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| Retirement Villages (Contractual Arrangements) Regulations Regulatory Impact Statement  Consumer Affairs Victoria  FINAL SUBMISSION 8 MARCH 2017 |

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List of shortened forms

|  |  |
| --- | --- |
| CALC | Consumer Action Law Centre |
| CAV | Consumer Affairs Victoria |
| DAP | Daily Accommodation Payment |
| DMF | Deferred Management Fee |
| HAAG | Housing for the Aged Acting Group |
| LASAV | Leading Age Services Australia (Victoria) |
| MPIR | Maximum Permissible Interest Rate |
| PCA | Property Council of Australia |
| RAD | Refundable Accommodation Deposit |
| RRVV | Residents of Retirement Villages Victoria |
| RV | Retirement Village |
| VCAT | Victorian Civil and Administrative Tribunal |

Glossary

|  |  |
| --- | --- |
| *Aged Care Act 1997* (Cth) | The Act and its delegated legislation provide the regulatory framework for Commonwealth Government funded aged care providers, and provide protection for aged care recipients. The legislative framework sets out the requirements to be an approved provider of Commonwealth Government funded aged care, for the allocation of aged care places, the approval and classification of care recipients, the accreditation of services, and the subsidies paid by the Commonwealth Government. The framework also sets out the responsibilities of providers in relation to aged care quality and compliance. |
| Aged care rule | Specified in r. 6 of the Retirement Village (Contractual Arrangements) Regulations 2006, requires retirement village operators to pay that part of a non-owner resident’s estimated exit entitlement required for the non-owner resident to enter a residential aged care facility, six months after the resident has entered care, even if the resident is not yet entitled to their exit entitlement under the terms of their residence contract. |
| Daily Accommodation Payment | A daily payment contributing to the cost of a resident’s accommodation in a residential aged care facility and is paid periodically i.e. fortnightly or monthly. It is not a refundable payment. It is calculated based on the refundable accommodation deposit multiplied by the maximum permissible interest rate and divided by 365 days. |
| Deferred Management Fee | A retirement village resident’s capital contribution, deferred until they leave their retirement village. The deferred management fee is determined by agreement between the retirement village operator and the resident at the time of entry (usually a proportion of the in-going contribution paid by the resident) and is deducted, on exit, from the refund of the resident’s in-going contribution. |
| Exit entitlement | The lump sum of money which a retirement village operator must pay to residents when they exit their retirement village, calculated based on their refundable in-going contribution minus agreed fees and charges and any payments under the aged care rule, plus any agreed capital gain share from the sale of the retirement village unit. It is normally made payable under the residence contract when the resident’s unit has been resold and the in-going contribution received from the next incoming resident, but subject to the ‘six month rule’ and the ‘aged care rule’. |
| High-level aged care | Aged care services provided to residents who require full assistance with medication administration, clinical nursing (24 hours), assistance with feeding, toileting, and continence management. This definition was removed following changes to the *Aged Care Act 1997* in 2014, under which all levels of aged care are defined as ‘residential aged care’. |
| In-going contribution | A payment, or no-interest loans, made by residents of retirement village units for their retirement village accommodation, separate from their recurrent service charges, where a lump sum of money is paid upon entry to the retirement villager operator (usually based on the market value of the unit) and part, all, or none of which is refunded upon exit from the retirement village. Most in-going contributions are refundable; after the deduction of contractual fees and charges and inclusion of any capital gain entitlement, the balance is the resident’s exit entitlement. |
| Low-level aged care | Aged care services provided to residents who are generally independent, but require little or minimal assistance with daily activities such as showering, dressing, provision of meals and medication management. This definition was removed following changes to the *Aged Care Act 1997* in 2014, under which all levels of aged care are defined as ‘residential aged care’. |
| Non-owner resident | A person who is a resident of a retirement village, who does not own the land that they occupy as a private residence in the village (i.e. a leasehold arrangement). |
| Owner resident | A person who is a resident of a retirement village, who owns the land (i.e. with title) they occupy as a private residence in the village. |
| Refundable Accommodation Deposit | A lump sum that a resident pays for accommodation costs in a Commonwealth Government-subsidised residential aged care facility, six months after entering the aged care facility, as set out in the *Aged Care Act 1997*. This payment is refundable after the resident exits the residential aged care facility. |
| Residential aged care | Personal care or nursing care (or both) that is provided to a person in a residential facility in which the person is also provided with accommodation (as defined by the *Aged Care Act 1997*). |
| Retirement village | A community where the majority of residents are retired persons who are provided with accommodation and services other than services provided in a residential care facility, and where an in-going contribution is required to be paid before becoming a member of the community. |
| Six month rule | Specified under s.26(2)(b) of the *Retirement Villages Act 1986* (Vic), retirement village operators can be required to pay non-owner residents their estimated exit entitlements six months after they leave the retirement village, if their retirement village unit has not been sold. An exemption from this rule is provided under r. 5 of the Retirement Villages (Contractual Arrangements) Regulations 2006, if the retirement village operator includes prescribed conditions in the residence contract that give the non-owner resident control of the sale of the unit. |

Executive Summary

Background

The retirement village sector in Victoria provides independent accommodation for retirees in a community setting. Retirement villages are generally small to medium sized residential complexes, or ‘villages’, with independent accommodation units and communal amenities. These villages are operated and managed by a mix of commercial and not-for-profit entities that generally provide maintenance and emergency care.

There are over 43,000 residents living in Victorian retirement villages (65 percent are female). The average age of residents entering retirement villages is 76 years old and the average tenure for residents is 12 years. There are currently around 440 retirement villages in Victoria providing around 33,000 retirement village units (67 per cent are commercial providers and 33 per cent are not-for-profit providers).

In Victoria, the retirement village sector is regulated by the *Retirement Villages Act 1986* (the RV Act), the Retirement Villages (Contractual Arrangements) Regulations 2006 (the Regulations), and the Retirement Villages (Records and Notices) Regulations 2015 (the RN Regulations).

The Regulations are sunsetting on 31 July 2017 and are the subject of this Regulatory Impact Statement (RIS). The Regulations support the RV Act in defining specific conditions for the timing and value of refunds of in-going contributions, and the structure and content of residence and management contracts. The Regulations are primarily focused on contracting arrangements between non-owner residents and retirement village operators, but also include provisions that apply to both owner and non-owner residents. Specifically, the Regulations include:

* + - * 1. Six month rule exemption (r. 5);
        2. Aged care rule (r. 6);
        3. Calculation of in-going contribution refunds (r. 7 and r. 8); and
        4. Contractual requirements (r. 8B-8H).

The objective of Regulation 6 is to provide for the full or part payment of residents’ refundable in-going contributions to be brought forward to cover certain costs to former residents associated with aged care accommodation. In 2014, the Commonwealth Government made significant changes to the arrangements for aged care payments which have impacted the operation of Regulation 6.

Problem analysis

Problems can arise between residents of retirement villages and retirement village operators. Often these problems arise due to a lack of understanding of their respective rights and obligations at the time of entering into a contract. Problems can also arise between non-owner residents and village operators relating to the timely return of their exit entitlement and, in particular the impact this can have on their entry into aged care.

* + - * 1. ***Problems relating to return of exit entitlements*** – It often takes longer to sell units in retirement villages (on average 10.5 months) than privately owned property (one to two months) and, unlike privately owned property, it is difficult for non-owner residents to borrow against the value of retirement village units. Non-owner residents who have left retirement villages and are waiting for their unit to be sold may not be able to finance their other needs, which can result in significant hardship for them, including sometimes interfering with their entry into aged care. The RV Act’s six month rule partly addresses this issue for non-owner residents by requiring retirement village operators to pay their exit entitlement within six months. However, without the exemptions from the six month rule established in the Regulations, the application of the six month rule is onerous for retirement village operators. They may incur higher interest costs while they wait to receive the funds from the sale of the unit, or may be forced to delay other investments until the funds are available
        2. ***Problems relating to contracts*** – Buying a unit in a retirement village is a major expense for most people. The average unit costs nearly $400,000 and residents will typically live in the unit for between eight and 15 years. It is important then that residents of retirement villages (both owner and non-owner residents) understand the terms and conditions of the contract they enter into with the retirement village operator. However, there are a number of factors that can contribute to a lack of understanding of retirement village contracts that are inherent to the sector, including: the complexity of the service offering; the fact it is a one-off purchase with long term consequences; the lack of experience in dealing with such specific contractual arrangements (both the prospective residents and the legal/accounting advisors); and reliance on information from the operator.

Objective of the reform proposal

The proposed Regulations are primarily concerned with three issues (1) remaking the exemption from the six month rule, applying in cases where non-owner residents have control over the sale of their unit and certain other prescribed conditions are met; (2) remaking a form of the aged care rule that takes into account changes to the *Aged Care Act 1997* (Aged Care Act); and (3) remaking aspects of the Regulations that were introduced in 2014 relating to retirement village contracts, including matters that must/must-not be included in contracts and the layout of contracts.

The objectives of remaking the Regulations are to:

* + - * 1. Ensure the return of non-owner residents’ exit entitlements does not interfere with their entry into aged care;
        2. Address problems relating to the clarity and complexity of contracts, which can result in detriment to retirement village residents;
        3. Minimise unnecessary compliance burdens on the retirement village sector;
        4. Minimise retrospective changes to non-owner residents’ contractual arrangements;
        5. Provide non-owner residents with the appropriate level of choice of aged care payment when entering into aged care; and
        6. Ensure the ongoing viability of the sector.

The first three objectives are addressed by remaking the Regulations. The final three objectives form the basis of the options analysis on the aged care rule.

Options to address the problem

The *Subordinate Legislation Act 1994* requires a RIS to consider a number of options to achieve the Government’s objectives, including both regulatory and non-regulatory options. In this case, the current regulations are sunsetting and it is a requirement that the proposed options are compared to a ‘base case’ where the regulations are not remade – i.e. one where there are no regulations.

Three options have been developed in consultation with stakeholders. All of these options involve keeping the three main aspects of the current regulations (1) the exemption from the six month rule; (2) a form of the aged care rule; and (3) the provisions relating to contract requirement and layout. All three options would retain the six month rule exemption and the contractual provisions in their current form. Three alternative approaches have been considered for renewing the aged care rule. These are:

* + - * 1. **Option 1** – DAP or RAD rule;
        2. **Option 2** – DAP or RAD rule with RAD grandfathering provisions; and
        3. **Option 3** – DAP rule.

No feasible non-regulatory options have been identified that would address the problems outlined above. In the case of the six month rule exemption, due to the six month rule being contained in legislation, a regulatory exemption is the only feasible way to amend the application of that rule. The only other option would be not to have any exemption from the rule, which as the analysis later in this chapter shows, would be onerous for the sector.

In the case of both the aged care rule and the provisions in the Regulations relating to contracts, a non-regulatory approach (e.g. self-regulation or guidance materials) would be technically possible. However, as outlined in Chapter 2, there are a number of inherent factors, which limit resident’s capacity to evaluate retirement village contracts and consider their long-term implications. CAV considers that a regulatory approach is the only feasible way of addressing these issues. In the case of the contractual provisions, the ongoing costs of these are low (around $337 per village per year or approximately $135,000 per annum) and have only recently been implemented.

No feasible alternative options have been identified by stakeholders during the consultation conducted to date for the calculation of estimated exit entitlements (r.7-8), the exemption to the six month rule (r.5), and requirements around contract layout and content (r.8B-8H). CAV also considers that there are no feasible alternatives to these options. As such, the analysis in this RIS focuses on options to address the problems relating to financial barriers to non-owner retirement village residents entering aged care that are currently addressed by the aged care rule (r.6).

No feasible alternative options were identified by CAV for addressing financial barriers to non-owner retirement village residents entering aged care. As aged care is a Commonwealth responsibility, the options available to the Victorian Government are limited. Other approaches would involve accessing the funds needed to pay for aged care from a source other than the retirement village resident or operator (e.g. government), which is not considered appropriate or proportional to the problem that the regulations address.

The key features of the base case and each option are summarised in Table E.1 below.

**Table E.1 – Summary of options**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Six month rule exemption  (Regulation 5) | Aged care rule  (Regulation 6) | Calculation of in-going contribution refunds  (Regulation 7 & 8) | Contractual requirements (Regulations 8B-8H) |
| **Base case – No contractual arrangements regulations** | No exemption from the six month rule under the Act for contracts made after 1 August 2017 — for these contracts the six month rule would still apply under the Act. As exemptions are already in most existing non-owner residents’ contracts, the six month rule exemption would apply to them but not for new non-owner residents.  Operators would be required to pay new non-owner residents’ estimated exit entitlements six months after exiting if their unit is unsold. | There would be no aged care rule.  RV Operators would not be required to fund non-owner residents’ aged care payments. Existing non-owner residents without the benefit of the six month rule would have to find the funds for their entry into aged care if their unit is unsold after six months. New non-owner residents would fund their entry into aged care under the six month rule if their unit is unsold after six months. | No regulatory requirements regarding how to calculate estimated exit entitlements. | No requirements regarding the structure and content of contracts other than as specified in the RV Act and the RN Regulations. |
| **Option 1 – DAP or RAD** | Six month rule exemption applies if non-owner resident has control of sale (i.e. remake the existing regulations).  Operators would be required to pay non-owner residents’ estimated exit entitlement only upon sale of the unit (subject to the application of the aged care rule). | Non-owner residents who entered RV after 31/07/06 would have a choice between requiring their operator to pay their aged care DAP or RAD prior to the sale of their unit.  Non-owner residents would receive the balance of their estimated exit entitlement upon sale of the unit (less the accumulation of RAD/DAPs payments). | The calculations for estimated exit entitlements are prescribed (i.e. remake the existing regulations). | Matters that should and should not be included in contracts (including certain terms and layout) are prescribed (i.e. remake the existing regulations). |
| **Option 2 – DAP or RAD rule with RAD grandfathering provisions** | Same as Option 1 | Non-owner residents who enter RV between 31/07/06 and 1/08/17 would have a choice of requiring the operator to pay their aged care DAP or RAD prior to the sale of their unit. Non-owner residents who enter RV after 1/08/17 would be able to require the operator to pay their aged care DAPs prior to the sale of their unit. | Same as Option 1 | Same as Option 1 |
| **Option 3 – DAP rule** | Same as Option 1 | Non-owner residents who enter RV after 31/07/06 can require the operator to pay their aged care DAPs prior to the sale of their unit. | Same as Option 1 | Same as Option 1 |

Assessment framework

The options analysis is conducted in two components.

* + - * 1. The first component assesses the impacts of Regulations 5, 7 and 8 compared to the base case. As discussed in Chapter 4, no feasible alternative to the status quo has been identified to address the issues around the calculation of estimated exit entitlements, the six month rule exemption and contractual requirements. A qualitative assessment of the impacts and an estimate of the compliance costs of these Regulations are provided.
        2. The second component involves an assessment of the alternate options for the aged care rule (r.6). The analysis includes an assessment of the financial impacts to retirement village residents and operators and a qualitative analysis using a Multi-Criteria Analysis (MCA) of the non-financial impacts of these options. The following criteria have been developed to assess the aged care options:

Does not retrospectively change residents entitlements;

Provides non-owner residents with choices of how to pay for their aged care; and

Ensures ongoing viability of the sector – does not risk the financial viability of the sector, including smaller retirement village operators, or retirement village operators with higher than expected numbers of residents exiting in one year.

Options analysis

The table below provides a summary of the options analysis based on the criteria outlined above and the financial impacts of each option. The financial impacts reflect the accommodation costs to non-owner residents of entering aged care using the aged care rule and the costs to retirement village operators of financing residents’ aged care rule payments under each option relative to the base case. The differences in financial impacts under each option reflect the availability of aged care rule payment options to residents with Option 1 providing the greatest level of choice (and hence the least costly) and Option 3 providing the most limited choice (and hence, the most costly). As the financial impacts relate mainly to transfers between village operators and non-owner residents, the costs to retirement village operators are higher when the costs to residents are lower (Option 1), and lower when the costs to residents are higher (Option 3).

Table E.2 – Options comparison of multi-criteria analysis and financial impacts

| **Overall impact summary** |  | **Option 1** | **Option 2** | **Option 3** |
| --- | --- | --- | --- | --- |
| **Non-financial impacts** | **Weighting** | **Score** | **Score** | **Score** |
| Minimises retrospective changes | 25% | +10 | +10 | +5 |
| Choice of payments for consumers | 25% | +10 | +7.5 | +5 |
| Viability of the sector | 50% | -2.5 | +7.5 | +10 |
| **Weighted average score** |  | **+3.75** | **+8.13** | **+7.5** |
|  |  |  |  |  |
| **Financial impacts (relative to base case)** |  | **$ per annum** | **$ per annum** | **$ per annum** |
| Total impacts for residents moving to aged care (average between 2018 and 2037) |  | +3,057,236 | -2,122,771 | -5,546,700 |
| Total impact for sector (average between 2018 and 2037) |  | -1,732,998 | +2,598,828 | +5,431,498 |
| **Net impact (average between 2018 and 2037)** |  | **+1,324,238** | **+476,057** | **-115,202** |

Preferred option

Based on the analysis in Chapter 5 of this RIS, the preferred option is Option 2. This option involves remaking the Regulations in their current form, but replacing the current aged care rule with a DAP rule for all non-owner residents who entered a retirement village after 31 July 2006 with an optional (grandfathered) RAD rule for non-owner residents who are already living in retirement villages. The preferred option is reflected in regulation 7 of the proposed regulations (Appendix I).

Overall, the option has been assessed as best meeting the objectives of:

* + - * 1. ***Ensuring the return of non-owner residents’ exit entitlements does not interfere with their entry into aged care –*** the preferred option addresses the financial barriers of entry to aged care that can occur when there are delays returning retirement village residents’ exit entitlement. Residents who are waiting for the return of their exit entitlement are less likely to be forced to delay their entry into aged care or have to seek a cheaper/less desirable provider;
        2. ***Addressing problems relating to the clarity and complexity of contracts –*** the preferred option maintains the regulatory amendments introduced in 2014 that addressed problems associated with the complexity of retirement village contracts. This will reduce the likelihood of residents suffering from financial or other type of harm because they have not understood the implications of their contract;
        3. ***Minimising compliance burden on the sector*** – the option results in a small amount ongoing compliances costs associated with regulations covering the content and layout of contracts;
        4. ***Minimising retrospective changes to non-owner residents’ contractual arrangements –*** the preferred option does not result in any retrospective changes to the conditions of existing retirement village residents, which would make them financially worse-off;
        5. ***Ensuring the ongoing viability of the sector –*** the preferred option retains exemptions to the six month rule and this more than offsets the cost of the proposed changes to the aged care rule, which results in the sector being financially better off than under the base case; and
        6. ***Providing non-owner residents with the appropriate level of choice of aged care payment when entering into aged care –*** the preferred option does not reduce the choice that current non-owner residents will have on how they will pay for aged care. It does, however, reduce the choice for future residents.

The preferred option balances the financial impact between residents and RV operators. Under the preferred option, the total financial impact on non-owner residents will be -$2.1 million per annum and the total financial impact on RV operators will be +$2.6 million per annum.[[1]](#footnote-2) The net financial impact on society of the preferred option is relatively small (+$0.5 million per annum) as financial impacts relate mainly to transfers between village operators and residents. On an individual basis, current non-owner residents are expected to be at most only $824 worse-off, on average, than under the current arrangements. However, in extreme cases (such as an exit entitlement of $500,000 and two years until sale), a non-owner residents would be $6,607 worse-off than under current arrangements.

Under the preferred option, non-owner residents will be impacted differently by the Regulations depending on whether they are an existing resident, or a new resident moving into a retirement village on or after 1 August 2017. Case studies of Margaret (an existing resident) and Joan (a future resident) have been presented below to illustrate how the operation of the Regulations will affect individual non-owner residents moving to aged care.

Figure E.1.1– Case studies to illustrate the impacts of preferred option



The total impacts on RV operators and residents will also vary over time. As explained in the options analysis and in Appendix E, this is a result of changes in the population of residents who are eligible for a RAD-based aged care rule payment and a DAP-based aged care rule payment over time.

For example, compared to base case where the Regulations have expired:

* + - * 1. Residents as a group will be better off by as much as $5.7 million in 2021, and will be worse off by as much as $7.0 million in 2032; and
        2. RV operators as a group will be as much as $4.9 million worse off in 2021 and as much as $7.0 million better off in 2032.

Compared to the current Regulations, under the preferred option:

* + - * 1. Residents as a group will initially be worse off by $0.5 million in 2018 , and will be worse off by as much as $5.5 million in 2032; and
        2. RV operators as a group will be up to $4.6 million worse off in 2021, and up to $7.2 million better off in 2032.

Consultation

CAV has consulted extensively with industry bodies and resident groups throughout the policy development process on the proposed changes to the Regulations, both during the design of the options and during the development of the RIS.

This RIS will be open for public consultation for a period of 30 days, from 29 March 2017 to 28 April 2017. Notice of the proposed Regulations and the RIS has been published in the Government Gazette and a daily newspaper circulating generally throughout Victoria, as required under the *Subordinate Legislation Act 1994*. The proposed Regulations and the RIS have been published on the CAV website and will be circulated to the industry bodies and resident groups who have participated in the reform process to-date. Additionally, a letter will be sent to retirement villages registered with CAV advising operators of the public consultation on the RIS and the proposed Regulations.

Implementation and evaluation

It is proposed that the existing Regulations will be remade, with amendments to the aged care rule, as set out in Appendix I and that the Regulations will commence on 1 August 2017. As CAV has already conducted extensive consultation with industry bodies and resident groups and as there will only be limited changes to the current Regulations, a transition period is not considered necessary.

Following the formal consultation period on this RIS, CAV will continue to keep the retirement village sector and key stakeholders informed of the proposed changes by:

* + - * 1. Writing to the registered retirement villages, industry bodies and resident groups with an information pack detailing the changes to the Regulations;
        2. Updating the CAV website and communications materials; and
        3. Updating CAV’s *Guide to choosing and living in a retirement village*.

CAV currently evaluates the effectiveness of the Regulations using feedback through stakeholder forums and dispute and complaints monitoring. It is proposed that this approach is continued for the new Regulations. CAV will monitor the effectiveness of the Regulations through key indicators such as:

* + - * 1. The number of retirement village related complaints made to CAV;
        2. The number of applications by RV operators to VCAT for financial hardship;
        3. Outcomes from random audits on retirement villages conducted by CAV;
        4. Industry data on aged care rule and six month rule payments; and
        5. Industry data on the time taken to sell a retirement village unit.

# Background

*This chapter provides an overview of the retirement village sector in Victoria, including its legislative and regulatory framework.*

## Overview of the retirement village sector

The retirement village sector in Victoria provides accommodation for retirees in a community setting. Retirement villages are generally small to medium sized residential areas, or ‘villages’, with independent accommodation units and communal amenities. These villages are operated and managed by commercial and not-for-profit entities that generally provide a level of maintenance and emergency care.

The majority of residents in retirement villages are non-owner residents with long-term leasing arrangements with their retirement village operator (approximately 85 per cent of villages use these types of arrangements).[[2]](#footnote-3) However, there are also other, less common forms of residency contracting include strata, unit or company titles (where residents purchase and have some form of ownership of a unit), and periodic tenancy arrangements. Contractual and financial arrangements for leasing or buying a retirement village unit can be complicated and retirement villages require a range of fees and charges to enter, live in and exit a retirement village (including a substantial in-going contribution).[[3]](#footnote-4)

Retirement villages are distinct from other types of community-based accommodation facilities (such as residential aged care, residential parks or rental villages) and operate under a separate legislative framework.

## Legislative and regulatory framework

In Victoria, the retirement village sector is regulated by the *Retirement Villages Act 1986* (the RV Act), the Retirement Villages (Contractual Arrangements) Regulations 2006 (the Regulations), and the Retirement Villages (Records and Notices) Regulations 2015 (the RN Regulations).

### The Retirement Villages Act

The RV Act is the overarching legislative instrument regulating the retirement village sector. The purpose of the Act is to “clarify and protect the rights of persons who live in, or intend to live in retirement villages”.

The RV Act protects residents’ financial investments in a retirement village through legislated residence rights, requirements for retirement villages to publish certain notices and information, and financial protection for residents’ in-going contributions. The RV Act also prescribes the rules around the sale of units by residents, operation and management of retirement villages and dispute resolution.

The RV Act also provides a definition of a retirement village.

Box 1.1 – Definition of a retirement village

*Under the RV Act, a retirement village is defined as:*

*A community —*

*(a) the majority of which is retired persons who are provided with accommodation and services other than services that are provided in a residential care facility; and*

*(b) at least one of whom, before or upon becoming a member of the community, pays or is required to pay an in-going contribution.*

### Supporting regulations

Section 43 of the RV Act provides for regulations to be made covering the calculation of fees and charges, contractual arrangements, and information disclosure requirements. The regulations made under the RV Act are the:

* + - * 1. ***Retirement Villages (Contractual Arrangements) Regulations******2006* –** These regulations set out rules around the payment and refund of residents’ in-going contributions, methods of valuations and other contractual requirements. The Regulations are sunsetting on 31 July 2017 and are the subject of this RIS. The Regulations are described in further detail in section 1.3.
        2. ***Retirement Villages (Records and Notices) Regulations* *2015* –** The RN Regulations support requirements under s.19 and s.20 of the RV Act for residents to be provided with certain documents and information and was established to assist prospective residents to compare and choose a retirement village that meets their personal and social needs, and to understand their rights and obligations and their financial commitment before making an informed decision to enter a retirement village.

## Retirement Villages (Contractual Arrangements) Regulations 2006

The Retirement Villages (Contractual Arrangements) Regulations 2006 (the Regulations) support the RV Act in defining specific conditions for the timing and value of refunds of in-going contributions, and the structure and content of residence and management contracts. The Regulations are primarily focused on contracting arrangements between non-owner residents and retirement village operators, but also include provisions that apply to both owner and non-owner residents. Specifically, the Regulations include:[[4]](#footnote-5)

* + - * 1. ***Six month rule exemption (r. 5)* –** under the RV Act, retirement village operators can be required to pay non-owner residents their estimated exit entitlement (their estimated refundable in-going contribution minus fees) within six months of leaving the village if their unit has not already been sold (the six month rule). Under the Regulations, an exemption from this is provided for in regulation 5 if the operator includes prescribed conditions (contained in Schedules 1 and 2 of the Regulations) in the residence contract that gives the non-owner resident control of the sale of the unit.
        2. ***Aged care rule (r. 6)*** – requires retirement village owners to pay non-owner residents moving to residential aged care that part of their estimated exit entitlement which is required to cover their residential aged care lump sum payment, six months after entering aged care, even if the resident is not yet entitled to their exit entitlement under the terms of their residence contract. The resident will receive the remainder of their exit entitlement (if any) when the unit is sold. This is known as the ‘aged care rule’ and applies whether or not the six month rule applies.
        3. ***Calculation of in-going contribution refunds (r.7 and r. 8)*** – prescribes clauses to be included in residence contracts that set out how refundable in-going contributions are calculated in certain cases, including the process for choosing and paying for an independent valuation.
        4. ***Contractual requirements (r.8B-8H*)** – prescribes matters that must and must not be included in residence and management contracts (including the terms and the layout of contracts). These provisions were recently inserted into the Regulations as part of an amendment in 2013 and commenced on 1 July 2014.

### The timing and calculation of exit entitlements

The Regulations make provision for key contracting mechanisms that define the timeframes in which retirement village operators are required to refund non-owner residents’ in-going contributions and how residents’ exit entitlements are calculated.

In-going contributions are payments made by residents of retirement villages for their retirement village accommodation, separate from their recurrent service charges, where a lump sum of money is paid upon entry to the retirement villager operator (usually based on the market value of the unit) and part, all, or none of which is refunded upon exit from the retirement village. Most in-going contributions are refundable; after the deduction of contractual fees and charges and inclusion of any capital gain entitlement, the balance is the resident’s exit entitlement.

The amount and the timing of the payment of the exit entitlement are dependent on the contractual arrangements between the resident and the operator, subject to qualifying provisions in the RV Act and the Regulations.

The exit entitlement is calculated according to the following formula:

|  |
| --- |
| *Exit entitlement = Refundable ingoing contribution – applicable fees – payments made by RV operator under the aged care rule + any capital gains* |

Where:

The exit entitlement could be more or less than the refundable in-going contribution paid by the resident exiting the retirement village (usually less) and can depend on a number of factors including:

* + - * 1. Contractual arrangements entered into;
        2. Sale price of unit;
        3. Price or in-going contribution that next resident pays;
        4. Independent valuation of unit; and/or
        5. Non-market factors.

The applicable fees may include the deferred management fee (DMF), cost of independent valuations, refurbishment costs and any costs incurred during the sale of the unit.

The aged care payments made by the RV operator only apply when a non-owner resident has required the RV operator to make payments to an aged care facility under the aged care rule.

* + - * 1. Prior to changes to the *Aged Care Act 1997* (Aged Care Act) in 2014 this was an ‘accommodation bond’ (or interest on the bond) for low-level aged care residents and only required six months after the resident has entered into residential aged care; but
        2. Post the amendments to the Aged Care Act, this could be a Refundable Accommodation Deposits (RAD) or Daily Accommodation Payments (DAP) paid by any resident moving to aged care. The RAD is required six months after the resident has entered into residential aged care while DAPs are required to be paid immediately upon entry in residential aged care.

The timing of the payment of the exit entitlement depends on:

* + - * 1. Contractual arrangements entered into;
        2. When the unit is sold and the next in-going contribution is received;
        3. Any application of the six month rule; and
        4. Any application of the aged care rule.

## Residential aged care

The objective of Regulation 6 is to provide for the full or part payment of non-owner residents’ refundable in-going contributions to be brought forward to cover certain costs to them associated with aged care accommodation. In 2014, the Commonwealth Government introduced significant changes to the arrangements for aged care payments which have impacted the operation of Regulation 6.

### Aged Care Act 1997

The *Aged Care Act 1997* provides the legislative framework for Commonwealth Government funded aged care providers, and provides protection for aged care recipients. The legislative framework sets out the requirements to be an approved provider of Commonwealth Government funded aged care, for the allocation of aged care places, the approval and classification of care recipients, the accreditation of services, and the subsidies paid by the Commonwealth Government. The framework also sets out the responsibilities of providers in relation to aged care quality and compliance.

Changes to the Aged Care Act

In 2014, significant changes were made to the *Aged Care Act 1997* that have implications for the operation of r.6 of the Regulations (the aged care rule).

Aged care providers can no longer require residents to pay an accommodation bond and residents now have the choice of paying for their accommodation through:

* + - * 1. A RAD;
        2. Non-refundable DAPs;[[5]](#footnote-6) or
        3. A mix of the above two.

Residents who initially elect to pay a DAP can revert to a RAD at any time. Like accommodation bonds, RADs are not required to be paid until six months after entry into the aged care facility. However, DAPs are required to be paid upon entry into residential aged care.

In addition, the distinction between low care and high care residential aged care facilities has been removed (previously, accommodation bonds could only be required of residents entering low care accommodation; now, all residential aged care residents can elect to pay a RAD or a DAP).

Operation of the aged care rule before and after amendments to the Aged Care Act

Under the aged care rule, retirement village operators are required to pay non-owner residents who are moving to aged care part (or all) of their estimated exit entitlement to fund the resident’s accommodation bond required upon entering an aged care facility, six months after the resident has entered the facility, even if the resident is not yet entitled to their exit entitlement under the terms of their residence contract. Alternatively, if the aged care facility had agreed to allow the resident to pay interest on the bond until the resident could pay the bond, the village operator was required to pay the interest.

The application of this rule is premised on the way that the Aged Care Actapplied prior to the 2014 changes, under which accommodation bonds only applied to low-level aged care residents and entrants could be required to pay such a bond (Figure 1.1).

Figure 1.1– Operation of the aged care rule pre-2014



The aged care rule does not sit well with the post-2014 Aged Care Act, under which all entrants to aged care can choose between paying for their accommodation by an accommodation bond or by a DAP, which replaces the concept of interest payments and bonds.

Since the changes to the Aged Care Act, it is understood that retirement village operators have been treating the obligation under the aged care rule to pay an accommodation bond as an obligation to pay a RAD. However, in instances where non-owner residents have elected to pay DAPs, operators have been willing to pay these DAPs, in lieu of paying a RAD.

**Figure 1.2 – Operation of the aged care rule post 2014**



## Demand and supply profile in the retirement village sector

### Demand for retirement village services

In 2016, there were 43,107 residents living in Victorian retirement villages.[[6]](#footnote-7) Over the ten year period from 2006 to 2016, the average annual growth rate was approximately six per cent (see Figure 1.3).

Figure 1.3 – Growth in Victorian retirement village residents, 2006 to 2016



Sources: Property Council of Australia’s submission to the Parliamentary Inquiry to the Retirement Housing Sector; Patersons 2014, *Aged Care & Retirement Sector Industry Report*; and 2011 ABS Census data.

The average age of residents entering retirement villages is currently 76 years old, and recent research has indicated that this has not changed substantially over the past three years.[[7]](#footnote-8) Although under the RV Act’s definition of a retirement village, most of the residents are aged 55 years or over, survey data from the Property Council of Australia’s (PCA) Retirement Census shows that more than 95 per cent of retirement village residents are over 65 years of age and more than 70 per cent are over the age of 75.

Data on current resident tenure indicates that on average current residents have been in retirement villages for seven years in Victoria.[[8]](#footnote-9) The total length of tenure for residents has been estimated to be between 8 and 15 years.[[9]](#footnote-10)

Approximately 65 per cent of retirement village residents are female[[10]](#footnote-11) (compared to 54 per cent of Victorians aged over 65)[[11]](#footnote-12) and 60 per cent of retirement village units are occupied by single residents.[[12]](#footnote-13) Survey data from the National Ageing Research Institute indicates that residents may move into retirement villages for a range of factors, including:

* + - * 1. Downsizing;
        2. Need for a home specially designed for ageing;
        3. Loss of spouse; and
        4. Partner’s health.[[13]](#footnote-14)

There is little data available on the reasons for leaving a retirement village. However, it is understood that generally a resident will leave a retirement village for a number of reasons including:

* + - * 1. Death;
        2. Moving into a residential aged care facility for a higher level of care;
        3. Changing retirement village; or
        4. Moving in with family.

As the Australian population ages, it is likely that the demand for retirement village services will increase. The population of people aged 55 years and over in Victoria is projected to rise by more than 840,000 in the next 20 years, an increase of over 50 per cent on the current population in that age bracket.

### Supply in the retirement village sector

There are currently 438 retirement villages in Victoria[[14]](#footnote-15), providing around 33,000 retirement village units.[[15]](#footnote-16)

Approximately 67 per cent of retirement villages are owned and operated by commercial operators and 33 per cent are owned and operated by not-for-profit operators. This equates to 84 per cent of retirement village units that are operated by commercial operators and 16 per cent of units operated by not-for-profit operators. [[16]](#footnote-17)

Large commercial retirement village operators may operate across multiple sites and jurisdictions and small to medium-sized independent operators may manage one to three villages.[[17]](#footnote-18) The retirement village sector in Australia has a low degree of market concentration with the top four largest providers occupying less than 10 per cent of market share and high number of small operators.[[18]](#footnote-19) In Victoria, more than half of retirement villages have between 1 and 150 retirement village units, and nearly 80 per cent of retirement village units have less than 150 retirement village units (see Figure 1.4).

Figure 1.4 – Distribution of retirement villages by number of units



Source: NERA analysis of retirement villages advertised on [www.villages.com.au](http://www.villages.com.au) in Victoria.

The majority of retirement villages in Victoria are located in and around the Melbourne metropolitan area.

## Reform context

### Recent reform to the contractual and information disclosure requirements

In 2013 a RIS was developed by CAV to amend the Regulations and the RN Regulations. These amendments addressed concerns around consumer detriment resulting from a lack of information available for residents to make informed choices when considering entering retirement villages. As part of the development of the RIS, CAV consulted extensively with the sector between 2011 and 2013 to develop options and consult on the preferred option. The RIS was finalised in April 2013, and after a period of further consultation both sets of regulations were updated.

The Regulations were amended to insert r.8B to r.8H which set out a number of contractual requirements and provisions to standardise contracts, and the RN Regulations were amended to require to improved pre-contractual information disclosure and introduce intermediate-stage[[19]](#footnote-20) information disclosure.

### Parliamentary inquiry

An Inquiry into the Retirement Housing Sector is currently being conducted by the Legal and Social Issues Committee of the Victorian Parliament. The Inquiry’s Terms of Reference include the operation and regulation of retirement villages (and other housing options) with the aim of identifying opportunities for improvement and reform. The Inquiry’s report was scheduled to be published on 1 March 2017 and the Government must provide a response within six months of the report being tabled.

If the Government’s Response to the Inquiry results in proposed changes to the Regulations, these will be considered after the Regulations are remade (as the Regulations must be remade prior to 31 July 2017) and will not be considered within this RIS process.

### Inter-jurisdictional comparison

Retirement villages are regulated in all Australian states and territories. However, only certain jurisdictions have provisions that prescribe the timing of exit entitlement payments by operators to residents and/or have an equivalent of the aged care rule.

New South Wales (NSW) and Tasmania have a six month rule with no exemptions. However, they provide operators with the ability to apply to the NSW Civil and Administrative Tribunal/Tasmanian Director of Consumer Affairs and Fair Trading to extend the payment timing based on financial hardship. South Australia (SA) has the same legislative arrangements but the timing is 18 months rather than six months.

Both SA and Tasmania have a version of the aged care rule. Tasmania requires the resident to demonstrate that they do not have ready access to funds or that paying for their own aged care would seriously affect their personal finances and in 2016, SA commenced legislative amendment to introduce a similar obligation on residents.

The preferred option does not include a requirement that residents must demonstrate that they do not have ready access to their own funds or that their personal finances would be seriously affected by their aged care payments as it has been determined that such a condition would place an onerous burden on residents to prove their case in VCAT if challenged by a village operator and no stakeholder group has supported this requirement.

A summary of various approaches that states and territories adopt is provided in Appendix B.

# Problem analysis

*This section articulates the nature and extent of the problem with contractual arrangements in the retirement village sector that justifies the need for regulation.*

## Context

When a resident enters a retirement village they will typically enter into a written contractual arrangement with the village operator. These contracts set out the rights and obligations of each party. They vary across the sector, but usually involve at least the following:

* + - * 1. The resident:

Makes a lump sum payment (in-going contribution) to the operator for the right to reside in the village (mostly applicable only to non-owner residents)

Makes regular payments to cover the cost of general services provided by the operator

May make additional, regular payments for the supply of any additional services by the operator (e.g. as in a serviced apartment)

After exiting the village, is refunded a proportion of the in-going contribution, usually when the unit is sold to the next resident (which, after deductions, is the resident’s exit entitlement)

* + - * 1. The village operator:

Receives the in-going contribution for the residence right

Maintains the village and provides any agreed services

Usually retains a proportion of the in-going contribution from the resident (known as a DMF).

In-going contributions to enter a retirement village are substantial. In 2016, the average in-going contribution for a two-bedroom unit was around $398,000.[[20]](#footnote-21) Generally the cost of retirement village units is around 10 per cent less than the cost of comparable apartments.[[21]](#footnote-22) Ongoing payments are usually around $409 per month.[[22]](#footnote-23) Generally, the in-going contribution is refunded (minus fees and charges) after the resident vacates the retirement village – or, more usually, when the unit is re-sold. On average, the retirement village operator retains about 35 per cent of sale price of the unit as a DMF.[[23]](#footnote-24)

## Problems identified

Problems can arise between residents of retirement villages and retirement village operators. Often these problems arise due to a lack of understanding of their respective rights and obligations at the time of entering into a contract. Problems can also arise between non-owner residents and operators relating to the timely return of residents’ exit entitlements and, in particular the impact this can have on residents entering aged care.

### Problems relating to the return of exit entitlements

Problems may arise between non-owner residents and retirement village operators as a result of delays in returning residents’ exit entitlements, after they have vacated their unit in the retirement village. It often takes longer to sell units in retirement villages (on average 10.5 months) than privately owned property (one to two months) and unlike privately owned property it is difficult for non-owner residents to borrow against the value of retirement village units. Non-owner residents who have left retirement villages and are waiting for their unit to be sold may not be able to finance their other needs, which can result in significant hardship for them, including sometimes interfering with their entry into aged care.

Retirement village contracts usually entitle residents to their exit entitlement following the sale of their residence right to a new resident. The former resident is the primary beneficiary of the sale, but they are generally on the actions of the retirement village operator to facilitate a smooth sale process. Even in cases where the former resident has control of the sale process, they often rely on the village operator for:

* + - * 1. Undertaking any refurbishment of the residence;
        2. Making the residence available for inspection;
        3. Maintaining the overall quality of the retirement village; and
        4. Answering enquiries from prospective new residents.

The RV Act’s six month rule partly addresses this issue for non-owner residents by requiring retirement village operators to pay their exit entitlement within six months of leaving the village if their unit has not already been sold, or ‘in accordance with the regulations’. The Regulations provide for an exemption of the six month rule if prescribed conditions, giving the non-owner resident control of the sale process, are included in the residence contract (the great majority of contracts include these conditions). However, even if the six month rule is avoided in this way, village operators are still subject to the application of the aged care rule (explained in Chapter 1).

In the absence of the Regulations, there would be no exemptions from the six month rule. This would be onerous for retirement village operators. They may incur higher interest costs while they wait to receive the funds from the sale of the unit, or may be forced to delay other investments until the funds are available.

***Interaction between the return of exit entitlements and entry into aged care***

Prior to the changes to the Aged Care Actin 2014, it was common for aged care providers to require residents entering low-care to pay an accommodation bond (payable six months after entering aged care). Former retirement village residents are often reliant on the return of their exit entitlement to pay the accommodation bond.

The aged care rule sets out a process to ensure that contractual provisions for the return of non-owner residents’ exit entitlements do not interfere with their entry into aged care. In certain circumstances, it requires retirement village operators to provide non-owner residents who have entered aged care with the whole or part of their estimated exit entitlement after six months, or in other cases to pay the aged care provider interest on the unpaid accommodation bond. In the absence of the Regulations, non-owner residents would incur these costs. As well as being financially onerous for non-owner residents, it may delay their entry into aged care or reduce their choice of aged care provider (e.g. if they cannot afford their preferred provider). Most people who enter aged care are doing so because of ill-health. Delays in entry into aged care could exacerbate their health problems.

There are also problems with the current operation of the aged care rule. As explained above, the rule refers to aspects of the Commonwealth’s aged care legislation, which have either changed substantially or no longer apply. It is not clear how the current regulations – as drafted – operate in light of the Commonwealth’s changes. Both residents and operators need clarity on this issue.

The Commonwealth Government’s changes give all aged care residents the choice of paying an up-front lump sum to enter aged care, making ongoing daily payments or a combination of the two. This gives more choice to aged care residents. Further, a change in the definition of aged care expands the application of Victoria’s aged care rule to a much broader set of non-owner residents. There is a need to reconsider the rule in light of these matters.

### Problems relating to contracts

Buying a unit in a retirement village is a major expense for most people. The average unit costs nearly $400,000 and residents will typically live in the unit for between eight and 15 years. It is important therefore that residents of retirement villages (owner and non-owner) understand the terms and conditions of the contract they enter into with the retirement village operator. However, there are a number of factors that can contribute to a lack of understanding of retirement village contracts are inherent to the sector. These include:

* + - * 1. The complexity of the service offering – retirement villages provide a combination of property rights and services. Contracts can be long, complex and difficult for prospective residents to understand.
        2. A one-off purchase with long term consequences – residents typically stay in retirement villages for between eight and 15 years.[[24]](#footnote-25) The costs associated with leaving retirement villages are significant. DMFs are typically 30 to 40 per cent of the value of units[[25]](#footnote-26) and in some cases residents may also be responsible for undertaking refurbishments of their units. Consequently, if residents are unhappy with their living arrangements or with the level of service provided by the operator there can be significant financial and lifestyle implications. At the time of entering their contract, residents may not fully consider the implications of clauses relating to leaving the village.
        3. Absence of experience in the specific contractual arrangements – most residents entering into a contract to enter a retirement village are doing so for the first time, so they do not have direct experience in contracting arrangements that are typical to the sector. This can impede their ability to scrutinise contractual provisions.
        4. Lack of knowledge and advice – the retirement village sector is growing, but is still a relatively small sector of the overall accommodation market for older people – just five per cent of over 65s live in a retirement village.[[26]](#footnote-27) As a result, there are still relatively few specialist legal advisors providing advice on retirement village contractual arrangements. There is also a general lack of understanding in the community of how the sector operates, which limits the prospective resident’s capacity to seek advice through informal networks.
        5. Reliance on information from the operator – prospective residents usually choose a retirement village before they have experienced living there. Generally, this decision is based on information about the village provided by the operator, which the prospective resident has limited to capacity to verify.

Other factors, which can contribute to a lack of understanding of the implications of retirement village contracts relate to particular vulnerabilities of prospective residents of retirement villages. These can include:

* + - * 1. The advanced age of the resident – the average age of a resident entering a retirement village in 2016 is 76.[[27]](#footnote-28) Research shows there are significant differences between the younger and older mind, which affect decision making.[[28]](#footnote-29)
        2. Personal circumstances precipitating entry to a retirement village – residents often enter a retirement village following traumatic circumstances, for example the loss of a partner.

If a resident doesn't understand the contract they are entering into they may experience some future detriment, either financial or through loss of lifestyle. In submissions to the *Parliamentary Inquiry into the Retirement Housing* *Sector*, a number of residents raised concerns about the complexity of their contracts and a lack of availability of legal advice in the sector. Residents’ submissions alsofrequently raised issues that they were having with their retirement village operator, which could be the result of a lack of understanding of the terms of their contracts. These included:

* + - * 1. Concerns about the level of fee increases allowed under their contracts and the impact these were having on their financial situation;
        2. Concerns about the sale process of units, including the level of fees deducted by village operators from their exit entitlements;
        3. Conflicts with village operators regarding contractual terms, which were contributing to residents’ health issues; and
        4. Conflicts with village operators regarding unfulfilled commitments about services provisions or about the village’s overall amenity, which led them to be dissatisfied with the village.

The Regulations currently include provisions for some standardisation of the structure and content of contracts. These are intended to increase residents understanding of their contracts and reduce conflicts between residents and village operators. In the absence of the Regulations, these provisions would not exist, which would exacerbate these issues.

## Evidence of the problem

The following section set out the evidence related to problems with contracts and with the return of residents’ exit entitlements.

### Evidence relating to problems with the return of exit entitlements

In 2015-16, CAV received 16 enquiries and five complaints related to the sale of retirement village units. There were also 39 enquiries and eight complaints about exit fees.[[29]](#footnote-30) A common cause of complaint is the time taken to sell retirement village units and the impact this has on the return of residents’ exit entitlements. It often takes much longer to sell units in retirement villages than other forms of residential property. The average time it takes to sell a unit in a retirement village is approximately 10.5 months,[[30]](#footnote-31) compared to around one month for other forms of residential real-estate in Melbourne and two months in regional Victoria (private sales).[[31]](#footnote-32) This time lapse and the significant sums of money involved can result in significant impacts for retirement village residents and operators.

Figure 2.1 – Retirement village enquiries and disputes about sales of premises handled by Consumer Affairs Victoria, 2012-13 to 2015-16



Source: Consumer Affairs Victoria.

***Impacts of the six month rule on retirement village operators***

In the absence of the Regulations, the RV Act’s six month rule would apply to all new non-owner retirement village residents. This would have a significant impact on retirement village operators in terms of cash-flow and financing costs:

* + - * 1. ***Cash flow*** – the average exit entitlement is $258,700 per unit; assuming that to be the average estimated exit entitlement, the village operator would have to pay that amount to the exiting resident (after six months), before receiving the next in-going contribution from the sale of the unit (on average after 10.5 months); and
        2. ***Financing costs*** – assuming an interest rate of 5 per cent and 4.5 months between the payment of the estimated exit entitlement and the sale of the unit, the average interest cost borne by the retirement village operator would be $4,866.

Presently, an estimated 3,400 residents exit retirement villages each year.[[32]](#footnote-33) This means that, at any one time, the sector potentially needs to fund about $330 million worth of exit entitlements ahead of receiving the proceeds from the sale of these units. The interest cost on these borrowings, which would be incurred by village operators is estimated to be around $16.5 million per annum. The Regulations currently provide an exemption from the rule (subject to the inserting of certain terms in the residence contract, including giving control of the sale of the unit to the resident). The exemption is widely used, appearing in almost all retirement village residence contracts of non-owner residents.

***Impacts of the aged care rule on retirement village operators and residents***

Residents entering aged care from retirement villages are required to pay the aged care provider DAPs, a RAD (previously known as an accommodation bond) or a combination of the two. Most residents prefer to pay a RAD (65 per cent), which on average is $361,000 and is due six months after entering aged care.[[33]](#footnote-34)

Most residents have limited access to capital and rely on the funds from their exit entitlement to pay part or all of their RAD. The aged care rule requires retirement village operators to refund non-owner residents the amount of their estimated exit entitlement up to the level of their accommodation bond within six months of the resident exiting the retirement village and entering aged care. It also requires the village operator to pay any interest that accrues on the accommodation bond in the first six months.

In the absence of the rule, non-owner residents would be required to fund their own aged care costs while they wait for their exit entitlement to be paid by the retirement village, either as DAPs, a RAD or a combination of the two. This would be a significant cost to most non-owner retirement village residents:

* + - * 1. If the non-owner resident chooses to pay for their aged care with DAPs for the first six months after entering aged care – on average, DAPs are $57 per day – or $10,400 for six months. However, if a non-owner resident paid their exit entitlement (on average $258,700) as a RAD, their DAP would be reduced by $41 per day to approximately $16 per day – a saving of $7,430 over six months; and
        2. If the non-owner resident pays a RAD upfront (i.e. out of funds other than their exit entitlement) – they miss out on interest they could earn on these funds. Assuming an interest rate of 3.25 per cent, accrued for six months, this is equivalent to $5,866.

In the absence of the aged care rule, a lengthy wait for the return of non-owner residents’ exit entitlements can interfere with their entry into aged care. For example, if the resident cannot afford the DAPs of their preferred aged care facility while they are waiting for their unit to be sold, they may need to choose a less suitable facility or delay their entry into aged care. Residents writing to the *Parliamentary Inquiry into the Retirement Housing* *Sector* raised issues with the length of the sale processes. This included a resident who moved into aged care from a retirement village because of illness, but whose unit remained unsold after 11 months, another where the sale process took over 20 months and a retirement village with four unsold units, which had been on the market for more than 12 months.

***Potential for disputes about the amount of an exit entitlement***

When a unit is sold to another incoming resident the market value is apparent from the sale price and the departing resident’s exit entitlement can be determined from the sale price. However, if the exit entitlement is required to be paid by the village operator, before the unit is sold, the market value must be estimated. This creates the potential for disputes between village operators and residents about the calculation. Disputes between residents and village operators can result in significant legal costs for both parties. A number of residents writing to the *Parliamentary Inquiry into the Retirement Housing* Sector also reported that the stress of disputes with village operators was detracting from their quality of life or exacerbating health conditions.

To enable the six month rule and the aged care rule to operate effectively, the Regulations set out a process for determining a non-owner resident’s exit entitlement based on an independent estimate of market value.[[34]](#footnote-35) In cases where a resident’s exit entitlement is based on factors other than market value (e.g. residents who have paid less than market value to enter the retirement village), the Regulations specify a formula for calculating the resident’s exit entitlement, which references the increase in the Consumer Price Index (CPI).[[35]](#footnote-36), [[36]](#footnote-37)

### Evidence of problems relating to contracts

In total, CAV received 622 enquiries and 42 complaints related to retirement villages in 2015-16. Overall, the total number of enquiries about retirement villages has been steady in recent years, while the number of complaints has been decreasing.

Figure 2.2 – Retirement village enquiries and disputes handled by Consumer Affairs Victoria, 2012-13 to 2015-16

Source: Consumer Affairs Victoria.

In 2015-16, there were 23 enquiries and one complaint to CAV relating specifically to residence contracts. In addition, there were a significant number of enquiries and complaints, which may originate from a lack of understanding about the contractual provisions of residence contracts. For example, issues with ongoing fees, service quality, by-laws and disputes between owners and managers.

In addition to the complaints and enquiries made to CAV, residents may also raise issues with the Housing for the Aged Action Group (HAAG), Residents of Retirement Villages Victoria (RRVV), or the Consumer Action Law Centre (CALC). The 2013 RIS for Retirement Village Contract Disclosure and Contract Regulations (described in the next section) provided data on the number of enquiries and complaints recorded by these organisations, in relation to retirement villages. However, no more recent updates to this data were available to include in this analysis.

***Changes made to the Regulations in 2014***

In 2014, following extensive consultation, changes were made to the Regulations to:

* + - * 1. Prescribe the matters that must be included in contracts; that may be included in contracts and that must not be included in contracts;
        2. Prescribe a basic set of mandatory rights and obligations of operators and residents; and
        3. Prescribe the layout of residence and management contracts including the order of matters.

The changes were made to better ensure incoming residents understood their financial commitments and contractual rights and obligations, and also to ensure residents could choose the village that meets their personal and social needs.

The changes to contract requirements in 2014 were not retrospective, which means they only affect contracts entered into after the Regulations were enacted (probably less than one-quarter of contracts in place in 2017). Since the changes, CAV has received fewer complaints about unfair contracts, which may be an early indication that the changes have been effective at meeting their objectives. However, more time is required to be certain of their impact.

|  |
| --- |
| Question: Have the changes to contract requirements in 2014 been effective in improving the fairness of contracts for residents (i.e. residents’ understanding of their financial commitments and contractual rights and obligations)? |

**Figure 2.3 –Retirement village enquiries and disputes about contracts handled by Consumer Affairs Victoria, 2012-13 to 2015-16**Source: Consumer Affairs Victoria.

# Objective of regulation

## Legislative and regulatory objectives

The purpose of the RV Act is ‘to clarify and protect the rights of persons who live in, or wish to live in retirement villages’.[[37]](#footnote-38)

In pursuit of that purpose the RV Act seeks to:

* + - * 1. Ensure retirees make the right decision about entering a retirement village;
        2. Protect non-owner residents’ in-going contributions from village operators’ insolvency or fraud;
        3. Recognise the vulnerability of residents who cannot or cannot easily leave their village by regulating service fee increases and special levies; and
        4. Facilitate residents’ departure from retirement villages.

The Regulations support the RV Act in defining specific conditions for the timing and value of refunds of in-going contributions, and the structure and content of residence and management contracts.

Specifically, the Regulations:

* + - * 1. Prescribe conditions for the purposes of s. 26(2)(c) of the RV Act (i.e. the six month rule exemption);
        2. Provide for full or part payment of refundable in-going contributions to be brought forward to cover certain costs to former non-owner residents associated with aged care accommodation (i.e. the aged care rule);
        3. Prescribe clauses to be included in residence contracts that set out how refundable in-going contributions are calculated in certain cases;
        4. Prescribe any matters that must be, may be and must not be included in residence and management contracts for retirement villages;
        5. Prescribe the terms for residence contracts and management contracts; and
        6. Prescribe the layout of residence contracts and management contracts.

## Objectives of the reform proposal

The proposed regulations are primarily concerned with three issues (1) remake the exemption from the six month rule, applying in cases where non-owner residents have control over the sale of their unit and certain other prescribed conditions are met; (2) remaking a form of the aged care rule that takes into account changes to the Aged Care Act; and (3) remaking aspects of the Regulations that were introduced in 2014 relating to retirement village contracts, including matters that must/must-not be included in contracts and the layout of contracts.

The objectives of remaking the regulations are to:

* + - * 1. Ensure the return of non-owner residents’ exit entitlements does not interfere with their entry into aged care;
        2. Address problems relating to the clarity and complexity of contracts, which can result in detriment to retirement village residents;
        3. Minimise unnecessary compliance burdens on the retirement village sector;
        4. Minimise retrospective changes to non-owner residents’ contractual arrangements;
        5. Provide non-owner residents with the appropriate level of choice of aged care payment when entering into aged care; and
        6. Ensure the ongoing viability of the sector.

# Options to address the problem

*This chapter describes the options considered that may address the problems identified in Chapter 2 and support the Government’s objectives as outlined in Chapter 3.*

## Overview of the options

The *Subordinate Legislation Act 1994* requires a RIS to consider a number of options to achieve the Government’s objectives, including both regulatory and non-regulatory options. In this case, the current regulations are sunsetting and it is a requirement that the proposed options are compared to a ‘base case’ where the regulations are not remade – i.e. one where there are no regulations.

Three options have been developed by CAV, in consultation with stakeholders. All of these options involve keeping the three main aspects of the current regulations (1) the exemption from the six month rule; (2) a form of the aged care rule; and (3) the provisions relating to contract requirements and layout. All three options would involve the six month rule exemption and the contractual provisions in their current form. Three alternative approaches have been considered for renewing the aged care rule. These are:

* + - * 1. **Option 1** – DAP or RAD rule;
        2. **Option 2** – DAP or RAD rule with RAD grandfathering provisions; and
        3. **Option 3** – DAP rule.

No feasible non-regulatory options have been identified that would address the problems outlined in Chapter 2 nor have any alternate regulatory options been identified for the six month rule, the calculation of estimated exit entitlement, and the contract provisions.

In the case of both the aged care rule and the provisions in the Regulations relating to contracts, a non-regulatory approach (e.g. self-regulation or guidance materials) would be technically possible. However, as outlined in Chapter 2, there are a number of inherent factors, which limit residents’ capacity to evaluate retirement village contracts and consider their long-term implications. A regulatory approach was considered the only feasible way of addressing these issues. In the case of the contractual provisions, the ongoing costs of these are low (around $337 per year, per village) and have only recently been implemented. No additional compliance costs are anticipated to arise from any of the proposed regulatory options.

In the case of the six month rule exemption, due to the six-month rule being contained in legislation, a regulatory exemption is the only way to amend the application of that rule. The only other option would be not to have any exemption from the rule, which as the analysis later in this chapter shows, would be financially onerous for the sector.

No feasible alternative options were identified by CAV for addressing financial barriers to non-owner retirement village residents entering aged care. As aged care is a Commonwealth responsibility, the options available to the Victorian Government are limited. Other approaches would involve accessing the funds needed to pay for aged care from a source other than the retirement village resident or operator (e.g. government), which is not considered appropriate or proportional to the problem that the regulations are seeking to address.

The key features of the base case and each option are summarised in **Table 4.1** below.

|  |
| --- |
| Question: Should CAV consider any other feasible options? If so, what are they and why? |

**Table 4.1 – Summary of options**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Six month rule exemption  (Regulation 5) | Aged care rule  (Regulation 6) | Calculation of in-going contribution refunds  (Regulation 7 & 8) | Contractual requirements (Regulations 8B-8H) |
| **Base case – No contractual arrangements regulations** | No exemption from the six month rule under the Act for contracts made after 1 August 2017 — for these contracts the six month rule would still apply under the Act. As exemptions are already in most existing non-owner residents’ contracts, the six month rule exemption would apply to them but not for new non-owner residents.  Operators would be required to pay new non-owner residents’ estimated exit entitlements six months after exiting if their unit is unsold. | There would be no aged care rule.  RV Operators would not be required to fund non-owner residents’ aged care payments. Existing non-owner residents without the benefit of the six month rule would have to find the funds for their entry into aged care if their unit is unsold after six months. New non-owner residents would fund their entry into aged care under the six month rule if their unit is unsold after six months. | No regulatory requirements regarding how to calculate estimated exit entitlements. | No requirements regarding the structure and content of contracts other than as specified in the RV Act and the RN Regulations. |
| **Option 1 – DAP or RAD** | Six month rule exemption applies if non-owner resident has control of sale (i.e. remake the existing regulations).  Operators would be required to pay non-owner residents’ estimated exit entitlement only upon sale of the unit (subject to the application of the aged care rule). | Non-owner residents who entered RV after 31/07/06 would have a choice between requiring the operator to pay their aged care DAP or RAD prior to the sale of their unit.  Non-owner residents would receive the balance of their estimated exit entitlement upon sale of the unit (less the accumulation of RAD/DAPs payments). | The calculations for estimated exit entitlements are prescribed (i.e. remake the existing regulations). | Matters that should and should not be included in contracts (including certain terms and layout) are prescribed (i.e. remake the existing regulations). |
| **Option 2 – DAP or RAD rule with RAD grandfathering provisions** | Same as Option 1 | Non-owner residents who enter RV between 31/07/06 and 1/08/17 would have a choice of requiring the operator to pay their aged care DAP or RAD prior to the sale of their unit. Non-owner residents who enter RV after 1/08/17 would be able to require the operator to pay their aged care DAPs prior to the sale of their unit. | Same as Option 1 | Same as Option 1 |
| **Option 3 – DAP rule** | Same as Option 1 | Non-owner residents who enter RV after 31/07/06 can require the operator to pay their aged care DAPs prior to the sale of their unit. | Same as Option 1 | Same as Option 1 |

## Common provisions

As discussed above, no feasible alternative regulatory or non-regulatory approaches have been identified that would address problems relating to the:

* + - * 1. Trade-off between financial burden and control of sale as currently addressed by the six month rule exemption;
        2. Calculation of in-going contribution refunds before units are sold; and
        3. Contractual requirements.

Under each option, it is proposed to retain the current provisions for the six month rule exemption (r.5), the calculations of in-going refunds (r.7-8) and contractual requirements (r.8B-H).

Six month rule exemption

The six month rule exemption would apply in contracts where the non-owner resident has control of the sale of the unit (consistent with the existing regulations). Retirement village operators would be required to pay non-owner residents’ exit entitlements only upon sale of the unit (subject to the application of the aged care rule).

In contracts where the non-owner resident does not have control of the sale of the unit there is no exemption from the six month rule and the retirement village operator is obliged to pay the resident their exit entitlement after six months of exiting the retirement village.

*Calculation of in-going contribution refunds*

Under all options, the calculation of the refundable in-going contribution to be paid to a departing non-owner resident would be required to have reference to the value of the retirement village unit. If the retirement village unit has not yet been sold by the time the retirement village operator is required to pay the resident their exit entitlement, then the value would be calculated by proxy using either the market, or the non-market valuation method.

* + - * 1. **Market valuations** – an independent valuation is obtained from a mutually agreed valuer. If agreement is not reached on the valuer, the valuer will be chosen by the President of the Victorian Division of the Australian Property Institute. This rule is applied when the in-going contribution that was paid by the resident was based on a market value.
        2. **Non**-**market valuations –** the price paid as an in-going contribution when the resident entered the retirement village is inflated by the Melbourne Consumer Price Index to estimate the value of the unit. This rule is applied when the in-going contribution that was paid by the resident was based on other factors than just market value and was lower than market value.

For both market and non-market valuations, if the exiting resident is also entitled to any proportion of the difference between the independent valuation and the in-going-contribution paid by the next resident moving in (if the independent valuation has undervalued the unit), the resident would also be liable for the costs of a valuation in the same proportion. Where the exiting resident is not entitled to any of the difference, the retirement village owner would be liable for the costs of valuation.

Contractual requirements

All options retain the same contractual requirements that currently exist in the Regulations including those around inclusions and exclusions of certain matters, prescribed terms and the layout of contracts. A summary of these requirements is provided in Appendix C.

## Aged care rule

Options 1, 2 and 3 propose different variations of the aged care rule to address financial barriers to entry into aged care. These are described below.

### Option 1 – DAP or RAD rule

Under this option, the existing regulations would be remade in their current form, other than replacing the current aged care rule (r.6) to address, in a minimalist way, the reforms to aged care, such that instead of non-owner residents having a choice between payment of their RAD and the DAPs up to the estimated exit entitlement, they would have a choice between a DAP rule and a RAD rule up to the estimated exit entitlement. This option is equivalent to the status quo, addressing the issues with the current wording of the aged care rule.

Aged care rule

Non-owner residents who entered a retirement village after 31 July 2006 would have a choice between requiring the retirement village operator to pay their aged care DAPs or RAD (up to the estimated exit entitlement) and would receive the balance of their exit entitlement (less DAPs/RADs payments made by the operator) when the unit was sold.

* + - * 1. **DAP rule** – The retirement village operator pays DAPs to the residential aged care facility each month from the resident’s entry into residential aged care up until the sale of their former retirement village unit. At that point the retirement village operator will pay the exit entitlement less the total DAP payments made to the former resident.
        2. **RAD rule** – The retirement village operator pays a RAD to the residential aged care facility six months after the exit of the resident if their unit has not yet been sold. When the unit is sold, the retirement village operator will pay the balance of the resident’s exit entitlement less the RAD.

The combined operation of the aged care rule and the six month rule in Option 1 is described in Figure 4.1.

Figure 4.1 – The aged care rule and the six month rule exemption under Option 1



### Option 2 – DAP or RAD rule with RAD grandfathering provisions

Option 2 would remake the Regulations in their current form, other than replacing the current aged care rule (r.6) with a DAP rule for all non-owner residents who have entered retirement villages after 31 July 2006 and a grandfathering provision allowing current non-owner residents (who entered into the retirement village prior to 1 August 2017) the choice between a DAP and RAD rule, in all cases up to a total of 85 per cent of the estimated exit entitlement with provision for operators paying RAD to apply to VCAT in hardship cases to pay DAPs instead.

Aged care rule

All non-owner residents moving to residential aged care who entered a retirement village after 31 July 2006 would be able to require their RV operator to pay their aged care DAP and would receive their exit entitlement (less DAPs payments made by the operator) when the unit was sold. Current retirement village residents (entered into the retirement village prior to 1 August 2017) will have the choice between a DAP or a RAD-rule, with payments capped at 85 per cent of the estimated exit entitlement and provision for operators paying RAD to apply to VCAT in hardship cases to pay DAPs instead. The cap on aged care rule payments ensures that estimated exit entitlements based on what transpire to be overvaluations of units do not result in residents needing to pay money back to the retirement village operator when units are sold, and moderates the financial impact on retirement village operators of having to pay early exit entitlements. The cap has been set at 85 per cent following consultation with industry stakeholders and in reference to a similar cap proposed in South Australia.[[38]](#footnote-39)

|  |
| --- |
| Question: Is the proposed 85 per cent cap on early exit entitlements appropriate? What alternative cap would you suggest and why? |

The combined operation of the aged care rule and the six month rule in Option 2 is described in Figure 4.2.

Figure 4.2 – The aged care rule and the six month rule exemption under Option 2



### Option 3 – DAP rule

Under Option 3, the Regulations are remade in their current form other than replacing the current aged care rule (r.6) with a DAP rule for new and existing non-owner residents who have entered retirement villages after 31 July 2006 up to 85 per cent of the estimated exit entitlement.

Aged care rule

All residents moving to residential aged care who entered a retirement village after 31 July 2006 would be able to require their RV operator to pay their aged care DAP and would receive their exit entitlement (less DAPs payments made by the operator) when the unit was sold. There would be no provision for existing residents to have the choice of requiring their RV operator to pay for their RAD after six months.

The combined operation of the six month rule and the aged care rule in Option 3 is described in Figure 4.3.

Figure 4.3 – The aged care rule and the six month rule exemption under Option 3



# Options analysis

*This section details the framework for assessing the options identified in Chapter 4 and then sets outs the results of the options analysis.*

## Assessment framework

The default decision tool for a RIS is a Cost Benefit Analysis (CBA). A CBA involves a systematic evaluation of the impacts of a regulatory proposal, accounting for all the effects on the community and economy, not just the immediate or direct effects, financial effects or effects on one group. It emphasises, to the extent possible, valuing the gains and losses from a regulatory proposal in monetary terms. Usually a CBA would be used to determine the preferred option, which is the option calculated to have the greatest net benefit to society.

The key quantifiable impacts of the options for the Regulations relate mainly to financial transfers between village operators and residents. These result in significant differences in outcomes for the groups involved, but overall the net benefits of the options to society are very similar.[[39]](#footnote-40) There are also other aspects of the Regulations which are not readily quantifiable – such as the impact on resident’s health and wellbeing as a result of disputes with village operators or delays in their entry to aged care. This means a CBA is less appropriate as a tool to assess the options.

In addition, because no feasible alternative options have been identified by stakeholders or by CAV for the calculation of the exemption to the six month rule (r.5), estimated exit entitlements (r.7-8), and requirements around contract layout and content (r.8B-8H). As such, the options analysis in this RIS focuses on the impacts of the alternate approaches to the aged care rule.

Hence the options analysis is conducted in two components:

* + - * 1. The first component assesses the impacts of Regulations 5, 7 and 8 compared to the base case. As discussed in Chapter 4, no feasible alternative to the status quo has been identified to address the issues around the calculation of estimated exit entitlements, the six month rule exemption and contractual requirements. A qualitative assessment of the impacts and an estimate of the compliance costs of these Regulations are provided.
        2. The second component involves an assessment of the alternate options for the aged care rule (Regulation 6). The analysis includes an assessment of the financial impacts to retirement village residents and operators and a qualitative analysis using a Multi-Criteria Analysis (MCA) of the non-financial impacts of these options.

## Analysis of common provisions

As discussed above, each of the proposed options includes:

* + - * 1. The six month rule exemption;
        2. The calculation of in-going contribution refunds before units are sold; and
        3. The establishment of minimum contractual requirements.

***Six month rule exemption***

Under each of the proposed options, the six month rule exemption would remain. The six month rule exemption provides for a trade-off for residents between having access to an early exit entitlement and having greater control over certain aspects of the sale of their unit.

Compared to the base case, the options ensure that the application of the six month rule is not too onerous for retirement village operators, and hence ensures the ongoing viability of the sector.

***Calculation of in-going contribution refunds***

Under each of the proposed options, the regulatory controls on current contracts would remain and benefit non-owner residents by improving clarity relative to the base case in the calculation of early exit entitlements and as such, will reduce the likelihood of consumers suffering some form of financial or other detriment due to a lack of understanding of the consequence of their contracts with retirement village operators.

Under the proposed options, calculations of market value-based early exit entitlements will be based on an independent valuation. There is a cost associated with undertaking an independent valuation, which stakeholders have indicated is approximately $600 per assessment. Under each option, there would be approximately 2,400 residents eligible for aged care payments on average each year over the 20 year period of analysis. If all of these residents applied for aged care payments and all of these residents had market value-based exit entitlements[[40]](#footnote-41) the total cost would be approximately $1.4 million per annum. However, under the base case a valuation of the property would likely occur anyway (as part of the normal sales process) and the cost of which incorporated into real estate agent fees or other exit charges. The regulatory burden of undertaking an independent valuation relative to the base case is therefore assumed to be very low.

***Other contractual controls***

Compared to the base case, there may be some compliance costs associated with maintaining contractual controls. An analysis of costs and benefits of the contractual controls was undertaken in the 2013 RIS for Retirement Village Contract Disclosure and Contract Regulations. This analysis estimated there would be additional compliance costs of approximately $6 million across the sector over ten years (approximately $14,000 per village). Of this, roughly $1.35 million are associated with implementing contract standardisation requirements for retirement village contracts as required under the Regulations. It was estimated that about half of these costs would be incurred up-front, updating contracts. The ongoing compliance costs for complying with information disclosure and contractual requirements were estimated to be quite low, at $337 per village per year or approximately $135,000 per annum on the retirement village sector.

Given this analysis, it is estimated that by remaking the Regulations related to contractual requirements, there will be an ongoing $135,000 compliance cost per annum to the sector.

|  |
| --- |
| Question: Are there any other substantial costs of compliance related to the six month rule exemption, the calculation of early exit entitlements and the other contractual controls described above? |

## Financial analysis of the options for the aged care rule

The options considered for regulating the return of residents’ exit entitlements and the payment of their aged care costs place different responsibilities for certain costs on retirement village operators and residents. They also affect the amount and timing of these costs.

Typically, a 10 year timeframe is required for conducting analysis in a RIS. However, due to the lagged nature of the operation of the aged care rule and the six month rule, changes to the Regulations may not have any meaningful impact until at least 2027. As such the analysis is conducted over a 20 year time period to capture the full extent impact of the options and the financial impacts detailed in the tables are yearly averages over the 20 year period.

The assumptions underpinning the financial analysis are detailed in Appendix D and the yearly financial impacts over the 20 year time period are presented graphically in Appendix E.

### Base case

Under the base case, the Regulations will expire and the aged care rule will no longer apply. No further exemptions to the six month rule would be allowed for new contracts between retirement village residents and operators. However, the exemptions would continue to apply to existing residents, whose contracts included the relevant provisions (the vast majority of existing non-owner residents).The table below sets out the financial costs to retirement village residents and operators that would occur in the base case.

Table 5.1 – Base Case: Financial impacts on non-owner residents and village operators – per resident

| **Base Case impacts - per resident** | **Existing resident** | | **New resident** | |
| --- | --- | --- | --- | --- |
| **Resident with RAD** | **Resident with DAP** | **Resident with RAD** | **Resident with DAP** |
| Residents with RAD/DAP | 65% | 35% | 65% | 35% |
| **Resident impacts** |  |  |  |  |
| Aged care costs | -13,038 | -13,038 | -7,451 | -13,038 |
| Interest costs | -203 | -203 | -163 | +3,659 |
| Deductions from entitlement | 0 | 0 | 0 | 0 |
| **Total costs** | **-13,241** | **-13,241** | **-7,613** | **-10,060** |
| **Retirement village costs** |  |  |  |  |
| Aged care costs | 0 | 0 | 0 | 0 |
| Interest costs on exit entitlement | 0 | 0 | -4,866 | -4,866 |
| Final exit entitlement | 258,700 | 258,700 | 258,700 | 258,700 |
| Exit entitlement paid to resident | -258,700 | -258,700 | -258,700 | -258,700 |
| **Total costs** | **0** | **0** | **-4,866** | **-4,866** |

Without the six month rule exemption, under the base case, all new residents would be entitled to early payment of their exit entitlement. In 2037, this will be approximately 3,000. The cost to retirement village operators of this will be on average approximately $6 million per annum over the 20 year period.

Table 5.2 – Base Case: Financial impacts on non-owner residents and village operators – total for sector

| **Base Case impacts – total for sector** | **2018** | **2037** | **Average**  **(2018 to 2037)** |
| --- | --- | --- | --- |
| **Population assumptions** |  |  |  |
| Residents receiving six month rule | 0 | 3,094 | 1,263 |
| Residents receiving RAD based payment | 0 | 0 | 0 |
| Residents receiving DAP based payment | 0 | 0 | 0 |
| Residents receiving not eligible for early payment | 1,030 | 0 | 1,106 |
| **Cost to residents moving to aged care** |  |  |  |
| Residents receiving six month rule | 0 | -26,205,405 | -10,698,140 |
| Residents receiving RAD based payment | 0 | 0 | 0 |
| Residents receiving DAP based payment | 0 | 0 | 0 |
| Residents not eligible for early payment | -13,634,569 | 0 | -14,641,083 |
| **Total cost to residents moving to aged care** | **-13,634,569** | **-26,205,405** | **-25,339,224** |
| **Cost to retirement village operators** |  |  |  |
| Residents receiving six month rule | 0 | -15,117,646 | -6,171,655 |
| Residents receiving RAD based payment | 0 | 0 | 0 |
| Residents receiving DAP based payment | 0 | 0 | 0 |
| Residents not eligible for early payment | 0 | 0 | 0 |
| **Total cost to retirement village operators** | **0** | **-15,117,646** | **-6,171,655** |

### Option 1 – DAP or RAD rule

Under Option 1, the six month rule exemption will continue to be used across the sector. Unlike the base case, non-owner residents moving from retirement villages to aged care will have access to a choice of a DAP or a RAD aged care rule up to the estimated exit entitlement.

It is estimated that 65 per cent of residents will elect for a RAD rule after six months and 35 per cent will choose the ongoing DAP rule. The retirement village sector is growing by about 5 per cent per annum and the number of residents choosing RAD and DAP-based rules is also expected to grow at this rate.

Figure 5.1 – Option 1: Number of non-owner residents eligible for aged care rule



The table below sets out the financial costs to retirement village residents and operators associated with this option.

Table 5.3 – Option 1: Financial impacts on non-owner residents and villages operator – per resident

| **Option 1 impacts - per resident** | **Resident with RAD** | **Resident with DAP** |
| --- | --- | --- |
| Residents with RAD/DAP | 65% | 35% |
| **Resident impacts** |  |  |
| Aged care costs | 0 | 0 |
| Interest costs | 0 | 0 |
| Deductions from entitlement | -7,451 | -13,038 |
| **Total costs** | **-7,451** | **-13,038** |
| **Retirement village costs** |  |  |
| Aged care costs | -7,451 | -13,038 |
| Interest costs on exit entitlement | -4,966 | -312 |
| Final exit entitlement | 258,700 | 258,700 |
| Exit entitlement paid to resident | -251,249 | -245,662 |
| **Total costs** | **-4,966** | **-312** |

Under Option 1, more residents are entitled to early payment of their exit entitlement initially – approximately 2,400 per year, compared to approximately 1,300 each year under the base case. The cost to the retirement village sector of this option is relatively low – operators would be $1.7 million worse-off on average each year over 20 years, compared to the base case. This cost is driven by exiting residents being entitled to early payments initially and also by retirement villages being able to deduct any DAP payments they have made on behalf of the resident from their final exit entitlement.

Table 5.4 – Option 1: Financial impacts on residents and villages – total for sector relative to base case

|  |  |  |  |
| --- | --- | --- | --- |
| **Option 1 impacts – total for sector** | **2018** | **2037** | **Average**  **(2018 to 2037)** |
| **Population assumptions** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Existing residents receiving RAD based payment | 669 | 0 | 719 |
| New residents receiving RAD based payment | 0 | 2,011 | 821 |
| Existing residents receiving DAP based payment | 360 | 0 | 387 |
| New residents receiving DAP based payment | 0 | 1,083 | 442 |
| **Cost to residents** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | +3,875,704 | +327,580 | +4,295,543 |
| Residents receiving DAP based payment | +73,031 | -3,225,367 | -1,238,307 |
| **Total cost to residents** | **+3,948,735** | **-2,897,787** | **+3,057,236** |
| **Cost to retirement village operators** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | -3,323,492 | -159,681 | -3,634,023 |
| Residents receiving DAP based payment | -112,609 | +4,952,817 | +1,901,024 |
| **Total cost to retirement village operators** | **-3,436,101** | **+4,793,136** | **-1,732,998** |
| **Net financial impact** | **+512,634** | **+1,895,349** | **+1,324,238** |

### Option 2 – DAP or RAD rule with RAD grandfathering provisions

Under Option 2, the six month rule exemption would continue to apply. All residents will have access to a DAP-based aged care rule. A RAD rule will also be available for retirement village residents who entered villages between 1 August 2006 and 31 July 2017, but not for residents who entered before or after those dates, in all cases up to a total of 85 per cent of the estimated exit entitlement with provision for operators paying RAD to apply to VCAT in hardship cases to pay DAPs instead.

Figure 5.2 – Option 2: Number of residents eligible for aged care rule



The table below sets out the financial costs to retirement village residents and operators associated with this option. Under this option, fewer residents will be eligible for a RAD rule over time, with more using a DAP rule.

Table 5.5 - Option 2: Financial impacts on residents and villages – per resident

| **Option 2 impacts - per resident** | **Resident with RAD** | **Resident with DAP** |
| --- | --- | --- |
| Residents with RAD/DAP | 30% | 70% |
| **Resident impacts** |  |  |
| Aged care costs | -814 | 0 |
| Interest costs | -10 | 0 |
| Deductions from entitlement | -7,451 | -13,038 |
| **Total costs** | **-8,275** | **-13,038** |
| **Retirement village costs** |  |  |
| Aged care costs | -7,451 | -13,038 |
| Interest costs on exit entitlement | -4,254 | -312 |
| Final exit entitlement | 258,700 | 258,700 |
| Exit entitlement paid to resident | -251,249 | -245,662 |
| **Total costs** | **-4,254** | **-312** |

Under Option 2 approximately 2,400 residents are eligible for early aged care payments each year, compared to approximately 1,300 each year under the base case. The cost to the retirement village sector of this option is lower than the base case – operators would be, on average $2.6 million better off each year over the 20 year period, compared to the base case. The financial impact on retirement village operators is low as new residents don’t have access to RAD aged care rule payments.

Table 5.6 - Option 2: Financial impacts on residents and villages – total for sector relative to base case

| **Option 2 impacts – total for sector** | **2017** | **2037** | **Average**  **(2017 to 2037)** |
| --- | --- | --- | --- |
| **Population assumptions** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Existing residents receiving RAD based payment | 669 | 0 | 719 |
| New residents receiving RAD based payment | 0 | 0 | 0 |
| Existing residents receiving DAP based payment | 360 | 0 | 387 |
| New residents receiving DAP based payment | 0 | 3,094 | 1,263 |
| **Cost to residents** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | +3,324,178 | 0 | +3,569,571 |
| Residents receiving DAP based payment | +73,031 | -14,135,653 | -5,692,341 |
| **Total cost to residents** | **+3,397,209** | **-14,135,653** | **-2,122,771** |
| **Cost to retirement village operators** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | -2,847,067 | 0 | -3,057,240 |
| Residents receiving DAP based payment | -112,609 | +14,150,906 | +5,656,068 |
| **Total cost to retirement village operators** | **-2,959,677** | **+14,150,906** | **+2,598,828** |
| **Net impact** | **+437,532** | **+15,253** | **+476,057** |

### Option 3 – DAP-based rule

Under Option 3, the six month rule exemption would continue to apply. All residents will have access to a DAP-based aged care rule, up to 85 per cent of the estimated exit entitlement, but no resident will have access to a RAD rule.

Figure 5.3 – Option 3: Residents eligible for aged care rule



Compared to the base case, more residents are entitled to early payment of their exit entitlement as DAP payments – approximately 2,400 per year, compared to approximately 1,300 each year. The cost to the retirement village sector is the lowest for this option – operators would be on average $5.4 million better off each year over the 20 year period, compared to the base case.

Table 5.7 – Option 3: Financial impacts on residents and village operators – per resident

|  |  |  |
| --- | --- | --- |
| **Option 3 impacts - per resident** | **Resident with RAD** | **Resident with DAP** |
| Residents with RAD/DAP | 0% | 100% |
| **Resident impacts** |  |  |
| Aged care costs | N/A | 0 |
| Interest costs | N/A | 0 |
| Deductions from entitlement | N/A | -13,038 |
| **Total costs** | **N/A** | **-13,038** |
| **Retirement village costs** |  |  |
| Aged care costs | N/A | -13,038 |
| Interest costs on exit entitlement | N/A | -312 |
| Final exit entitlement | N/A | 258,700 |
| Exit entitlement paid to resident | N/A | -245,662 |
| **Total costs** | N/A | **-312** |

Table 5.8 - Option 3: Financial impacts on residents and villages – total for sector relative to base case

|  |  |  |  |
| --- | --- | --- | --- |
| **Option 3 impacts – total for sector** | **2018** | **2037** | **Average**  **(2018 to 2037)** |
| **Population assumptions** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Existing residents receiving RAD based payment | 0 | 0 | 0 |
| New residents receiving RAD based payment | 0 | 0 | 0 |
| Existing residents receiving DAP based payment | 1,030 | 0 | 1,106 |
| New residents receiving DAP based payment | 0 | 3,094 | 1,263 |
| **Cost to residents** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | 0 | 0 | 0 |
| Residents receiving DAP based payment | +208,660 | -14,135,653 | -5,546,700 |
| **Total cost to residents** | **+208,660** | **-14,135,653** | **-5,546,700** |
| **Cost to retirement village operators** |  |  |  |
| Residents receiving six month rule | 0 | 0 | 0 |
| Residents receiving RAD based payment | 0 | 0 | 0 |
| Residents receiving DAP based payment | -321,741 | +14,150,906 | +5,431,498 |
| **Total cost to retirement village operators** | **-321,741** | **+14,150,906** | **+5,431,498** |
| **Net financial impact** | **-113,081** | **+15,253** | **-115,202** |

## Qualitative analysis of the options for the aged care rule

### Addresses barriers to entry into aged care

Each of the proposed options includes an aged care rule that provides non-owner residents with early access to their exit entitlement either in the form of a RAD payment or DAP payments when they are moving to aged care. This means that each of the proposed options will remove the financial barriers to entry to aged care for residents exiting retirement villages. This will ensure that non-owner residents will not experience any delays in their entry into aged care and the potential for any delay to exacerbate their health problems.

As all of the options deliver this key objective of the Regulations, the benefits of addressing the financial barriers to entry into aged care are not included in the MCA.

### Multi-criteria analysis of the options for the aged care rule

The following criteria have been used to assess the impacts of each of the options. The criteria have been developed from the problems identified in Chapter 2 and the objectives of regulation identified in Chapter 3:

* + - * 1. Does not retrospectively change residents entitlements (weight: 25 per cent);
        2. Provides non-owner residents with choices of how to pay for their aged care (weight: 25 per cent); and
        3. Ensures ongoing viability of the sector – does not risk the financial viability of the sector, including smaller retirement village operators, or retirement village operators with higher than expected numbers of residents exiting in one year (weight: 50 per cent).

The criteria have been weighted in such a way that criteria capturing benefits to residents (the first two criteria) and criteria capturing benefits to retirement village operators (the last criterion) are weighted equally.

Each criterion is scored relative to the base case and is ranked on a scale of -10 to +10, where 0 represents no difference from the base case.

#### Minimises retrospective changes

Non-owner residents who entered into contracts under the current Regulations would have had a reasonable or legitimate expectation that the aged care rule would apply to them. Removing the rule retrospectively penalises these residents by reducing their entitlements, in the event they entered aged care.

Under Option 1, existing and new residents will have access to either a DAP or RAD based aged care rule, which means that no existing residents are retrospectively made worse-off than at the time they entered their contracts. Likewise, under Option 2 no existing residents are retrospectively made worse-off than at the time they entered their contracts. Therefore this option is assessed as being equivalent to Option 1 against this criterion. Option 3 reduces the choice of payment options to existing residents. Retrospectively reducing the entitlement is not considered an equitable outcome for these residents, although it is still an improvement on the base case, where they would not have access to any form of aged care payments.

The scores for each option against this criterion are presented in the table below.

Table 5.9 – Aged care rule: minimises retrospective changes

| **Criteria** | **Weighting** | **Option 1** | **Option 2** | **Option 3** |
| --- | --- | --- | --- | --- |
| Minimises retrospective changes | 25% | +10 | +10 | +5 |

#### Choice of aged care payments for consumers

Under Option 1 all residents leaving retirement villages for aged care would have access to the aged care rule with a choice of a RAD rule or a DAP rule (up to their estimated exit entitlement). By comparison to the base case, this option removes the possibility that a delay in the return of a resident’s exit entitlement will interfere with their entry into aged care. It also provides residents with the most choice regarding how they will pay for their aged care costs and significantly reduces the aged care costs they incur prior to the sale of their retirement village unit.

Under Option 2, all residents will have access to a DAP-based aged care rule, while existing residents will have access to their choice of DAP or RAD-based payments. For all residents, this will ensure that the return of exit entitlements does not interfere with their entry into aged care. However, new residents will not have as much choice about how they pay for this care while they are waiting for their exit entitlement.

Under Option 3 all residents leaving retirement villages for aged care would have access to a DAP based aged care rule (but no RAD rule). This is an improvement on the base case, as it means that these residents will not risk having to delay their entry into aged care or choose a cheaper/less desirable aged care provider because they do not have access to the funds held up in their exit entitlement. However, for the non-resident population as a whole, Option 3 does not provide as much choice regarding the type of aged care payments as Options 1 and 2.

The scores for each option against this criterion are presented in the table below.

Table 5.10 – Aged care rule: choice of aged care payments for non-owner residents

| **Criteria** | **Weighting** | **Option 1** | **Option 2** | **Option 3** |
| --- | --- | --- | --- | --- |
| Choice of aged care payments for non-owner residents | 25% | +10 | +7.5 | +5 |

#### Minimises impacts on the overall viability of the sector

Under the base case, all new non-owner residents would be eligible for the six month rule, without exemption. This could lead to large costs to retirement village operators. Retirement villages would be required to pay exiting non-owner residents in advance an average of $258,700 for 4.5 months before units are sold. This would have a significant impact on the viability of the sector, especially for smaller retirement village operators, or retirement village operators with higher than expected numbers of residents leaving in one year.

Option 1 will be slightly more expensive for the sector than the base case. This is because all retirement village residents entering aged care would have access to either DAPs or a RAD based payment, whereas under the base case, they would not. The total cost to the sector is estimated at $1.7 million per annum on average over the 20 year period, which would slightly worsen the overall viability of the sector.

Option 2 would reduce the number of cases where a retirement village operator is required to pay lump-sum early exit entitlements. Additionally, the insertion of the 85 per cent cap on the estimated exit entitlements paid prior to the sale of the unit and financial hardship provisions for operators under the aged care rule will further reduce the financial impacts on retirement village operators and hence significantly improves the viability of the sector compared to the base case. Under this option, the total cost to the sector is approximately $2.6 million per annum on average over the 20 year period.

Option 3 significantly reduces the number of times where retirement village operators are required to pay lump-sum early exit entitlements and hence is the least likely option to adversely impact the viability of the sector. Under this option the sector would be better off on average by $5.4 million per annum over the 20 year period, compared to the base case.

The scores for each option against this criterion are presented in the table below.

Table 5.11 – Aged care rule: viability of the sector

| **Criteria** | **Weighting** | **Option 1** | **Option 2** | **Option 3** |
| --- | --- | --- | --- | --- |
| Viability of the sector | 25% | -2.5 | +7.5 | +10 |

## Overall assessment

Option 2 is the preferred option as it has the highest MCA score which reflects that it manages a balance between financial impacts on residents and on the sector.

Option 1 receives the lowest MCA score; mainly as a result of the impact on the viability of the sector (it is less financially viable than the base case for operators). Option 3 receives the second highest score because it does not address the issue of retrospectivity and minimises payment choices for non-owner residents. Option 2 scores the highest because it minimises the retrospective changes and balances the choice of aged care payments for non-owner residents with the ongoing viability of the sector.

While Option 1 achieves the highest net impact, it is not the preferred option because this impact simply represents a transfer between operators and non-owner residents. Option 2 is the preferred option because it provides for a positive net impact and minimises the transfers between operators and residents.

Table 5.12 – Options comparison of multi-criteria analysis and financial impacts

| **Overall impact summary** |  | **Option 1** | **Option 2** | **Option 3** |
| --- | --- | --- | --- | --- |
| **Non-financial impacts** | **Weighting** | **Score** | **Score** | **Score** |
| Minimises retrospective changes | 25% | +10 | +10 | +5 |
| Choice of aged care payments for non-owner residents | 25% | +10 | +7.5 | +5 |
| Viability of the sector | 50% | -2.5 | +7.5 | +10 |
| **Weighted average score** |  | **+3.75** | **+8.13** | **+7.5** |
| **Financial impacts (relative to base case)** |  | **$ per annum** | **$ per annum** | **$ per annum** |
| Total impacts for non-owner residents moving to aged care (average between 2018 and 2037) |  | +3,057,236 | -2,122,771 | -5,546,700 |
| Total impact for sector (average between 2018 and 2037) |  | -1,732,998 | +2,598,828 | +5,431,498 |
| **Net impact (average between 2018 and 2037)** |  | **+1,324,238** | **+476,057** | **-115,202** |

# Preferred option

*This chapter provides a summary of the preferred option and the impacts of this option on small businesses and industry competition.*

## Summary of preferred option and impacts

Based on the analysis in Chapter 5 of this RIS, the preferred option is Option 2. This option involves remaking the Regulations in their current form, but replacing the current aged care rule (r.6) to be a DAP rule for all residents who entered retirement villages after 31 July 2006 with an optional (grandfathered) RAD rule for residents who are already living in retirement villages. Overall, the option has been assessed as best meeting the objectives of:

* + - * 1. ***Ensuring the return of non-owner residents’ exit entitlements does not interfere with their entry into aged care –*** the preferred option addresses the financial barriers of entry to aged care that can occur when there are delays returning retirement village residents’ exit entitlement. Residents who are waiting for the return of their exit entitlement are less likely to be forced to delay their entry into aged care or have to seek a cheaper/less desirable provider;
        2. ***Addressing problems relating to the clarity and complexity of contracts –*** the preferred option maintains the regulatory amendments introduced in 2014 that addressed problems associated with the complexity of retirement village contracts. This will reduce the likelihood of residents suffering from financial or other type of harm because they have not understood the implications of their contract;
        3. ***Minimising compliance burden on the sector*** – the option results in a small amount ongoing compliances costs associated with regulations covering the content and layout of contracts;
        4. ***Minimising retrospective changes to non-owner residents’ contractual arrangements –*** the preferred option does not result in any retrospective changes to the conditions of existing retirement village residents, which would make them financially worse-off;
        5. ***Ensuring the ongoing viability of the sector –*** the preferred option retains exemptions to the six month rule and this more than offsets the cost of the proposed changes to the aged care rule, which results in the sector being financially better off than under the base case; and
        6. ***Providing non-owner residents with the appropriate level of choice of aged care payment when entering into aged care –*** the preferred option does not reduce the choice that current non-owner residents will have on how they will pay for aged care. It does, however, reduce the choice for future residents.

The preferred option balances the financial impact between residents and retirement village operators. Under the preferred option, the total financial impact on residents will be – $2.1 million per annum and the total financial impact on retirement village operators will be +$2.6 million per annum.[[41]](#footnote-42) The net financial impact on society of the preferred option is relatively small (+$0.5 million per annum on average over the 20 year period) as financial impacts relate mainly to transfers between village operators and residents. On an individual basis, current residents are expected to be no more than $824 worse-off, on average, than under the current arrangements. However, in extreme cases, some residents may be up to $6,607 worse-off, on average, than under current arrangements (see case studies in Figure 6.3 and Figure 6.4).

The total impacts on RV operators and residents will also vary over time. As explained in the options analysis and in Appendix E, this is a result of changes in the population of residents who are eligible for a RAD-based aged care rule payment and a DAP-based aged care rule payment over time.

For example, compared to base case where the Regulations have expired:

* + - * 1. Residents as a group will be better off by as much as $5.7 million in 2021, and will be worse off by as much as $7.0 million in 2032; and
        2. RV operators as a group will be as much as $4.9 million worse off in 2021 and as much as $7.0 million better off in 2032 (see Figure 6.1).

Compared to the current Regulations, under the preferred option:

* + - * 1. Residents as a group will initially be worse off by $0.5 million in 2018 , and will be worse off by as much as $5.5 million in 2032; and
        2. RV operators as a group will be up to $4.6 million worse off in 2021, and up to $7.2 million better off in 2032 (see Figure 6.2).

Figure 6.1 - Financial impacts of preferred option, relative to base case



Figure 6.2 - Financial impacts of preferred option, relative to status quo



Note: A discount rate of 4 per cent has been used for the calculation of PV.

## Case study to illustrate the impacts of the preferred option

Under the preferred option, residents will be impacted differently by the Regulations depending on whether they are an existing resident, or a new resident moving in to a retirement village on or after 1 August 2017. Case studies of Margaret (an existing resident) and Joan (a future resident) have been presented below to illustrate how the operation of the Regulations will affect individual residents moving to aged care.

Figure 6.3 – Case study to illustrate the impacts of the preferred option



## Case study to illustrate impacts of changes in key assumptions

The calculation of financial impacts under the preferred option uses a number of key assumptions which may have large impacts on the results of the analysis. These assumptions include:

* + - * 1. The length of time it takes to sell a retirement village unit;
        2. The average value of exit entitlements paid under the aged care rule or six month rule; and
        3. The financial cost to retirement village operators of paying residents an early estimated exit entitlement.

These assumptions have been tested with key stakeholders through consultation conducted as part of the development of this RIS. However, it is prudent to also undertake sensitivity analysis to test how sensitive the results of the financial impact analysis are to changes in these assumptions.

Two further case studies are presented below to illustrate how changes in these key assumptions may affect residents and retirement village operators.

Figure 6.4 – Case study to illustrate the impacts of changes in key assumptions



### Summary of individual impacts

The individual impacts to residents and retirement village operators increase as the sale time increases and the value of residents’ exit entitlement increases. A detailed table of these individual impacts is provided in Appendix F.

## Interest rate sensitivity analysis

A key assumption in the calculation of the financial impacts on retirement village operators is the interest rate applied to any funds borrowed by the operators. The options analysis assumes a nominal rate of 5 per cent based on a suggested interest rate presented in a consultant report on the impact of the aged care rule.[[42]](#footnote-43) This rate has been tested with stakeholders during consultation for this RIS. As other rates have also been suggested in other reports on the impact of the aged care rule, a sensitivity analysis has been conducted comparing the main analysis (5 per cent) to a low interest rate scenario (4 per cent) and a high interest rate scenario (8 per cent). These scenarios could represent a range of interest rates available to different retirement village operators, a different mix of funding sources (some early payments may be funded from retirement village operators working capital), or delay costs for retirement village operators who are financially constrained and would have used the funds for other productive purposes.

Table 6.1 shows how changes in the assumed interest rate affects the cost for each RAD rule payment and DAP rule payment for retirement village operators, and the total annual cost to the retirement village sector. As the interest paid by retirement village operators increases, the cost to operators of paying early exit entitlements under the aged care rule increases. However, regardless of the interest rate, retirement village operators benefit relative to the base case as they are not required to pay out the full estimated exit entitlement through the six month rule as assumed in the base case.

Table 6.1 – Interest rate sensitivity analysis: Financial costs to retirement village operators

|  |  |  |  |
| --- | --- | --- | --- |
| **Sensitivity analysis** |  |  |  |
|  | **Main analysis (5%)** | **Low interest rates (4%)** | **High interest rates (8%)** |
| Cost for average RAD rule payment | $4,254 | $3,398 | $6,837 |
| Cost for average DAP rule payment | $421 | $337 | $667 |
| Total annual cost to sector (average from 2018 to 2037) | $3,572,826 | $2,584,026 | $5,741,996 |
| **Total annual impact to sector relative to base case (average from 2018 to 2037)\*** | **+$2,598,828** | **+$2,076,105** | **+$4,175,927** |

\*Total financial impacts are shown as a positive number (+) for benefits. As costs under the base case are higher than the preferred option for retirement village operators, operators benefit from the preferred option regardless of interest rates.

## Impact on small businesses

It is Victorian Government policy to specifically consider the impact of proposed amendments to legislative proposals on small businesses in RISs. Where the costs of compliance with regulations comprise a significant proportion of business costs, small business may be affected disproportionately by such costs compared to large businesses.

As the preferred option could potentially involve large cash flow impacts for retirement village operators, consideration must be given to the viability of smaller retirement village operators. More than 30 per cent of retirement villages in Victoria have less than 50 retirement village units (villages vary in size from 6 units up to 600).[[43]](#footnote-44) Smaller retirement village operators are likely to have a smaller pool of capital at their disposal to fund their residents’ aged care costs prior to the sale of the unit and they may not be able to manage large cash flow impacts as well as a larger retirement village operator can.

However, it is unlikely that smaller retirement village operators would be significantly impacted by the preferred option, especially when comparing the impacts to the base case where retirement village operators would have to pay the full exit entitlement of a resident at six months (or earlier if the unit is sold earlier) because it is assumed that the six month rule exemption is applied universally.

Additionally, the preferred option makes provision for a safety net for retirement village operators including a cap on exit entitlements paid of 85 per cent and hardship provisions where operators can apply for exemption from the requirement to pay RADs (and pay DAPs instead).

## Competition Assessment

Under the Competition Principles Agreement, the Victorian Government is required to consider whether regulatory proposals will restrict competition. If competition is restricted, a RIS must demonstrate that the Government's objectives can be only achieved by restricting competition and that the benefits of the restriction outweigh the costs.

In order to assess whether the proposed Regulations will restrict competition, the following ‘competition test’ has been applied. A legislative amendment is considered to have an impact on competition if any of the following questions in the table below can be answered in the affirmative.

While there is potential for the financial impacts to affect some retirement village operators and residents more than others, this is unlikely to result in a restriction in competition across the sector.

Table 6.2 – Impacts of new regulations on competition

|  |  |
| --- | --- |
| Question | Assessment |
| Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent retirement village operators? | Unlikely - See below for discussion. |
| Will it be more difficult for new retirement village operators to enter the industry after the imposition of the proposed measure? | No |
| Will the costs/benefits associated with the proposed measure affect some retirement village operators or residents substantially more than others (e.g. different sized operators, location)? | Yes – in extreme cases this may disproportionately affect some residents and some small retirement villages. See below for discussion. |
| Will the proposed measure restrict the ability of residents to choose the price, quality, range or location of their products? | No – the contractual requirements in Regulations 8(B) to 8(H) do not limit how a contract is structured or how a retirement village product is offered. CAV does not consider that contractual terms prescribed by regulation will have a significant effect on competition. |
| Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet? | No |
| Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure? | No |

In extreme cases the preferred option may have a disproportionate impact on small retirement village operators and some residents.

Retirement village operators who have relatively few units and a small pool of capital to draw from may face financial difficulty if a large group of their residents leave their retirement village for aged care at the same time. This would be further exacerbated if the operator’s units were ageing or not suitable for the current market. This is unlikely to affect the structure of the market in a significant way as there are protections for retirement village operators built into the preferred option including:

* + - * 1. The restriction of a DAP rule only to new non-owner residents;
        2. An 85 per cent limit on early payment of exit entitlements under the aged care rule; and
        3. A provision for retirement village operators to apply to VCAT for an exemption from the requirement to pay RADs if facing financial hardship (and pay DAPs instead).

As discussed in the case studies above, residents entering retirement villages after 31 July 2017 may be disproportionately impacted by the preferred option if the sale of their unit takes substantially longer than six months.

# Consultation

*This chapter details the consultation process undertaken by CAV in preparation for this RIS*.

## Policy development process

CAV has consulted extensively with industry bodies and resident groups throughout the policy development process on the proposed changes to the Regulations.

In October 2014, the PCA submitted a report to the Minister for Consumer Affairs, Gaming and Liquor Regulation recommending changes to the aged care rule under the Regulations to be consistent with the changes to the Aged Care Act. CAV responded to the PCA report and invited PCA to discuss the potential impacts of the changes to the Aged Care Act in December 2014.

In June 2015, CAV hosted a roundtable of industry bodies and resident groups to discuss the future of the aged care rule. The PCA, the CALC, RRVV, the HAAG, COTA Victoria (COTAV) and the Leading Aged Services Australia (Victoria) (LASAV) participated in the roundtable.

In December 2015, the Minister for Consumer Affairs, Gaming and Liquor Regulation approved a review to assess the impacts on the retirement village industry and residents of the changes in the Aged Care Act. In February 2016, CAV engaged a consultant to assess the impacts on residents and retirement village operators of a range of options to change the aged care rule, including the PCA’s recommended approach. In June 2016, CAV used the findings of the consultant’s report to support further discussions with industry bodies and resident groups to develop a set of proposed options for a new aged care rule. The stakeholders involved in these discussions include CALC, RRVV, HAAG, COTAV, LASAV and PCA.

In September 2016, a coalition of CALC, RRVV, HAAG and COTAV provided further feedback to CAV on the findings of the consultant’s report.

In October 2016, CAV corresponded with CALC, RRVV, HAAG, COTAV, LASAV and PCA advising that the Regulations would sunset on 31 July 2017 and a RIS was being prepared to remake these regulations and to assess proposed reforms for the formulation of a new aged care rule. The correspondence also invited industry bodies and resident groups to provide feedback on the proposed reforms.

The views presented by industry bodies and resident groups during the policy development process have been incorporated into the proposed options assessed in this RIS.

## Formal consultation on the RIS

In January 2017, NERA consulted with PCA, CALC, RRVV, HAAG, COTA Victoria and LASAV to gather feedback on the potential costs and benefits associated with the proposed regulatory options as input to the impact analysis of the RIS (See Chapter 5). As part of the consultation process, key assumptions including the number of residents and the applicability of the aged care rule and six month rule payments were tested with stakeholders. Up to date data provided by stakeholders in this process have been incorporated into the analysis. The consultation note used to guide these discussions is provided in Appendix G.

CAV proposes a consultation period of 30 days, from 29 March 2017 to 28 April 2017.[[44]](#footnote-45) This will ensure that industry bodies and resident groups have sufficient time to consider and comment on the proposed reforms, and ensure that the Regulations are remade before they sunset on 31 July 2017. Notice of the proposed Regulations and the RIS will be published in the Government Gazette and a daily newspaper circulating generally throughout Victoria, as required under the *Subordinate Legislation Act 1994*.

The proposed Regulations and the RIS will be published on the CAV website and circulated to the industry bodies and resident groups who have participated in the reform process to-date. Additionally, a letter will be sent to retirement villages registered with CAV advising operators of the public consultation on the RIS and the proposed Regulations.

A table detailing the industry stakeholder consultation process to-date and any consultation that will be undertaken in the future is provided in Appendix H.

# Implementation, monitoring and evaluation

*This chapter outlines the proposed approach and timelines to implement the proposed Regulations and provides a summary of the evaluation strategy.*

## Implementation outline

The existing Regulations will be remade, with amendments to the aged care rule (r.6). These proposed Regulations will commence on 1 August 2017. As CAV has already conducted extensive consultation with industry bodies and resident groups to inform the development of the proposed Regulations and there will only be limited changes to the current Regulations, a transition period is not necessary.

Following the formal consultation period on this RIS, CAV will continue to keep the retirement village sector and key stakeholders informed of the proposed changes by:

* + - * 1. Writing to the 438 registered retirement villages, industry bodies and resident groups with an information pack detailing the changes to the Regulations; and
        2. Updating the CAV website and communications materials (including a printable plain English factsheet); and
        3. Updating CAV’s *Guide to choosing and living in a retirement village*. [[45]](#footnote-46)

## Compliance and enforcement

It is proposed that CAV will undertake compliance and enforcement activities such as:

* + - * 1. Engaging with retirement village operators to inform them of changes to the Regulations and their obligations;
        2. Random audits of retirement villages;
        3. Assisting retirement village operators to make sure they understand how to comply with the relevant legislation and regulation; and
        4. Managing and providing general conciliation services and a complaints process for disputes in a residence contract in relation to a retirement village (for disputes that are not resolved within the retirement village’s internal dispute resolution process).

If conciliation is unsuccessful, parties can be referred to the VCAT to resolve their dispute. In these circumstances, parties are recommended to obtain legal advice in the first instance and provided information on how to access the VCAT process.

Where a resident is considered to be vulnerable and disadvantaged, for example, if they are recipients of a Centrelink payment, they may be referred to advocacy services supported by CAV for advice and support resolving their dispute.

## Evaluation

A robust evaluation strategy is essential to ensure that regulation is practical, effective, relevant to the sector and aligned with government objectives on an on-going basis.

The objective of the evaluation will be to assess the ongoing effectiveness of the proposed Regulations in addressing problems related to the return of exit entitlements and contractual arrangements between retirement village operators and residents.

CAV currently evaluates the effectiveness of the Regulations using feedback through stakeholder forums and dispute and complaints monitoring. It is proposed that this approach is continued for the new Regulations. CAV will monitor the effectiveness of the Regulations through key indicators such as:

* + - * 1. The number of retirement village related complaints made to CAV;
        2. The number of applications by retirement village operators to VCAT for financial hardship;
        3. Outcomes from random audits on retirement villages conducted by CAV;
        4. Industry data on aged care rule and six month rule payments; and
        5. Industry data on the time taken to sell a retirement village unit.

In early 2017, the *Parliamentary Inquiry into the Retirement Housing Sector* in Victoria considered issues related to the operation and regulation of the retirement housing sector with the aim of identifying opportunities for improvement and reform.

The Parliamentary Inquiry’s report was scheduled to be finalised on 1 March.

The Government is required to provide the Legislative Council with the Government’s response to the Committee’s recommendations within six months of the final report being tabled in Parliament. As the Government’s response to the inquiry may potentially prompt changes to the operation of the retirement village sector, CAV may reconsider its existing monitoring and evaluation approach as part of a broader reform process.

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# Inter-jurisdictional comparison

## Six month rule

The six month rule, or a similar version of it, is legislated in most Australian states and territories except for the Northern Territory and Queensland.

In New South Wales (NSW), the Australian Capital Territory (ACT) and Tasmania, retirement village operators must refund a resident’s in-going contribution (minus any fees) within six months of the resident vacating their retirement village unit. In NSW, a retirement village operator may apply to the NSW Civil and Administrative Tribunal to extend time for this payment, or pay by instalments if the operator is of the opinion that they will not be able to enter into a residence contract six months after the resident has left the retirement village.

In Western Australia (WA) and South Australia (SA), alternate forms of the six month rule are applied with different time frames. In WA, retirement village operators are required to pay the refundable in-going contribution (minus any fees) within 45 days of the resident leaving the retirement village if the resident has no control over the sale of the retirement village unit. If the resident has control over the sale of the unit, then the requirement to pay within 45 days is exempted. In SA, retirement operators are required to pay resident their exit entitlements within 18 months of the residents vacating their residence, if not relicensed prior this time.

## Aged care rule

The Victorian, Tasmanian and SA retirement villages regulations all contain a version of the aged care rule.

In SA, a resident transitioning from a retirement village to an aged care can apply for refund of their exit entitlement to secure entry to a residential aged care facility if the resident:

* + - * 1. Chooses to pay for their aged care accommodation with a RAD; and
        2. Does not have ready access to sufficient funds to pay for the RAD or if doing so would seriously affect their personal finances.

If a resident applies for the SA aged care rule, the retirement village operator must refund residents their exit entitlements within 60 days after being approved for entry to residential aged care or, after leaving the retirement village. Additionally, the retirement village operator must also commence making payments to the aged care facility in the form of DAPs, which are applicable to the resident’s care at the aged care facility within 30 days after receiving an application for a resident leaving the retirement village and moving to a residential aged care. The retirement village operator must keep making payments on behalf of the resident up to 85 per cent of the operator’s reasonable estimate of the resident’s exit entitlement or when the resident becomes entitled to be paid their exit entitlement.

Under Tasmania regulations, a resident transitioning to an aged care facility is eligible to apply for a refund of their in-going contribution (the aged care rule) if the resident:

* + - * 1. Vacates the retirement village owing to mental or physical illness or incapacity as certified by an independent geriatrician or independent general medical practitioner or an Aged Care Assessment Team;
        2. Desires, or need, to move to another kind of accommodation which provides a higher level of care;
        3. Must pay an amount in order to enter that accommodation; and
        4. Does not have ready access to funds to pay for aged care accommodation or if paying for aged care accommodation would seriously affect their personal finances

If a resident applies for the Tasmanian aged care rule, the retirement village operator is required to refund residents the amount of their refundable in-going contribution that is required to pay for their aged care accommodation. Retirement village operators are allowed 45 days after the resident has made the application to refund the required amount. There are no requirements for the operator to pay daily accommodation payments to the residential aged care on behalf of the resident.

## Valuation of retirement village units

Like Victoria, Queensland, South Australia and the ACT all set out regulatory requirements for the calculation of retirement village unit values referenced in refundable in-going contributions. These are described below.

* + - * 1. ***Queensland*** – the retirement village operator and resident are to negotiate in good faith and agree in writing on the resale value within 30 days of the termination date;
        2. ***ACT*** – the retirement village resident may set the sale price of the unit or appoint a selling agent, or delegate to the retirement village operator to set the sale price or selling agent; and
        3. ***SA*** – the retirement village operator and resident agrees to a resale price, and if objectives cannot be resolved, the resident should be given the opportunity to obtain an independent valuation or reach agreement on another process for valuing the residence and setting the price. The responsibility for any costs towards valuation activities must be detailed in the remarketing policy of the retirement village.

## Residence contract requirements

All Australian jurisdictions prescribe requirements for retirement village residence contracts through their governing legislation. These requirements generally cover the financial terms of the contract (in-going contribution, exit entitlements and service charges) and the resident’s rights under the contract (cooling-off period rights, control over sale, rights to terminate the contract).

Like Victoria, NSW legislation also requires that retirement villages follow a standard contract template where a standard layout and terms of contract are defined in regulation.

## Review of retirement village legislations in other jurisdictions

Other states and territories such as WA, the ACT and SA have recently completed reviews of the governing legislations of their respective retirement villages sectors. These reviews include:

* + - * 1. SA Review of the *Retirement Villages Act 1987* (SA) – In 2013, a Parliamentary Select Committee undertook a review of the *Retirement Villages Act 1987* (SA) as a result of growing concerns from the industry that the previous Act (now amended) did not adequately provide consumer protection to existing and prospective residents. The review led to a number of legislative reforms under the *Retirement Villages Act 2016* (SA), including:

The introduction of disclosure statements which must be provided to prospective residents at the same time as the residence contract;

The operators must set out a specific dollar amount or percentage that will be charged as remarketing costs within the residence contracts; and

The introduction of mandatory payment of exit entitlement to a resident within 18 months of vacating their residence even if it is not relicensed.

* + - * 1. QLD Review of the *Retirement Villages Act 1999* (Qld) – In 2012, the Transport, Housing and Local Government Committee of the Parliament published a report for the Review of the *Retirement Villages Act 1999* (Qld), which recommended 37 reforms to the Queensland Government. The Queensland Government subsequently developed a Consultation Regulatory Impact Statement to assess these regulatory proposals, to decide on the most efficient and effective options for addressing the underlying policy issues. The Office for Best Practice Regulation identified four areas of reforms which may have significant impacts on businesses, the community and government. These areas include: legal, financial and practical considerations for village closures, the management of behavioural issues in retirement villages, the types of payment models available to residents and the timing for the refund of residents’ exit entitlements. No changes have been made to retirement village legislations to-date following this review.
        2. ACT Review of the *Retirement Villages Act 2012* (ACT) – The ACT government conducted a statutory review of the *Retirement Villages Act 2012* (ACT) in 2016 seeking to understand whether the legislation was operating effectively and meeting the needs of key stakeholders such as retirement village operators and residents. This statutory review led to reforms under the *Retirement Village Amendment Act 2016*, which are aimed at enhancing retirement village business operations and improve the internal disputes process for retirement village operators and residents.
        3. WA Retirement Villages legislation review – WA undertook a statutory review of its retirement village legislations in 2010 (finalised in 2013) to improve consumer protections for seniors who choose to live in retirement complexes and providing fair and clear guidelines for the industry and retirement village operators. This review led the changes under the *Retirement Villages Amendment Act 2012* (WA), including requirements to provide disclosure statements to prospective residents and requirements to include mandatory matters or provisions or exclude prohibited matters in residence contracts.

## Summary of the inter-jurisdictional comparison

Table B.1 – Summary of inter-jurisdictional comparison on various regulatory requirements

| **State / Territory** | **Contract requirements** | **Six month rule for non-owner residents** | **Aged care rule for non-owner residents** | **Valuation requirements** |
| --- | --- | --- | --- | --- |
| **Victoria** | Contractual requirement on what must, must not and may be included in retirement village contracts. | Operator must refund within six months after the resident leaves the RV, unless they are exempted. | Operators pay residents who are moving to aged care part (or all) of their refundable in-going contribution to fund the resident's RAD or DAP. | Carried out by:   * + - * 1. An independent valuer; or         2. A valuer assigned by the Australia Property Institute. |
| **New South Wales** | Contractual requirement on what must (through a standard contract form in the Act) and must not be included in contracts. | Operator must refund within six months after the resident leaves the RV.  The operator may apply to the Tribunal to extend time for payment or pay instalments. | Nil | Nil |
| **Queensland** | Contractual requirement on what must be included in contracts. All public information available to the resident also forms part of the contract. | Nil – The operator is only required to pay the resident their exit entitlement after the unit has been reoccupied, or as agreed in the residence contract. | Nil | Within 30 days of the termination date, resident and operator are to negotiate in good faith and agree in writing on the resale value of the right to reside in the unit. |
| **South Australia** | Contractual requirement on what must be included in contracts. | In-going contribution must be refunded within 18 months of leaving the RV. If the operator is suffering financial hardship and cannot facilitate the payment, they can apply to the SA Civil and Administration Tribunal for extension of time. | Operator must:   * + - * 1. Pay the DAP applicable to the resident’s aged care after 30 days of the resident leaving the village; and         2. Refund the remaining in-going contribution within 60 day of the resident leaving the village. | The retirement village operator and resident agree to a resale price, and if objectives cannot be resolved, the resident should be given the opportunity to obtain an independent valuation. |
| **Western Australia** | Contractual requirement on what must and must not be included in contracts. | Operator must refund in-going contribution within 45 days of the resident vacating possession if:   * + - * 1. The residence contract must be terminated in accordance with the terms; and         2. The resident has no control over the sale. | Nil | Nil |
| **Australian Capital Territory** | Contractual requirement on what must and must not be included in contracts. | A resident's in-going contribution must be refunded no later than six months after the day the resident delivered up vacant possession of the premises to the operator. | Nil | The resident may but need not appoint the operator as a selling agent, and may, but need not appoint the operator to set the sale price. |
| **Tasmania** | Contractual requirement on what must be included in contracts. | In-going contribution must be refunded to the resident / representative six months after a notice of termination was submitted. If the operator suffers from financial hardship, the Director may extend the period further, of no longer than 12 months. | If the resident does not have ready access to funds to pay for aged care, or if paying would seriously affect their personal finances, they can apply for their refundable in-going contribution to be refunded within 45 days from the operator. | Nil |

# Summary of Regulations 8B – 8H

In 2013, a RIS was developed by CAV to amend the Regulations and the Records and Notices Regulations. These amendments addressed concerns around consumer detriment resulting from a lack of information available for residents to make informed choices when considering entering retirement villages. The objectives of these changes were:

* + - * 1. To ensure that retirement village contracts are in writing and are comprehensive;
        2. To facilitate comparison of different villages’ contracts and to enable proposed residents and their advisors to choose an option that best suits the resident; and
        3. To facilitate the identification of rights and obligations after the resident enters the retirement village.

Following the consultation process, r.8B to r.8H were amended and inserted to the Regulations, setting out a number of contractual requirements and provisions to standardise contracts. These provisions prescribe the matters that must, must not and may be included in residence and management contracts, prescribe a basic set of mandatory rights and obligations of operators and residents, prescribe the layout of residence and management contracts (including the order of matters). These regulations are summarised in the table below.

Table C.1 – Summary of r.8B to 8H of the Regulations

| Regulation | Type of contractual requirements | Description of provision | |
| --- | --- | --- | --- |
| Residence contract | Management contract |
| 8B | Matters that **must not** be included | * + - * 1. Requirements to have a will         2. Requirements to take out insurance policies other than a liability policy for any motorised wheelchairs operated by the resident         3. Requirements for a resident to pay liquidated damages and any costs of enforcing the contract         4. Limits on the operator’s liability for default or breach of duty         5. Recovery of administrative and operating costs beyond the term of residency         6. Restrictions on membership of resident agreement         7. Power to relocate residents without consent | |
| 8C | Matters that **must** be included | * + - * 1. The date of contract, owner’s details, resident’s details and the duration of contract | |
| * + - * 1. The assets provided by the owner as part of the leasehold agreement (e.g. furnishings, fittings)         2. Any restrictions imposed on the resident when living at the village (e.g. restrictions on pets, parking entitlements)         3. Specify the costs and charges payable by the resident during and after leaving the village, and the method for calculating these costs (e.g. refund of in-going contribution, ongoing charges, reinstatement costs).         4. The rights of the resident to terminate the contract. | * + - * 1. The details of the service to be provided to the resident         2. The matters for which maintenance charges may be used         3. Any legal costs payable by the resident to the manager         4. Details of insurance policies taken out by the manager for the resident         5. The rights and method for the resident to exit this contract         6. The dispute resolution procedures under the RV Act         7. The process for consulting with residents on proposals to change services provided by the manager. |
| 8D | Matters that may be included | Without limiting the matters that may be included a residence or management contract, they may include a warning that the resident should take out a house contents insurance policy or a public liability insurance policy. | |
| 8E | Prescribed terms | * + - * 1. The primacy of the RV Act         2. The basic obligations of the owner or manager, and resident         3. The basic rights of the resident         4. General terms requiring the owner, the manager and the resident to deal with each other in good faith         5. The precedence of the prescribed terms of the Retirement Villages Act over any inconsistent contract terms or village by‐laws. | |
| 8F | Layout of contracts | * + - * 1. Introductory maters – dates, details of the owner and resident, address, term, resident’s entitlements at the village (e.g. parking)         2. Cooling-off notice (if applicable)         3. Operative words         4. Prescribe terms         5. Prescribed matters – Cost payable on entry, during residency and on departure, cost of reinstatement, exit entitlements, maintenance, village insurance, termination and amendment of contracts | |
| 8G | r. 8B, 8C, 8E, 8F do not apply to agreement to lease or contract of sale | If a residence or management contract is annexed to a contract of sale of land, or a contract of sale of unit in a unit trust or share in a corporation, **then r. 8B, 8C, 8E and 8F only applies to the residence or management contracts** but not to the agreement to lease of contract of sale. | |
| 8H | Contracting out | A provision in a contract or a document concerning a retirement village which purports to exclude, modify or restrict the operation of r. 8B, 8C, 8E and 8F is void. | |

# Impact analysis assumptions

## Population groups

It has been necessary to consider the financial impacts on different cohorts of residents based on when they entered the retirement village, as different regulatory requirements and obligations have applied over time:

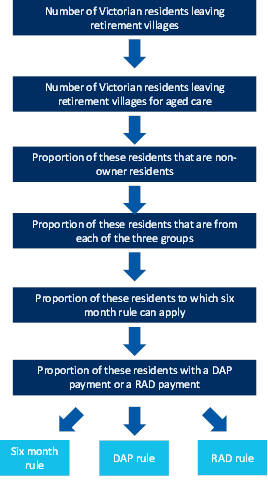
* + - * 1. **Non-owner residents who entered retirement villages prior to 1 August 2006**: the aged care rule and the Regulations do not apply to contracts that were entered into before 1 August 2006. Hence, for these residents, neither the aged care rule or the six month rule are assumed to apply and not included in the RIS analysis;
        2. **Non-owner residents who entered retirement villages between 1 August 2006 and 1 August 2017**: the base case assumes the six month rule will continue to apply to these residents, but the aged care rule will not be remade and therefore will cease to apply. Option 1 and 2 will give these residents the choice or a RAD or DAP based aged care rule. Under Option 3, they will only have access to a DAP based rule; and
        3. **Non-owner residents who entered retirement villages after 1 August 2017**: the base case assumes the six month rule will continue to apply to these residents, but the aged care rule will not be remade and therefore will cease to apply. Under Option 1 residents who entered a retirement village after 1 August 2017 will have the choice of a RAD or DAP based aged care rule, but under Options 2 and 3, these residents will only have access to a DAP based rule.

## Frequency of impacts

The frequency of the impacts refers to the number of non-owner residents exiting retirement villages per annum and whether the six month rule or the aged care rule applies to them. This has been determined based on the assumptions about:

* + - * 1. The total number of residents leaving retirement villages;
        2. The number of departing residents who enter aged care:
        3. The proportion of these residents to whom the six month rule and aged care rule apply to; and
        4. The proportion of resident who will choose a DAP or RAD based payment under the aged care rule.

Figure D.1 – Assumptions made to estimate the frequency of the financial impacts



The first three of these assumptions are the same for all three options, but the final two assumptions define each option and as a result differ between options.

***The number of residents leaving retirement villages***

The number of residents exiting retirement villages each year is estimated based on assumptions provided in a report by the PCA around the proportion of people exiting retirement villages who move to aged care (60 per cent), and the number of people who moved from retirement villages to aged care each year (on average 2,480 per annum). Over the 20 year period of the analysis, it is estimated that an average of **4,133 residents exit retirement villages per annum**.

***The number of departing residents who enter aged care***

The total number of residents **moving from retirement villages to aged care** over the 20 year period of the analysis is estimated to be an average of **2,480 per annum**. This estimate is extrapolated from data provided by the PCA in a 2014 report that estimated the number of residents moving to aged care in 2014 and in 2021.

***The proportion of residents who the six month rule and aged care rule apply to***

As noted above, different rules apply to retirement village residents, depending on when they entered their retirement village. As a result, the number of departing residents that the six month rule and the aged care rule applies to is changing over time.

The total length of tenure for most residents has been estimated to be between 8 and 15 years[[46]](#footnote-47) and the average tenure of a resident in a retirement village is 12 years.[[47]](#footnote-48) Based on this, it is expected that by 2021 all of the pre-2006 cohort will have left retirement villages.[[48]](#footnote-49) It is assumed that residents who entered retirement villages between 1 August 2006 and 1 August 2017 will have the same average tenure. These residents will progressively exit villages from 2018 to 2030.

For the base case, it is assumed that the six month rule exemption is not remade. Therefore, the six month rule will apply to all residents who entered retirement villages after 2006. The exemption is very widely used in the industry[[49]](#footnote-50) and for all other options, it is assumed to apply to all contracts between retirement village operators and residents.

The aged care and the six month rules only apply to non-owner/leasehold residents. The vast majority of retirement village residents are leasehold residents – assumed to be 85 per cent.[[50]](#footnote-51)

***Resulting assumptions about the three resident cohorts***

The three assumptions above have been used to estimate who the aged care rule will apply to under each option. This is shown in the figure below.

Figure D.2 – Retirement village residents entering aged care, by year of entry into retirement village



***Proportion of residents choosing a DAP or a RAD based payment***

A resident’s choice between a DAP or RAD based payment has different financial impacts for the resident and their retirement village operator. Data available on residents’ choice of payment method when entering aged care indicates that 40 per cent of residents choose to pay for aged care accommodation using a RAD, 35 per cent choose a DAP and the remaining 25 per cent use a mix of the two.

For the purposes of the modelling, residents who choose a combination of DAP and RAD, are assumed to pay a RAD equivalent to their exit entitlement. Therefore, if they are given the choice, it is assumed that **65 per cent** of residents will choose a RAD based payment and **35 per cent** will choose a DAP based payment.

### Timeframe of the analysis

Typically, a 10 year timeframe is required for conducting analysis in a RIS. However, due to the lagged nature of the operation of the aged care rule and the six month rule, changes to the Regulations may not have any meaningful impact until at least 2027. As such the analysis is conducted over a 20 year time period to capture the full extent impact of the options.

## Key financial assumptions

The key assumptions used to estimate the financial impact of the options are:

* + - * 1. ***Retirement village borrowing costs*** – when a retirement village operator is required to pay a resident’s exit entitlement before the unit is sold, it is assumed they have to borrow funds and pay interest on the borrowings until the unit is sold. The analysis assumes an interest rate of **5 per cent** per annum on these borrowings.[[51]](#footnote-52) Sensitivity analysis has also been conducted using rates of **4 per cent** and **8 per cent**.
        2. ***Residents’ forgone interest*** – a resident who moves into aged care accommodation and pays for their accommodation using a RAD is forgoing the potential to earn a return on the amount of the RAD. The forgone return is estimated to be **3.25 per cent** per annum, which is about what they could currently earn in a term deposit – it is also equal to the current deeming rate used by Centrelink to assess the earning potential for retirees’ savings.[[52]](#footnote-53)
        3. ***Cost of DAPs*** – the alternative method of paying for aged care accommodation is a DAP. It is calculated daily using the MPIR as published by the Department of Social Services. The exact amount of the DAP depends on the equivalent RAD payment required for an accommodation place. It is assumed in this analysis that the MPIR is **5.76 per cent**, equal to the current published rates.
        4. ***The average time to sell a unit –*** it is assumed that the average time to sell a retirement village unit is 10.5 months. This assumption is based on data provided by the PCA. Reflecting the uncertainty involved in the time to sell a retirement village unit, sensitivity analysis has been conducted on this assumption (see chapter 6).
        5. ***Value of exit entitlements*** – the average exit entitlement is assumed to be $258,700. This is calculated by assuming an average in-going contribution of $398,000[[53]](#footnote-54), and subtracting total exit fees (including DMFs and any contribution to long term maintenance funds) of 35 per cent[[54]](#footnote-55).
        6. ***Value of RAD*** – the average cost of a RAD is assumed to be $361,000.[[55]](#footnote-56) As this exceeds the total value of an exit entitlement, it is assumed that **the RAD value to which the aged care rule applies is the same as the average exit entitlement ($258,700)**.
        7. ***Cap on payments –*** Under the options, there is a cap on the aged payments a retirement village can make of both the RAD and the DAPs of up to **85 per cent of the estimated exit entitlement for options 2 and 3 and up to the estimated exit entitlement for option 1**.

## Average impacts of the six month rule (under the base case)

Under the six month rule retirement village operators are required to refund non-owner residents their exit entitlement after six months. Given the average sale time of a unit is 10.5 months; the six month rule requires a retirement village operator to borrow the amount of the exit entitlement for 4.5 months until they receive the next in-going contribution. The cost of the interest on these borrowings is estimated to be $4,866.

Under the base case, there is no requirement for a retirement village operator to pay residents’ aged care costs. Thus on average, a resident must pay their own DAPs for the first six months at a total cost of $7,451, plus interest of $162. The resident will receive their full exit entitlement after six months, regardless of whether the unit has been sold. After this time, 65 per cent of residents will use their entitlement as a RAD, which reduces their ongoing DAPs. The remaining 35 per cent will invest the funds and continue to pay DAPs.

The cash flow implications and financial implications of this are shown below.

Figure D.3 – Financial implications of the six month rule

## Average impacts of a RAD-based aged care rule

Under a RAD-based aged care rule, retirement village operators are required to pay a non-owner resident’s DAPs for the first six months after they enter aged care at a total cost of $7,451 on average, plus interest of $109. After six months they are required to refund residents the amount they need for their RAD, with the total of DAPs and RAD up to 85 per cent of the resident’s estimated exit entitlement for option 2 and up to the estimated exit entitlement for option 1. The average RAD ($361,000) is higher than the average exit entitlement ($258,700), so it is assumed that most residents will request the full 85 per cent of their estimated exit entitlement ($213,562).

Given an average sale time of 10.5 months, under a RAD rule, a retirement village on average will need to borrow and pay interest on $213,562 for 4.5 months, until the unit is sold and the operator receives the next in-going contribution. The cost of the interest on these borrowings is estimated to be $4,158 on average. The retirement village operator deducts the DAPs they have paid from the resident’s estimated exit entitlement.

When compared to the base case, the resident benefits from the rule as a result of not having to make DAP payments to the aged care provider in the first six months. However, the resident will receive a lower exit entitlement after six months because the payments made by the village operators are deducted from the exit entitlement and they only have access to 85 per cent of their estimated exit entitlement. The resident will receive 85 per cent of their estimated exit entitlement after six months, if their unit has not been sold. As with the base case, it is assumed that 65 per cent of residents will use their entitlement as a RAD, which will reduce their ongoing DAPs. The remaining 35 per cent will invest the funds and continue to pay DAPs.

The cash flow implications and financial implications of this are shown below.

Figure D.4 – Financial implications of a RAD-based aged care rule



## Average impacts of a DAP-based aged care rule

Under a DAP-based aged care rule, retirement village operators are required to pay a non-owner resident’s DAP payments until the resident’s unit is sold up to 85 per cent of the estimated exit entitlement for options 2 and 3 and up to the estimated exit entitlement for Option 1. Given an average sale time of 10.5 months, this means that the retirement village will need to make DAP payments for 10.5 months, totalling $13,038 on average. The cost of interest to fund these payments will be an additional $313. Once the unit is sold, the retirement village operator pays the resident their exit entitlement, minus the DAPs it has paid. On average, this will reduce residents’ exit entitlements from $258,700 to $245,662.

When compared to the base case, the resident benefits from the rule as a result of not having to pay DAPs to the aged care provider prior to receiving their exit entitlement. However, the resident will wait longer to receive their exit entitlement – on average 4.5 months longer. Their exit entitlement will also be less because any DAP payments made by the village operators are deducted from the exit entitlement.

The cash flow implications and financial implications of this are shown below.

Figure D.5 – Financial implications of a DAP-based aged care rule



# Financial impacts on retirement village residents and operators

Figure E.1 – Option 2 financial impacts relative to base case



Note: values shown above are present values that have been discounted by 4 per cent annually. Positive values represent a benefit and negative values represent a cost relative to the base case.

Up until 2027, most residents exiting retirement villages for aged care have access to a RAD rule under grandfathering arrangements. These residents do not have access to the six month rule or the aged care rule under the base case so the benefit to them and the cost to operators is large. From 2027 onwards, new residents begin to exit retirement villages. These residents only have access to a DAP based rule (which is more costly for residents and less costly for operators) compared to the base case where they have access to a six month rule payment (more costly for operators and less costly for residents). This means that in the latter years the financial impact for residents becomes negative, and the financial impact for operators becomes positive. These impacts are also shown in Figure B.2 relative to the status quo.

Figure E.2 – Option 2 financial impacts relative to status quo



# Summary of individual impacts

The individual impacts to residents and retirement village operators increase as the sale time increases and the value of residents’ exit entitlement increases. Tables below show the range of costs to residents and retirement villages of moving into aged care from retirement villages under the aged care rule. It is assumed for these costs that the value of the RAD/DAP scales with the value of the exit entitlement that the resident is owed.

Table F.1 – Total cost to residents – RAD payment (by sale time and value of exit entitlement)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Sale time (months)** | | | | | | | | |
| **Exit entitlement** | 6 | 10.5 | 12 | 18 | 24 | 30 | 36 | 42 | 48 |
| $50,000 | -$1,440 | -$1,599 | -$1,653 | -$1,873 | -$2,101 | -$2,335 | -$2,578 | -$2,827 | -$3,085 |
| $100,000 | -$2,880 | -$3,199 | -$3,306 | -$3,747 | -$4,201 | -$4,671 | -$5,155 | -$5,655 | -$6,170 |
| $200,000 | -$5,760 | -$6,397 | -$6,613 | -$7,494 | -$8,403 | -$9,342 | -$10,310 | -$11,310 | -$12,340 |
| $258,700 | -$7,451 | **-$8,275** | -$8,554 | -$9,693 | -$10,869 | -$12,083 | -$13,336 | -$14,629 | -$15,962 |
| $300,000 | -$8,640 | -$9,596 | -$9,919 | -$11,240 | -$12,604 | -$14,012 | -$15,465 | -$16,964 | -$18,511 |
| $400,000 | -$11,520 | -$12,794 | -$13,226 | -$14,987 | -$16,806 | -$18,683 | -$20,620 | -$22,619 | -$24,681 |
| $500,000 | -$14,400 | -$15,993 | -$16,532 | -$18,734 | -$21,007 | -$23,354 | -$25,776 | -$28,274 | -$30,851 |

Table F.2 – Total cost to retirement village operators – RAD payment (by sale time and value of exit entitlement)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Sale time (months)** | | | | | | | | |
| **Exit entitlement** | 6 | 10.5 | 12 | 18 | 24 | 30 | 36 | 42 | 48 |
| $50,000 | -$42 | -$822 | -$1,085 | -$2,155 | -$3,252 | -$4,376 | -$5,529 | -$6,710 | -$7,922 |
| $100,000 | -$84 | -$1,644 | -$2,171 | -$4,310 | -$6,503 | -$8,752 | -$11,057 | -$13,421 | -$15,844 |
| $200,000 | -$169 | -$3,289 | -$4,342 | -$8,620 | -$13,006 | -$17,504 | -$22,115 | -$26,842 | -$31,689 |
| $258,700 | -$218 | **-$4,254** | -$5,616 | -$11,150 | -$16,824 | -$22,641 | -$28,605 | -$34,720 | -$40,989 |
| $300,000 | -$253 | -$4,933 | -$6,512 | -$12,930 | -$19,510 | -$26,255 | -$33,172 | -$40,263 | -$47,533 |
| $400,000 | -$337 | -$6,577 | -$8,683 | -$17,240 | -$26,013 | -$35,007 | -$44,229 | -$53,684 | -$63,377 |
| $500,000 | -$421 | -$8,221 | -$10,854 | -$21,550 | -$32,516 | -$43,759 | -$55,286 | -$67,105 | -$79,222 |

Table F.3 – Total cost to residents – DAP payment (by sale time and value of exit entitlement)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Sale time (months)** | | | | | | | | |
| **Exit entitlement** | 6 | 10.5 | 12 | 18 | 24 | 30 | 36 | 42 | 48 |
| $50,000 | -$1,440 | -$2,520 | -$2,880 | -$4,320 | -$5,760 | -$7,200 | -$8,640 | -$10,080 | -$11,520 |
| $100,000 | -$2,880 | -$5,040 | -$5,760 | -$8,640 | -$11,520 | -$14,400 | -$17,280 | -$20,160 | -$23,040 |
| $200,000 | -$5,760 | -$10,080 | -$11,520 | -$17,280 | -$23,040 | -$28,800 | -$34,560 | -$40,320 | -$46,080 |
| $258,700 | -$7,451 | **-$13,038** | -$14,901 | -$22,352 | -$29,802 | -$37,253 | -$44,703 | -$52,154 | -$59,604 |
| $300,000 | -$8,640 | -$15,120 | -$17,280 | -$25,920 | -$34,560 | -$43,200 | -$51,840 | -$60,480 | -$69,120 |
| $400,000 | -$11,520 | -$20,160 | -$23,040 | -$34,560 | -$46,080 | -$57,600 | -$69,120 | -$80,640 | -$92,160 |
| $500,000 | -$14,400 | -$25,200 | -$28,800 | -$43,200 | -$57,600 | -$72,000 | -$86,400 | -$100,800 | -$115,200 |

**Table F.4 – Total cost to retirement village operators – DAP payment (by sale time and value of exit entitlement)**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Sale time (months)** | | | | | | | | |
| **Exit entitlement** | 6 | 10.5 | 12 | 18 | 24 | 30 | 36 | 42 | 48 |
| $50,000 | -$42 | -$81 | -$100 | -$194 | -$326 | -$495 | -$703 | -$950 | -$1,235 |
| $100,000 | -$84 | -$163 | -$199 | -$388 | -$652 | -$991 | -$1,406 | -$1,899 | -$2,471 |
| $200,000 | -$169 | -$326 | -$399 | -$776 | -$1,303 | -$1,982 | -$2,813 | -$3,799 | -$4,941 |
| $258,700 | -$218 | **-$421** | -$516 | -$1,004 | -$1,686 | -$2,563 | -$3,638 | -$4,914 | -$6,392 |
| $300,000 | -$253 | -$489 | -$598 | -$1,165 | -$1,955 | -$2,972 | -$4,219 | -$5,698 | -$7,412 |
| $400,000 | -$337 | -$652 | -$797 | -$1,553 | -$2,607 | -$3,963 | -$5,626 | -$7,598 | -$9,883 |
| $500,000 | -$421 | -$815 | -$997 | -$1,941 | -$3,259 | -$4,954 | -$7,032 | -$9,497 | -$12,354 |

# Consultation note

Retirement Villages (Contractual Arrangements) Regulations   
Regulatory Impact Statement

Purpose of this consultation

The Retirement Villages (Contractual Arrangements) Regulations 2006 (the Regulations) regulate contractual arrangements between retirement village operators and their residents. The Regulations are due to expire on 31 July 2017 and Consumer Affairs Victoria (CAV) has proposed that they are remade, with an amendment to the aged care rule (required as a result of recent changes to aged care payments under the Commonwealth *Aged Care Act 1997*).

Before the Regulations are remade, CAV is required to conduct an analysis of their costs and benefits and consult on the proposed options – through a process known as a Regulatory Impact Statement (RIS). CAV has engaged NERA Economic Consulting to prepare the RIS.

The purpose of NERA’s consultation is to identify the potential costs and benefits of the proposed options, and to collect data to quantify these costs and benefits. The RIS will be released for a formal public consultation process in mid-2017, where there will be a further opportunity to comment on the analysis and the proposed options.

***The aged care rule***

The ‘aged care rule’ is contained in regulation 6. It was introduced in 2006 to ensure the process for refunding residents’ exit entitlements does not interfere with their entry into aged care. The rule requires a village operator, on request, to pay the accommodation bond that a resident is required to pay to an aged care provider for entry into aged care. The rule applies to residents who entered retirement village contracts after 31 July 2006.

The Commonwealth Government changed the Aged Care Act in July 2014, to the effect that aged care providers can no longer require residents to pay an accommodation bond, now called a refundable accommodation deposit (RAD). Residents now have the choice of paying for their aged care by a RAD, non-refundable daily accommodation payments (DAP), or a combination of a RAD and DAP.

The changes also removed a distinction in aged care between high and low care. Previously, accommodation bonds could only be required from residents entering low care accommodation. Now residents entering high or low care accommodation can elect to pay a RAD.

Proposed options for the Regulations

Three options have been developed by CAV in consultation with stakeholders representing retirement village operators and residents. All of the options considered result in the Regulations being remade, with each option providing a variation to the aged care rule.

* + - * 1. **Option 1** – **renew the Regulations and** **apply a DAP or RAD rule to new and existing residents –** amend the aged care rule to require retirement village operators to, on request, pay either the **DAP or RAD** that non-owner residents, who entered retirement village contracts after 31 July 2006, are required to pay to an aged care provider for entry into aged care;
        2. **Option 2** – **renew the Regulations and apply a DAP or RAD rule to existing residents, and a DAP rule only to new residents** – amend the aged care rule to require retirement village operators to, on request, pay either the **DAP or RAD** that non-owner residents, who entered retirement village contracts after 31 July 2006 and before 1 August 2017, are required to pay to an aged care provider for entry into aged care. Residents who enter into contracts after 1 August 2017 would only be eligible for a DAP based rule.
        3. **Option 3** – **renew the Regulations and apply a DAP rule only to both new and existing residents** – amend the aged care rule to require retirement village operators to, on request, pay the **DAP** that non-owner residents, who entered retirement village contracts after 31 July 2006, are required to pay to an aged care provider for entry into aged care. No resident would be eligible for a RAD based rule.

The options will be compared against a scenario where the Regulations would expire and the contractual arrangements between residents and operators would be governed by only the RV Act, the RN Regulations, guidance issued by CAV, and contractual law.

Consultation questions

***Impact of renewing the Regulations***

* + - * 1. Have the Regulations been effective to-date, do they need to be renewed?

How widely used are the six month rule exemptions provided for in regulation 5? Is it required?

Does the aged care rule effectively facilitate the transition of residents from retirement villages to aged care? In light of the changes to the Aged Care Act, is it still required, does the rule need amendment?

Do regulations 7 and 8 (and Schedules 3 and 4) provide sufficient clarity for the calculation of residents’ refundable in-going contributions? Are they required to be renewed?

Have the new contractual requirements that came into effect in 2014 (regulation 8B-8H) been operating effectively? Is there any evidence of their impact?

***Impact of changes to the Aged Care Act***

* + - * 1. In your experience, what has been the effect of the changes to the Aged Care Act in 2014 on the operation of the aged care rule?

Has it increased requests for retirement villages to pay RADs?

What impacts has this had on retirement village operators and the sector?

How has it affected residents’ ability to transition to aged care?

Are you able to provide any data or evidence to support your answers?

* + - * 1. In your experience, what proportion of retirement village residents entering aged care choose to pay for their aged care using DAPs or RADs? What factors influence this choice?

***Impact of options for the aged care rule***

* + - * 1. How do you think the three options will impact retirement village operators and residents?

How will they affect demand for the take-up of DAP and RAD based payments?

What financial impacts will they have on residents and operators?

How will they impact the ability of residents to transition to aged care?

Do you think they will impact the financial viability of retirement village operators?

Are you able to provide any data or evidence to support your answers?

# Stakeholder consultation timeline

Table H.1 Stakeholder consultation timeline

|  |  |
| --- | --- |
| Timing | Consultation |
| 1 July 2014 | Changes to the Aged Care Act 1997 (Cth) commenced. |
| October 2014 | PCA submitted a report to the Minister for Consumer Affairs, recommending the aged care rule to be amended to reflect changes to the Aged Care Act. |
| December 2014 | CAV responded to the PCA report and invited PCA to discuss the potential impacts of changes to the aged care rule under the Aged Care Act. |
| June 2015 | CAV hosted a roundtable of industry bodies and resident groups to discuss the future of the aged care rule. The PCA, CALC, RRVV, HAAG, COTA Victoria and LASA participated in the roundtable. |
| December 2015 | The Minister for Consumer Affairs approved a review to assess the impacts on the retirement village industry and residents of the changes in the Aged Care Act. |
| April 2016 | CAV engaged an independent consultant to assess the impacts on residents and retirement village operators of a range of options to amend the aged care rule, including the PCA’s recommended approach. |
| June 2016 | CAV engaged with industry bodies and resident groups to discuss the required changes to the Regulations to develop a set of proposed options for a new aged care rule. |
| September 2016 | A coalition of CALC, RRVV, HAAG and COTAV provided feedback to CAV on the findings of the independent consultant’s report. |
| October 2016 | CAV corresponded with industry bodies and resident groups including CALC, RRVV, HAAG, COTAV, LASA and PCA advising that the Regulations would sunset on 31 July 2017 and a RIS was being prepared to remake these regulations and to assess proposed reforms for the formulation of a new aged care rule. Industry bodies and resident groups were invited to provide feedback on the proposed reforms. |
| November 2016 | CAV received feedback from CALC, RRVV, HAAG, COTAV and PCA on the proposed reforms. CALC, RRVV, HAAG and COTAV jointly responded to the proposed reforms. |
| January 2017 | NERA consulted with industry bodies and resident groups (PCA, CALC, RRVV, HAAG, COTAV and LASA) to gather feedback on the potential costs and benefits associated with the proposed regulatory options as input to the impact analysis of the RIS. |

# Draft Retirement Villages (Contractual Arrangements) Regulations 2017

Report qualifications/assumptions and limiting conditions

This report is for the exclusive use of the NERA Economic Consulting client named herein. There are no third party beneficiaries with respect to this report, and NERA Economic Consulting does not accept any liability to any third party.

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| NERA Economic Consulting 727 Collins Street Melbourne, VIC 3008 Australia Tel: 61 3 9623 9800 Fax: 61 3 8640 0800 www.nera.com |  |  |
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|  |  |  |

1. These financial impacts are an average between 2018 and 2037 (the period of analysis). [↑](#footnote-ref-2)
2. In December 2015, it was found that between 80 per cent and 90 per cent of Australian retirement villages offer either leasehold or loan licence (equivalent to a leasehold in Victoria) tenure. Source: Productivity Commission 2015, *Housing Decisions of Older Australians*, Commission Research Paper, Canberra. [↑](#footnote-ref-3)
3. The average in-going contribution in 2016 was estimated to be $398,000 (based on a two-bedroom independent living unit). Source: PricewaterhouseCoopers (on behalf of the Property Council of Australia), *Retirement Census 2016 (abstract).* [↑](#footnote-ref-4)
4. Note that regulations 1 to 4 refer to the definitions and objectives. [↑](#footnote-ref-5)
5. The DAP is calculated on an equivalent basis of the provider’s RAD – using a prescribed formula and the maximum interest rate (MPIR), currently equal to 5.76 per cent per annum. [↑](#footnote-ref-6)
6. Property Council of Australia 2016, *Submission to the Parliamentary Inquiry into the Retirement Housing Sector*, Legislative Council Standing Committee on Legal and Social Issues, Victoria [↑](#footnote-ref-7)
7. PricewaterhouseCoopers (on behalf of the Property Council of Australia), *Retirement Census 2016 (abstract), Retirement Census 2015 (abstract), Retirement Census 2014 (abstract)* [↑](#footnote-ref-8)
8. The average current tenure describes the average length of time that residents surveyed have stayed in a retirement village including both new and old residents. The average total tenure describes the average length of time from entry to exit that residents stay in retirement villages. Source: PricewaterhouseCoopers (on behalf of the Property Council of Australia), *Retirement Census 2016 (abstract)* [↑](#footnote-ref-9)
9. Grant Thornton, Property Council of Australia and the Retirement Living Council 2014, *The effect of the Victorian Aged Care Rule on the retirement village sector*  [↑](#footnote-ref-10)
10. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-11)
11. Australian Bureau of Statistics, Quarterly Population Estimates (ERP), by State/Territory, Sex and Age, cat. no. 3101.0. [↑](#footnote-ref-12)
12. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-13)
13. National Ageing Research Institute (NARI) 2016, *Retirement Village Residents’ Experiences of Contracts and Outcomes: Pilot Project, Synopsis of Results*, page 15. [↑](#footnote-ref-14)
14. CAV, *Public register of retirement villages*, viewed January 2017, < https://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/choosing-a-retirement-village/public-register-of-retirement-villages>, accessed February 2016 [↑](#footnote-ref-15)
15. Residents of Retirement Villages Victoria 2016, *Submission to the Inquiry into the Retirement Housing Sector*, Legislative Council Standing Committee on Legal and Social Issues, Victoria. [↑](#footnote-ref-16)
16. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-17)
17. Retirement Village Association 2016, Submission to the *‘Caring for Older Australians Inquiry Report’*, Productivity Commission, Australian Government, Melbourne, August 2011, page.11. [↑](#footnote-ref-18)
18. Little, S. (2016), *IBISWorld Industry Report OD5534, Coming of age: Revenue soars as retiring baby boomers drive industry demand*, Retrieved from <www.ibisworld.com>. [↑](#footnote-ref-19)
19. When prospective residents are selecting retirement villages. [↑](#footnote-ref-20)
20. The national average in-going contribution for a 2-bedroom unit is $398,000 in 2016 ($385,000 in 2015 and $375,000 in 2014). Source: PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016* *(abstract),* page 6. [↑](#footnote-ref-21)
21. Units are priced at the level of, or about 10 per cent below, the cost of local apartments. Source: Grant Thornton 2014, *National overview of the retirement village sector*, page 4. [↑](#footnote-ref-22)
22. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-23)
23. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract), Retirement Census 2015 (abstract), Retirement Census 2014 (abstract).* [↑](#footnote-ref-24)
24. Grant Thornton, Property Council of Australia and the Retirement Living Council 2014, *The effect of the Victorian Aged Care Rule on the retirement village sector.* [↑](#footnote-ref-25)
25. PricewaterhouseCoopers (on behalf of the Property Council of Australia), *Retirement Census 2016, Retirement Census 2015, Retirement Census 2014.* [↑](#footnote-ref-26)
26. The Victorian market penetration of retirement villages was 5.3 per cent of the population over 65. Source: Grant Thornton 2014, *National overview of the retirement village sector*, page 5. [↑](#footnote-ref-27)
27. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016.* [↑](#footnote-ref-28)
28. Hollingworth, C. & Barker, L. 2015, Three Behavioural Insights into Ageing Mind, viewed April 2017, retrieved from: <behavioraleconomics.com/three-behavioral-insights-into-the-ageing-mind/>. [↑](#footnote-ref-29)
29. CAV 2016, Number of enquiries and complaints relating to the sale of retirement village units. [↑](#footnote-ref-30)
30. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2015, *Retirement Census 2015 (abstract).* [↑](#footnote-ref-31)
31. Real Estate Institute of Victoria (REIV) 2017, retrieved from: <http://www.reiv.com.au/property-data/median-prices/days-on-market>. [↑](#footnote-ref-32)
32. Estimate based on resident numbers provided in Grant Thornton (2014), The effect of the Victorian Aged Care Rule on the retirement village sector, (estimate of 60% of residents exiting villages to aged care). [↑](#footnote-ref-33)
33. Aged Care Financing Authority (ACFA) 2016, *Fourth report on the Funding and Financing of the Aged Care Sector*, page 34, Commonwealth Government, Canberra. [↑](#footnote-ref-34)
34. Retirement Villages (Contractual Arrangements) Regulations 2006, Schedule 3 – Calculation of refundable in-going contribution based on market value) [↑](#footnote-ref-35)
35. Retirement Villages (Contractual Arrangements) Regulations 2006, Schedule 4 – Calculation of refundable in‑going contribution where in-going contribution less than market value) [↑](#footnote-ref-36)
36. Note: this formula uses CPI rather than a housing price index as it estimates the value of exit entitlements that are not based upon market value (or the value of the property). Stakeholders have indicated that this formula is used when calculated exit entitlements that are based on ‘ability to pay’ and is commonly used in not-for-profit villages. [↑](#footnote-ref-37)
37. See section 1 of the *Retirement Villages Act 1986*. [↑](#footnote-ref-38)
38. *Retirement Villages Act 2016 (SA)*. Note this Act has not yet commenced operation but is due to start on 1 January 2018. [↑](#footnote-ref-39)
39. There are some minor differences in the overall impact of the options, which are driven by different interest rate assumptions for residents and village operators. However, these do not point to sufficiently large differences between the net benefits of different options to warrant choosing between them on this basis.. [↑](#footnote-ref-40)
40. It is unclear what proportion of exit entitlements are based on market value vs. non-market value. However, the non-market value exit entitlement is more common for not-for-profit operated units (approximately 16 per cent of all Victorian retirement village units). [↑](#footnote-ref-41)
41. These financial impacts are an average between 2018 and 2037 (the period of analysis). [↑](#footnote-ref-42)
42. KPMG 2016, *Analysis of Impact of the Aged Care Rule*, Consumer Affairs Victoria, Melbourne. [↑](#footnote-ref-43)
43. Data sourced from retirement villages advertised in Victoria on [www.villages.com.au](http://www.villages.com.au). Note that as some retirement village operators manage multiple villages, the proportion of small retirement village operators is likely to be less than 30 per cent. [↑](#footnote-ref-44)
44. The *Subordinate Legislation Act 1994* requires a minimum 28-day public consultation period to allow sufficient time for stakeholders to assess the RIS and prepare a considered response. [↑](#footnote-ref-45)
45. CAV 2016, *Guide to choosing and living in a retirement village,* Victorian Government, Victoria. Retrieved at: <https://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/choosing-a-retirement-village>. [↑](#footnote-ref-46)
46. Note: it is unclear how many residents fit within this category. Source: Grant Thornton, Property Council of Australia and the Retirement Living Council 2014, The effect of the Victorian Aged Care Rule on the retirement village sector. [↑](#footnote-ref-47)
47. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-48)
48. We note that there are exceptions to this; however, the majority of this cohort is expected to have left by this time. [↑](#footnote-ref-49)
49. Feedback from stakeholder consultation conducted to collect data for this RIS indicated that most retirement villages include the requisite clauses in residence contracts to use the six month rule exemption. [↑](#footnote-ref-50)
50. Productivity Commission 2015, *Housing Decisions of Older Australians*, Commission Research Paper, Canberra. [↑](#footnote-ref-51)
51. This analysis assumes a 5 per cent rate as suggested in the 2016 KPMG Report, *Analysis of Impact of the Aged Care Rule*. [↑](#footnote-ref-52)
52. Department of Human Services, Deeming, viewed February 2017, <https://www.humanservices.gov.au/customer/enablers/deeming>. [↑](#footnote-ref-53)
53. PricewaterhouseCoopers (on behalf of the Property Council of Australia) 2016, *Retirement Census 2016 (abstract).* [↑](#footnote-ref-54)
54. Ibid. [↑](#footnote-ref-55)
55. Aged Care Financing Authority 2016, *Fourth report on the Funding and Financing of the Aged Care Sector*, page 34, Commonwealth Government, Canberra. [↑](#footnote-ref-56)