

Exit Entitlement Options

The *Retirement Villages (Miscellaneous) Amendment Bill 2023* (the Bill) has been released for a period of public consultation. The Bill proposes to amend the *Retirement Villages Act 2016* (the Act).

What changes are being proposed to the mandatory repayment of an exit entitlement?

Three possible options for the mandatory repayment of an exit entitlement are being canvassed. These are:

Option 1 - is modelled on the scheme in New South Wales. It allows an eligible resident to apply to the Tribunal for an order for the payment of the exit entitlement when certain conditions are met. The conditions are:

- > that a period of six months plus 20 business days for refurbishment (for metropolitan Adelaide) or 12 months plus 20 business days for refurbishment (in all other cases) has passed since delivery of vacant possession, and
- > the residence contract provides for the resident to share in at least 50 per cent (50%) of the capital gain applying to the residence, and
- > a sale price has been agreed between the resident and operator, or an independent valuation has been obtained within 30 days prior to the Tribunal application.

Under this option, the Tribunal can only issue a payment order if all of these conditions have been met and it is satisfied that the operator has unreasonably delayed remarketing.

The ability of a resident to continue living in a residence after giving notice of intention to vacate is removed.

The existing 18-month repayment provisions and ability to remain in-situ will continue to apply to residents who are not eligible to apply to the Tribunal for an order.

Option 2 - reflects the recommendation made by the final report of the independent review of timeframes for exit payments in Queensland retirement villages. It reduces the timeframe in which the operator is obligated to pay an exit entitlement after a resident has delivered vacant possession from 18 months to 12 months. A 20-business-days refurbishment period applies before the 12-month timeframe commences.

The ability of a resident to continue living in a residence after giving notice of intention to vacate is removed. Repayment of the exit entitlement is automatic after 12 months unless relicensed sooner.

Option 3 – maintains the status quo (no change). Statutory repayment of the exit entitlement will remain at 18 months after a resident provides a notice of termination. If a resident continues living in a residence after giving notice of intention to vacate, vacant possession must be provided to the operator at least three months before repayment falls due.

Requirement	Option 1	Option 2	Option 3
Timeframe for exit entitlement payment	> 6 months plus refurbishment (metropolitan Adelaide) > 12 months plus refurbishment (regional)	12 months plus refurbishment	18 months (existing provisions)
Applies to all residents	✗ Applies to eligible residents only:* ✓ Resident must be entitled to >50% capital gain of the premises ✓ Agreed value/valuation in past 30 days ✓ Application to Tribunal ✓ Operator must have unreasonably delayed marketing	✓	✓
Applies to: > deceased estates > residents for whom the operator is paying the aged care daily accommodation payment.	✗	✓	✓
Time allowed for operator to undertake refurbishment following vacant possession	✓ 20 business days	✓ 20 business days	✗
Resident can terminate licence and remain in occupation.	✗	✗	✓ Resident must give 3 months vacant possession prior to receiving exit payment
Provides for automatic payment of exit entitlement to resident	✗ The resident must make an application to the Tribunal. The Tribunal may only make an order if operator has unreasonably delayed remarketing.	✓	✓
Allows operator to apply to Tribunal for an extension of time	✓	✓	✓
Applies to existing and new contracts	✓	✓	✓

* Non-eligible residents will continue to have their exit entitlements paid in accordance with the existing provisions (refer to option 3)

For more information

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