

RETIREMENT VILLAGES AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [3.22 pm]: I move —

That the bill be now read a second time.

The bill I am introducing today is the Retirement Villages Amendment Bill 2012. The purpose of the bill is to amend the Retirement Villages Act 1992 to implement some key reforms in the “Statutory Review of Retirement Villages Legislation 2010: Final Report”, which was tabled in Parliament on 18 November 2010. Due to the extensive nature and complexity of the final report’s recommendations, the government is implementing the reforms via two amendment bills. This first bill will address some of the major issues worrying retirement village residents and implement some of the more pressing recommendations.

The key to a happy and well-run village is its management. Of concern to residents are things that put them at risk, whether they be the conduct of the organisation or persons administering the village or the way the village is being financially managed. The bill contains a number of measures that seek to address these concerns including provisions prohibiting certain persons from being the administering body of a retirement village or being in any way, whether directly or indirectly, concerned in the administration of a retirement village. For example, the conviction of a serious offence or disqualification from managing corporations under Part 2D.6 of the commonwealth Corporations Act 2001 attract the prohibition. The reference to “directly or indirectly concerned” recognises the range of corporate structures applying in WA. It is only intended to capture persons who, in fulfilling the functions of an administering body, have the capacity to influence decisions in relation to the administration of a village. The Commissioner for Consumer Protection will, however, have discretion to grant exemptions from the prohibition. There are provisions for a statutory manager to be appointed by the State Administrative Tribunal to replace the administering body of a retirement village when there is evidence of serious mismanagement of the village. It is expected that these provisions will be rarely used. There are provisions giving residents the capacity to appeal collectively to SAT against increases in recurrent charges or imposition of a levy, so that residents as a group can challenge excessive or unwarranted imposts, and SAT may make orders addressing the circumstances of the case. Finally, there are provisions for regulations to prohibit certain fees and charges being recouped from residents, such as certain legal costs, that do not relate to the operation of a village. These regulations will apply to all contracts regardless of when they were signed.

Retirement village contracts are complex and the decision to move into a village is a major one. Amendments to increase the times for pre-contractual disclosure and post-contractual cooling off have therefore been included. Contractual matters are often the basis for disputes and the bill makes several amendments to improve capacity for these to be resolved. The bill clarifies that SAT may make specific orders relating to the completion of works and the fulfilment of contractual requirements around the provision of recreational and entertainment services and amenities, and that these can be dealt with by SAT regardless of whether the obligations are contained in a residence contract or a separate service contract. The bill provides for regulations to be made requiring contracts to include, or not, certain provisions or matters. The regulations will implement various review recommendations and will result in a higher level of transparency in village contracts. There is provision for the regulations to identify whether such requirements apply to all contracts or just to contracts signed after the regulations commence. This will provide the flexibility for new issues to be addressed and applied on a case-by-case basis. The bill also makes provision for appeals to SAT on disputes about whether a residence contract complies with such regulations.

For the benefit of village operators, the bill will allow premiums to operators to be released from trust once a resident is entitled to occupy the unit and the cooling-off period has expired. This will cover situations in which a resident could move into the village but delays doing so for personal reasons. Currently, residents who lease rather than own their units and who leave a village continue to pay recurrent charges until the unit is leased to a new resident. This is burdensome for older people moving to aged care who end up paying two sets of fees. It can also be burdensome for deceased estates. The practice is also out of step with the approach in other jurisdictions.

Limiting a former non-owner resident’s liability to pay recurrent charges is a key reform. This will be achieved by prescribing a time limit in regulations and the bill creates the power to do this. Government policy is that the regulations will apply to benefit all residents and specify two time periods for this purpose. The first period of six months will apply to existing contracts. The second period of three months will apply to new contracts. After the respective periods, former non-owner residents will not be liable to pay recurrent charges. It is important to note that the regulations will also need to reference matters beyond the control of the administering body, such as

the allocation of probate, that delay their capacity to re-market the residence. It is also anticipated that the specified periods will need to commence after these matters have been addressed by the administering body and the former resident or their estate. Once a former resident's liability ceases, the administering body will have to cover the cost of the recurrent charges and will be prohibited from recovering those costs by increasing recurrent charges or imposing additional operating fees or charges on other residents within the village. A further safeguard for all non-owner residents leaving a village will be the ability to defer payment of recurrent charges incurred after leaving. Deferred amounts, with interest, will be deductible from a former resident's refund entitlements.

The government's key goal in advancing these reforms is to simultaneously balance the need for the retirement villages sector to grow with appropriate consumer protections that promote the interests of residents. Our population is ageing and the Australian Bureau of Statistics forecasts that in another forty years nearly a quarter of Western Australia's population will be over 65. It is essential, therefore, that Western Australia legislates now to adequately protect the interests of our seniors in the present and future. The reforms in this bill are long overdue. They go some way to addressing current imbalances in the power relationship between retirement village residents and industry. They introduce greater transparency into village contracts for the benefit of residents and help to enhance the overall effectiveness of the legislation for the benefit of all parties. The government's intention is to implement the remaining legislative reforms recommended in the final report in a second amendment bill as appropriate.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth. I commend the bill to the house, and table the explanatory memorandum.

[See paper 4814.]

Debate adjourned, pursuant to standing orders.