



The Hon Simon O'Brien MLC
Minister for Finance; Commerce; Small Business

Your Ref: Petition 154

Our Ref: 29-21996

Hon Brian Ellis MLC
Chair, Legislative Council Standing Committee
on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Mr Ellis 

**PETITION NO 154 – REQUESTING A REVIEW OF RETIREMENT VILLAGES
LEGISLATION**

Thank you for your letter dated 17 May 2012, on behalf of the Legislative Council Standing Committee on Environment and Public Affairs (the Standing Committee), requesting comments on the terms of a petition from residents of Leederville Gardens Retirement Village and a letter from the principal petitioner, Mr Peter Boam to the Hon Giz Watson MLC, Member for the North Metropolitan Region and a submission from the tabling Member, the Hon Lynn MacLaren MLC, Member for the South Metropolitan Region. I apologise for the delay in responding to your request.

In summary, the concerns raised by the above documents relate to whether proposed reforms limiting a former non-owner resident's liability to pay recurrent charges after leaving the village, should apply to benefit all non-owner residents or only those that enter into residence contracts after provisions relating to the reforms have commenced.

The petition from residents of Leederville Gardens Retirement Village reflects concerns held by many non-owner residents in retirement villages who have been writing to their local members of Parliament to support a change in policy.

The statutory review

As you may be aware, the final report of the *Statutory Review of Retirement Villages Legislation* (the final report) contains three recommendations relevant to this issue, being recommendation 73 (to limit a former non-owner resident's liability for ongoing recurrent charges), recommendation 74 (to prevent the operator attempting to recover the costs resulting from recommendation 73, by increasing recurrent charges payable by other residents) and recommendation 75 (to enable former non-owner residents to defer payment of recurrent charges until their premium is repaid). I confirm that provisions relating to all three recommendations have been included in the *Retirement Villages Amendment Bill 2012* (the Bill). I tabled the Bill in Parliament on 14 August 2012 and it is my hope that the Bill will be debated as soon as possible when Parliament resumes in September.

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The proposed Bill

The Government supports the position petitioned by the Leederville Gardens residents that the reforms of recommendation 73 should apply both to existing and future non-owner residents. The Government has therefore determined that liability for recurrent charges will be limited both for residents on existing contracts and for new entrants.

The Bill will provide for a former non-owner resident's liability to cease in accordance with criteria that will be set out in the Regulations. The Regulations will be drafted so as to recognise that there are some matters that are outside the control of the village operator that may prevent a unit being marketed to prospective residents. Such matters include the operator and outgoing non-owner residents (or their representatives) reaching agreement on initial sale price, obtaining valuations where required, reaching agreement on refurbishment, and the allocation of probate in deceased estates.

This issue is expected to be contentious. While existing residents have actively sought to have the proposed reforms applied to them, industry members have consistently opposed any change.

Industry's ability to recover any new liability for recurrent charges

Recommendation 74 of the final report is related to recommendation 73 and proposed that operators be prohibited from recovering their new liability for recurrent charges from residents of the village once the former resident's liability has ceased.

Standing Committee members may wish to note that recommendation 74 did not propose prohibiting affected operators from seeking to cover this potential cost by increasing the upfront premium paid by a new resident, or through adjusting new contracts to increase the exit fees, which include the proportionate amount retained by operators at the time of on-selling of leases.

When the prescribed period will start

As the Bill provides for Regulations to be made determining when a former resident's liability to pay recurrent charges will cease, the period will be specified in the Regulations. The period proposed in the final report was six months, but has been revised to three months for new contracts, and six months for existing contracts. The final period will be settled, in consultation with stakeholders, during the drafting of the Regulations.

Financial relief for all outgoing non-owner residents

I ask that members of the Standing Committee note that a related reform in the Bill includes a mechanism by which former non-owner residents or their estates can defer payment of the recurrent charges, incurred after leaving the village, by requiring the operator to deduct such payments from the former resident's refund entitlement. This change will necessitate the village operator covering the cost of the charges until they can be deducted and reflects recommendation 75 of the final report. This amendment will also apply to all non-owner residents, regardless of when they signed their contract. This mechanism should help alleviate existing residents' concerns about potentially having to cover both retirement village charges and those relating to aged care, should they need to move into an aged care facility.

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I trust that the information provided, and the reasons for the Government's policy positions in approving the Bill, will be recognised by the Standing Committee as benefitting both current and future residents and balancing their interests with those of the owners and operators of retirement villages, to ensure the long term profitability of retirement villages in Western Australia.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon O'Brien', written in a cursive style.

Simon O'Brien MLC
MINISTER FOR COMMERCE

6 SEP 2012