

RETIREMENT VILLAGES AMENDMENT BILL 2012

Committee

Resumed from 19 September. The Deputy Chair of Committees (Hon Jon Ford) in the chair; Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clause 15: Section 57A inserted —

Progress was reported on the following amendments moved by Hon Lynn MacLaren —

Page 15, line 10 — To delete “special resolution” and insert —
ordinary resolution

Page 15, lines 15 to 18 — To delete the lines and insert —

ordinary resolution means a resolution passed at a meeting of residents called either by the administering body or by the Residents Committee, or (in villages where there is no Residents Committee) by a minimum of 5 residents entitled to vote on the resolution or 30% of the number of residents entitled to vote on the resolution (whichever is the greater). The meeting must be held in accordance with subsection (4).

Page 15, after line 18 — To insert —

- (4) To pass an ordinary resolution
- (a) the residents must have been given notice of the meeting by the administering body or by the Residents Committee or by the residents calling the meeting; and
 - (b) there must be a quorum present (whether in person or by proxy) of
 - (i) a minimum of 5 residents entitled to vote on the resolution or 30% of the number of residents entitled to vote on the resolution (whichever is the greater); or
 - (ii) If the retirement village has fewer than 10 occupied residential premises, a majority of residents entitled to vote; and
 - (c) the resolution must be carried by at least 51% of the number of residents who are present (whether in person or by proxy) and who are entitled to vote, and do vote.

Hon LYNN MacLAREN: Yesterday, I moved three amendments relating to ordinary resolutions. To remind those members who had a good sleep last night and who have forgotten what this is all about, the intent is to make it easier for residents to take a dispute to the State Administrative Tribunal. We feel that it is vitally important that they should have the power to refer disputes about recurrent charges and levies to SAT without intervention by the administering body. The current situation is that in order to consider these special resolutions, the administering body has to be involved in calling a meeting. I think I pointed out quite clearly yesterday that the administering body has to call that meeting so that they are involved in it. This is just trying to loosen up the stringent criteria set in place by the current rules and regulations that require a special resolution. My proposal is that instead we use the lower bar of “ordinary resolution”. I believe the minister was to enlighten us in his response to that proposed amendment.

Hon SIMON O'BRIEN: I moved to report progress last night on clause 15, not because I did not have a view about this matter but because I knew members wanted to have some discussion about it. The government is opposed to the proposed amendments. I will provide some advice to the house on this question of “special resolution” versus “ordinary resolution”. In so doing, I will canvass the several amendments standing in Hon Lynn MacLaren’s name because they all relate to the same fundamental issue. These are about some amendments to the act that will be introduced by proposed new section 57A headed, “Disputes in relation to recurrent charges or levy payable by residents”. The first thing to note is that the principal clause will deliver a long sought-after outcome. It will provide the capacity for residents who are dissatisfied or in dispute with the operators about increases in recurrent charges or the imposition of a levy to do some other work and pay for it, to actually take the matter in dispute to the State Administrative Tribunal. No-one is seeking to change that because that is a long sought-after new mechanism, and we all agree that is a good thing.

The honourable member’s proposed amendments relate to what hurdles have to be passed to refer matters to SAT. We do not want to create some casual environment whereby whenever any resident of the up to 214 retirement villages does not like having an increase in their recurrent charges or some other levy, they can appeal

to SAT. SAT would be sitting in permanent session, and that is an undesirable outcome. I think it is generally agreed that a certain element of common view has to be met amongst the residents at a particular retirement village before a dispute is lodged for resolution with SAT. That is good from SAT's point of view, but I would also like to point out to members that that is also good from the residents' point of view. Despite some views that are occasionally expressed to the contrary, the operators are not the "baddies" in all of this. The operators of most retirement villages get on perfectly well with all of their residents; they run their villages very well. The former situation at Karrinyup Lakes Lifestyle Village is very much the extraordinary exception rather than the rule. I might add that Karrinyup Lakes is now under new ownership; I was referring to the former Karrinyup Lakes situation. At a well-run retirement village—one would hope all of them are and certainly most of them are most of the time—there is a mutually beneficial partnership between the resident body and the operators. That is how it should be as well—everyone gets on fine and there are levels of cooperation. There are a lot of decisions about how recurrent charges are set and whether a levy is to be raised for some new facility or suchlike. They are decisions taken with the agreement, or possibly even at the initiative of, the resident body. It is not something that is imposed upon residents. However, with so many thousands of residents in hundreds of retirement villages, there will be some residents who are dead opposed to any increase in charges or any imposition of a levy. There will be situations, because they are not interested in that, why should they pay? That is just human nature; we all see that happening. But that does not mean that a small minority, or several people, should be able to hijack the agenda and, perhaps in the name of the resident body, go forward to some other tribunal such as SAT. It might well be the case that under the ordinary resolution elements contemplated in this proposed amendment that outcome could arise far too easily, to the distress of the residents of the larger part of the resident body at the particular village.

The new definition and requirements contemplated in these proposed amendments—Mr Deputy Chair, I hope it is all right if I also canvass the related ones—substantially reduces the number of residents required to pass such a resolution and also reduces residents' rights to require a meeting and formal notification requirements. I will come to that latter part in a minute. As proposed section 57A contemplates taking the important step of a dispute being referred to SAT on behalf of the whole resident body of a village, it needs to have a reasonable level of resident input to ensure the power is not used in an intemperate way. After examination of the current arrangements, it is certainly the government's view that a special resolution should be required. Let us face it, we are all politicians in this place, we ought to know how these things work; a special resolution is already in the code. Adding these definitions into the act now will have a ripple effect. It will change a lot of things in the retirement villages code which could have unforeseen consequences. We think the special resolution requirement is the appropriate one to have.

I said there was a second aspect, and that relates to something that I am sure the mover would not want to reduce; that is, the residents' rights to require a meeting and have formal notification requirements. I am now canvassing the second amendment. My concern is that the amendments that are put forward could significantly impact on the operation of retirement villages to the detriment of residents. It is not about empowering them; that will not be the outcome. Matters around the calling and conduct of meetings at which a special resolution may be passed are issues most appropriately dealt with in the code. Any amendments to those requirements ought to be the subject of careful consultation and consideration. Currently, the legislation does not impose requirements for the passing of an ordinary resolution by residents. Residents may currently pass ordinary resolutions on a variety of matters from village to village. By replacing the word "special" with the word "ordinary" in the bill before us, the proposed amendment makes every resolution of residents an ordinary resolution and imposes new requirements for every such ordinary resolution. That is the effect it would have. As I have already indicated, that is likely to have unintended consequences for residents. The definition of "ordinary resolution" removes the current capacity in the code for residents of a village in which a residents' committee is established to bypass the residents' committee and require the administering body to call a meeting at which a special resolution may be passed. I think that is the main unintended consequence of the member's amendment. In effect, if a situation arises—it happens from time to time—in which a residents' committee is out of sync with what the vast body of residents want, the committee would be able to frustrate the calling of a meeting to consider the very matters that the residents may wish to consider.

Finally, of course, there is an intention to bypass the requirement for the residents' request for a meeting to be called to be carried out by the administrators. Again, the removal of the administrator from the process could have serious consequences in a number of ways, not the least of which is that the administering body is probably the only genuinely competent body that is capable of giving notice of a special meeting to the entire village community.

In summary, these amendments would remove the capacity for residents to independently require a meeting to be called in villages with residents' committees and they would reduce the capacity for residents of villages without committees to require a meeting by raising a request in proportion to 30 per cent of residents entitled to vote from the code's current 10 per cent of residents. I have just covered a lot and hope that I have not confused

anyone. However, as I have indicated, although well-intentioned, I believe the amendments would have unintended consequences. They will not deliver what is sought, in my view, but they will pose new risks for the harmony and wellbeing of residents. I will hand it over to members who may wish to contribute to this discussion.

Hon LYNN MacLAREN: I note the minister's comments and I appreciate the care and consideration to which he has gone to explain his assessment of the amendment. It is still my contention that the amendment to replace "special resolution" with "ordinary resolution" would apply only as it is stated here, under proposed section 57A(3), "In subsection (2)". We are talking about the definition of "special resolution" that is in the bill. It is actually included here. The amendment is intended to apply only to this proposed section. It certainly is not intended to apply to other circumstances in other parts of the bill. I query, with deep respect, the minister's assessment of that. However, in the interests of going forward, I would like the minister to clarify whether the administering body must call a meeting within 20 days if 10 per cent of the residents or the residents' committee requests a meeting. That would go some way towards addressing the concerns of my constituents about the onerous procedures that are required to hold a general meeting to discuss these disputes.

Hon SIMON O'BRIEN: The code currently requires operators to hold a meeting at which a special resolution may be passed within 20 days of receiving a request to do so from either the residents' committee or, if the village has more than 10 occupied premises, a minimum of five residents or 10 per cent of the residents, whichever is the greater or, if the village has fewer than 10 occupied premises, by a majority of residents. I note in passing that it is not a high hurdle for concerned residents to jump to get those sorts of numbers. That is already in the code. This concept of a meeting by special resolution is already contained in the code, and, of course, in the practice and usage of retirement villages, which our amendment seeks to tap into. Management cannot deny the residents the opportunity to meet, because the code requires management to call a meeting of residents on a proposed special resolution if requested by the quorum of residents required.

Hon LYNN MacLAREN: That goes a considerable way to addressing the perceived difficulties about calling one of these meetings. I reiterate that even if a small number of residents were empowered to call one of these meetings, it would still require a majority of people at that meeting to pass a resolution. We are talking about the difference between 75 per cent in the case of a special resolution and 51 per cent in the case of an ordinary resolution. If the minister wants to comment on that, I welcome it. My amendments would substitute "special resolution" with "ordinary resolution" and provide a definition of what that ordinary resolution would entail.

Hon KATE DOUST: I initially thought I would support Hon Lynn MacLaren's amendments but I have read them again and listened to the discussion today. I found the minister's articulation of some of the implications that may arise if we were to pass these amendments quite helpful. I agree with the minister that perhaps the test should be higher than what is set out in the ordinary resolution amendment. I understand where Hon Lynn MacLaren is coming from, but if the test is for a minimum of five residents and there are only five residents, three of those will need to agree to the ordinary resolution. Issues that residents want to take to the State Administrative Tribunal would normally be of a significant nature, and I would hope that, before they even get to this point, all other measures have been exhausted to try to discuss and negotiate with management a way forward. This needs to be—I hate to use these words—stepped out more. There needs to be a higher barrier than is what is set out in the amendments before that decision is made, otherwise it can be treated perhaps a little lightly—not flippantly, but I think people might rush to that barrier faster and more frequently rather than asking how they can resolve the issue. That is my concern. If this matter is currently addressed in the code, my only question is: how often, up to this point in time, has there been an issue in which people have not been able to resolve matters and felt that they could have gone to another place to resolve them? I do not know what the frequency is and what that level of dissatisfaction may have been to get them to the point of wanting to have an ordinary resolution versus a special resolution and to move the matter onto SAT.

Hon Simon O'Brien: I think it would be pretty extraordinary.

Hon KATE DOUST: I would have thought so, too. I think that taking any matter to SAT is extremely serious and that all measures should be taken prior to that to try to resolve an issue. It is important to keep the current arrangements in place whereby management has that degree of compulsion to call the meeting and to address the issues. I would be very concerned if there was to be a change that may water that down in any way. That is not to say that down the track government may look at ways to improve or provide different mechanisms—I do not know; things change.

Hon Simon O'Brien: The code is up for review now.

Hon KATE DOUST: That would be the opportunity then perhaps to have the broader discussion, and there might be options put in place that may satisfy the concerns of those individuals who want this as well. That may very well be the vehicle that is used to address these issues. On this occasion, unfortunately, the opposition will not support Hon Lynn MacLaren's amendments, as we support the special resolution that is currently in this bill.

Amendments put and negatived.

Clause put and passed.

Clause 16 put and passed.

Clause 17: Sections 76 to 77C inserted —

Hon KATE DOUST: I know that normally it is a practice, if we are going to oppose a clause, to just oppose it in the debate, but I put such an amendment on the notice paper primarily as a trigger to remind myself to get up and give the reasons the opposition opposes this clause.

This clause provides some significant change, but I will specifically deal with proposed section 77C, which enables the commissioner to grant an exemption. Under proposed section 76(1) and (2), certain people can be prohibited from being part of the administrative body of a retirement village or being in any way directly or indirectly concerned with the administration of a retirement village. The explanatory memorandum explains the details of the type of people who can be prohibited from working directly or indirectly with a retirement village, and gives the examples of people who have been made bankrupt or have been convicted of a range of serious offences, which could include violence to another person or sexual offences. It then goes on to talk about the range of penalties that can be included. That is a very significant and a positive change, which addresses concerns that were raised in the statutory review that was conducted and also addresses some of the issues that were canvassed in that initial inquiry into Karrinyup Lakes Lifestyle Village and the way people had been treated by management there. That is all as well and good and the opposition does not dispute those proposed sections at all.

I am concerned about proposed section 77C. I raised this during the initial briefing I had, and certainly during the second reading debate I canvassed the fact that no state that had retirement village legislation allows for an exemption to be granted. I looked at legislation in the other states. Victoria's legislation prohibits certain individuals from working in retirement villages if they have been convicted of a range of offences, and that is replicated in New South Wales, South Australia, Tasmania and Queensland, so virtually every state has that prohibition in place, which is good. None of those other states allows for an exemption to enable a person to work in a retirement village in certain circumstances. However, proposed section 77C provides some circumstances in which a person should be allowed to continue as the administering body or as a person involved in the administration of the village, despite being prohibited under section 76, and it gives the commissioner the capacity to grant an exemption on the basis of either the wellbeing or the financial interests of residents within the village being at risk if the prohibited person cannot continue in administering the village. It then goes on to state that if a person holding the exemption certificate becomes a person to whom section 76 applies again; that is, if the person given the exemption then goes and commits an offence, be it something to do with finances or a sexual offence, they have to hand back the exemption certificate. Why would we even open the door to that opportunity? If somebody is prohibited from working in that environment because they have committed an offence that is listed, why would we give them that opportunity to step back in with the possibility that it may recur? Why would we expose those people living in retirement villages to the potential of that occurring again? If no other state has allowed that to occur, I do not understand why we would be the exception to that arrangement. That is what I am interested in hearing from the minister, because I do not know what would justify a person being allowed to be granted an exemption and, then, if they commit an offence again, handing back that exemption certificate. It does not make sense. In providing the appropriate protection, security and comfort to the residents in those villages and ensuring that we remove all potential opportunity for financial mismanagement or any form of abuse, violence or assault, as we have seen happen in some cases in these types of arrangements, why not shut the door and remove that capacity for an exemption to be granted, as has been done in every other state? It makes sense not to allow that situation to occur. It is a much better way to go. I would be interested in the minister's explanation for why we are the only state that would see fit to grant that exemption.

Hon SIMON O'BRIEN: The government and the Commissioner for Consumer Protection are very dinkum about protecting retirement village residents, and a bill to give further substance to that commitment is going through the parliamentary processes and enjoys support from all sides of the house. As further proof of the government's commitment, this bill introduces new provisions so that if someone is involved or has been involved in a whole heap of things, they may not be involved in the administration of a retirement village. That protection is not there at the moment. We are introducing that protection, and it is pretty hard stuff. The government is introducing a protection that enables the intervention by the commissioner into a retirement village to take out the administrator and replace that person with another statutory manager. The government is dinkum about doing that.

Sitting suspended from 1.00 to 2.00 pm

Hon SIMON O'BRIEN: Before we broke for lunch, I indicated that the government, with the support of all sides of the house, is providing, amongst other things, greater protection for the residents of retirement villages

who might find themselves in the fortunately rare, but occasional, situation in which the administrators of the village are either incompetent or doing the wrong thing, or both, and the relationship breaks down. We make no apology for any of the measures being introduced here. However, one of the measures prohibits certain people from being involved in the administration of retirement villages. As Hon Kate Doust observed, several proposed sections relate to that, and there is no disagreement about that. However, proposed section 77C provides the Commissioner for Consumer Protection with the power to grant exemption certificates. The purpose of this exemption process is to cover extenuating or extraordinary circumstances that could arise and make it unreasonable for a particular prohibited person to be excluded from being involved in the operation and management of the village. I do not think the mechanics of the provision are being questioned by members; they are simply asking why we have an exemption.

Hon Kate Doust: I have a question on the criteria.

Hon SIMON O'BRIEN: Okay; we will come to that in a moment. It is necessary to provide this protection for residents. However, proposed section 77C recognises that people who may have already been involved for a long time with a retirement village in quite a positive way and without offending or causing any risk or inconvenience to residents might be caught up in this and be deprived of their job or livelihood. If we did not have proposed section 77C in the bill, I suspect someone would propose an amendment to say, "What if we have some extenuating circumstances?" It is a matter for the house to decide.

Just for the record, let me give members some examples of the sort of extenuating circumstances in which the commissioner might want to grant an exemption certificate. Four years ago, Mr John Smith was convicted of an offence involving violence to another person and was imprisoned for four months. Mr Smith was able to provide evidence that at the time of his conviction and imprisonment, he had undergone severe stress due his personal circumstances at the time, including a marriage breakdown, the loss of his home through stressful divorce proceedings, and an emotional breakdown. Mr Smith was fortunate to find employment as a manager at a retirement village shortly after his release from prison. He found that he had an affinity for working with older people and his life turned around for the better. In his application for an exemption, Mr Smith attached a petition from over 100 residents of the village, vouching for his character and reputation, and his excellent management of the village over the past four years. That is the sort of circumstance we could be confronted with when the bill is passed, and perhaps we need a safety valve.

Let me give members another example; this is hypothetical of course. Three years ago, Ms Rhonda Brown was a manager in a corporation when it became insolvent and was wound up. Although Ms Brown was part of the management team and made certain financial decisions that influenced the financial direction of her company, she was able to demonstrate to the commissioner that the area of financial control that she held had nothing to do with the company's financial demise. Ms Brown is currently employed as a manager of a retirement village. She was able to demonstrate to the commissioner that her financial management of the village's financial accounts complied with all the standards of the retirement villages code and accounting standards required. Last year, through an industry accreditation process, Ms Brown was awarded the "Manager of the Year Award", mainly for her financial management of the village.

Again, if people out there possibly fit that profile, we want to ensure that we have an avenue for relief if people were to be caught up in this new net we are creating. The simple answer is that if someone has those extenuating circumstances, we want to be able to relieve them. However, I expect that the exemption process would be used very rarely, if at all.

Hon LYNN MacLAREN: I seek a couple of clarifications from the minister. Firstly, it seems like the minister is proposing the suggested deletion of section 77C. Could the minister clarify whether the processes that the commissioner will adopt in issuing these exemption certificates are transparent, and that the reason for the decision can be released to the public? Secondly—I canvassed these issues in my contribution to the second reading debate—although we welcome the increased scrutiny of people who will be involved in the administration of retirement villages, does this also apply to managers? It applies in proposed section 77 in this case that we are talking about, but it also relates to proposed section 76. Do the increased measures of scrutiny apply to people who are applying to manage retirement villages as well as those involved in the administration of them?

Hon KATE DOUST: I seek some clarification. Under proposed section 77C as set out in the bill, when a person applies to the commissioner seeking an exemption, will it be left to the commissioner's discretion to determine whether an exemption certificate should be granted, which could be fairly broad, or will there be a set of criteria in the regulations that the commissioner can work through to determine whether that exemption certificate should be granted?

Hon SIMON O'BRIEN: I thank members for their input on this clause. The bill includes this exemption process to cover extenuating or extraordinary circumstances that, if they were to come before us after the

amendment bill had gone through, would make it look unreasonable if a particular prohibited person was excluded from being involved in the operation or management of the village. That is what we are trying to achieve. An exemption could be sought by persons or individuals who may already be involved in administering a particular village and by persons who become involved in that activity after the provisions commence. I point out, though, that recommendation 33 of the final report recommended that this exemption process be put in place. This is not a new matter; it has been canvassed before.

In terms of the grounds for exemption and other matters raised, the bill provides that the commissioner may grant an exemption only if someone applies for such a certificate and satisfies the commissioner that neither the wellbeing nor financial interests of the residents of a retirement village will be at risk if the person is the administering body of the village or is in any way, whether directly or indirectly, concerned in the administration of the retirement village, as the case requires.

It will be up to the commissioner to form an opinion. If this provision is included, the commissioner will develop guidelines as necessary for the exemption process, and those guidelines, if developed, will be made publicly available. As I said, I am not sure whether there will be any applications at all.

Hon Kate Doust: But you still need to have guidelines in place just in case.

Hon SIMON O'BRIEN: It would be helpful. For example, the Commissioner of State Revenue publishes some guidelines on how he treats certain land tax matters from time to time. They are not guidelines that Parliament foists on him and says that he has to follow; they are guidelines that he devises for himself so that those involved in paying land tax will know what to expect and will know the approach that his office takes. It is a bit the same with this provision. I am not suggesting that we develop the guidelines, but the commissioner may well do so, and I expect would do so, but that will be informed by experience. The point is that the commissioner may grant an exemption only if satisfied that the welfare or financial interests of residents will not be at risk if the person is granted an exemption. Given all that has happened with retirement villages, and given the Commissioner for Consumer Protection's involvement with a number of retirement villages—I have worked cheek by jowl with her and I know some of the pressures and conflicts that she has had to work through—she would be very circumspect about granting an exemption and thereby certifying that she is satisfied as to those matters. We have to place power in the hands of some key officers to make decisions. We do it all the time, and we expect that they will exercise those powers with discretion.

In most cases, decisions would not be made public for privacy reasons. However, any administering body of a village that would be impacted on by a decision would of course have to be informed of the commissioner's decision and the reasons for the decision. Whether decisions, or even the fact of certificates, are made more widely known would depend on the circumstances that may prevail in what, as I said, is likely to be a very rare event. The examples I gave as fictional case histories are not based on any known person, as far as I am aware; they were just made up for illustrative purposes.

Finally, in response to Hon Lynn MacLaren, "administration" links with the definition of "administering body" in the Retirement Villages Act and refers to management functions related to administering or operating a village.

Hon KATE DOUST: I thank the minister for that detailed explanation. I return to the original question that I asked during my contribution to the second reading debate and again today. Given that all the other states do not allow for a certificate of exemption, I want the minister to explain to me why Western Australia is agreeing to do that.

Hon SIMON O'BRIEN: It is right that no other state has this sort of exemption process. Therefore, if Western Australia adopts this process, it will be seen as enlightened and leading the way. In Western Australia, it was considered reasonable through the review process, which has been going on for years, that an exemption process be included to enable the commissioner to consider extenuating or unforeseen circumstances. As I say, I think it would be rarely used, if ever, but it does provide a release mechanism. I do not know what more I can say. It is a matter for judgement. I am sure that if we went ahead with a fairly strong provision such as contained in the preceding new proposed sections, we might have adverse effects that no-one would like to see in connection with a few people who have been serving well, diligently, honestly and fairly in retirement villages and who might be very harshly treated and lose their livelihood for no good reason if we did not have this safety valve. That is why we have it. The government intends to persist with this provision because it is responsive to the recommendations of the final report. Again, it is not die in a ditch, but I certainly think it should be available.

Hon KATE DOUST: Proposed section 76(1)(c) refers to a person who is disqualified from managing corporations only for a period of five years from the time of their qualification. If somebody has committed an offence, they cannot work in management in a retirement village for a period of five years. Can they seek an exemption during that five-year period?

Hon SIMON O'BRIEN: It is probably worth pointing out to the chamber that the prohibition actually lasts for five years. I think that is roughly proportionate to spent conviction provisions.

Hon Kate Doust: That is 10 years.

Hon SIMON O'BRIEN: I do not know, but that is the spirit of it. So the procedure under proposed section 77C would apply for that five years.

Hon Kate Doust: During that five years?

Hon SIMON O'BRIEN: Yes, during that five-year term, and outside of that, it would not be required. So, it is not a lifetime prohibition necessarily anyway, but we are just concerned that there might be some people who are still in that five-year period and are therefore disqualified but who might have been working for some years already, in an unrelated way quite innocently, at a retirement village who might suddenly find themselves out on the street. That is the reason for the safety valve.

Hon KATE DOUST: I have only two more questions, I think—it depends on how we go. The bill refers to a certificate being granted and it having to be handed back if the individual reoffends.

Hon Simon O'Brien: Yes.

Hon KATE DOUST: How many opportunities does an individual have? If they have reoffended and are back in that work environment, can they apply for a second bite at the cherry? Do they get just one go?

Hon SIMON O'BRIEN: We are getting into the realm of the hypothetical, but there is nothing wrong with that because we want to consider from all angles what the consequences of our legislating might be. The commissioner would have to consider each application on its merits, and that would have regard for any antecedents that might exist. If I was in the place of the commissioner and it was someone who was clearly establishing a pattern of offending in the same way, obviously I would be loath to issue an exemption.

Hon Kate Doust: One would hope so.

Hon SIMON O'BRIEN: I think one would know so, knowing that our officers faithfully carry out their duties. What was the other question?

Hon Kate Doust: I am about to ask it.

Hon SIMON O'BRIEN: All right.

Hon KATE DOUST: I am glad the minister is so keen for another question.

I am not sure whether the minister has covered this already, but when a certificate has been granted to a person working in management in a retirement village, is there any provision in this bill for third parties—that is, the resident—to be informed that an exemption certificate has been granted to an individual working in their retirement village? If there is, I have not been able to find it.

Hon Simon O'Brien: No.

Hon KATE DOUST: Why not advise the residents? In terms of transparency, why not give residents the information that somebody working in their village—running their village, if the minister likes—may have had a conviction for fraud or violence or sexual assault or whatever? Why do they not have the right to know that?

Hon SIMON O'BRIEN: The member raises a fair question, but again we come back to questions of privacy and protecting people from suffering disproportionately for a former transgression. I remind the committee that under the terms of clause 17, the commissioner may only grant an exemption if satisfied that the welfare or financial interests of residents will not be at risk. If Hon Kate Doust was the commissioner considering a matter, she would make exhaustively sure that there was no risk, to the extent she could. So it is likely to be, if the situation did arise, I would think, that the earlier offence, although capable of disqualifying the person because of its seriousness, might have nothing to do with affecting the financial interests or welfare of residents. That is the guarantee, and the commissioner is going to take responsibility for it. So, in other words, it is going to work out that there is zero risk because the relevant offence is—sorry, the —

Hon Kate Doust: It could be a very relevant offence.

Hon SIMON O'BRIEN: The offence or the history is not going to impact on the current position. As I say, it is highly unlikely to be used, but it is necessary to have.

In terms of the privacy of the person, it is not going to help if they have gone through this process of application, the assessment of that application—the consideration of the circumstances, and the commissioner considering the application and putting his own neck on the line by accepting it—and we then potentially alarm people that

here is someone about whom it is questionable whether they should be involved in running this village. I would think that would do as much damage as throwing them out of their job anyway.

Hon LYNN MacLAREN: I think we are beginning to go round in circles. As long as there is some transparency in the decision making on the part of the commissioner, I will not be supporting the amendment to delete the clause regarding the exemption certification. I have been convinced by the minister that these new restrictions on who can be involved in retirement villages may well impact unfairly on people who have a proven record of doing a good job in management and administration. Although I completely support the intention of Hon Kate Doust in, I guess, shining the light of scrutiny on the issuing of these exemption certificates, I think at this stage we have to wait and see whether it is a rare occasion. If there is some transparency around the reasons and the decision making, I think we need to allow this to run its course and try it out. I will not be supporting the amendment.

Hon KATE DOUST: I think we have had a reasonable discussion, and sometimes we do have to see how things work out. I am still not too sure why we would want to be the first state over the precipice on this type of change. I am very concerned about what could happen in some circumstances, and I think it is a load for the commissioner to have to bear if things do not go well.

Hon Simon O'Brien: That's what they get paid for.

Hon KATE DOUST: I do not know if they get paid enough actually for those things.

I am certainly very interested in seeing the guidelines that the commissioner puts out around how the commissioner will go about making a decision to grant an exemption. I am not too sure how long it will take for that to be developed. I think we have served the purpose; I am not going to formally move this amendment, I will just let it go. I am glad we had the discussion.

Clause put and passed.

Clauses 18 to 21 put and passed.

Title put and passed.

Bill reported, with amendments.