

RETIREMENT VILLAGES AMENDMENT BILL 2012

Second Reading

Resumed from an earlier stage of the sitting.

HON LYNN MacLAREN (South Metropolitan) [5.04 pm]: I want to make a couple more comments about the key reforms in this amendment bill and a couple of remarks about miscellaneous provisions. Perhaps I was not making myself crystal clear in relation to the rights of owner-residents in pointing to the South Australian remarketing policy. I want to ensure that the minister heard that it is in relation to former residents. If the minister seeks clarification on that recommendation, it is in recommendations 71 and 72. The department recommended that the legislation be amended to require that if a resident expresses a wish to leave the retirement village, the operator may make available to prospective purchasers all pertinent information regarding the unit in the retirement village scheme. It points to the remarketing policy in South Australia. I note too that in this recommendation on page 119 of the statutory report, it refers to the lease-for-life transactions. That is one of the matters that has been put off to the next swathe of reforms. But I want to encourage the minister to consider these quite favourably, because in my travels I have learnt quite a bit about leases for life. They are also called apartments for life. It is a reform that will assist people who are in retirement villages and other seniors' accommodation because it hard codes people's rights as residents until they pass away. In some of these exciting accommodation options, people can move from being quite mobile and quite self-sufficient into different levels of care, even high-care facilities, until they need to go into a hospital or until they pass away. The importance of apartments for life and leasing for life is security of tenure. Honestly, as far as improving the quality of life goes, security of tenure is one of the most important aspects, especially for the ageing. It can make people quite fearful. I encourage the minister to look at those lease-for-life reforms as quickly as possible and, hopefully, introduce them quicker than these reforms have been introduced.

I want to conclude my second reading contribution by talking about the two final key reforms. One is the appointment of the statutory manager when the wellbeing or financial interest of residents may be at risk. Hon Kate Doust flagged this, because the bill will introduce new provisions for the Commissioner for Consumer Protection to apply to the State Administrative Tribunal to appoint a statutory manager to manage a village when the wellbeing or financial interests of residents may be at risk. Clearly, this is an important amendment that has earned the Greens' support. However, my question to the minister is: is there a simple mechanism by which the commissioner could be alerted to the presence of such a risk? I draw this to the minister's attention because retirement village residents are, by definition, older Australians and many of them are vulnerable and concerned about blowing the whistle on the guy in charge of their village. I share that concern. No matter what age we are, we might have a concern about blowing the whistle on the management or the manager of a place where we live and where we rely on security of tenure. Is there something that can be introduced in this legislation that would provide residents with a safe and confidential way to bring matters of concern to the attention of the commissioner? If the minister will address that in his response, I am sure many village residents will be very interested to hear that.

The last of the key reforms I want to discuss is the unsuitable persons who are prohibited from being involved in the management of retirement villages. Undoubtedly, this is a step in the right direction. The next step would be to ensure that there are courses available for the accreditation of retirement village managers. In due course, the legislation should specify the qualifications to be a fit and proper person to manage a retirement village rather than merely preclude those who are clearly unsuitable from holding that position. That is more of a carrot approach than the stick approach. It is also of some concern that proposed section 76 specifies persons who are not to be involved in the administration of retirement villages while proposed section 77C gives the commissioner the ability to grant an exemption from those provisions. These sections should apply to both the management and administration of retirement villages. What comfort are we given that the process adopted by the commissioner when making a decision under proposed section 77C will be transparent and that reasons will have to be given for that decision? One of the criteria for disqualification is anyone who has been convicted of an offence involving violence to another person that is punishable upon conviction by imprisonment of not less than three months. Clearly, this is more relevant to managers who are responsible for the day-to-day running of the village rather than the administering body that is responsible for the administration of the village. I would like the minister to assure us that the intention of the legislation is for the restrictions to apply to both the administration and the management of the village.

I have three comments on the miscellaneous provisions. I have already acknowledged that increased standardising of residents' contracts is desirable, although we await greater detail and clarity about that with eager anticipation. For instance, will the regulations prescribe what exit fees, refurbishment charges and cost-of-sale fees of non-owned units may or may not be charged by the administering body and how they are to be held?

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Will they prescribe or recommend how much may be retained by the administering body out of the premium on the transfer of the premises? I hope that in the next review of the legislation, which is mandated to occur every five years—although we have seen how long that can lag—consideration will be given to increased standardisation of the contracts, as clearly set out by Hon Kate Doust. As she said, that is the New South Wales model. Has the department thought along these lines yet or do we not intend to introduce standardised contracts?

Since a number of significant issues will be settled only upon publication of the regulations, I seek the minister's assurance that there will be extensive consultation with the affected stakeholders in relation to those issues. The minister should also reveal the proposed timing of the regulations.

Will the minister ensure that the Seniors' Housing Centre is properly resourced to help existing and prospective retirement village residents understand the provisions of this new legislation?

Hon Simon O'Brien: I created it and set it up. I hope that gives you some confidence. No-one else ever did.

Hon LYNN MacLAREN: What impact will it have and what other steps is the minister taking in this regard? Perhaps this is a time when the minister can shine his light most brightly on what he has been able to achieve by setting up the Seniors' Housing Centre.

There is a crying need for assistance to be given to the people affected by this legislation. Unless residents can get help in understanding their contracts, the cooling-off period will not help. Hon Kate Doust illustrated with a hefty pile of documents how complex these contracts can be. It is timely to consider how the government can assist people in retirement villages to understand their rights and obligations. That relates back to my previous point about standardised contracts.

I commend the minister. It is great that he has got this bill together. It is warmly welcomed by the Council on the Ageing Western Australia and all the seniors groups that we have talked to. It is an important step towards improving the rights of residents living in retirement villages. However, as the minister will note from the amendments I have on the supplementary notice paper, there are a couple of little things that I believe we could fix now that would make it maybe 100 times better.

Hon Simon O'Brien: A factor of 100 is probably a little over the top!

Hon LYNN MacLAREN: It depends. We have 15 000 residents, so maybe we can make it 15 000 times better!

In any case, anyone who is considering departing from a retirement village at this point in their life cycle would certainly look to a bill that actually specifies the starting point of the recurrent charges being charged to them. It is great that we are setting a limit. I would prefer it to be a shorter time but I understand that the government is pursuing a three-month limit and that industry and even the residents have accepted that. When does that three months start? That, to me, is the key provision in this bill. We can do a lot to improve the fairness of how we control this industry. I call on the minister to support the amendments I have on the notice paper. I appreciate the time of his officers who, over many months, have given me regular updates and answered quite complex questions from my office, and continue to do so in good faith. Obviously, they are concerned to have the best legislation possible passed by the Council. I would love to see that happen and I look forward to the minister's answers in the next stages of the passage of this bill.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [5.17 pm]: I want to speak for a few minutes on the Retirement Villages Amendment Bill 2012 because I—as I am sure many other Council members—have been approached at various times from constituents living in retirement villages who have found themselves in quite difficult and distressing disputes. The first point I make is that it is disappointing to the sector that it has taken so long to get this bill before the house and that it is being done in two parts. Members have canvassed the issue of the report entitled "Statutory Review of Retirement Villages Legislation" being tabled at the end of 2010. It is nearly two years since that report was tabled. Of course, that did not happen in a vacuum. There was a lot of parliamentary action and debate occurring, including parliamentary committee reports from the other place in particular, prior to that. Those reports canvassed some of the issues that retirement village residents have been grappling with for a considerable time. In one sense it is disappointing that the government will be able to tick off the list that before the election it has brought before Parliament legislation to deal with retirement villages. However, it will not be the complete and full list of matters that was recommended by the review, which is disappointing.

Three areas have been raised with me in the past two and a half years by three separate organisations within the South Metropolitan Region. The first relates to a dispute between residents and the management of an established retirement village that was looking at, and has now completed, a substantial redevelopment of its site. The matters relate to the amenity of existing long-term residents and their ability to get answers about what the

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Hon Lynn MacLaren; Hon Sue Ellery; Hon Col Holt; Hon Alyssa Hayden; Hon Ljiljanna Ravlich; Hon Max Trenorden; Hon Dr Sally Talbot; Hon Adele Farina; Hon Philip Gardiner; Hon Simon O'Brien; Hon Kate Doust

redevelopment would mean for them. They felt, and I agree with them, that they were treated poorly by the management of that centre. In that case, the residents sought legal opinions, which cost them money. They also felt that they were not getting the kind of advice and support that they needed from the department, which was a cause of much distress for them. The second area was in relation to a lease-for-life complex that was a new development. The residents were led to believe, because it was clearly stated in the advertising material, that the service would be an ageing-on-site service and that high-care licences had been applied for and received and that people would literally be able to move through the various stages of independent living through to low care and then high care. The advertising material that I have seen made it absolutely explicit that they would be able to do that. However, the contracts were not explicit. Although “buyer beware” is an important principle that people need to follow, these people did not check that the contracts reflected what the advertising said. These people had spent a lot of money to move into a brand-new facility, only to find that the high-care licences had been rejected—rejected twice, I think—and therefore there was no capacity for them to age in place, and they then found that it would cost them money to get out of that facility.

In the case of one couple in particular—I am sure there are others—one of the partners is residing in a retirement village in independent living, and the other partner is residing in a high-care facility on the other side of the metropolitan area. A bond had to be paid to reside in that high-care facility, in addition to the costs that are being incurred for the partner who is residing in the retirement village. That resulted in that couple seeking a legal opinion, and although a financial settlement was reached between the couple and the owners of the retirement village, in no way did that financial settlement meet the additional costs that this couple had to incur as a result of their being misled by those advertisements.

The third issue that has been raised with me in the last two and a half years relates to the settlement of complaints. This concerns an existing facility in which there was a dispute between the residents and the onsite manager, who I think had been given an enormous amount of power by the owners of the facility. In that facility, very poor dispute handling procedures were in place, and residents felt that they were being verbally and bullied at meetings that were called to resolve disputes. Again, the residents had to incur the cost of obtaining legal advice. That caused a lot of distress, and a lot of time and energy was spent in trying to achieve outcomes that in the end were not satisfactory. I am sure that other members can relate similar examples. That is why it is very disappointing that this bill does not canvass all the issues of concern.

I want to touch now on some of the issues that were recommended in the review and ask that the minister in his response provide me with an answer to these issues. The review made a recommendation about maximum fees to be on the waitlist. I could not find a reference to that in the legislation—perhaps I was not looking properly—but I ask the minister whether he could advise me about that. The review also made a recommendation about the content of information statements for prospective residents and said that two levels of disclosure that are consistent with each other should be prescribed. I ask whether that has been provided for in the legislation. The review also made a recommendation that a full disclosure package of information be provided within 10 working days of the initial request. In the case of the facility that was not able to get a high-care licence, if that recommendation had been in place at the time, it would have been clear to those people that the licences were being applied for but there was no guarantee that they would be delivered upon.

I am pleased to see the changes in respect to the State Administrative Tribunal. I ask the minister again about what work the department has done in working with residents’ representative bodies to improve the training of managers in the retirement village industry. These people hold very powerful positions in the lives of the residents and it is critically important that they have the best possible people skills to be able to manage disputes not only quickly but also sensitively and fairly. The report also recommended that guidelines and procedures be developed for appropriate and effective consultation. In the case of the dispute that was brought to me about the major redevelopment that was taking place in an existing facility and residents’ concerns about what that would mean to their amenity, if prescribed consultation procedures had been in place, people would have been a lot better informed much earlier on, and even though I suspect the redevelopment would still have gone ahead, some of those concerns might have been alleviated.

One of the other important provisions that needs to be put into this legislation is around accreditation, because as the aged care system has found, if accreditation procedures are put in place, there is a degree of accountability and a degree of enforceability, and that gives people a greater sense of comfort about whether the services that they are being provided with are or are not meeting the prescribed standards. So I would welcome the minister’s comments on those matters.

Finally, I make this point. The Deputy President (Hon Brian Ellis) did me a favour, because I am paired from 5.30 pm, and I asked whether I could get the call to enable me to speak earlier, so he did not follow the normal process of going across the chamber. I therefore apologise to Hon Alyssa Hayden, because I know she was disappointed that she did not get the call, but I am about to vacate the space, so I am sure she will get the

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opportunity to speak. We will support the legislation. It is long overdue and we will not hold it up. But it is disappointing that it canvasses only some of the recommendations of the report—not all of them. These contracts are complex, but this is the core business of this department. I really do not see why this legislation could not have been drafted in a way that reflects all the recommendations in the report. But, having said that, I commend the bill to the house.

HON COL HOLT (South West) [5.26 pm]: I rise in support of the Retirement Villages Amendment Bill on behalf of my Nationals colleagues. I have been listening to the contributions from members so far, and they have definitely canvassed most of the issues that have been raised with us. I also want to go into some details and some specifics that have been raised with us. It is important in this retirement villages legislation that we strike a balance between providing a fair system for residents, and promoting investment into this industry. When Hon Kate Doust mentioned that superannuation funds could be a potential source of investment in this area, it occurred to me that that might be a bit of a circular argument or a circular investment option —

Hon Max Trenorden: They have had a haircut as well!

Hon COL HOLT: That is right! If superannuation funds were to invest in retirement villages, the people who live in those villages might well be the people who own those superannuation funds, so that is not a bad idea. In regional Western Australia, we need to promote investment into retirement villages, because many people who get to retirement age would like to continue to live in the towns and the regions in which they grew up and in which they have been working. We need to find ways of encouraging that type of investment, particularly in some of the smaller centres in which there might not be the economies of scale to drive that investment. So certainly in this bill we need to strike that balance. I can tell members that the south west is full of very active and sharp retirement village residents, and they are right onto this thing and are raising issues with us. I have met with a number of residents in retirement villages to hear firsthand their concerns, and I am pleased to say that most of the concerns that they raised are catered for in this bill. But I would also like to get a response from the minister to ensure that these people can be confident that their concerns will be dealt with in this bill.

As other members have highlighted, the first issue that we need to address is the provision of standard contracts. I note that Hon Kate Doust had a couple of contracts on display. I would say that the contracts I have seen are just baby ones. One lady in a retirement village told me that her contract weighed 1.5 kilograms. She suggested that I take it to Parliament to show members, but I did not think that was necessary!

Hon Ljiljanna Ravlich: You probably couldn't lift it!

Hon COL HOLT: I could not!

That is a substantial and complex document for a person to go through before entering into a contract for a placement at the village. I encourage the minister to introduce standard contracting to provide a starting point for those who enter into such contracts. In that way, they will not have to face the confusion of wading through pages and pages of legalese before feeling confident that a particular retirement home is right for them. The cooling-off period contained in the bill will be a great advantage. However, as much as possible we need to move towards standard contracts in the industry. I would have thought that standard contracts would also be advantageous to operators, because a standard contract that everyone can agree to might remove some of the angst involved.

To complete the trifecta of concerns raised by the parties, I refer to the capped period for ongoing charges. We also welcome the prescription of six months for existing contracts and three months for new contracts. I ask the minister to provide a better definition of “retrospectivity” and how it will apply. Under an existing contract, if someone remains living in a unit the six months will apply. Under a new contract with someone moving into a unit—that is, they could have an old contract, but are not in their unit. When does the capped waiting period expire? When does the retrospectivity apply to those who are caught in the middle? I seek clarification about that, because many residents will be affected by this bill. As has been indicated by other members who have spoken about the bill, the bill requires a definition of when either period starts; that is, when do the six or three month-periods begin? The minister has already flagged a potential amendment to include that. We look forward to seeing that amendment, because an absolute date will provide certainty.

Those are the major concerns that have been raised with the Nationals. I agree with many of the comments made by other members who have spoken on this bill; I do not need to go over them. Obviously, this is the first of two bills. To complete the picture, I encourage the minister to get on the job of drafting the second bill. The industry is obviously very important to us in Western Australia because of our ageing population and the number of seniors who are looking to move into retirement villages. We must get that second bill up and through to Parliament to complete the picture for those involved in the industry, both operators and residents. With those few words, I commend the bill to the house.

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HON ALYSSA HAYDEN (East Metropolitan) [5.33 pm]: I rise to provide my feelings about the Retirement Villages Amendment Bill 2012. I thank the Minister for Commerce and his department for putting forward these amendments and for bringing this very worthy amendment bill before the house. As Hon Kate Doust said, retirement villages cross our minds at some stage, often more than once or twice, especially as we move away from our youth and into our older years. At 42, I am known to be middle-aged, which is an awful thing to say out loud!

Hon Simon O'Brien: No, you're only a kid!

Hon ALYSSA HAYDEN: In this place I am young, which is wonderful! I will stay here to stay young!

People start looking at retirement villages in a different light as they get older. Aged-care retirement villages are important to all of us and to all our electorates. Not unlike other regions, retirement villages in the East Metropolitan Region are well looked after and well sought after. Indeed, there never seems to be enough. It surprises me when I hear people say that their unit has been left empty for 12 months when, at the same time, I hear that many people cannot find a vacant unit in a retirement village. Units are left sitting and the vacated resident has to pay the recurrent charges month after month. I am absolutely baffled as to why units are sitting empty when people say there are not enough vacant units in retirement villages. Perhaps they are left sitting because they are not being suitably refurbished and upgraded. Obviously when people relocate they want to move somewhere that is better than where they lived, not worse. Perhaps that is a little reminder to retirement village owners that once units become vacant, they should be refurbished and cleaned quickly, because there is a long waiting list of people trying to find appropriate units.

Similar to other members in the house, I, too, have been contacted by a number of residents from my electorate. Their main concern was the recurrent charges that are payable by former residents. I will refer to a story I was told by one lady. As was said earlier, people living in retirement villages do not want to do in their retirement village. People in their later years do not want those in charge of their wellbeing thinking that they are complaining in any way. I will not say where this lady is from or provide her name so that she can continue to live her life with a smile on her face. The lady's neighbour sadly and unfortunately passed away. Nine months after her neighbour's death, she caught up with his family, who went to the village to put some furniture back into the unit, which had not sold. The lady learned that for the past nine months the family had been paying \$160 a fortnight in recurrent charges, a burden that is placed on the family or the estate when a loved one passes. It is sad enough dealing with that let alone having to pay recurrent charges of \$160 a fortnight on top of the burden of having to sell the place. She was horrified to learn how much the family was paying, so much so that even though she was extremely happy where she is living, for the first time she felt like a hostage. She told me that before she learnt about the recurrent charges, she was happy living where she was. She had had no problems and had not thought about leaving. However, when she found out that should she decide to leave—because her friends in the village had moved on or gone to higher care, because she had found another village she preferred to live in or because she had decided to move in with family—all of a sudden that option was taken away from her because she would be stuck paying the fortnightly recurrent charges. That filled her with fear. Whereas she had once lived a happy life, she now feels like a hostage and has worries and concerns that, quite frankly, she should not have in her retirement years. When my grandmother thinks she has to pay a \$5 bill, the world comes to an end. She starts stressing that the bill will cost this or that. When she gets the bill, she often finds that it is not that bad. In the meantime, her stress levels have gone up, the number of blood pressure tablets she takes has increased and she has caused herself misery. These people are living with the fear that if they do want to move out, that option is not available because they cannot afford the fortnightly recurrent charges.

With that in mind, I went to the Minister for Commerce to raise the issue with him. To his credit, he took it on board and we can now see amendments in this amendment bill. I am pleased to see the amendment inserting sections 23 to 25 of the Retirement Villages Act, which will set a three-month limit for new contracts and a six-month limit for existing contracts. However, I agree with the sentiments expressed by Hon Kate Doust and Hon Lynn MacLaren who spoke earlier about when the time limits will start. Will the three-month limit and the six-month limit for existing contracts commence when this bill is enacted? Will the former residents—those who have left before this bill passes—be caught in a loophole in that they will not be protected and will be left vulnerable, similar to the story that I just told? I have concerns for the people who have just vacated their unit and moved into establishments that provide higher care or have moved out for other reasons, and also for those families who are left to pay the recurrent charges associated with the unit after a family member has passed away. I would hate to see us protect only a few and not all. I know that all members in this house are here to protect the betterment of our community and our society. I would like the minister to strongly consider the amendments that have been suggested and ensure that all residents, whether they be former residents or current residents, are included in these contracts that stipulate three-month or six-month time limits when paying recurrent charges.

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Hon Lynn MacLaren referred to another amendment relating to permanent vacancy. What does “permanent vacancy” mean? What does it stand for? The minister has indicated, as Hon Colin Holt said, that he will look at clarifying this in his amendment. I would hope that a permanent vacancy would occur once a person hands in their keys, removes all their furniture, packs up their trailer and drives off for the very last time, never to return because they have hopefully moved on to another place and they will no longer live in or sleep in or use that unit for personal use. I would hope that would amount to a permanent vacancy, not when a person has handed in the keys to a retirement village and the owners have decided that they are going to renovate so the person needs to keep paying recurrent charges until the renovations are complete. To me, it is like owning a house. If one renovates something to sell, the owner of the house or unit benefits, not the resident who has handed in the keys. If someone is renovating a unit and will be personally rewarded because they have spent the extra money, whether they sell it quicker or get a resident quicker or they get more money for it because it has been refurbished, that is the owner’s responsibility and the resident should not have to pay recurrent charges until that renovation is completed.

I ask the minister to continue down the path of what he has done with this amendment in providing security to people in their later years of life. They should be enjoying their life and not worrying about where their next penny will come from because they have extra burdens on them that are not really necessary. Hopefully, the minister will take on board those amendments that have been suggested and ensure that retirement villages are happy and safe places to go to, because I would like them to be when I move in one day.

HON LJILJANNA RAVLICH (East Metropolitan) [5.43 pm]: I, too, rise to support the Retirement Villages Amendment Bill 2012. In doing so, I wish to say how disappointed I am in the length of time it has taken this government to bring this bill into this place. This bill has a very long history. I think Michelle Roberts initiated the original inquiry into retirement villages. Labor certainly initiated the work in this area. It was long overdue. This government, which has now been in office for four years, has without a doubt dragged its feet in bringing this legislation to this place. Having said that, we had a statutory review of retirement villages. That review made 100 recommendations. It was a significant and fulsome review. Those recommendations were very, very important to ongoing viability, operational efficiency and fairness and equity towards residents. They were critical. The Minister for Commerce has come in in the late hours of the term of this government with a bill that deals with only a fraction of those 100 recommendations. I notice that Hon Alyssa Hayden said that she wants to congratulate the minister for this worthy legislation. It may well be worthy but it is certainly not fulsome and it is lacking in many areas, including what was recommended it address and what it aims to address. That is the first thing I want to put on the public record.

When Minister Buswell made a speech in response to the tabling of the review in December 2008, he said that the government was taking the committee’s report very, very seriously and that this was a serious issue for government. In October 2010, the then Minister for Commerce, Minister Marmion, made the following statement to the house when he said —

I can assure members this is my number one priority.

Two years later, what do we have? We have a bill that deals with only a very narrow set of recommendations as recommended by the review. I say to the minister that I think that is very disappointing.

Hon Simon O’Brien: Don’t get out of breath. If you need to stop and suck on another lemon, do it because you might improve your demeanour. You’re a miserable piece of work.

Hon LJILJANNA RAVLICH: The minister might take offence. If he thinks that it is good enough to come into this place at this time with a bill that addresses only a fraction of the recommendations of the statutory review of the retirement villages legislation, and if he thinks he is going to get a big tick from me, he had better think again because he will not.

We have 200 retirement villages in WA. They are very important to people because they give people an opportunity to live in a community and enjoy the amenities within that environment. They are very highly sought after. They also offer investment opportunities for investors. Some of these facilities are built from institutional investments and some are provided by local government authorities. A variety of models operate out there.

One of the things that became apparent to me very early on when I was looking after the commerce portfolio for the opposition was the contractual arrangement being entered into by people moving into retirement villages. One of the points made in the statutory review was that the contracts were simply too onerous and complex and were written in such a way that people simply could not understand the detail. People did not understand the meaning of the provisions, yet they were being pressured to sign within a limited time to get their spot in the retirement village. Of course, what were their options? They could either sign the contract without understanding it or, alternatively, take it to a lawyer who would charge them a bomb. That is time consuming, and chances are

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that they would not fulfil the requirement to sign within a certain time frame to get into the village. Everything is geared towards keeping those people considering moving into a retirement village in the dark so that they are not well informed about their consumer rights and do not understand some of the ongoing obligations once they move into the facility.

The area of retirement villages needed to have the spotlight shone on it. Of course, that is exactly what the statutory review of the Retirement Villages Act did. It was a very good report. It made 100 recommendations. The review was long overdue and provided a blueprint for a happier and brighter future for people wanting to move into retirement villages. If the vast majority of the recommendations had been implemented by the government through legislative reform, it certainly would have given people the protections they needed from unscrupulous operators and from the things that occurred to them once they had signed the contract. Some of the things that happened to people were totally unacceptable. Some of them were ripped off within the retirement villages framework. That would not be acceptable anywhere outside of that particular framework, but for some reason it seems to be okay if they are residents of a retirement village. I think there are some serious issues with the complexity of contracts. There is no doubt that this bill simply does not go far enough. Albeit, having said that, at least it is a start, so we can give the minister a tick for bringing something to this place.

Before I go into some of the issues brought to my attention, I will quickly touch on some of the provisions within this legislation that I think are worth noting, including more time to consider contract information and a longer cooling-off period. I think they are positive provisions. I would like to have seen a provision that contracts be written in easy-to-understand language so that people do not have to sign a contract they do not understand or, alternatively, go to a legal professional to have it explained to them. I do not think that many people who are about to go into a retirement village have the luxury of spending money on legal advice to better understand their contract. In fact, most people may have just enough to get through the door and secure their place. The other point is that there is always an urgency of time. If they do not accept the vacancy that is available, somebody else will quickly get it. There are pressures. At least this bill will go some way towards assisting, particularly by providing a longer cooling-off period. The right to appeal against excessive or unwarranted increases in charges is a positive provision. No doubt if it goes to the State Administrative Tribunal, there will be a financial implication for the person concerned, so it is not without charge. This provision also will allow for a time limit on the payment of recurrent charges by non-owner residents who leave a village, with a limit of six months for current contracts and three months for future contracts. These are, by and large, a move in the right direction.

I had a number of meetings with the Western Australian Retirement Complexes Residents Association. I want to put on the public record its list of concerns about the retirement villages legislation. First of all, there are the ongoing charges after a resident leaves a village. Often it is in the vicinity of \$300 to \$450 a month. When a resident leaves a village, that charge must continue to be paid until the unit is sold, and sometimes that can take years. It is believed that because the monthly charges for the unit continue to be paid, the village operator, who could be the owner of the unit, may not undertake refurbishment or resale with any great haste. He may not lower the sale price of the unit to meet the market and it may not be in his interests for the unit to be sold. At the end of the day, he still gets the \$300 or \$450 a month. The person has gone, he has a vacant asset and there is no imperative for him to sell it to somebody else because he is still being paid. Under what law is that fair? I cannot find a comparison for how that would operate in any other sphere, yet this is quite common in retirement villages.

Hon Simon O'Brien: Let us say there was a strata title arrangement in a block of flats and you own your flat and you move out. Are you going to keep paying the strata fees and what have you?

Hon LJILJANNA RAVLICH: That is like somebody who rents a property leaving and until such time as a new tenant is found for the rental property, they are obliged to continue paying the rent. That does not happen.

Hon Simon O'Brien: No, that is not the analogy.

Hon LJILJANNA RAVLICH: That does not happen.

Hon Simon O'Brien: No, it doesn't, and if you'd done any homework at all, you'd know that that is a very poor analogy. It is completely inaccurate.

Hon LJILJANNA RAVLICH: Has this issue been addressed in the minister's legislation?

Hon Simon O'Brien: Yes, it has. If you'd read the bill, you'd know that.

Hon LJILJANNA RAVLICH: When we get to that part of the bill, I will be interested to know how much and what the minister has picked up on.

I am told that every village needs to have a reserve fund. Money is put aside to pay for large-scale expenditure to keep the village in good condition. I do not think anybody would disagree that there is a requirement to do that.

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However, it seems to me that there is some confusion about when a mandatory reserve fund becomes a slush fund. The problem is that there does not appear to be any clear definition of what reserve funds can and cannot be used for. Of course, without that clarity, it is easy to use the money as a bit of a slush fund for whatever the operators of the facility require. I think there is a problem with the mandatory reserve fund. The people who pay into that fund—that is, the tenants—need to be regularly provided with information that satisfies them that the mandatory reserve fund is being used for the purpose for which it has been set aside. Likewise, everyone accepts that certain recurrent charges need to be paid in retirement villages, but a problem occurs when recurrent charges are not accounted for. There is no doubt that recurrent charges—or levies or maintenance or amenities fees—are used for the purpose of making life better in retirement villages. I do not think that tenants object to paying recurrent charges.

Sitting suspended from 6.00 to 7.30 pm

Hon LJILJANNA RAVLICH: Before the dinner break we were discussing current charges in retirement villages. I want to make the point that people who reside in retirement villages are a generation who do not shirk their responsibilities. They pay their way; they also have a sense of what is fair and what is not fair. Often the lack of transparency around recurrent charges is something they have to deal with and they do not consider that to be fair. They are asking for something that most of us take for granted. If we are paying for something, we want to know exactly what we are paying for and that we are not being ripped off. Lack of transparency around recurrent charges at retirement villages has been a very serious issue. I understand that until now, residents of retirement villages have not had an avenue of appeal against recurrent charges. They were looking for an avenue that would allow individuals or a group of residents who felt they were being treated unfairly concerning recurrent charges to take the matter to the State Administrative Tribunal. I have looked at the legislation and I do not know that that provision is in the bill in the way the Western Australian Retirement Complexes Residents Association would like it to be.

The last issue I want to touch on that was brought to my attention is the way legal costs are devolved to residents. I understand that at present many residents' contracts give legal indemnity to the operator, which means the operator's legal costs can be included in the village operating budget and residents have to pay for them. In other words, if a case is taken to SAT or appealed to a higher court and the operator loses, the residents pay all the costs. Clearly, that is unfair and a major impost on residents. I cannot think of other circumstances in which this sort of thing applies. It is grossly unfair. I am told there have been incidents in which huge legal costs have been devolved to the residents. We can imagine a situation in which that legal cost may relate to one of the existing residents, so, inadvertently, residents are pitched against each other in a legal battle that may have nothing to do with them, while at the same time they are responsible for bearing the legal costs. That is a total absurdity and should be something that the government addressed in this legislation. Clearly it has not. I will therefore put on the public record that this legislation does not go far enough. I also want to put on the public record my appreciation for the work that has been done by the Western Australian Retirement Complexes Residents Association in bringing these matters to my attention.

Finally, I want to put on the public record that I expect that the residents of retirement villages will expect the rest of this legislation to be introduced into this place in due course. I say to the minister that having completed only a fraction of the job —

Hon Simon O'Brien: It's at least a fraction, is it?

Hon LJILJANNA RAVLICH: It is a fraction. There were 100 recommendations and I doubt very much whether the Retirement Villages Amendment Bill 2012 covers any more than, in total, about 20 per cent of them.

Hon Simon O'Brien: But you didn't bother to check before you started mouthing off. You are all mouth and no substance.

Hon LJILJANNA RAVLICH: It falls very, very short of what this Parliament, members of the opposition and, certainly, retirees expected. Thank you very much, Mr Deputy President (Hon Col Holt).

HON MAX TRENORDEN (Agricultural) [7.36 pm]: I have a few remarks to make on the bill. I appreciate the bill and will support it. It is good that it has been introduced, but I must admit that I do not know what will be in the second tranche of legislation that the minister has talked about.

Hon Simon O'Brien: I will cover that in response.

Hon MAX TRENORDEN: I want to raise a few issues that concern me that have not been raised during most of the debate that I have heard tonight. A lady rang the Standing Committee on Public Administration but we could not handle her issue because it was not quite within the ambit of the committee, but I gave an undertaking to the committee, as some members of the chamber know, that I would try to assist her. Her difficulty, which has not been resolved, is with Lend Lease while she is trying to sell her unit. She is 88 years old and has gone blind.

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She has taken her issue to the State Administrative Tribunal and the Magistrates Court. Because of her age she is concerned about legal ramifications. It is all a little beyond her. She has had legal advice, which, quite frankly, is also a bit beyond her. She is too scared to act. For a couple of years now she has not been able to sell her unit, which is a serious concern because this lady is 88 years old and blind. She is struggling. Her daughter is helping her but the bottom line is that when people purchase units, either strata title or green title, and they reside in them the question arises of how to get out of them. It may have been this week that I was reading in *The Australian* that one of the partners of the big four accounting firms had stated that in future we can expect a reduction in housing prices of 15 per cent. What would worry me if that happened—I am not saying the prediction will come true—or even if prices went down by 10 per cent, is that large corporations like Lend Lease may not want to sell any units because their sale could devalue the whole complex. Some of the argument involves, as I am sure the minister will understand, what happened in Queensland. There were severe problems with Queensland's retirement villages, partly because part of the planning and profit projections of most of the corporations was capital gain. There is no guarantee of capital gain in the next few years—probably longer. The matters covered by the Retirement Villages Amendment Bill are important. I am not denigrating the bill; indeed, I am fully supportive of it. However, it does not cover all the issues. The lady to whom I referred went to the State Administrative Tribunal. However, as most members know, SAT's rulings cannot be enforced. The lady got a ruling in her favour, but Lend Lease told her to go away. Lend Lease is big enough to do that. How does an 88-year-old woman take on Lend Lease when she has a contract an inch and a half thick? I am not arguing that there is no necessity for robust contracts; indeed, we are adding to that tonight. But it makes it very difficult for those people who are not prepared to pay for large sums for lawyers. Usually they get a family friend who has a little knowledge of the law to advise them on their contracts. I am concerned about the issues that remain, to which a couple of members have referred. I would like to know where the minister intends to go with the second piece of legislation. I have a personal fear of retirement homes. I am happy to say it tonight. Some people might refer to parliamentary privilege, but I will not go into a retirement home. The conditions of those contracts are not drawn up in tenants' favour. I understand why people want to be in retirement and over-55 homes, but the conditions are not in favour of the tenant because the contract is pitched towards making sure that the proprietor—not so much the manager—does not lose in the deal. To repeat, when these proposals first began, the natural capital gain of 10 years ago was factored in as a profit margin for the owners of the development. That part is going; it might be going and gone for a number of years yet, which will put pressure on the corporations to make sure that money comes from the people who have purchased the units. As I said, this may not be absolutely true, but some owners will not sell their units quickly because selling them will devalue their property.

Another issue that the minister is currently dealing with is strata titles. During the inquiry on strata titles, we found that many owners of properties in parts of the Middle East and the United States would not pursue wayward tenants who did not pay rents and leases for the same reason—namely, if they pursued them and won, they would devalue their properties. They were happier to not pursue those people to ensure that their property value did not decline. It is not as though what I am saying is not a part of current industry practice—hopefully, it is not common industry practice—but I am concerned that people who own their own units do not have the capacity to sell when their unit is no longer of use to them. The lady to whom I referred is going into a higher level of care and needs to sell her unit. After two years it remains unsold.

HON SALLY TALBOT (South West) [7.43 pm]: I will speak briefly about the Retirement Villages Amendment Bill 2012. The opposition has no interest whatsoever in doing anything other than expediting this bill which, as other honourable members have said, has been a long time coming.

I congratulate opposition members in the other place for having kept this issue on the front burner for the past four years. Everybody who works in this place knows there are times when the two chambers work in a parallel universe; indeed, we are not always aware of what the other place is doing. Some checking I did the other day confirmed that this issue has been debated in the Legislative Assembly in a lively way at least twice in the past two years during motions brought on by the Labor opposition. The first one was 20 October 2010 and the second was almost a year to the day later, on 19 October 2011. The thing that I found interesting was that in both those debates, my colleagues in the other place outlined very clearly a number of the issues that honourable members have taken up in this place this afternoon. I refer to the very real difficulties that people in our electorates face when they find themselves in that admittedly very small number of villages where there are problems. Most retirement villages work very well. In no sense are we trying to suggest that there is major corruption in the retirement village industry; nevertheless, when things go wrong, they go very, very wrong. We have heard case after case mentioned in the house this afternoon and tonight. Our opposition colleagues in the other place have been putting these cases on the record for years. Every time they have brought this issue before the government, it has said, yes, the issue is its number one priority, that it is going to get things done without delay, that it understands the issues, has had a statutory review, has received the recommendations, provided the government response, and that, therefore, the bill is not far away. When the motion criticising the government's inaction was

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debated on 19 October 2011, members predicted that they would be back 12 months from that day with no legislation. That is exactly what had happened the year before, and they were shown to be absolutely right. After today there are 20 sitting days left in this place and only 17 in the other place. That is how long the government has let this issue drift while it has been in office. It is a very sad thing that has been brought home to many of us in the opposition and in other parties very eloquently by people living in retirement villages who are desperate to see the recommendations of the statutory review put into effect. That review was tabled in November 2010. It has taken the government nearly two years, even from that point, to get to here, even though the issues were well known long before that.

Obviously one of the iceberg issues in this whole question has been Karrinyup Lakes Lifestyle Village. A couple of parliamentary reports have looked into the problems at that village. It was an exceptionally troubling case of things going wrong. My colleague Tony O'Gorman, the member for Joondalup, has done an excellent job of bringing those issues to light. Members need only listen to their constituents, read their correspondence and look at the cases that have been put on the record in the other place to know that the Karrinyup Lakes issue is not an isolated incident. More importantly, the Karrinyup Lakes inquiry told us very clearly where the problems are and what needs to be fixed to guard against such malpractice in the future.

I will refer to a couple of retirement villages in my area in Peel. Hon Alyssa Hayden referred to the number of retirement villages in the East Metropolitan Region. I assure her that there are three or four villages in Peel for every one village in her electorate. Peel is obviously an extremely attractive place to run a village business. There is no shortage of customers because it is such a beautiful area. My colleague the member for Mandurah, David Templeman, has put some of these cases on the record before, and I will add to that tonight. These cases all relate to the issues that have been raised by honourable members in this chamber this afternoon during the debate on this bill. These issues are fundamentally about people who get trapped—there is no other word for it—into making a major financial commitment in the second half of their lives to move into retirement village accommodation, only to find, through circumstances that are almost never happy, that they are not able to move on, because they can no longer get access to their finances. It is clear that we need to have greater openness, transparency and accountability in the management of retirement villages.

I now want to refer briefly to some of the cases that the member for Mandurah has talked about. They revolve around the issue of what happens when people who live in a retirement village need to move to another facility, either because their partner has died or they become too ill to live independently. We have had cases in the Peel in which clearly the wrong thing was done by these people. One particular village—I will not name it—gave an undertaking to a person who had to move to another facility that it would use its best endeavours to sell that person's property so that the person would not be responsible for the ongoing financial payments. However, the village had just invested in building some brand new units, and because the unit that this person was trying to divest themselves of was an older style villa in the complex, every time somebody made an inquiry about moving into the village, this person's property was right at the bottom of the list and they ended up with an enormous financial burden over a period of two years that just about crippled them financially.

Of course, the circles of concern go out from this. An elderly person may be sick and also in a state of grief, having lost a partner, and of course their extended family then gets caught up in trying to provide the care and financial assistance that that person needs, and there ends up being a great deal of unhappiness and anxiety, when it is a relatively simple fix to enact. That is why people cannot comprehend why the government has left it to within the last 20 days of parliamentary sittings to bring this bill before the house.

In February 2011 the member for Mandurah and I went to a meeting in Peel of the WA Retirement Complexes Residents Association. There were between 150 and 200 people in that hall. We know, because we work in organisations in which we try to form some sort of collective, how hard it is to get people to show an interest in issues. More than 150 people turned out to express their concerns about the government's inaction on this issue. We were joined at that meeting by Hon Nigel Hallett. I am disappointed, and I am sure he is, too, that he is not able to be present in the chamber for this debate; undoubtedly he is away on urgent parliamentary business somewhere. But the member for Mandurah, David Templeman, spoke very eloquently at that meeting about what his expectations were, about what needed to be done, and about how he would support these residents in getting more secure outcomes for them. I spoke and raised some issues that other constituents have raised with me, basically to let them know that they were not alone, their voices were being heard, and they had representatives in the state Parliament who were prepared to speak for them and advocate for them. I have to say that Hon Nigel Hallett was also asked to speak at that meeting. He said that he would do his best to expedite matters with his colleagues in the government. I was, therefore, looking forward to hearing his contribution to this debate to see whether this was the best he could do. I think it is a bit disappointing, to be absolutely frank. I know he is a hardworking member, but it was well over 18 months ago that government members were out there

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in the community, with very, very anxious people, saying, “Don’t worry; we’ll see it right for you”; and, 18 months later, we are only just beginning to see some government action on this issue.

Hon Kate Doust has read into *Hansard* some detailed commentary by the WA Retirement Complexes Residents Association. I want to go over a couple of those points, without repeating too much what other members have said, because if we start to pick the eyes out of this, we can see that there are still some issues that the government has failed to address. I hope those issues will be addressed by way of amendment. I also want to ask the minister whether he can explain to the house in his summary why he has had all the recommendations, the statutory review findings and the government response on the record for so many years, yet we are still not looking at a bill that will fix all the problems. I just cannot understand why that is happening; and, if I cannot understand it, then nor will those 150 people who turned out that day to make their point of view heard.

The first issue is village management. I know this is an issue in which Hon Max Trenorden has also taken an interest with regard to the management of strata complexes. The issue is that too many of the people who are managing retirement villages and strata complexes, and who are being given authority over people’s lives and finances, are people who simply do not have the expertise to run businesses of this kind. Therefore, one of the things that WARCRA has asked is: why do there need to be exemptions to the rules that will prohibit certain people from being in positions of administration in retirement villages?

The second issue is that these contracts are extremely complex. Hon Kate Doust gave a very concrete demonstration of that when she held up half a kilogram of paperwork. I have to say that some of the contracts that I saw the morning of that meeting in Peel were probably twice the size of that documentation. I know that Hon Col Holt has had the same experience. But, not only that, the contracts are very difficult to read. We who work in this place in this job are quite used to dealing with complex documentation, complicated language, legalese and all that sort of thing. But having seen some of the provisions in these contracts, I would have had to sit down for many, many hours, with some expert advice, to make head or tail of what these people were being asked to sign up for. So, one of the things that WARCRA has talked about is whether the government is willing to make amendments to this bill and to respond to the suggestion that we should put in place measures to address the structure of contracts so that there is some degree of standardisation. It is infinitely more complicated for a person to buy into a retirement village than it is for a person to buy their first house when they are 25 years of age, or whatever. That is absolutely ludicrous. People aged in their late teens can get a credit card. I do not think people even have to sign forms any more before they are caught up in the financial system, yet when people go into a retirement village, they are faced with kilos of paperwork, written in extremely abstract and obtuse language, and they are asked to commit themselves to all sorts of things. Quite frankly, I think people would have to pay thousands of dollars in legal costs to be absolutely certain about what they are signing up to.

My last couple of points are, basically, about the requirements for a special resolution of residents to get a referral to the State Administrative Tribunal. One of the things that I think some members of the government do not understand is the way that people use positions of power and what it is like to be in a position where people do not feel that they have equal power to the people they are dealing with. That can be an extremely oppressive thing to experience. It is oppressive because it removes a person’s voice, but even more than that, because they cannot actually name it. Having an equal relationship is not just a matter of saying that we are all equals; it is a matter of demonstrating that in concrete, practical actions. If a person has to go around lobbying for something with people that they meet every day, buying the paper or picking up a carton of milk, and then they have to present that to what is, after all, an authority figure in the village management, the government is asking a lot of them. I absolutely agree with the comments that this could lead to very unpleasant and untenable situations and, again, to people feeling that they have not had their point of view heard and seriously considered.

We have a provision that permits former non-owner residents to defer payment of recurrent charges until a refund entitlement is due to be paid. I know that Hon Kate Doust has put this letter on the record, but it is best explained in their words. This last provision requires a former non-resident to make an election in writing and we consider that such an election should also be permitted by the legal personal representative of the former non-owner resident, as in some cases the vacating of the residence may be due to incapacity. Not a day passes when we do not read about the proportion of society that will be affected by some form of dementia as the population ages, so it seems to be a highly sensible thing to suggest an amendment of that kind, and that is one that the opposition will be supporting.

The final point is perhaps the most important, and this is the matter I raised earlier about how quickly people can get access to their capital if they decide to move out of the village or they are forced to move out of the village for some reason. I cannot see why we would allow laws or regulations to remain in place that permit the operators to unduly extend or artificially protract the time before which people get their money back. I want to illustrate that point by reading into *Hansard* a letter from Mrs J. Worthy, who has written to me. She lives in my electorate. The letter is actually the attachment to her email, which was sent to me personally, asking me to look

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at this matter. The letter is actually addressed to Hon Kate Doust because she has been the shadow minister with carriage of the bill in this place. I want to tell members what Mrs Worthy's point is, because she expresses it in a very succinct way. She says —

As residents living in a retirement village, you can appreciate our concerns regarding some of these amendments. It would appear the issue in relation to the amount of time out going residents have to continue paying *Ongoing Charges* has the potential to be capped at 6 months for existing residents and 3 months for new contracts.

However, clarification is urgently needed to establish when that 6 month period begins. Is it when a departing resident has handed over the keys thus establishing vacant possession and giving Operators the opportunity to refurbish or is it at the completion of refurbishment?

If the latter, then I have no doubt Operators will take advantage of this loophole and delay commencement of the refurbishment thus extending the time before they become responsible for the charges.

I believe there is a massive campaign by the R.V.A. to try and convince politicians that the issues relating to *Ongoing Charges* and the time frame after which Operators will be responsible, will not work.

If similar amendments have been adopted in at least 4 other states in varying degrees, then what is the problem in W.A.? Also, as you are aware, the amendment to the *Retirement Villages Act 1992* has been in the pipeline for 6 years. Responsible Operators have had ample time to adapt and consider the ramifications of any adverse finding. It will certainly eliminate, shall I say, the "dodgy" ones.

To date, politicians from all parties have listened to the growing concerns of residents living in retirement villages and have shown total commitment to fighting for us. We sincerely hope you will continue to fight for us on these important issues and not bow to pressure from the RVA.

I think that is very well expressed, and Labor will certainly be supporting amendments to that effect.

With that, Mr Deputy President, I will conclude my remarks. It will be a very good day for many of these residents when they can wake up in the morning and know that at least part of their financial anxiety has been taken away and to an extent those anxieties are not going to arise in the future.

In closing, I referred earlier to my concerns about why we are going to be looking at two bills, and I ask the minister what the second bill will include. I know that the explanatory memorandum says that work has commenced on the second round of amendments that will appropriately implement remaining legislative reforms recommended by the final report, but I remind honourable members that there were 100 recommendations in that final report. This leads to the suspicion, because the government has decided to split the recommendations into two bills, that what we are looking at in this bill is the stuff the government did not consign to the too-hard basket with only 20 more days of sitting before the election. I look forward to the minister's reassurances on those points.

HON ADELE FARINA (South West) [8.06 pm]: I rise to support this long-awaited Retirement Villages Amendment Bill 2012. As other members have stated, the sector has waited a very long time for this bill to address a number of significant issues that currently exist within the sector. I have received representations from a large number of constituents living in retirement villages throughout the south west, and while welcoming the bill would like to put on the record their disappointment that the bill has taken so long to come before the house and that the bill does not address all the recommendations identified by the statutory review and the inquiry undertaken in the other place.

It is also important to note that the bill has been drafted so that a number of key provisions that need to be addressed will have to await the drafting of regulations. This means that with the passing of this bill through both houses of Parliament, residents of retirement villages will still be subjected to delay and uncertainty for a further period of time until the regulations have been drafted, they come into effect and the disallowance period has concluded. So there is still a way to go before the relief that is intended to be provided by the bill comes into effect. This is an ongoing concern for residents of retirement villages.

As is often the case, members are being asked to pass a bill without seeing the regulations, and taking it on trust that the regulations will be expedited and will take the form that has been indicated to the house. Given the long wait for the bill to be introduced, I think it is imperative that the minister indicate the expected time frame for drafting an enactment of the regulations. The minister also needs to explain why certain provisions have been left to the regulations, rather than incorporated in the bill, especially when the detail of the provisions is known and agreed, as is indicated by the second reading speech and explanatory memorandum. The point is: if we know

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what the provisions are, they have been agreed, there is no dispute about them and there is no intention to change them, why are they being left to be stipulated in the regulations rather than being incorporated into the bill itself? I will come back to this point.

I would like to briefly address the issues that have been raised with me by constituents living in retirement villages. The first is the need for standard contracts written in plain English. Hon Ljiljanna Ravlich made issue of this, and so did a number of other members who have spoken on this matter. There is a great variation between contracts, and a large number of hidden gems in the fine print of those contracts. Many of the contracts and supporting documentation are weighty and lengthy documents that are beyond the ability of most people to comprehend, and even beyond the ability of some lawyers to comprehend, particularly lawyers who do not have expertise in this area. In this day and age we should not be operating in a way that prohibits people from understanding contracts that they are entering into. There is absolutely no reason why these contracts cannot be written in plain English, in a way that is easier to understand. Certainly, the standardising of contracts will go some way to addressing that issue.

Although the cooling-off period in the bill provides some comfort, it does not go far enough in addressing the problem. It is disappointing that the government has not addressed the issue of standard contracts and the use of plain English in the drafting of the contracts. I believe this is a matter that needs to be addressed by government, and I call on the minister to explain to Parliament why it has not been addressed by the bill and whether the government intends to address this issue in the next bill that it has foreshadowed it will introduce to the house.

Another issue raised with me is the significant refurbishment costs being imposed on owners of life-lease contracts who decide to sell their units. The costs being imposed are really substantial, and I was quite shocked by some of the fees being charged. In some cases the costs are imposed regardless of whether the refurbishments are carried out, which I find quite extraordinary. In anyone's assessment, this is an unfair impost, especially if the refurbishment works are not being undertaken. Unfortunately, this matter is not addressed by the bill—at least I do not believe it is. If it is, I invite the minister to tell us which provisions of the bill address this concern. If it is not part of this bill, I invite the minister to inform the house whether the government intends to address this in the next foreshadowed bill; and, if so, when we can expect that to happen.

The third issue that has been raised with me is that of recurrent charges being payable for up to three years after residents have vacated the village, or until a unit is sold. Many members who have spoken on the bill have raised this issue. I would like to put on the record that the recurrent fees being charged by some villages are a substantial impost. To have to continue to pay the recurrent charges when no longer living in the retirement village for any length of time is a substantial impost on individuals. Section 11 of the bill provides that for a person who becomes a former resident on or after the commencement of the act, and who had a contract existing before the bill was enacted, a maximum period of six months will apply, and after that period the former resident will no longer be liable to pay the recurrent charges. The bill also provides that for new contracts—that is, contracts entered into after the enactment of the bill—a maximum period of three months will apply.

I understand that this has generally been accepted by the sector. However, the representatives I have met with and received representations from have called on me to ensure that all former residents are placed on an equal footing, regardless of when they became former residents and when they entered into the contract. Clearly, that is not provided for in the bill. To this end, I note that the bill does not address the situation of a person who has become a former resident before the commencement of section 11 of the act. I therefore call on the minister to explain why the bill creates two time periods, the justification for this and why the provisions apply only when the person becomes a former resident on or after the commencement of section 11 of the act. Although I acknowledge that the six-month time period has generally been agreed, it is my view that it is a very generous provision in favour of the retirement village, and I would appreciate an explanation from the minister as to the basis on which this time period was settled as, in my view, this continues to place a substantial impost on the former residents, or at least those who fall within that category.

It is also unclear to me why the detail has not been included in the bill and is being left to the regulations. It appears from the second reading speech that the time periods are known and agreed and that there is no intention by government to change these. If this is the case, it is more appropriate that these be incorporated in the bill rather than left to the regulations. If the intention of the government in putting this detail into the regulations is to easily amend those provisions without having to come back to Parliament by way of an amendment bill, the government should place on the record that it is its intention to review and change those time periods and that is the reason it is putting that into the regulations. I do not know the reason; I am just asking the minister to explain that to the house, because, as I see it, if those provisions are known and agreed, and there is no intention to make changes to them, they should be incorporated into the bill rather than being left to the regulations.

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I would also like to support the views expressed by Hon Lynn MacLaren about the need for the bill to be clear as to the start date for the calculation of the six-month or three-month time period set by the bill. I look forward to hearing the minister's reply on this matter and his position on the amendment proposed by Hon Lynn MacLaren.

On the issue of regulation-making powers in the bill, I note that clause 8, which establishes a new section 14A, provides that residence contracts must comply with prescribed requirements as specified in the regulations. It has taken four years for the government to introduce this bill to Parliament, after a very comprehensive review. In view of this, it is difficult to understand why so much of the detail that should properly be incorporated into the bill is being left to regulations. I invite the minister to detail what regulations he envisages will be made pursuant to proposed new section 14A and why these have not been incorporated into the bill so that they are clear for all to see as we consider the bill.

The last point I want to raise is about the appeal right to the State Administrative Tribunal. Although the appeal right to an independent party is welcome, we need to acknowledge that SAT has become quite formalised in its structures and processes. Although it is often said that legal representation is not necessary, the truth is that in many cases people do not get very far in SAT these days without legal representation. For many, the SAT processes are onerous and daunting, and they can be costly. I would have preferred an alternative, less costly option to have been proposed, at least as a first point, for reconsideration of disputes under the bill rather than having to resort to the more formalised and more costly structure of SAT.

The second reading speech also states that SAT will have the power to make specific orders relating to the completion of works and amenities. Although this is definitely welcomed, I am curious to learn from the minister how SAT can make this happen if the developer says he does not have the finances to comply with any orders made by SAT to build facilities. Although it is fine for the bill to make this provision and to allow SAT to have the power to make an order that the developer comply with the development proposal he first put forward that said he would build sporting facilities, a swimming pool, community meeting facilities or whatever, the question I have is: how does SAT make the developer comply? The experience I had during my period as Parliamentary Secretary to the Minister for Planning and Infrastructure and also adviser to the Minister for Planning is that we can make all the orders we like, but if a developer simply says, "Well, that was my intention. I had all these great visions to provide all these things, including a railway line or whatever, but I now don't have the finances to do it", how does having this provision in the bill deliver the outcome that residents want? It seems to me that we need to address this issue much earlier in the planning approval process rather than at this late end, because at this late end of the process, while the order can be made, we are going to find it extremely difficult, if not impossible, to get the developer to comply with the order. Depending on the time when that order is made, we may also find that there is a disconnect between the developer who built the development, the person who is operating it and the residents who are now living there. We can make any order we like against the operators, but they were not the ones who gave the undertaking at the beginning when they got the planning approval, if it is a separate developer. If it is one and the same party, there will still be a problem because an order can be made, but how will we get a developer to comply with the order when the developer says that they do not have the money to do it? I am really curious to hear from the minister how he sees this provision working in reality and delivering the intended result that is stated in the second reading speech. I look forward to hearing about that.

Overall, the response in the representations made to me by people living in retirement villages is that they welcome the bill. It has been a very long time coming. However, they continue to raise with me the concerns that I have outlined and would like to see the government's response to those concerns and to see the balance of the recommendations in the statute review report being quickly implemented by government.

HON PHILIP GARDINER (Agricultural) [8.21 pm]: I have a couple of points that I do not think have been made yet; and, if they have, I am sorry to have indulged members. This is a very important area, which is a point that has already been made by a number of members. Many members have covered nearly all the relevant aspects that the Retirement Villages Amendment Bill 2012 will apply to retirement villages. It is only a vicarious pleasure of mine at this stage, and I do not have detailed knowledge of it, but some aspects concern me and I would like a response to them from the minister when he replies. Regrettably, I will be unable to be in the chamber to hear his reply, but I will look very closely at it in *Hansard*.

Clause 10, which seeks to amend section 18(1) of the act, requires premiums paid by prospective residents to be held in trust until the residents move into the village or it becomes apparent that they will not. At the briefing, we had responses to the few questions that I am going to ask, and they have been very helpful; thank you, minister. But I would just like it to be on the record so that we know what the minister is thinking and what some of the implications might be. A trust account is always open to abuse one way or the other. We have seen it. It could be solicitor trust accounts or trust accounts in different industries. People can withdraw funds when they have no right to do so and use those funds for purposes that are totally alien to the intention of the trust account.

Extract from Hansard

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Hon Lynn MacLaren; Hon Sue Ellery; Hon Col Holt; Hon Alyssa Hayden; Hon Ljiljanna Ravlich; Hon Max Trenorden; Hon Dr Sally Talbot; Hon Adele Farina; Hon Philip Gardiner; Hon Simon O'Brien; Hon Kate Doust

I would like to have clarification that there will not be a single trust account covering a number of villages owned by the same owner, and that the retirement village owner who operates the trust accounts does not have other businesses through which money can be siphoned off. These are trust accounts into which good people have deposited good funds and they should not be allowed to be dissipated by the actions of some unscrupulous operator or owner. I would like to think that one of the ways that can be prevented from occurring is that there be one trust account for each village, not a trust account encompassing a number of village businesses, if you like. If there is a trust account for a particular village, the accounts of that trust will be produced annually and can be circulated either to those in the village or to those whose connections have had an association with the village and who may be affected. I would like to know whether the intention is for the initial premium to be paid into a specific village trust account. I understand from the briefing that this may be dealt with in the second tranche of this legislation; and, if that is the case, I would like to have it on the record that that is being considered for inclusion in the second tranche.

The second point has been pretty well covered. It deals with the ability of residents to pay recurrent charges, the time limits of three months and six months, and at which point there is a permanent vacancy. I think the minister has that one in hand and everyone has referred to that as a key issue.

The third point I wish to make relates to clause 17, which seeks to insert proposed sections 76 to 77C. This is really about the operator. There is a prohibition on certain persons being on the administering body of a retirement village or being involved in the administration of a retirement village. The provisions have been drafted so that both corporate entities and individuals may be prohibited. That suggests that at least some criteria will be applied to any person seeking to fill that position. I am pleased that will occur. But with the complexity of this bill, to which a number of people have referred, and with the documentation and those kinds of things that will inevitably, I am afraid, be pretty complex, the operator will have to be pretty equivocal in dealing with the interests of the residents of the village and, on the other side, the interests of the owner. I would see the operator also being a counsellor and an adviser in many respects to those residing in these villages, because the complexities will be too deep for most laypeople to understand. There appears to be no provision within the bill for a manager to have some knowledge of the act or regulations, and that is of concern to me. I can see that without that knowledge by the operator, polarisation will occur, many times unnecessarily, in villages. It will happen because that is human nature. We get concerned about particular things, but if the operator does not have the capacity to advise how an issue should be resolved because of his lack of knowledge of the act and how it applies, I think there will be many more trips to the State Administrative Tribunal than there would be if the operator had a level of understanding and education that passed a certain test. I am not keen on that kind of regulation, but it occurs in real estate—they have to do courses every year—and in other industries. I see complexity here and I think this population is very prone to being disadvantaged because of their relatively unsophisticated knowledge of commercial matters in relation to retirement villages. That is an important factor.

Other issues to do with health apply to the operator, because, with age, first aid will be more and more of a factor. I suspect that operators should also have some qualification in first aid. I would like the minister to give his position on the capacity building of these operators to the extent that they are not just acting on behalf of the owner or manager of the business, but are more collegiate in that they will also counsel and advise up to the point at which it becomes contestable and will advise residents how they should deal with certain aspects of the act, as it will be, and how it applies in both their interests and the interests of the owners and operators.

Those are the three points. The second point has already been dealt with in questions from other members. But I look forward to a response to the first and third points.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [8.29 pm] — in reply: I am delighted that the Retirement Villages Amendment Bill 2012 is to be read a second time. I am also delighted that there seems to be unanimity of that view amongst the members of this house. A lot of matters were raised by quite a number of members. I intend to deal with them all; though of course when matters have been raised by several members in a series, members will be glad to know that I do not propose to repeat myself. I thank members who have participated in the debate, particularly those who have taken the opportunity to make a constructive contribution—there have been a number of those.

I will first respond to some quite erroneous and ill-conceived attacks on the government that were made during the debate. I do not want to spend much time on those matters because I prefer to concentrate on the positive. The government undertook some very good work to bring in this bill. Some very good work has been undertaken by this house to scrutinise and pass the bill. That is the first thing we need to realise. Despite the assertion by one apparently quite embittered member on the other side of the house, this is not a flimsy or narrow bill dealing with a couple of trivialities. It is a substantial bill, dealing with a large number of matters, and is broadly welcomed by all sides of politics and certainly by retirement village residents. The question was raised again and

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again about why some matters are apparently being held off and not dealt with in this bill. That was raised by Hon Kate Doust, who, I hasten to add, raised it in a quite proper and civilised way. She asked, “What are the things that are not being dealt with in this bill and why not? When can we expect to see more action about those?” These are matters that I have canvassed publicly over time, but it is important now to consolidate the actions we have taken.

I want all members to know this: I became minister with responsibility for consumer protection matters, amongst others, at the tail end of 2010—in fact it was on 14 December 2010. The final report into the legislation was tabled in November 2010. It had been freshly tabled; I became minister before Christmas. Prior to that, there had been actions in that direction going back—not six years, as a member recently said—at least eight years; certainly back to 2002 or 2003. I received the final report when I was the brand-new Minister for Commerce. Very shortly thereafter—I do not recall the date—I was sitting down with the Commissioner for Consumer Protection and the Director General of the Department of Commerce when I was asked, “Minister, here is the legislative program that we potentially have—what are your priorities?” I was looking at all the things that we needed to do. In commerce, there are a range of bills related to commercial and residential tenancies and a whole host of other matters. A group of four bills relating to the Building Commission and builders’ registration were already before the house. A range of bills had some urgency about them or some priority needed to be allocated because they related to commonwealth or uniform agreements. There were consequences if we did not proceed with some of those. Plus of course, in other parts of the portfolio there was a legislative requirement to establish a Small Business Commissioner, major changes were being made to workers’ compensation, and new, alternative dispute-resolution mechanisms were being set up in a range of industries.

All of these things have been done. But one of the things that caught my eye was retirement villages legislation. For some of the reasons some members have gratuitously mentioned tonight, I noted retirement villages was something that impacted directly on a lot of people’s lives. I noted that it had been going on for years without resolution, and I said, “I want to make retirement villages legislation a high priority in order to progress the recommendations in the report.” In discussing that, I was advised by the commissioner, the director general and others that if we went ahead with the whole program of proposed legislative reform, it would take considerably more than two years and then we probably would not have the bill fully drafted. In other words, it would be passed at the next election. I said that it was not good enough to fail to deliver anything.

We then looked at how we could deliver things that are deliverable in a shorter time frame to provide real benefit to people in retirement villages and address some of the real problems that exist. We contemplated a plan to introduce two tranches of amendments. The first tranche, contained in this bill before us, was based on some of the more important recommendations in the final report. The matters in this bill were chosen to address some major concerns of residents and to implement some key recommendations of the final report including recommendations contained in the 2008 tenth report of the Economics and Industry Standing Committee titled “Karrinyup Lakes Lifestyle Village”. Karrinyup Lakes was seen to encapsulate the key things that had been going wrong, or where poor behaviour had been exhibited by management. The Karrinyup Lakes example encapsulated some systemic problems that the sector was at risk of. Not that they were general, but just that they were typical of the sorts of problems that could arise—for example, the statutory manager provisions, the reforms relating to a former non-owner resident’s liability to pay recurrent charges; matters that have been repeated many times in the course of the second reading debate. They were the things that we identified as necessary to take action on. I am glad that members support this bill because they are precisely the matters that members opposite, one after another, have highlighted and said this is where we need action. I am glad they approve of that.

The second tranche, bill 2, will address the remaining recommendations that cannot be implemented via the regulations or the retirement villages code. Members seem to forget about that, if they even know about it at all. Apart from amending bills, we have been doing a number of other things to implement recommendations. I will talk a bit more about regulations and the retirement villages code, and we will cover it also in committee. Members have already referred to some of those matters. I think, importantly, some members have shown that they do not even know about some of these matters, particularly in relation to the code. I will rely on that, but changes have been made in a number of areas.

The second bill will include provisions for mandatory reserve funds and a range of other complex matters that will need to be worked through in detail with industry and resident stakeholder representatives. If we had tried to do that as part of the parcel that members opposite have in front of them now, it would not have been introduced in this session of Parliament. Heaven knows when it would have been introduced. It is all very well for members such as Hon Sally Talbot to stand up and pontificate about how “There are only 20 sitting days to go; talk about cutting it fine.” The fact is I am the minister who prioritised this matter. I did it from the earliest days in this portfolio. I made the decisions to make sure that we got legislative reform in this place, and here it is in front of

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them now. I do not want to hear any whitewash from people who do not know any better and who say that this bill has taken a disproportionate amount of time to get here. It took the time it took to draft because of its complexity. It was done with priority, and I have been hurrying them along at every opportunity. Do members know what? The fact is that the Commissioner for Consumer Protection and everyone else at Consumer Protection also put a high priority on this. When members want to gratuitously say that the government has dragged its heels over this, they are insulting the people who have been working very, very hard to make sure we got the measures in this bill—there are a lot of measures in this bill—before Parliament rises.

I was at a dinner the other night at the Motor Trade Association of Western Australia. A very interesting speech was made and some nice sentiments were conveyed about what this government is doing in the motor vehicle area. It was interesting to hear the official speeches from the representatives. They said it was good to have a minister who has been around for almost two years because in the last year or two of the previous government, they had about five ministers. The portfolio was like a revolving door and none of them had any empathy for, or a decent or respectful relationship with, the industry, which is what they have with the current minister. I suspect that if that was the case with the motor trade industry, it was the same with the retirement villages industry. I hope we do not hear any more about this government somehow failing to deliver legislation in this matter when, quite clearly, that is what we have been focussing on and the proof of the pudding is in the bill that is in front of us now.

Hon Kate Doust was the first member to introduce the theme of how people make decisions about their living arrangements at key times in their lives. This is something that has captured a lot of my attention. I think it is worth discussing to remind people of what this bill is really about. Sometimes we regret the important life decisions we make, such as an unfortunate career choice that we cannot get out of. Not that that relates to anyone in this chamber, I am sure. Some people make life decisions about who they will marry or establish a liaison with when they are perhaps not necessarily mature enough to make such a decision. Similarly, when people are transitioning perhaps from work to retirement—from a variable income to a lower, fixed income—they make major decisions to cash up the equity in their family home. A key decision about investing almost the entirety of their capital into a home for the future is a very important choice to make. We do not want to get it wrong. That is why I have sought, through other mechanisms, to try to assist seniors in making that most critical of decisions.

I am getting a bit fed up with being told about how there are lots of recommendations that are not represented in this bill. I will be implementing a whole lot of the recommendations of the final report through non-legislative means, such as the establishment of a seniors' housing centre. That took some doing. Successive ministers have wanted to do that and have not been able to. I had a couple of false starts, but we got there in the end. We have a resource that is provided through both government and private sector organisations to help seniors in particular with the difficult decisions they have to make about later-in-life accommodation options. As we have already discussed, it is a very important question. If people get it wrong, the consequences can be severe. We have heard some testimony tonight from members who have come across people who have had a bad experience. It might be the fault of some manager or operator of a retirement village who was not very nice, or very good or very competent or perhaps they did not understand all that they were getting into and then, to their distress, found it would be awfully expensive or impossible, to extricate themselves and have another go. That is why these sorts of decisions are so critical.

Quite apart from constituents, I have some personal experience of this—although the lady involved was a constituent; she was my mother. In the last couple of months of her life she went into a good retirement village in Melbourne under a lease for life. She got me and others to go through the contract. I will not give the detail of our considerations but we did our best endeavours. I worked out from her point of view that her break-even point would probably be if she was resident for four years. She was very happy there for about six weeks and then she died suddenly. I am sure to this day she is doing turnovers in her grave, if not cartwheels, about what the impacts of that sequence of events did to her estate. She worked hard all her life and she would have been very upset to see how her estate was eroded by the charges and circumstances and whatnot. Her executor was a Commonwealth Bank manager, an old friend of the family, just the sort of chap we need as an ally in this situation. He was very frustrated because, like others who we have been talking about in this debate, he was coming into contact for the first time with the circumstances we are debating and that we will look at in more detail in committee, and it seemed rather unusual. People go on paying recurrent charges under this form of lease after they have left and, in this case, after they have died. It seems awfully unfair. Some of the questions asked—such as, “What are we getting for our money?”—have been echoed here tonight. Normally when people rent a flat, they can get up and leave. There might be an issue with the bond, but that is it. There are no ongoing charges—people just get out. We will be making big changes by introducing a cap on recurrent charges after a

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resident leaves. It is a particular and peculiar arrangement. To answer Hon Ljiljana Ravlich's question, I do not know of a similar arrangement.

I was telling members about my mother's situation. We experienced the same frustration in trying to wind up her estate that I am sure has been reflected in all the representations made to members by retirement village resident associations and individuals who want to know why on earth they are paying recurrent charges every month, to which the response is that they should not worry because it can be taken out of the premium that is returned when the lease is onsold. People do not have to pay anything now; the money is covered when the premium is onsold. There is suspicion, even with a reputable operator, because one cannot help but form the view that the organisation holds all the cards and that it is dragging its feet over the refurbishment, marketing and selling of the damn unit, which people want to sell to end the recurrent charges and to pay out the estate. It is natural to feel that way. It is natural to come to the conclusion, right or wrong, that it is in the owners' interests to not rush to sell, because all the time they have an income from the recurrent charges. I understand all that because I have lived it. Our executor was a man by the name of Rex Harrison—no relation—who was a retired bank manager. When he came to my place after a meeting to talk to me, he was shaking with rage. He said that he looked at the bloke and thought, "I'm surprised your eyes aren't brown, you're that full of it". That was an extraordinary thing for a gentleman to say, but such was his frustration. More to the point—I do not know exactly what he meant!—that illustrates how even those who are experienced in dealing with contracts can shake their heads at some retirement village arrangements. When a situation involves a resident who needs to get out for some reason—the money belongs to the person, not the estate—the concerns I have mentioned would be amplified. I understand that. I want anyone observing this debate to know that I understand.

The situation, for members who are not fully aware of it, is typically with non-owner residents of retirement villages. They do not buy the land and unit under a purple title or a strata title arrangement. They buy a lease that entitles them to the exclusive use of a unit. That lease is an on-sellable asset. In effect, they do not rent the property; rather, they pay a premium to go into it. It seems very much to those residents that they have bought their unit—indeed, they have exclusive possession of it. What they have done is bought their lease with what is called a premium. In due course, that premium is refunded when the lease is onsold by the operator of the village to the next resident. The premium might look very, very different at that time than it did when they first paid it, because various formulas are applied to give a portion of the premium to the operator or owner of the village on a sliding scale. The former resident receives a proportion of the premium, which may be smaller. In my mother's case, it was most definitely a lot smaller than what had been paid. For those residents who live in a unit for some time before they vacate, there is capital gain in the value of the premium so they preserve their investment and, indeed, have it added to. There is a wide range of experiences. Residents are typically worried about having a bad experience. That is reinforced by those they have observed having a bad experience. The thing that makes them feel vulnerable in particular is that the operator or owner seems to hold all the cards. The operator decides what real estate agent will broker the sale of a lease, the arrangements for refurbishment, the timetable for selling the unit and all the rest of it. All the time that there are apparent delays, rightly or wrongly, the residents and their associates wonder why they are paying extra charges. The charges are applied because the normal arrangements in a retirement village involve certain communal costs that have to be met by the village as a whole. These are the recurrent charges we are talking about. I refer to things such as gardening, insurance, administration costs for the retirement village office, water and electricity to the common grounds, water rates, maintenance of common property, the cleaning of the clubhouse if there is one, the cleaning of the swimming pool if there is one and looking after the kitchen if there is a communal dining facility. All those things have to be paid for so they are apportioned per unit. That is what the recurrent charges are. Whether or not someone lives in a unit, those charges still have to be paid. If they are not paid by someone for a vacant unit, they have to be met by everybody else. That is why the recurrent charges will continue. If the owner of a title to a dwelling decides to move out or passes away, everyone understands why those recurrent charges have to continue to be paid in the way I have described. But for a leaseholder it seems different, because that person does not have ownership ultimately to make decisions about how the matter of future ownership will be resolved. It is quite wrong, and several members seemed to use this as the basis of their remarks, to say it is like renting a flat as a normal tenant and when they move out, they have to keep paying ongoing rental charges. It is not the same analogy, but it is certainly a real concern for residents, which is why we have brought in this bill. We need to make sure people understand the nature of it.

Hon Kate Doust was also the first member amongst several to ask about the possibility of creating a standard format for contracts. She voiced the concern that it needed to be simpler and easier to understand. We have heard some awful stories here and elsewhere about contracts weighing half a kilogram, incompressible contracts and so on. There are some matters that we want to deal with; however, they are not being dealt with in legislation. We are not going to have a clause that says, "Thou shalt have a standard contract written in plain English." This legislation touches on contracts in terms of their content. To some extent, that will drive a greater clarity and

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precision and uniformity in contracts because we will be able to prescribe by regulation certain things that must be in contracts and certain things that may not be in contracts. We will achieve part of what Hon Kate Doust and others are suggesting in a non-legislative way. That will be done also in part as we examine a lot of things in the retirement villages code, which is something that is about to happen. It has been referred to by others, and we will probably come back to it when we get to the committee stage.

The question of ordinary versus special resolutions was raised by several members. Hon Lynn MacLaren has some amendments on the notice paper, and Hon Kate Doust raised the issue as well. Because there will be a debate about this in the committee stage, I do not feel inclined to go into detail now, but between now and the committee stage on the relevant clause I would let members know that there are already provisions called special resolutions and ordinary resolutions. The requirements for dealing with those mechanisms are contained in the retirement villages code. That is why I will be suggesting some alternative views when we come to debate those matters a bit later on. I understand what drives it. I acknowledge the several members who reported their contacts with retirement villages' resident associations, but we will leave that for a bit later in the process. Similarly, the question of residents' representation will come up at that time.

Hon Kate Doust asked what sort of matters would be prescribed in the regulations in relation to contracts as being matters that are compulsorily to be in contracts or actually prohibited from being placed in contracts. I will give her a run-down. The whole purpose of the provision, which is in new section 14A of the bill, is to enable some matters to be prohibited and others to be dealt with more clearly in contracts, as I have already indicated. That will allow the implementation by regulation of various recommendations of the final report. Again, it is another way that we will be implementing the recommendations but without them being in this bill or the next one. It is proposed that all residents' contracts will be required under this provision to do the following things: firstly, to clearly state when proposed amenities and services are to be provided, which is recommendation 2; to state how the cost of any auditing of the accounts of the village is to be apportioned, which is part of recommendation 43; to clearly state the areas set aside for private recreational areas, such as gardening, which is recommendation 57; to provide residents with a right to add or remove fixtures in their own dwellings with the meaning of "fixtures" to be clearly defined, which are recommendations 58 and 60; to state that residents may be held liable for the repair of any damage caused by the additional removal of any fixtures, which is recommendation 59; and to require exit fees to be calculated on a daily, pro rata basis to avoid the outgoing resident and incoming resident being charged for the same period, which is under recommendation 78.

The final form of those required and prohibited matters and provisions—I am sure there will be more besides over a period of time—will be determined in consultation with industry and with residents during drafting of those regulations. Again, that is something that members have requested in the course of the second reading debate. I confirm that that will happen.

We were also asked why—I forget who asked it now; probably a few people asked it—the regulations cannot include a standard form contract as is currently being developed in New South Wales. As I have already indicated, I think that the provisions in the bill that I just described are likely to lead to the standardisation of some clauses and matters in contracts, but I am not contemplating a standard form contract in the new section 14A of the bill. It is a new initiative. It is being explored in other states. It may be considered in the future. What we recognise, though, is that it is important that contracts are written in such a way that residents can easily understand them and can readily compare the contracts from village to village when they are making those important decisions about which village they would like to live in.

Hon Kate Doust: Can I just ask a question?

Hon SIMON O'BRIEN: Yes.

Hon Kate Doust: Does your department offer advice? If a potential resident were to bring in their contract and say, "I need somebody to explain what this means", is that sort of advice provided?

Hon SIMON O'BRIEN: What we provide through the Seniors' Housing Centre in particular is information about the things that people should consider and about the questions that they should ask. It is not only about retirement village contracts but about a whole heap of things, and in particular it is about who people should consider asking things of, including in relation to retirement village contracts. We do not give advice as such.

Hon Kate Doust: Maybe not advice; maybe information.

Hon SIMON O'BRIEN: We give information about the sorts of things that need to be considered about matters that need to be drawn to the respective resident's attention. I hope that deals with the member's question.

The other thing that occurred to me, too, when listening to second reading contributions is that, although we are amending the Retirement Villages Act, the retirement villages industry is not regulated in the sense that other

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sectors are regulated by consumer protection. There are no licences to run a retirement village. No compulsory training is required, for example. There is a question about that that I will come back to.

Hon Lynn MacLaren made an interesting contribution, and I thank her for it. She has obviously put a lot of time into this. She asked about the time taken to introduce the bill, and I have already responded comprehensively to that. I hope she is satisfied with the explanation and now can adopt a view that this has been given a priority. It takes longer than people think to do these complex things right. It takes longer than I would like. That is just the reality of it. Things have to get into cabinet and the rest of it.

Hon Lynn MacLaren: If I could just interject, you made that point very well about the big task ahead and how you have bitten off a piece that you thought you might be able to chew.

Hon SIMON O'BRIEN: Not only that, but to actually deliver some real things, real improvements—and there are some here—but to deliver them now, not some time in the future. I do not know who is going to be —

Hon Lynn MacLaren: I think retirement village residents have certainly said to us that they are really pleased that the government is finally getting this legislation through. So clearly they welcome it. But it is still fair to say that there is a common belief out there that more could be done more quickly.

Hon SIMON O'BRIEN: Indeed.

Hon Lynn MacLaren: It is our role to bring that to your attention.

Hon SIMON O'BRIEN: Everyone wants things yesterday; that is a feature of our times, and I suspect it has ever been so.

The member asked also what sorts of payments will be prescribed that are of a class not to be passed on to residents. The sorts of costs that we intend to prohibit from being passed on to residents under this provision are basically costs that are not related directly to the operation of a village. Those costs would include certain administering body legal costs, such as costs awarded against an operator by the State Administrative Tribunal or other courts. Other possible examples include fees for membership of industrial or professional associations, and travel costs. These are discretionary costs that the operator can recoup through other means, such as tax returns or whatever. They are certainly not the sorts of costs that should be passed on to residents.

I have possibly told members this before, but I want to repeat what is a quite extraordinary example of inappropriate costs being recouped from residents. This was one of the issues at Karrinyup Lakes Retirement Village. It involved the administering body passing on to residents some legal costs associated with a dispute with the residents' body. In that case, costs were awarded against the operator—that is, the residents' costs were to be paid by the operator—but the operator sought to pass on to the residents those very same legal costs. That was just outrageous.

Hon Lynn MacLaren: And there is nothing to prohibit that, minister.

Hon SIMON O'BRIEN: It is certainly going to be prohibited in the future. Anyway, we have resolved those matters.

Moving along, the member used the analogy of a tenant who stops the payment of rent, versus a resident who vacates a unit in a retirement village. I have discussed that a bit, and I hope that has given the member some thought-provoking material. It is not as though the former resident is paying for something akin to rent in absentia and getting nothing for it. The fact is that the resident entered into a contract that requires the resident to take exclusive possession of a dwelling. Part of the deal, and rightly so, is that the resident will pay their share of the common charges and so on. That should continue until the ownership of the lease changes and the new resident comes in. However, in many situations, particularly if the resident has passed away and the executors of the estate have to make that payment, they find it an extraordinary arrangement. Even though that was in the contract and they read it and understood it and agreed to it, they still find it galling when they have to make those payments. But the fact is that they will still get their premium back, and they will also share in a proportion of any capital gains over that period of time. So it is not as though they have just vacated the premises and they have no interest in the premises in that sense. But I am the first one to recognise that it is galling. I have told members my personal story from 1998 when my mother passed away; so, believe me, I understand the strength of feeling about that matter.

Hon Lynn MacLaren: Why is it that other states have managed to restrict the length of time for which recurrent charges can be charged to former residents, but we cannot do that in this state? I think the issue is the interminable length of time for which these recurrent charges can be levied.

Hon SIMON O'BRIEN: That is why I have brought this bill to the house—to put a cap on it. That is what I am doing. We are doing something about that, and I think the member will find that now it is very comparable with

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what happens in other states. I have a note about that, which I will come to in a moment—it is a reference; I have looked it up.

The member asked whether there are confidential ways in which concerned residents can bring matters to the attention of consumer protection. Any consumer has the capacity to do that. A resident may feel awkward about making a complaint about an administrator whom they see every day, or about raising a matter about which they feel they are being treated unfairly. Residents can, of course, seek advice from consumer protection in confidence or raise a complaint or whatever.

Hon Lynn MacLaren: How do they do that?

Hon SIMON O'BRIEN: They can make contact in a number of ways—with the department, or they can go to the Seniors' Housing Centre and make a complaint in that way.

Hon Lynn MacLaren: Will their identity be kept confidential?

Hon SIMON O'BRIEN: As with any member of the public who complains to a compliance agency —

The DEPUTY PRESIDENT (Hon Alyssa Hayden): Minister, if you do not mind, this is maybe something that we can discuss once we are in committee.

Hon SIMON O'BRIEN: I am sorry that that unruly interjection distracted me, Madam Deputy President, but I think we have dealt with it.

The member asked me for an assurance that there will be extensive consultation about any regulations. There is a review of the code, which is starting about now. The member also spoke about the need to specify the starting date, and we will be looking at that matter in committee.

Hon Sue Ellery said she was disappointed that the bill had taken so long and asked why it was in two parts and so on. She is now informed about those matters, so hopefully she will make more informed comments in future when she is discussing this matter.

Hon Sue Ellery: Now that I know what this is about, I am happy to tell people —

Hon SIMON O'BRIEN: The Leader of the Opposition stood up and moaned about how disappointed she is that this has taken so long.

Hon Adele Farina: Isn't she allowed to be disappointed?

Hon SIMON O'BRIEN: I have just comprehensively explained what happened and the priority that was placed on this. Perhaps the member was not in a position to hear that.

Hon Adele Farina: She's entitled to say she's disappointed. You can't tell her how to feel!

Hon SIMON O'BRIEN: All right! The Leader of the Opposition can dwell on her disappointment and suck on her lemons or whatever it is that she needs to do.

Hon Sue Ellery: This is ridiculous!

Hon SIMON O'BRIEN: What were the Labor Party's last five commerce ministers doing, except twiddling their thumbs, instead of getting on with this?

Hon Sue Ellery: Really? Is this the second reading reply?

Hon SIMON O'BRIEN: Yes, it is.

Hon Sue Ellery: Well, get on with it!

Hon SIMON O'BRIEN: Oh dear! I got a bit of a nibble there!

Hon Sue Ellery: Seriously, you constantly take the longest possible time to give second reading replies. You have addressed matters that were not raised in the second reading debate. Just get on with it!

Hon SIMON O'BRIEN: Fine, Madam Deputy President; I will strike out all that unnecessary response there.

The DEPUTY PRESIDENT: I suggest you do, minister.

Hon SIMON O'BRIEN: Hon Col Holt spoke about standard contracts, and that is a matter that we have discussed and I have responded to. Again, I point out that we do not actually regulate this sector, in the sense that retirement villages are not licensed. He also specifically asked what would be the difference between a person being subject to a six-month cap or a three-month cap if they signed up before the bill went through and then moved into the village after that time. The cap that would apply to such a person would be the cap that applies at the time the contract is signed. Hon Alyssa Hayden made a wonderful contribution, and I thank her for it. I have

Extract from Hansard

[COUNCIL — Tuesday, 18 September 2012]

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Hon Lynn MacLaren; Hon Sue Ellery; Hon Col Holt; Hon Alyssa Hayden; Hon Ljiljanna Ravlich; Hon Max Trenorden; Hon Dr Sally Talbot; Hon Adele Farina; Hon Philip Gardiner; Hon Simon O'Brien; Hon Kate Doust

noted also that Hon Ljiljanna Ravlich raised a couple of matters, but I have already dealt with those. Hon Max Trenorden raised the question from the point of view of purchasers and asked how they get out of it if they find themselves stuck by a change in the market, with an inconvenient fluctuation of trends in prices in the housing sector; there is a bit of that around at the moment. In the case of purchasers, whether it is the purchase of a property in a retirement village or somewhere else, it is unfortunate that these are the fluctuations that adversely affect us.

Hon Max Trenorden: Minister, if I can just interject, the real problem—I didn't actually say it in my speech—is that she can't actually sell the property until Lend Lease sign off on it. So it is not just her. She cannot just sell it off her own bat; she also needs Lend Lease to agree.

Hon SIMON O'BRIEN: Yes. That is a view that has also been expressed by a lot of people wanting to sell their lease. They feel even more disempowered because they do not have the capacity to choose an agent and make the other decisions around it. Hon Max Trenorden was obviously referring to an individual person when he spoke. If he wants to discuss that further, away from this bill, obviously we will —

Hon Max Trenorden: Your people are actually helping her at the moment, minister.

Hon SIMON O'BRIEN: I was going to offer that if that was not the case, so I am glad they are taking advantage of it.

Hon Sally Talbot and Hon Adele Farina made contributions. There was reference, particularly by the latter, to plain English and simple contracts. I have addressed that. I think I have addressed the nature of recurrent charges. The question also arose of how the State Administrative Tribunal can enforce an order if a developer has no money.

Hon Adele Farina: I think I said that the developer says, "I have no money."

Hon SIMON O'BRIEN: Yes, if the developer says he has no money. That might be something that is probably best taken up under the relevant clause of the bill, because I think it says that it needs to be recognised.

Finally, Hon Philip Gardiner asked for clarification about trust accounts. He indicated that he wanted to know about the security of money held in trust when an operator manages more than one village and has not established separate trust funds for each village. I am not aware that this situation applies in villages in Western Australia—I do not know. I do know that with one particular well-known chain of lifestyle villages that share a common name, a separate corporate entity is established for each individual village, which obviously indicates a separate trust account. However, that is not what the trust funds amendment in this bill relates to, of course. The code, as it stands, currently requires operators who have more than one village to prepare budgets and accounts separately for each village. In relation to compulsory training, Hon Philip Gardiner, again it is not a case of us having requirements for people to operate retirement villages. Therefore, the question of us regulating training per se does not come into it. I note, however, that there is a strong Retirement Village Association and, like other peak bodies, it takes an active interest in the training and other aspects of the welfare of its members to preserve the integrity and the reputation of their industry.

As we have seen, a lot of items in this bill have been raised, and I am criticised if I do not address them all or I am criticised if I do by people who swan in and out of the chamber on urgent parliamentary business. But I have addressed all those matters, and I look forward to the second reading of this bill.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Alyssa Hayden) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clauses 1 to 6 put and passed.

Clause 7: Section 13 amended —

Hon KATE DOUST: I have a fairly simple question. This clause deals with the cooling-off period when an individual signs a contract to go into a retirement village. I am pleased to see that the period has been increased from five working days to 10 working days, which I imagine is reasonably standard. However, as the minister discussed in his second reading response, moving into a retirement village is not the same as, say, taking a rental property in a normal circumstance. As we have seen, the size of and the detail in the types of contracts that are issued are substantial, complex and complicated. I wonder whether the minister could explain to us why it was pegged at 10 days and perhaps not a greater amount of time, given that it is a significant change, and I would

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have thought that people might have needed a longer period in this situation to work through all the issues in the contract and to get good advice. I do not know whether even 10 days in some cases is a sufficient period.

Hon SIMON O'BRIEN: Can I just inquire whether members, in particular Hon Kate Doust and Hon Lynn MacLaren, have a marked-up copy of the act, a blue bill, as it were?

Hon Kate Doust: I do, but because of the way the amendments are structured, I am working off the one in my hand —

Hon SIMON O'BRIEN: No problem.

Hon Kate Doust: — because the amendments are lined up with this, not the marked-up copy.

Hon SIMON O'BRIEN: I just wanted to make sure that we had made that available to members. Section 13 of the act deals with information that has to be provided to prospective residents so that they can make a more informed decision. We are changing the time that a person is to be provided with a range of prescribed information from four working days to at least 10 working days before a person enters into a registered contract. That is one change. The second change is to make it an offence for any person to demand or receive any fee or charge for any of that information being provided. It has to be made literally freely available. I believe that the rationale for this that the member is chasing is recommendations 15 and 16 in the 2010 final report. Of course, the government accepts the recommendations.

Clause put and passed.

Clause 8: Section 14A inserted —

Hon LYNN MacLAREN: This issue relates to the retrospectivity of certain clauses, which I mentioned in my contribution to the second reading debate. Proposed section 14A(5) states —

The regulations may provide that section 6(2) does not have effect in relation to any specified regulations, or any specified provisions of regulations, made for the purposes of subsection (1).

Can the minister provide some clarity about whether this will be retrospective?

Hon SIMON O'BRIEN: I am going to call in all of my well-known skills for brevity, because this is awfully complicated to read! The member specifically asked whether proposed section 14A(5), which refers to whether section 6(2) has any effect in relation to specified regulations, is a matter of retrospectivity. If there is an existing contract and this proposed section comes into force, it would apply from that day forward. I think the nub of the member's question is what would happen if that pre-existing contract has a clause that, via this mechanism, will be prohibited from here on in—for example, a clause that states that the operator has an enduring power of attorney or something like that. Yes, that would apply. As I understand it, that offending part of the proposed section would, from that time forward, be void.

Hon Lynn MacLaren: Thank you; that is very clear.

Hon ADELE FARINA: At the risk of asking a question that may have been asked during the second reading debate while I was absent from the chamber, I will tread carefully. In my contribution to the second reading debate, I requested that the minister give an indication of the regulations that will stipulate provisions that must not be included in any contract and the regulations that will stipulate provisions that must be included in the contract, so that we get some idea of the sorts of provisions that will be covered by the regulations.

Hon SIMON O'BRIEN: I did provide some typical examples in my response, and I was roundly criticised by the member's leader for dragging out my response! All I was trying to do was to address this genuine and sincere inquiry.

Hon Adele Farina: Perhaps you won't mind doing it now.

Hon SIMON O'BRIEN: I will provide examples in relation to recommendations in the final report, because there are some examples of recommendations that are being delivered upon, but not through the bill; they will be delivered through the regulations that are made. Recommendation 2 is that a resident's contract clearly state when proposed amenities and services are to be provided. Recommendation 43 is that it be stated how the cost of any auditing of the accounts of the village is to be apportioned. Recommendation 57 is that the contract clearly state the areas set aside for private recreational areas, such as gardens. Recommendations 58 and 60 were taken on board so that residents are provided with the right to add or remove fixtures in their own dwellings—this is a clause that shall be there—with the meaning of fixtures to be clearly defined. There is a counterpoint to that in recommendation 59, which is that residents may be held liable for the repair of any damage caused by the addition or removal of any fixtures. Recommendation 78 is that exit fees be required to be calculated on a daily pro rata basis to avoid the outgoing resident and the incoming resident being charged for the same period. All

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these recommendations and more are either compulsory or prohibited matters that will be determined in consultation with industry and residents, so there will be plenty of opportunity for people to participate in that.

Hon ADELE FARINA: The minister said that those recommendations will be picked up in the regulations, but that is not necessarily going to be the case because the consultation with industry has not actually occurred. I am a bit confused. At the end of his comments, the minister indicated that that consultation still needed to take place, which leads to my next question. If the consultation has occurred, there is agreement and the government's intention is to implement those recommendations, why is this detail not in the bill, rather than being left to the regulations?

Hon SIMON O'BRIEN: As the member knows, it is an established role of regulations to contain things that are more convenient to set out in that form so they can be amended, added to, or reduced without introducing an amending bill. I probably did not make it clear that the specific examples I gave obviously derive from recommendations, so there has been consultation. In my final remark, I was referring to other matters that I am sure will arise as they are identified. They will need to go into regulations so they can be brought on stream quickly. An example of that, which I think the debate so far has shown there is a need for, is some residents' contracts lack clarity about when a resident will be entitled to have their premium repaid. One thing we learnt from the second reading debate is that has to be something that is set out, so we will make sure of that. I think I have already alluded to, by way of example, the sorts of provisions that are in contracts. This actually exists in some contracts, or they try to put it in—requiring residents to confer an enduring power of attorney on the administering body. That is absolutely outrageous. I am sure the member would agree that is the sort of thing that should be prohibited. That prohibition is in the act, but because there will probably be a growing list of things, we need to use regulations. That is why I am seeking that head of power.

Hon ADELE FARINA: On that last point, particularly the enduring power of attorney, I would have thought that is of such substance that it should be in the provisions of the bill. We keep saying that all this stuff can be put into regulations, but we all know that the whole point of having legislation is to put as much as we possibly can into the bill itself, and leave to the regulations only that part that cannot properly be put into a bill. I would have thought a lot of those provisions exist in bills already and should properly be put in this bill. It is not as though we would exclude such a provision and then, some months down the track, the minister will change his mind. I do not think either political party in government would change its mind on that provision. I do not see any reason why that should not be incorporated in the bill itself rather than in regulations. We could still list all the things that are known and agreed, that recommendations have been made in the act, and still provide a head of power to make further regulations to add to that list should they become available at a later time. It is more complete for it to be in the legislation itself rather than in regulations.

Hon SIMON O'BRIEN: That is a fair point. The weakness in that argument, as pointed out to us, is: how do we decide what can stand alone in the act and what can be reserved for regulations? As I understand it, legal officers put it to parliamentary counsel to put in some of these things specifically, but the advice was, for that reason I have given, that, no, we are better off reserving the power to do that by subordinate legislation rather than singling out some things but not others.

Progress reported and leave granted to sit again, pursuant to standing orders.