

**REGULATION 11(3)(O) AS INSERTED INTO THE RETIREMENT VILLAGES REGULATIONS 1992 BY REGULATION 6 OF THE RETIREMENT VILLAGES (RECURRENT CHARGES, PRESCRIBED MATTERS AND EXEMPTION CERTIFICATES) AMENDMENT REGULATIONS 2014 — DISALLOWANCE**

*Motion*

Pursuant to standing order 67(3), the following motion by Hon Kate Doust was moved pro forma on 19 June —

That regulation 11(3)(o) as inserted into the Retirement Villages Regulations 1992 by regulation 6 of the Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014, published in the *Government Gazette* on 21 March 2014 and tabled in the Legislative Council on 1 April 2014 under the Retirement Villages Act 1992, be and is hereby disallowed.

**HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition)** [8.39 pm]: This disallowance motion relates back to legislation that passed through this place in November 2012, the Retirement Villages Amendment Bill 2012. There was a fairly extensive debate in this place and a number of amendments were made to the legislation. I must say that the then Minister for Commerce was very amenable to a range of suggestions that were put forward by a number of members around the chamber for improving the legislation and promoting future changes that we still have not seen.

In April 2014 we saw the proclamation of the amendments to the act and the regulations. I was approached in late April this year by the WA Retirement Villages Residents' Association to discuss a particular regulation and to ask if we could move to have it disallowed. Members may not have had the opportunity to look at this regulation, but it seeks to allow a portion of the costs of industry association membership and accreditation fees to be passed on to the residents, so that the operators of retirement villages could seek to have residents pay some additional costs in relation to those types of fees. WARVRA says that this is, indeed, unfair, is not what was decided in Parliament and runs contrary to what the minister of the day agreed to in 2012. If members recall, this matter was actually canvassed during the debate by Hon Lynn MacLaren and the then minister, Hon Simon O'Brien. Hon Simon O'Brien stated on 18 September 2012 —

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 then said —

And there is nothing to prohibit that, minister.

Hon Simon O'Brien replied —

It is certainly going to be prohibited in the future. Anyway, we have resolved those matters.

At that time I think we all agreed with that point and were all very satisfied that the minister had been very clear in his view, so when the bill was passed, the retirement village community also thought that the matter had been resolved.

We then went to an election and a new Minister for Commerce came in. The regulations finally came in in 2014, and when the village residents became aware of the new regulations, they were very surprised to see that there had been a change in position or a change in direction; one might say, a backflip. The residents under this proposed regulation could now be asked to pay up to 50 per cent of these costs that the operators pay for their membership fees to accreditation and other bodies. This issue was canvassed during the estimates hearings in the Legislative Assembly in May this year, and David Templeman, MLA, the member for Mandurah, asked

**Extract from Hansard**

[COUNCIL — Wednesday, 24 September 2014]

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Hon Kate Doust; Hon Lynn MacLaren; Hon Col Holt; Hon Michael Mischin; Hon Simon O'Brien

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a question of Ms Anne Driscoll, who at that time was the acting director general of the department. In response to Mr Templeman's question about this regulation coming into effect, she said —

... the department's view was that it is a reasonable fee of which residents could pay a share. That is because a properly functioning industry body assists village operators and, in turn, that affects the wellbeing of the residents.

I received an email from Mr David Street, who is involved with the Western Australian Retirement Villages Residents Association, and he stated that the cost of the Retirement Living Council membership to operators is charged per village. We must keep in mind that there are about 220 villages in this state. When we dealt with that legislation—Hon Lynn MacLaren will confirm this—I think the discussion was that about 15 000 people were residents of retirement villages in this state. That is a substantial number of people in a growing industry, community and lifestyle. He also states that, according to the budget of the village he lives in, about \$4 200 per annum is allocated for those membership fees, of which 50 per cent is charged to residents in operating fees. Residents would be hit with a charge of about \$2 100, which would be spread over the residents. We must keep in mind that the vast majority of people living in retirement villages are on fixed or low incomes. They already pay a number of other fees to the village; they can pay anything from \$300 to \$600 a month for the running costs to maintain the village, as well as any rates and water costs. Some may get a discounted rate if it is a not-for-profit village, but others do not. But it all adds to the cost. He goes on to state that his understanding at present is that the accreditation fees have yet to be finalised with the operators. When they will come into effect is subject to the size of the villages and the number of villages, and 50 per cent of that cost also will be charged to residents. I understand that a new scheme of arrangement has been put in place by the Property Council of Australia, which will manage the determination of a lot of these fees, and those fees have not yet been finalised. WARVRA has always stated that these costs are a charge to the operator's business, not to the village residents. They do not have to be members; it is voluntary. In fact, some larger not-for-profit operators are not members. The residents have no say at all in the Retirement Living Council affairs, yet they are expected to contribute. They have no say on RLC annual fee charges and, in the opinion of the residents' association, the fees could easily be manipulated. I hope the association has sent letters to all members of this chamber. I know it is quite a prolific letter writer and goes into a lot of detail about its concerns, and I will go through some of those.

On the second page of one of the letters the association sent to me, it indicates that the industry membership costs are not directly related to operating a village. It refers to the two main industry associations not supplying a direct service that is essential to the operation of a village. It also notes that the Property Council of Australia, which is also the Retirement Living Council, is largely concerned about property investment and the development of new retirement villages. When I wrote to a range of operators of retirement villages and elicited responses about their views on this disallowance, there was some feedback—I think it was from the Property Council—that the current retirement villages legislation is a prohibitor to the growth of retirement villages in our state, but I am sure that we can have that discussion at another time when we deal with another round of legislation.

WARVRA has suggested that this association—it also suggested this to its predecessor—should in fact undertake training for its staff in how to engage with residents and how to perform their various responsibilities. That offer has not been taken up, even though I note in the letters I have received that there has been some reference to training. I note that in a piece of correspondence from the minister to WARVRA, there is also a reference to training being provided by these operators. The letter that I have received goes on to state that the owner or operator of a retirement village, not the retirement village and certainly not a resident of the village, is a member of the industry association. It also states that membership by an owner or operator of an industry association accrues no benefit to the residents of a retirement village; the residents cannot access any services or information provided by the industry association; nor do the residents have any input into, control over or knowledge of the expenditure of the association. Owner-operators obviously do not disclose that to the residents. Those are some of the issues that the residents' association highlighted about the associations that these fees are paid to. If this regulation goes through, there will be no capacity for residents to have any input into or give any direction on what happens with those associations. They certainly will not have a seat at the table to participate in any decision-making, even though they would be expected to pay part of the costs.

The letter I received goes on to say that accreditation costs are not directly related to operating a village. It states that the Property Council of Australia is establishing a new scheme of accreditation, and goes through the range of costs, which vary depending upon the size and number of villages. They range from about \$2 700 for a single village operator to \$3 300 for a multisite operator. If we think about that, half that cost goes back to the residents. The residents have no say in any of these decision-making processes. The letter goes on to state —

- The accreditation process is industry controlled, so there is little chance that a village will not be accredited either immediately or after some remediation. The process is heavily “paper

based” ... but there does not seem to be any continuing assessment nor any form of unannounced spot checks.

- Some operators have used village accreditation in their sales/marketing materials and we —

The residents’ association —

consistently maintain the principle that sales and marketing costs are the responsibility of the owner/operator.

- There is no credible evidence of accreditation being used by potential residents as a factor influencing their decision to enter a retirement village ...

Its own surveys confirm that. The letter also states —

- Many on site village managers are not in favour of the accreditation process and indeed several of them queried it at the recent Property Council of Australia Retirement Living Council conference in Perth.

Those are the concerns that the Retirement Villages Residents Association has about both the accreditation processes and the industry associations and why it should not have to pay those fees. The letter goes on to state that, as it stands, many retirement villages currently do not pass on those additional costs. It advises that now that this regulation has been proposed, those smaller places that previously have not required that payment are now also talking about requiring residents to pay half the costs. I note in the minister’s response to WARVRA that he said those things are up for negotiation and even though this regulation would be in place, there would still be capacity for negotiation. I think that is fairly optimistic on the part of the minister. I would imagine that if a retirement village operator saw that his competitors were starting to charge their residents these additional costs and it would save them some money, he would also be inclined to go down the path of hitting up these residents for additional costs. I do not think there would be a genuine opportunity for negotiation between the residents and the operators.

Why are we moving this disallowance? It is because we want to support the residents. We feel that the whole industry and the residents were certainly given a very strong declaration by the government back in 2012 when the minister of the day, Hon Simon O’Brien, was very clear and determined in his position on why those residents should not have to pay those extra charges. It was based upon a flawed history of experience in another quite prominent retirement village—Karrinyup Lakes Lifestyle Village —

**Hon Ken Travers:** I know it well.

**Hon KATE DOUST:** A number of members do know it well. It probably set the ball rolling for quite significant change in the retirement village industry, but there is still more to go. Our view is that that commitment—that promise—was made. It was very clear. We all walked away from here with the understanding that residents would not have to pay any of those additional costs. It has come as a surprise and a shock to some that, without any negotiation or further discussion, a decision was made behind the table that it would change.

**Hon Michael Mischin:** It was made in my office, actually.

**Hon KATE DOUST:** That is fine; it was made in the minister’s office.

**The ACTING PRESIDENT (Hon Simon O’Brien):** Order! Members, this is, of course, a time-limited debate by virtue that the question will be put and determined before the house rises this evening, so we have finite time. Hon Kate Doust realises that. I think she is making her remarks very much with a mind to allowing some time for other members to contribute, and I think a lot of members will want to make a contribution, so we might all have regard to the brief time we have. In the meantime, I would like to hear the member make her speech uninterrupted.

**Hon KATE DOUST:** This is a very serious issue, and the residents of retirement villages view it as a very serious issue because it will add to the cost burden they already carry amongst all of the other cost increases over the last few years as a result of government decision-making processes.

The next reason to disallow this regulation is that the opposition does not believe these additional costs are directly related to the operation of the village. It is the opposition’s view that these costs should not, therefore, be passed on to the residents. I have already talked about the additional costs that residents pay as a matter of course and that these costs vary from place to place. Another matter that came up in connection with this issue, which is something I am sure will be picked up at a later stage, is that the residents do not know what the total figure of these additional charges will be. There is no cap on these charges and they are very concerned that hidden costs will be tacked onto these fees that will not be explained to them but they will have to pay. They do not think that is appropriate. It comes back to the core issue of whether members think it is acceptable that the government has made a decision, given a commitment and then backtracked. If members opposite agree it is not acceptable to make that change, they should support us on this disallowance motion. If members opposite agree it is acceptable

that these people will be hit with an extra charge, I do not understand how they would think that is fair or reasonable, because the opposition does not think it is.

The Western Australian Retirement Villages Residents Association attempted to meet with the Minister for Commerce to discuss this issue and he has written to them, but they have not had a face-to-face meeting. It would have been quite useful for WARVRA to articulate its concerns to the minister. It has been said to me that if we are successful in disallowing this amendment, the operators would have the capacity to charge 100 per cent of the full rate. I do not think that is correct. I would be interested to know the source of the advice that they will be hit with the full rate, because at this point they cannot be charged 100 per cent, so I do not know how removing this regulation would allow that to occur. I would be interested to know why people would have that view.

Bearing in mind Mr Acting President's comments that we are time restricted, this comes down to the fact that in 2012, after an extended period and detailed debate, the government made a very clear commitment. The language was strong; it sent out a very clear message to the residents that this fee would not be put in place, it would not happen and it would be prohibited. The government sent a message to the industry that this was a no-go zone and that this would not happen; but 14 months later, it does happen. The government needs to explain why that change has occurred. Why have the operators had the ear of the minister but not the residents? Why will the operators now be able to charge this additional fee that will impact on the daily lives of residents but does not seek to improve the way they live in these retirement villages. I think at the time the minister of the day made reference to the fact that there are other ways for those operators to recoup these costs. The methods for recouping them are still there. They can certainly be claimed as a tax deduction, and that has not changed.

It is Labor's view that this regulation should be disallowed. It is an unfair change. It is an unfair proposition that the residents of these villages should have to incur and pay up to 50 per cent of an amount that is yet to be determined. It is an amount that could mysteriously increase over time as these fees change and evolve, depending on the determination of the peak body of which those operators are members. It is indeed a broken promise, if members like, that this government made in 2012. For some reason, and without explanation to the people living in those villages, that promise has changed.

I hope that members of this chamber can demonstrate tonight to the residents of those villages that they are prepared to stand up for them; that they are prepared to make sure that the government sticks to a commitment it made in 2012; that they are prepared to be fair, balanced and reasonable; and that they are prepared to ensure that the residents do not have to pay any more than they currently pay. The residents are already paying a quite reasonable amount across the spectrum of their various villages. For people on low and fixed incomes this regulation just adds to the burden. It is simply a way for operators to gouge further cash out of those residents. If the government has agreed to do this, that is a disgraceful thing to have happened. I hope when we finally finish our debate tonight that members will have taken on board the views of the residents' association, the way in which this regulation will impact on the residents and the fact that it is an unfair impost to sustain this regulation. The opposition hopes that members will vote to remove it, will provide that fairness and balance to those residents and will require the commitment made in 2012 to be upheld.

**HON LYNN MacLAREN (South Metropolitan)** [9.01 pm]: I rise to support the motion for disallowance. I express my appreciation to Hon Kate Doust for raising this matter and for allowing us to debate it in this place tonight. As she mentioned, I was very deeply involved in the passage of the Retirement Villages Bill, as was the Acting President himself. I guess it was one of the best experiences I had in that term of government, in that we were able to work constructively with stakeholders, the minister and the department at the time to not only raise these matters, but also obtain some promises—if members will—that their needs would be addressed. It is a privilege now to be in this place debating these regulations that are supposed to be delivering on that promise. It is at the same time disappointing that we are seeing the government not quite deliver what it promised. However, we have a chance tonight to remedy that. As Hon Kate Doust said, the Western Australian Retirement Villages Residents Association has written to many members. It has asked that the Greens support this disallowance of regulation 11(3)(o) that is proposed to be inserted into the Retirement Villages Regulations 1992. I will definitely do that. I found the Western Australian Retirement Villages Residents Association to be most helpful in providing me with much more detailed information on what retirement villages are all about, and on their challenges as well as some of the good things they get from living in a retirement village. It is really important that our regulations and the laws that govern them are fair. I want to remind members that on Friday, Retirees WA will hold its annual general meeting. I assure members that they will be discussing this matter, because retirement villages and retirement housing is a key issue for them. I have been invited to that annual general meeting, and I will be attending, and hopefully I will be reporting the good news that we have raised this matter and that the minister has been able to help us address their concerns. As members know, I am the Greens' spokesperson for both seniors and housing. Therefore, I am well aware of the challenges that retirement village residents face, and I support their call for a fairer and more responsible way to share the cost of fees.

The proposed regulations provide for a cap on the time for which a non-owner resident can remain liable for ongoing fees after vacating the residence. That is one of the promises that we were given during the debate on the retirement villages legislation. This is very important, and I am glad that it is included in these regulations. The regulations also provide for prohibited charges that village operators may not collect from residents; amendments to the disclosure and cooling-off periods for residency contracts; and the introduction of prohibited persons who may not be involved in operating retirement villages. These issues were raised at length during the debate, and those members who were here at the time will probably be having flashbacks on how detailed and important those issues were at that time.

Although these changes are welcome and address some of the more obvious concerns about the previous arrangements, they do not go far enough, as Hon Kate Doust has said. It is Greens policy that all older Australians should have adequate means to live on, should be consulted on legislative and procedural changes that affect them, and should have access to suitable accommodation, including affordable and quality housing. It would seem that the state government has reneged on undertakings given by the then Minister for Commerce in 2012. I quote from *Hansard* of 18 September 2012, at page 5936 —

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.

Those were the then minister's words. I understand that regulation 11(3)(o) permits the administering body of a retirement village to demand or receive payment from residents for half of those costs. However, it is clear to me that neither industry association membership costs nor accreditation costs are related to the operating costs of a village. Therefore, those costs should not be passed on to residents. It seems entirely reasonable to me that there would be many owners and operators who do not charge residents any costs associated with their membership of an industry association or for accreditation of the village. The intent of the act is to prevent owners and operators from increasing the cost burden on retirement village residents. That is what we are supposed to be doing. However, this regulation is not in keeping with that commitment.

In 2012, the Greens, and I as a member of the Greens, supported the Retirement Villages Amendment Bill and moved a number of amendments to make that bill fairer and more responsive to the needs of residents. Those amendments were not supported by the government. Therefore, we now need to look for improvements in these regulations. With the increasing number of elderly people in our prosperous society looking forward to enjoying retirement, we need to get this right for the benefit of all. I support the disallowance.

**HON COL HOLT (South West — Parliamentary Secretary)** [9.09 pm]: I remember the debate on the Retirement Villages Amendment Bill 2012 in this house, and it was a long debate. Work definitely took place in this house, and behind the Chair, to get the balance right in this industry and meet the needs of both retirement village operators and occupants. It was long, hard and arduous. I agree with Hon Kate Doust and Hon Lynn MacLaren that the indication from the minister of the time, and from my reading of *Hansard* from back then, was that the cost of the owners' association fees should not be passed on. I note that Hon Kate Doust read that section of the *Hansard*. I will not go into it, because I would like to allow time for the minister to respond and to put his points on this issue. I agree; it was clear in that *Hansard* that the minister of the day did not expect that the costs associated with membership of an industrial or professional association would be passed on to the residents, because there were other means by which this could be done, through taxation and other things. That is pretty clear. Maybe an interpretation of the *Hansard* is possible, but for my money there is not any. We have obviously also had some discussions with the WA Retirement Villages Residents Association, which also saw that it was very clear in *Hansard* that that was the expectation. We have moved away from that expectation, in my view, and we have landed with a 50 per cent rate somewhere in the drawing up of the regulations. One of the incongruous things about where we have arrived at is that at some point when the regulations were being developed, there was a discussion between the operators' association and the minister's office or the department about where these things should be set. We have village residents potentially funding an industry organisation to negotiate with the minister's office or the department to give them a bit of a dud deal. It seems a little incongruous to me that the residents are helping to fund an outcome that is not actually that good for them.

**Hon Kate Doust:** They are not currently doing so, but the potential is there.

**Hon COL HOLT:** No, but I have to say that we have a dilemma. I know members opposite do not agree with it, but the advice we have is that we can approve or disallow this regulation. In our assessment, if we disallow this regulation, the potential is that 100 per cent of the cost could be passed on to residents.

**Hon Kate Doust:** They cannot do that now.

**Hon Ken Travers:** The existing regulations would stay, so whatever the existing circumstances are would remain.

**Hon COL HOLT:** My advice has been that —

**Hon Ken Travers:** From whom?

**Hon Lynn MacLaren:** They can just make another regulation—a better regulation.

**Hon COL HOLT:** They can—agreed. Therefore, we could amend the regulation, and then we should remove the 50 per cent cost. That would be our advice to the minister. For us it is a dilemma. Do we disallow the regulation, and allow potentially 100 per cent of the cost to be charged? No. Do we not disallow the regulation so that at least there is a 50 per cent cap, and ask for a commitment from the minister that our view in this house is clear—that there was a commitment during the debate on the bill, with the minister at the time saying that these sorts of fees cannot be passed on, and go back and make it very clear within this regulation that those fees cannot be passed on? The question should be asked: where does it stop and where does it start? Can the operator of a retirement village pass on these fees or not? That is a good question. I have not been able to see a definition of that. I think they are good questions that the minister himself needs to answer. Although the Nationals reluctantly do not support the disallowance, we point out to the minister that we are clear in our minds that these sorts of things were not to be passed on to residents. We would like to hear a commitment from the minister around changing that in the regulations in future to reflect the outcome that we in this house clearly agreed to.

**HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce)** [9.14 pm]: Rather a bit of exaggeration has been stacked around this debate in describing this regulation as unfair and not what was “decided” by Parliament. I should point out that what was being considered in September 2012 was a statute that was decided by Parliament. The scope of the regulations was what was being speculated upon and certain comments were made in the course of that. As I recall, nothing was decided by Parliament in respect of the regulations themselves.

**Hon Kate Doust:** I would have thought that the minister making a commitment was fairly clear.

**Hon MICHAEL MISCHIN:** I will get to that in a minute. If we were going to rely on the words of the minister in response to a request to foreshadow, to a degree speculatively, the content of the regulations, many of the regulations that seem to be acceptable to the opposition and the Greens and have not been the subject of any comment, would not have been passed at all. I will get to those in a moment.

I understand the Greens’ philosophy that everyone should have affordable and high-quality housing—paid for, presumably, by someone other than themselves.

**Hon Lynn MacLaren:** It’s our policy.

**Hon MICHAEL MISCHIN:** Well, their policy. But someone has to pay for it. The policy of the Retirement Villages Act—I may be wrong about this—was not to stop operators from charging residents; the whole point of the legislation was widening to regulate the industry generally and to establish rights and obligations. The whole policy of the legislation was not to favour one side over the other, as Hon Lynn MacLaren seems to think it was.

The government has indicated its commitment to putting strong protections in place for seniors who live in retirement villages. It has succeeded in doing that with fair and clear guidelines within which the industry is to operate in outlining not only the responsibilities and obligations of operators but also those of residents. The first stage of the reforms in this area were, of course, the amendments to the legislation itself, which came into effect on 1 April. Much of the delay in having the legislation come into effect was the necessity to refine certain aspects of it by way of consultation across all interest groups, not just the Western Australian Retirement Villages Residents Association, but also the industry, which, of course, has ultimately the obligation of providing these services in a way that will make a profit for them, otherwise they would have no incentive to do it. Those industries must be viable. That may not accord with the philosophy that somehow everything ought to be provided by someone for no or little cost at all on those who receive services, but the reality is that we in this community depend upon these sorts of villages being provided at the expense of someone who has to have an incentive to do it.

In any event, there have been significant reforms and some of them have been the subject of considerable controversy. One of them was setting the time limit for the payment of recurrent charges, which was considerably opposed by the industry. The industry’s argument was that it has to have some money to reinvest in

villages to lift the quality of the villages—to maintain them and to refurbish units and the like. If someone enters into a contract with their eyes wide open that after they vacate the unit and have to pay recurrent charges into the future until the unit can be re-occupied by someone else paying a reasonable amount of rent, someone should pay that. But a different decision was made. People are now being relieved of the burden of the contracts that they have entered into. We can have value judgements as to where the balance should have been struck, but Hon Simon O'Brien, as Minister for Commerce at the time, made that decision and that has been incorporated into legislation. I hope that Hon Lynn MacLaren, when she goes down to the AGMs, will point out what the government has actually achieved in these areas, rather than constantly criticising, as the Labor opposition seems to do, by pointing out the things that they do not like and not acknowledging the things that the government has done.

Changes that were for the benefit of and strongly supported by retirement village residents meant that residents no longer have to pay those sorts of recurrent fees. Other changes include longer periods for the disclosure of information to prospective residents, longer cooling-off periods for prospective residents, restrictions on people who have been convicted of certain offences from being involved in the management of villages, the ability to challenge excessive or unwarranted increases and charges, and all those sorts of reforms.

One of the delays, as I mentioned, was a requirement to fine-tune some of the reforms and to receive information from both industry and residents and to find a balance for how regulations could be drafted in a way that was equitable and viable. There has been a considerable amount of consultation over the succeeding years. Much of it has been productive and has resulted in consensus on the form of regulations, although many of the details have been argued out. One regulation, however, that has been consistently opposed by the Western Australian Retirement Villages Residents Association, which represents the interests of residents, has been regulation 11(3)(o), which relates to an administering body of a retirement village passing onto residents not more than 50 per cent of costs incurred from the membership of, or accreditation by, an industry body that represents the retirement villages industry. That was inserted by regulation 6 of the Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014, gazetted on 21 March this year. To put it into context, it gives effect to section 25 of the Retirement Villages Act 1992, as amended. Section 25(1) of those regulations states —

The administering body of a retirement village must not demand or receive payment from a resident or former resident in respect of any matter prescribed for the purposes of this section.

There is a penalty of \$20 000 if that is contravened. Subsection (2) simply states that section 6(2) of the act, which limits the operation of the act to contracts, agreements and arrangements after the commencement of the act, does not apply. That really does not matter in this context, but I mention it for completeness.

Regulation 11(3) prescribes the matters for which an administering body may not demand or receive payment from a resident. The regulations, rather than breaking promises, being unfair or focusing on one specific regulation, deny operators from charging for a vast variety of things that before then they could charge for, and, in some instances, did not charge for. Hon Simon O'Brien was moved, in particular, by some examples, one of which involved residents suing an operator, succeeding in court and the operator purporting to charge them for the costs that the operator had incurred in defending the claim. Of course, those things, before these reforms took place and for all the time that the opposition was in government, were not addressed. We addressed it, and Hon Simon O'Brien is to be congratulated for the work he did in that field. Rather than pointing out the unfairness, allegedly, of one aspect, there should be some reasonable acknowledgment of all the things that have been achieved and the fairness and the balance that has been set in WARVRA's direction on a vast variety of expenses, costs, charges and fees that otherwise were charged or capable of being charged by operators.

Two of the prescribed matters regarding administering bodies and what they cannot demand or receive payment for are set out in paragraphs (n) and (o). Paragraph (n) states —

the costs incurred by the administering body of accreditation or membership fees paid to a professional body or industry body, other than an industry body referred to in paragraph (o);

That is not a betrayal of any trust. That is the blanket prohibition, but an exception has been made in a very narrow way, so it is wrong to say that there has been a renege on some commitment made in 2012. That commitment has, in fact, been incorporated into the regulations, with one narrow exception—that is, the one in paragraph (o), which is to the effect that the administering body must not demand or receive payment from a resident or former resident of the costs incurred by the administering body of accreditation or membership fees paid to an industry body whose principal purpose is to represent the interests of administering bodies, however described, of retirement villages to the extent that the payment demanded or received from the resident or former resident exceeds his or her portion of an amount equal to 50 per cent of those costs—so a subset. It relates not to

professional industry bodies, but just industry bodies, and it has to be those whose principal purpose is to represent the interests of administering bodies. On the face of it, I can understand why there may be a concern about that, but I will point out a number of things about that in due course. There are currently two, as I understand it, industry bodies in Western Australia in that category. One is the Retirement Living Committee WA of the Property Council of Australia, and the other is Aged and Community Services WA. I will say a bit more about them in due course. The Western Australian Retirement Villages Residents Association, of course, maintains that operators should be prohibited from passing on any of these costs, because they are business expenses that do not directly relate to the operating costs of the village. As such, in its view there is no justification for passing them on. I mention the arguments WARVRA put up to say that I have actually heard them; I do not have to have its representatives come up to my office—I understand the arguments.

**Hon Kate Doust:** You're happy to meet the operators, aren't you?

**Hon MICHAEL MISCHIN:** Was I?

**Hon Kate Doust:** My understanding is that you met with the operators, but you wouldn't meet with WARVRA.

**Hon MICHAEL MISCHIN:** That is not right.

**The ACTING PRESIDENT (Hon Brian Ellis):** Order, members. I think all members realise that there is a time limit on this motion and it will be put at 9.45 pm. I ask members to refrain from interjections to give all members who wish to speak a chance to have their time.

**Hon MICHAEL MISCHIN:** Hon Kate Doust has misunderstood the situation entirely and I have not heard one version over the other. If I had gone the other way and given what WARVRA wanted, presumably the industry would say I had not listened to it and that I was favouring WARVRA—I cannot win either way. However, the reality is that on this particular issue I have not met with either side, but I had submissions through the department about the arguments both ways.

In any event, going back to Hon Simon O'Brien's comments, and I will not read them out again, but if they are read in the context and quite properly balanced, he was being asked to give some idea of the sorts of things that would be embraced by section 25 of the act. He indicated that the regulations were still being crafted and he gave some examples. Many of the things that are now in the regulations were not mentioned by him at all, and yet they have been prohibited. He was giving an indication of the sorts of things that the government then had in mind, but he was also conscious, if I am not misinterpreting his position at the time, that there was an awfully long way to go yet to get down to the specifics. From what he said, I accept as a general principle that that is fair enough—I entirely agree with what he was saying as a general principle. But it cannot be reasonably suggested that he was going down to specifics, let alone making precise, statute-like commitments on every single aspect of what may be included in the regulations. Considerable consultation has taken place since, for the purposes of drafting the current regulations, and we have the balance right between the residents who do not want to pay anything or want to pay as little as possible, and the industry, which is looking at some way of recouping what it may regard as reasonable costs and expenses.

The way this came about is that there was no agreement over this particular aspect. The industry was saying that it should be able to join professional organisations and have part of the costs associated with that defrayed when it actually benefits the operation of the village, and the residents were saying that they did not want to pay that because they could not see any benefit coming to them. That was the balancing exercise I was confronted with. The arguments on the part of the industry were that certain industry bodies confer benefits on residents in addition to operators. They can provide small and large operators with training tools and resources that members can utilise to ensure professionalism and improve the services. As members will know if they ever go to a conference and, presumably, the annual general meetings for some of these organisations, there is an exchange of views. One of the reasons people join associations is that they can exchange, network and pick up ideas and the like. Although the professional organisations can join the residents' associations, of course residents do not necessarily join or have an interest in the professional associations, but that does not diminish the relevance of those things and the ideas and information that can be gleaned and the value that can be added. It was put to me that the membership can provide an operator with the capacity to lobby state and federal governments for residents' concessions on charges, rates and taxes.

**Hon Kate Doust:** The residents are pretty capable of doing that themselves.

**Hon MICHAEL MISCHIN:** Yes, but it certainly helps if the operators are joining in on the exercise, does it not, Hon Kate Doust? They can lobby for, and participate in, pilot programs to enable residents access to home and community care packages within retirement villages; they can facilitate reductions in the costs of housing and contents insurance by negotiating with the insurance industry to create a product specifically designed for residential premises in retirement villages; they can improve the professionalism of the operator's management by delivering training —

**Hon Kate Doust:** Do they do that? No, I don't think so, yet.

**Hon MICHAEL MISCHIN:** Hon Kate Doust is talking about the evidence of it; I am telling the member the arguments.

**Hon Kate Doust:** You are telling me the things they might do.

**Hon MICHAEL MISCHIN:** And the member is telling me what residents say is not happening. Hon Kate Doust believes them; I have a balanced view on the matter and I am prepared to be persuaded on evidence, rather than just accepting one side of the story, as Hon Kate Doust is inclined to do.

The operators can carry out market research to ascertain best practice in the industry and improve the services to residents. Joining a professional organisation can provide flow-on benefits to residents such as accreditation, continual improvement of the village by the administering body, increased accountability and responsiveness of operators to village residents and peace of mind for the residents that the village is being operated by an accredited body with certain standards. I suggest that there is a greater confidence in living in a village that is an accredited member of some respected professional or industry body with levels of peer assessment than otherwise. As an example, the Lifemark Village Scheme—an accreditation scheme recommended by the Property Council—assesses villages against 26 international standards of performance that include the categories of resident support, staff performance, safety, compliance with regulations, and appropriate policies to guide village life in areas such as dispute resolution, holding meetings with residents and the like. All those things, I think, have a direct benefit to those who live in the villages and have an interest in seeing that the villages they are involved in meet the accreditation standards. Individual industry operators clearly benefit from membership of the Property Council and/or Aged and Community Services Western Australia, and from achieving accreditation. It is simply not right, to my mind, to say that there is no flow-on benefit to residents.

I was faced with a valid argument in favour of each point of view as to who would bear the costs, and in the lack of agreement in this narrow subset of paragraph (m) I chose a compromise of it being shared on a 50–50 basis by the operator, and up to—it is important to know it is not “at least”—50 per cent being passed on to, and apportioned among, the residents. I understand that some organisations may not pass on that cost; others may. It is said that those who are currently not charging will. I do not understand the logic there. They used to be able to before —

**Hon Kate Doust:** That is what I have been told.

**Hon MICHAEL MISCHIN:** Who told the member that?

**Hon Kate Doust:** I was advised that.

**Hon MICHAEL MISCHIN:** By?

**Hon Kate Doust:** You're on your feet.

**Hon MICHAEL MISCHIN:** You are the one asserting that as a fact. Who told you?

**Hon Kate Doust:** I don't have to tell you.

**Hon MICHAEL MISCHIN:** All right—WARVRA? The member does not have to tell me and I do not have to listen to it.

**Hon Kate Doust:** If you give me a minute at the end, I will.

**Hon MICHAEL MISCHIN:** I do not have to listen to it.

Hence we get sub-regulation (3)(o). Administrative bodies have accepted that compromise; the Western Australian Retirement Villages Residents Association does not. I understand its arguments to the contrary. I can see the merit in its arguments but I can also see the merits from the other side.

The Department of Commerce has advised me that in its assessment there is a demonstrable value to residents when an administering body is a member of a professional association and undertakes accreditation. I have accepted that advice and struck a compromise. I took into account Hon Simon O'Brien's comments in his capacity as the former Minister for Commerce. I also took into account the extent of the consultation that had been undertaken, the extent to which relief had been given to residents in all these other fields, and I agreed with the assessment and advice from my department. I could have delayed the decision and hoped they would come to some kind of compromise. It did not seem likely between the two sides of this debate. It would have delayed things even further, so I made a decision on the subject, and that is the matter we are arguing about today.

I also gave an assurance to WARVRA prior to 1 April—which has not been mentioned—that the Department of Commerce would continue to monitor the impact of this particular regulation, and if there is evidence that an excessive impost was being placed on residents, the regulations would be further reviewed. I maintain that position. Oddly enough, that does not seem to have entered into the debate against this regulation.

In terms of cost, my information is that it is likely to be modest compared with the benefits. It has been estimated to me that if the membership costs of the Property Council of Australia were applied to an average village, the cost per unit per annum would be approximately \$43, while the membership costs of Aged and Community Services Western Australia are approximately \$6.77 per unit per annum. Further, based on information from the Lifemark Village website, the accreditation fee for single village operators of up to 49 units is about \$1 500 per annum per village, or about \$30 per unit, of which a maximum of \$15 would be charged to the resident. For an average sized village of 70 units, the fee is \$2 300, which is still approximately \$30 per unit. A maximum of \$15 per annum would be passed on to the resident. That means a unit in an average sized village is looking at being charged, at best, about \$60 a year for the combined costs of industry body membership and accreditation, assuming that all of it is passed on by the operator. The costs in larger villages are likely to be less.

In light of those considerations, it seemed to me not an unreasonable position to reach in respect of this particular fee and charge. As I have indicated, the Department of Commerce will monitor the impact of the regulation so that if there is evidence that it is resulting in an excessive impost on residents, it can be further reviewed and I will take appropriate and timely action to remedy it. In this case we are faced with a choice—we can continue to add to the limitations placed on retirement villages to operate, and limit their ability to pass on charges, but if we do that there is always a risk that retirement village operators will simply make their investments elsewhere or will find other means of passing on these expenses by way of greater costs to incoming residents. They could be incorporated as part of the rental without a direct and obvious charge on existing residents, but it would all be charged to new residents. The balance had to be struck. Others will take a different view of it, and every member of this house may have made a different decision or drawn the line slightly differently, but it did not seem to be unreasonable under the circumstances to make it a 50–50 compromise, with a maximum limit of 50 per cent being passed on proportionately to all the residents in the village on a per annum basis, and to continue to monitor the situation. On that basis, I would prefer to see that the regulation be maintained and that this particular impost, in amongst all the others, be permitted to the limited extent that I have indicated. The government will oppose the disallowance.

**HON SIMON O'BRIEN (South Metropolitan)** [9.40 pm]: I might be able to offer a unique perspective here. Let me tell members where this legislation came from. When I had the privilege of becoming Minister for Commerce in December 2010, everyone said that they were looking forward to working with me and briefing me in the new year, and I said, “Well, you won’t have to wait that long; you’ll be briefing me tomorrow, before we all knock off for Christmas, and we’ll have a look at where we’re going.” What I discovered in this very legislatively intense portfolio was that there seemed to have been a rapid turnover of ministers since time immemorial, and a whole lot of things needed to be done. In prioritising some of the things that needed to be done, one that came readily to attention was the need for reforms in retirement villages to stop retirement village residents being ripped off. Some things were going to take longer than others, so I said, “Bundle up the things that are going to make a real difference now and that we can do now, and we’ll call that tranche 1 of 2, and we’ll get it in and provide some relief to residents.” Members of this house worked with me in getting that legislation through, and I again thank them for it, because it has made a real difference in correcting some of the anomalies that we had.

One of the outcomes of the bill that we passed, the Retirement Villages Amendment Bill 2012, is what is now section 25 of the act, which provides a head of power for it to be prescribed that certain demands for payment may not be levied on retirement village residents by the administering body. That was to correct some very significant ills that existed at the time. There was a reason for this; there were a lot of reasons. People were hurting, it needed to be fixed, and, by gee, we fixed it. We gave the legislation the head of power to do it, and in the course of the committee stage Hon Lynn MacLaren asked me, amongst about two million other questions, something that was raised perhaps in the second reading debate, because I am reminded by the passage in *Hansard* that was quoted earlier, from 18 September 2012—two years ago; it seems like about 300 years ago! I responded to Hon Lynn MacLaren by saying, in part —

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.

I was giving some indicative parameters, not some ironclad guarantee that has subsequently been reneged on, so it is not appropriate to portray the current minister as having reneged on some sort of ironclad commitment. If members look at the regulations, they will see that we have put a stop to all those practices that, quite rightly, should have been stopped, such as passing on costs for travel by administrators and getting residents to pay the costs that had been awarded against them in legal challenges and so on. What we are considering now, in the last few seconds available, is a very minor part, and most of the costs of administering the body paying fees to

**Extract from Hansard**

[COUNCIL — Wednesday, 24 September 2014]

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Hon Kate Doust; Hon Lynn MacLaren; Hon Col Holt; Hon Michael Mischin; Hon Simon O'Brien

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professional bodies are banned under regulation 11(3)(n). It is a very discrete element that, after consultation, the government has opted to deal with in this way. I am not shy and will stand in this place or elsewhere and say when I reckon the government of the day is not playing a straight bat. I am not saying that; I am saying that the Minister for Commerce, as always, has played it straight. He has the best interests of the whole industry, including, specifically, the residents, at heart. His explanation and rationale are based on consultation and sound advice.

**The PRESIDENT:** Noting the time, it is time to conclude the debate and, as we know, the question must be put at the end of this day's sitting.

*Division*

Question put and a division taken with the following result —

Ayes (9)

Hon Alanna Clohesy  
Hon Kate Doust  
Hon Sue Ellery

Hon Adele Farina  
Hon Lynn MacLaren  
Hon Ljiljana Ravlich

Hon Sally Talbot  
Hon Ken Travers  
Hon Amber-Jade Sanderson (*Teller*)

Noes (17)

Hon Ken Baston  
Hon Jacqui Boydell  
Hon Paul Brown  
Hon Jim Chown  
Hon Peter Collier

Hon Donna Faragher  
Hon Nick Goiran  
Hon Dave Grills  
Hon Nigel Hallett  
Hon Alyssa Hayden

Hon Col Holt  
Hon Peter Katsambanis  
Hon Mark Lewis  
Hon Michael Mischin  
Hon Helen Morton

Hon Simon O'Brien  
Hon Brian Ellis (*Teller*)

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Pairs

Hon Stephen Dawson  
Hon Robin Chapple  
Hon Samantha Rowe  
Hon Darren West

Hon Robyn McSweeney  
Hon Phil Edman  
Hon Martin Aldridge  
Hon Liz Behjat

Question thus negatived.