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22 June 2015

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Aged Care Bond rule

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the request made by Jane Garrett MP, Minister for Consumer Affairs, to examine the changes made in 2014 to the aged care payment system and whether they impact on the aged care rule contained in the *Retirement Villages (Contractual Arrangements) Regulations 2006.*

HAAG would like to acknowledge that we support the submission compiled by Residents of Retirement Villages Victoria (**RRVV**) in conjunction with Consumer Action Law Centre (**CALC)** and Council on the Ageing (**COTA**). We are working collaboratively in preparation for the roundtable organised by Consumer Affairs Victoria (**CAV**) to discuss this matter further.

The basis of this submission is that the Aged Care rule should remain in place. Retirement villages are targeted at a cohort that will naturally become vulnerable as they age. The move into aged care, although only one of a number of options, will be inevitable for some and the aged care rule provides an important protection that was introduced for a reason, and continues to remain relevant.

Comments

The Property Council of Australia (**PCA**), with advisory firm Grant Thornton, produced a report claiming that the continued use of the aged care rule, in conjunction with changes to the aged care system, will adversely affect retirement village operators.

HAAG's responses are detailed below.

1: On page 3 of the PCA report it states "the main source of income for retirement village operators is the sale and resale of dwellings". It goes on to say that as the main source of cash flow "ingoing contributions are used as working capital for facility administration and maintenance".

It is alarming that residents' ingoings are used for cash-flow purposes when it is a lump sum that should be preserved for return to residents when they leave their village. HAAG has had many complaints from residents that they fear that their ingoings are not in fact used for the purposes of village maintenance and have been diverted to other operations of businesses.

Residents pay a variety of fees and charges whilst living in a retirement village. The ongoing maintenance fees paid by residents are intended to cover the operating costs of a village. A proportion of those operating costs usually include facility administration and maintenance so it is difficult to understand why the ingoing contribution is applied in a similar way.

Residents are also charged exit fees, such as Deferred Management Fees (**DMFs**). The PCA report does not consider the DMF in the overall revenue of the village and yet it provides retirement village operators with a significant income. In fact the industry has significantly expanded this income stream by reducing time-frames for the model. For example, changing the original, standard formula based on a charge of 3% per annum over 10 years to 35% over 3 years.

Recommendations

HAAG recommends that the RVA and regulations be amended to require operators to hold ingoing contributions in trust whilst allowing them access to the interest earned as income for the village.

HAAG also recommends that each village be required to establish a sinking fund to address cash flow issues and ensure money is available for capital works in the village.

An <u>alternative</u> recommendation would be to utilise the interest earned on the ingoing contributions held in trust to fund a retirement villages list at the Victorian Civil and Administrative Tribunal (VCAT). This is similar to residential tenancy bonds being held in trust by the Residential Tenancies Bond Authority (RTBA) which funds the residential tenancies list at VCAT.

2: The money a resident is entitled to upon exiting a village belongs to them. It provides financial security and choice in the later stages of life, especially when a resident's sole income is the pension. According to the Australia Institute of Health and Welfare (**AIHW**) over 70% of retirement village residents are pensioners.[1]

[1] Australian Institute of Health and Welfare, *Residential Aged Care in Australia 2010-11: A statistical overview,* Canberra, 2012.

In the solutions provided in the PCA report, as to how residents should receive their early exit entitlements when moving into aged care, the suggestion is for operators to pay the Daily Accommodation Payment (**DAP**), instead of the Refundable Accommodation Deposit (**RAD**), until a dwelling is sold.

The RAD is a lump sum payment made upon entry into aged care and as the name implies is mostly refundable, less any amounts you have agreed to have deducted (similar to an ingoing contribution in a retirement village). The DAP is similar to a daily rental payment, none of which is refundable. This puts the resident at a significant financial disadvantage if the DAP payment is levied rather than the RAD.

The resident should have control over how their money is used and how their care is paid for. Having already lost a significant amount of money through exit fees charged by the retirement village it is unfair to expect residents to risk losing further financial security. Residents should not be disadvantaged and should retain their right to choose an arrangement that best suits their needs.

3: On page 5 of the PCA report the provisions available to South Australian and Tasmanian operators are mentioned, whereby operators can apply for an extension if an early payment of exit entitlement would cause financial hardship concerns.

We would consider this to be a reasonable provision as long as it was applied in a similar way as hardship provisions dealt with under the Residential Tenancies Act. VCAT considers the comparative hardship of the applicant and respondent in a case and makes a determination on that basis. This is something that would need further analysis to ensure the parameters are clear and equitable.

4: In relation to the resale of dwellings page 7 of the PCA report makes the assumption that receiving early payment of an exit entitlement will mean residents with control over the sale of their dwelling will have less incentive to sell in reasonable time.

The average cost of entry into aged care versus the average exit entitlement must be more carefully compared to understand the true impact on operators and residents. The cost of aged care will not always outweigh the exit entitlement so the resident will have incentive to secure the remainder of their money.

The true level of control that a resident has in the sale of a dwelling must also be considered in this context. Apart from the resident setting the sale price the operator controls the majority of the sale process.

A move into care will mean vacant possession of the dwelling is guaranteed. This allows the operator to begin refurbishment quickly which will mean placing the dwelling on the market as soon as is reasonably possible. This is not overly complex, as the PCA report suggests, and neither is setting the sale price for a dwelling.

A dwelling can be valued independently to ensure both parties are sufficiently happy with the price and the dwelling is likely to then be sold within a reasonable timeframe.

Recommendation

HAAG recommends that independent valuations be made mandatory for dwellings sold in retirement villages. This will ensure an equitable and timely outcome for both parties.

5: The PCA report states on page 8 that "the number of residents moving into aged care is increasing due to the ageing population".

The population is indeed ageing and an increase of residents requiring early exit entitlements may not necessarily arise due to a lack of differentiation between low and high care under the new aged care system. In fact the increasing trend is that more people now utilise home and community care packages instead of entering residential care.

The current government policy focus is called Consumer Directed Care (**CDC**) where people can choose their own packages and providers. This policy direction enables high levels of home care support, even to stages of high care provision, in one's own home.

According to the Australia Bureau of Statistics (**ABS**) in 2011 there were 3.1 million people in Australia aged 65 and over. Of that group the ABS counted 135,900 living in retirement villages.[2] This makes up approximately 4.4% of the overall population aged 65 and over. According to the Australian Institute of Health and Welfare (**AIHW**) only 5% of people aged 65 and over were in residential aged care during 2010-2011.[3]

A report published in the Health and Social Care in the Community journal states that the majority of people aged 65 and over wish to remain living in their own home, receiving community care as opposed to moving into residential aged care.[4] It has also been shown that if retirement village residents do move into care it is usually accessed at a later age.

Retirement village design has enabled people to live longer in village environments and HAAG has case studies that support the aged care benefits of this form of housing to enable ageing-in-place. The use of home and community care also delays moves into aged care according to Aged Care Assessment Team (**ACAT**) data.[5]

Considering all of the above it is therefore absurd to argue that 60% of retirement village residents would move into care annually, as is quoted on page 13 of the PCA report.

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[2] Australian Bureau of Statistics, *Where and how do Australia's Older People Live?,* Available at: http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013 (Accessed 16 June 2015).

[3] Australian Institute of Health and Welfare, *Patterns in use of Aged Care 2002-03 to 2010-11*, Canberra, 2014.

[4] Cheek, J., Ballantyne, A., Byers, L., Quan, J., *From Retirement Villages to Residential Aged Care: what older people and their families say,* Health and Social Care in the Community, pp 8-17.

[5] Australian Institute of Health and Welfare, *Pathways in Aged Care: d people follow recommendations?,* Canberra, 2011.

6: Statements made by the PCA, about the potential insolvency that may occur for smaller operators paying RADs, is questionable and unsubstantiated.

The PCA report differentiates between small and large operators, highlighting that there are several “family run” villages that will be most affected by the aged care rule, and yet there is no evidence provided to support this. In HAAG’s experience the overwhelming structure of the sector is made up of for-profit business operators and the not-for-profit sector such as churches, charities and service clubs. ‘Family run’ villages are not well known to HAAG and it would enlighten this discussion if the industry could better demonstrate the significance of this type of operation and the detriment that change would cause.

7: We thank the PCA for opening the door to have issues considered. We highlight though that we have been given very little time to respond and prepare, whereas the PCA have put significant time and resources into producing their report. This approach is very unbalanced and we believe that if the state government is considering any changes to the aged care bond rule then a more robust analysis is required that has been offered by the Property Council.

CAV should require a more vigorous response and appropriate timeline to discuss such important matters. Due to the limited time provided for response HAAG has been unable to engage with its members to include residents’ responses in our submission.

Further, if this matter is being seriously considered by the state government then stakeholders should have the opportunity to provide CAV with issues papers on other important problems in the industry and be given the status at a similar level of discussion and consideration.

Most importantly, this type of issue should not be raised in isolation and needs to be considered in the wider context of the retirement housing sector. For example, if the government is going to consider changes to charges related to the aged care rule then this has implications for the whole suite of charges that constitute the totality of costs borne by residents in retirement villages.

There are also many other fundamental problems experienced by residents that need to be addressed such as fundamental protections for leaseholders regarding rights and procedures for privacy and repairs. HAAG has voiced over a long period of time that the *Retirement Villages Act 1986* (**RVA**) needs to reflect the diversity of the sector but this has mainly gone unnoticed. The PCA report acknowledges there are differences between villages and operators but this applies to issues broader than just this rule.

Recommendations

HAAG recommends that a thorough investigation be undertaken of the sector to allow the diversity to be appropriately reflected in sector practice, legislation and regulation.

HAAG recommends that stakeholders be given sufficient time and opportunity to provide issues papers on important problems in the sector to encourage a robust discussion and review.

8: It also appears that much of the information provided in the PCA report is unsupported by valid resources. It is concerning that the lack of evidence contained in many of the claims made in the report has prompted such an immediate response from CAV. Many of the references used in the endnotes cannot be accessed and verified by other stakeholders and so provides an imprecise overview of the issue.

In conclusion

The proposal and report provided by the PCA lacks substance and evidence yet HAAG welcomes the opportunity for more robust discussion of retirement housing issues, as long as all stakeholders are given sufficient time to respond and propose other matters for consideration as well.

In the meantime ***HAAG recommends the aged care rule continue in its current form to ensure the financial security of residents is maintained.***

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