LASA
LEADING AGE SERVICES AUSTRALIA
The voice of aged care

18 MONTH PAYMENT OF EXIT ENTITLEMENT IN QLD

LASA Submission, 31 August 2020

A strong voice and a helping hand for all providers of age services

Leading Age Services Australia

Leading Age Services Australia (LASA) is a national association for all providers of age services across residential care, home care and retirement living/seniors housing. Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion – always.

LASA's membership base is made up of organisations providing care, support and services to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 55% of our Members are not-for-profit, 37% are for-profit providers and 8% of our Members are government providers. Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

The review of the payment of exit entitlements in Qld is welcomed and LASA has the following key matters to raise for the panels consideration:

1. No Reduction to the time frame of 18 months.

LASA is not against having a 'buy back' requirement but recognises the challenges on cash flow for small operators when there is insufficient time to sell a unit if the time frame is short, such as 6-12 months. There are many and varied cases where residents or their families can take months to vacate a unit, often leaving personal belongings such as furniture and clothing. They will write letters to operators saying they are donating the items with no intention of collecting it. This all chews up time where the operator cannot gain access to commence refurbishment in preparation for sale. Refurbishment can take 3-4 months and given the above scenario 6-8 months could have elapsed before the unit is ready for sale.

We are cognisant that many large operators such as Lend lease, Aveo, Stockland and others offer short time frames in their contracts such as 6 months. These organisations have deep, healthy balance sheets and can afford multiple buy backs at one time, unlike small stand-alone operators, who don't have such deep pockets and are the very foundation of accommodation for senior Australians across Queensland. Without at least 18 months we may well see more operators going into administration due to the inability to buy back multiple units without a sale. This has negative consequences for the residents of these villages who see their unit devalued ready for liquidation.

LASA's position is to maintain the 18 month timeframe to provide reasonable time for families to vacate, refurbishment to take place, marketing commenced and a sale achieved at the right price for the outgoing resident. It is also suggested that the clock does not start ticking on the 18 months time frame until the operator has vacant possession, meaning the unit is empty and the keys have been handed back.

2. Strata Units not to be included

It was clear when the legislation commenced that Strata units were not included. A minority of residents went to the media with headlines stating strata operators are utilising a loophole to avoid buy backs. A knee-jerk reaction to save face saw the Minister then include Strata.

Strata units should not be caught up in this legislation. NSW once again, through appropriate consultation with all stakeholders has come up with the right buy back scope in their legislation – strata is not included.

Residents in a retirement village with strata ownership 'own' their unit. They maintain control of the sale process, can appoint an agent, can set the price and in the majority of cases take 100% of the sale price. This is in stark contrast to most residents in Qld in retirement villages who are under a loan/licence arrangement where they don't own the property but simply 'leasing' the property on a lifetime lease. The 'ingoing contribution' a resident has paid is like a bond, with the deferred management fee (DMF) or lease payment being taken out of the bond and the balance returned as the 'Exit entitlement'. We have seen a Gold Coast operator already have to sell her own home to try and pay out exit entitlements to families. LASA has received letters from the residents committee who are watching the decline of both their village asset and their valuations and they are very much against the buyback legislation and what it has done to their village and valuations.

3. Hardship Provision scope to be extended

The Hardship offering to operators is not a solution. No operator wants to put up their hand and seek hardship. That immediately says to potential residents that this operator is under financial stress, it triggers concern and investigation by creditors and subsequently there is a backlash by the market and nobody wants to buy a unit in that village and their plight worsens.

LASA would like to see the 'Hardship' provision extended beyond just financial hardship as a trigger for operators to apply to QCAT. It may be difficult to sell due a 'global pandemic' or economic factors in a regional or remote setting where enquiries are limited, despite the operator doing everything possible to market and sell the unit. Financial hardship is not the only factor nor should it be the pre-requisite for an application to QCAT.

The panel should note the NSW buy back requirements recently announced. They have been designed to allow operators to apply for an extension of time due to other extenuating reasons such as a depressed market, without 'hardship' being the trigger.

4. Valuations

The sector in Qld lacks experienced valuers who understand how to value retirement village units. The requirement for a valuation within 14 days after the parties agree to disagree is totally impractical and in most cases cannot be achieved. LASA seeks an amendment to the legislation to extend the valuation time to at least 30 days (S.60[2]) to allow time to appoint an independent and knowledgeable valuer.

Given the shortage of experienced Retirement village valuers it is difficult to find one that has not had a past relationship with the operator in that region. S.70A of the Act calls for independence when it is difficult to achieve, especially in such a short 14 day time frame. Such impractical legislation renders operators non-compliant due to no fault of their own.

5. Resident appoints an agent

The Act allows a resident to appoint an agent after 6 months. If a resident chooses to take control of the sale process after 6 months and/or appoint an agent, the operator's requirement to buy-back should cease. They cannot be responsible for achieving a sale when it has been removed from their control.

CONTACT

Paul Murphy is LASA's Principal Advisor – Retirement Living & Seniors Housing and can be contacted for further information or clarity in this submission.

Paul Murphy.

E: paulm@lasa.asn.au

M: 0437 336635