

RETIREMENT VILLAGES AMENDMENT BILL 2012

First Reading

Bill read a first time, on motion by **Mr J.M. Francis (Parliamentary Secretary)**.

Explanatory memorandum presented by the parliamentary secretary.

Second Reading

MR J.M. FRANCIS (Jandakot — Parliamentary Secretary) [3.26 pm]: I move —

That the bill be now read a second time.

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

Key to a happy and well-run village is its management. Of concern to the residents are things that put them at risk, whether it be the conduct of the organisation, persons administering the village or the way the village is being financially managed. The bill contains a number of measures that seek to address these concerns. These include —

Provisions prohibiting certain persons from being the administering body of a retirement village or being in any way, whether directly or indirectly, concerned in the administration of a retirement village. For example, the conviction of a serious offence or disqualification from managing corporations under part 2D.6 of the commonwealth Corporations Act 2001 attracts the prohibition. The reference to “directly or indirectly concerned” recognises the range of corporate structures applying in Western Australia. It is intended to capture only persons who, in fulfilling the functions of an administering body, have the capacity to influence decisions in relation to the administration of a village. The Commissioner for Consumer Protection will, however, have discretion to grant exemptions from the prohibition provided that there is no risk to the welfare or financial interests of residents.

Provisions for a statutory manager to be appointed by the State Administrative Tribunal to replace the administering body of a retirement village when there is evidence of serious mismanagement, although it is expected that these provisions will be rarely used.

Giving residents the capacity to appeal collectively to SAT against increases in recurrent charges or imposition of a levy so that residents as a group can challenge excessive or unwarranted imposts.

Provisions for regulations to prohibit certain fees and charges being recouped from residents, such as certain legal costs that do not relate to the operation of a village. These regulations will apply to all contracts regardless of when they were signed.

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

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

Limiting a former non-owner resident's liability to pay recurrent charges is therefore a key reform. Following amendments passed by the Legislative Council, the bill includes a start date for a former non-owner resident's liability to pay recurrent charges and provides for regulations to prescribe when the liability ceases. Government policy is that, except when the residence contract provides for a former non-owner resident's liability to cease earlier, the regulations will apply to benefit all non-owning residents and specify two time periods for this purpose. The first period of six months will apply to existing contracts where residents permanently vacate a village before or after the provisions commence. The second period of three months will apply to new contracts. After these periods, a former non-owner resident's liability to pay recurrent charges ceases. It is important to note that the regulations will need to reference matters such as the allocation of probate or letters of administration.

The regulations will also provide for circumstances that enable a former non-owner resident's liability to cease earlier than the six or three month periods, such as if SAT were to make orders terminating the resident's contract under section 59 of the act that include a requirement that the administering body repay the resident's premium by a specified date. Once a former resident's liability ceases, the administering body will have to cover the cost of the recurrent charges and will be prohibited from recovering these costs by increasing recurrent charges or imposing additional operating fees or charges on other residents within the village.

The bill includes an additional safeguard for former non-owner residents to defer payment of recurrent charges incurred after leaving. Deferred amounts, with interest, will be deductible from a former resident's refund entitlements.

The government's key goal in advancing these reforms is to balance the growth prospects for the retirement villages sector with appropriate consumer protections for residents in the present and the future. Our population is ageing and the Australian Bureau of Statistics forecasts that in another 40 years nearly a quarter of Western Australia's population will be over the age of 65. It is essential, therefore, that Western Australia takes the opportunity now to put in place appropriate and rigorous consumer protection laws for our seniors.

The reforms in this bill are long overdue. They go some way to addressing current imbalances in the power relationship between retirement village residents and the industry. They introduce greater transparency into village contracts for the benefit of residents and help to enhance the overall effectiveness of the legislation for the benefit of all parties. The government's intention is to implement the remaining legislative reforms recommended in the final report in a second amendment bill as appropriate.

I commend the bill to the house.

Debate adjourned, on motion by **Ms J.M. Freeman**.