements beyond reinstatement.

- Example: If a resident initially had high-quality benchtops, but they now have burns or chips, replacing them should be a reinstatement cost, not a renovation, as it restores the original condition rather than enhancing it.
- The concept of fair wear and tear introduces uncertainty. If an operator replaces carpets every six years as standard practice, requiring reinstatement within seven years should be clarified as the operator's responsibility.

Operator responsibilities and communication

- The phrase: "The operator of the retirement village may require the resident to pay for renovation of the resident's residential premises if:" needs to be refined. The criteria for determining when a resident is responsible should be clearly outlined in their resident agreement.
- Reinstatement requirements should be explicitly agreed upon and communicated with clear deadlines for completion.
- A renovation plan should only be applicable if the resident is contributing to the cost of renovations. If the resident is not financially involved, then the process should remain solely at the operator's discretion.
- A clear dispute resolution process should be included to address disagreements related to renovations and reinstatement.

We support the introduction of a renovation plan but recommend the following refinements:

1. Introduce provisions for delays caused by probate or public advocate involvement.
2. Specify a clear timeframe for residents to respond to renovation plans to avoid indefinite delays.
3. Clarify the difference between reinstatement and renovation, particularly in cases where damage goes beyond fair wear and tear.
4. Ensure operators are not obligated to include residents in renovation decisions unless they are contributing to costs.
5. Remove ambiguity in operator obligations by aligning renovation requirements with resident agreements.

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

Question 5: Do you agree with the information to be included in the property condition reports as shown in Attachment B and C? If not, please explain why.

We acknowledge the importance of property condition reports in ensuring transparency at the commencement and conclusion of residency. However, we identify several areas requiring clarification and refinement to improve usability and efficiency.

Consistency and format issues

- The format of the forms appears inconsistent. For example, some sections use "clean, working and undamaged," while others use "clean, undamaged, unworking." The terminology should be standardised across both the entry and exit reports to avoid confusion.
- The layout of the forms should remain consistent across different property types, ensuring uniformity between reports for one-bedroom, two-bedroom, or three-bedroom units, including ensuites and additional rooms

Provision and return of reports

- The requirement to provide two copies of the entry condition report to the resident is unnecessary. Instead, the resident should receive one copy to mark up and return. Once agreed upon, the operator should provide the resident with a final signed copy.
- If a resident does not return the marked-up report within 28 days, it should be deemed that they have accepted the report as presented. This ensures timely resolution and avoids indefinite delays.

Timelines for completion and return of reports

- Under Section 14D(4), there is no defined timeframe for the operator to return the exit property condition report to the departing resident. We propose a seven-day timeframe for the operator to provide the report post-inspection.
- The entry condition report should be completed before a resident moves in to ensure any disputes are resolved prior to occupancy.

Early entry considerations

- The regulations should clarify the implications of early entry in cases where a resident settles early or books removalists before their official move-in date. There should be provisions to handle such scenarios while ensuring the condition report remains accurate.

Capital gain

- The qualification of capital gains for residents is ambiguous and needs clarification. It is unclear whether the capital gain is proportional to the ingoing contribution or tied to the actual capital appreciation of the property. If there are lease arrangements without capital gain entitlements, applying capital gain provisions retrospectively would be inappropriate. This section should be revised to state "share of capital gain, if the resident is entitled to it as per their contract."

Coverage and responsibilities

- Where the entry condition report outlines areas included in the resident's responsibility, it should explicitly include all areas the resident will occupy and maintain, such as gardens.

We support the introduction of entry and exit property condition reports but recommend the following amendments:

1. Standardise terminology and formatting across all forms to avoid inconsistencies.
2. Reduce the number of copies provided to the resident and streamline the return process.
3. Introduce a 28-day deemed acceptance clause if the resident does not return the marked-up entry report.
4. Define a seven-day timeframe for operators to provide exit condition reports after inspection.
5. Ensure entry condition reports are completed before the resident moves in to prevent disputes.
6. Clarify early entry provisions for residents who take possession ahead of their official start date.

7. Explicitly state that all resident-occupied areas, including gardens, should be covered in the entry report.

If you have any further questions or would like to discuss, please contact Mark Prosser, Director Retirement Living & Seniors Housing at mark.prosser@ageingaustralia.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Prosser', with a stylized flourish at the end.

Mark Prosser
Director Retirement Living & Seniors Housing