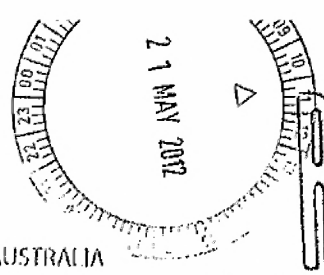

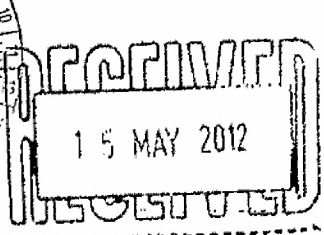

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Hon Lynn MacLaren MLC

Hon Simon O'Brien MLC
Minister for Commerce
12th Floor Dumas House
2 Havelock Street
West Perth WA 6005

Dear Minister,

I write in support of the WA Retirement Complexes Residents' Association (WARCRA) regarding proposed amendments to the retirement village legislation, which I understand are to be considered by Cabinet shortly and tabled in Parliament in the near future.

I attach WARCRA's well argued submissions on:

- Excessive or Unwarranted Increases in recurrent charges: the special resolution requirement.

and

- Ongoing charges in retirement villages

I commend WARCRA's work throughout the retirement village legislation review progress and request you to give close consideration to the positions expressed in these submissions.

Yours sincerely.

Ken Marston

CEO

May 7th 2012

cc:

Hon Lynn MacLaren MLC

Peter Tinley MLA

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WARCRA

Western Australian Retirement Complexes Residents' Association, Inc.
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ONGOING CHARGES IN RETIREMENT VILLAGES.
Part 1 of Retirement Village Legislation
Recommendations 73,74,75 of the Statutory Report

At present residents of retirement villages who do not own their units are required to keep contributing to operating costs after leaving the village by paying ongoing charges, in the vicinity of $300 to $500+ a month, until the unit is sold. This can continue for years and must be paid by the resident, their family or their estate.

1. Ongoing charges to cease after prescribed period

The Statutory Report on the Review of the Retirement Village Legislation proposes prescribing the length of time ongoing charges have to be paid once a non-owner resident leaves the village and after that time the costs cannot be devolved to other residents. Six months was proposed in the body of the Report as an appropriate period and the Minister has said in Parliament that "the proposed time period is six months."

We support this proposed amendment but wish to clarify exactly when the six months is to start. Is it to be from vacant possession, that is, from the time the residents belongings are removed and the keys returned to management? or are some other conditions to be inserted?

On the basis of pre-drafting discussions we fear that vacant possession will be interpreted to mean after refurbishment is carried out. This would mean that the six month period would be considerably extended, in many cases by a further six months or more.

Refurbishment is under the control of management. It is often not even started for months after a unit is vacated, especially if there are other units on the market. The continued payment of ongoing charges by the resident will diminish the incentive for operators to get refurbishment and re-sale under way expeditiously.

The effect of defining vacant possession as being after the completion of refurbishment would mean the ongoing charges may well have to be paid for a year or longer, not the six months so frequently referred to.

Recommendation 75 of the Statutory Report, if adopted, will mean ongoing charges can be deducted from the eventual refund entitlement when the unit is sold. It is thought this will assist those who have had to move to residential

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care who often have to pay at the same time for both the unit they left and the aged care facility they have moved in to. The helpfulness of this provision will be reduced if the time to pay ongoing charges is extended as discussed above. (In South Australia, where they already have this provision, interest is not charged on the accrued charges but in WA's proposed legislation interest will be charged.)

2. Retrospectivity

The provisions in regard to limiting ongoing charges as outlined in the Report are not retrospective. As a result, current residents will be disadvantaged in the sale of their units and will have to pay ongoing charges for ever lengthening periods because operators, to avoid becoming responsible for the charges themselves, will inevitably give priority to selling those units which are subject to new contracts having the prescribed limitation period.

For these reasons we believe the legislation in this regard needs to be retrospective. In view of the need for business to adapt to a new requirement of this nature a phasing in period of two years would be reasonable.

In summary: WARCRA supports

1. a requirement for ongoing charges to cease after a prescribed period following which the costs are not to be devolved to other residents.

2. the prescribed period to be no longer than six months from vacating the unit, removing belongings and returning the keys to management - apart from instances where probate makes this impossible.

3. Retrospective application of the legislation in regard to ongoing charges, possibly after a phasing in period.

W.A.R.C.R.A.

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EXCESSIVE OR UNWARRANTED INCREASES IN RECURRENT CHARGES: THE SPECIAL RESOLUTION REQUIREMENT
Part 1 of The Retirement Village Legislation
Recommendation 35 of the Statutory Report

Recommendation 35 reads *That the legislation be amended to provide that, where residents in a village believe increases in recurrent charges to be excessive or unwarranted, they may, if the matter cannot be resolved by any other means under the legislation and within a reasonable time, and if agreed by a special resolution of residents, make an application to the SAT to have their case heard.*

This amendment provides the only opportunity for residents to have any input in the way the village budget is managed. Increases in recurrent charges over which residents have no control are a matter of serious concern for residents and an issue which is increasingly coming to discourage prospective residents from buying into a village. We believe the requirement for a special resolution should be deleted for the following reasons:

- Under the proposed amendment residents cannot simply go straight to the SAT. They must first seek to resolve the problem 'by any other means under the legislation'. That is they must first invoke the village dispute resolution procedures as set out in the legislation, and then apply to Consumer Protection for conciliation or any other dispute resolution procedure they propose. There are enough hurdles in place without having additionally to go through the onerous business of securing a special resolution.

- The provision is fundamentally unfair in that an individual's right to seek justice may be withheld by reason of the illness, ignorance, apathy or anxiety of others. In NSW an individual can take complaints to the Tribunal. The Residents' Association in NSW was appalled to hear of our proposed legislation. In fact, in WA until now, only individuals could take a matter to the SAT. It seems the functioning of the SAT can be changed to make life easier for operators and less so for residents.

- Arranging a special resolution is not a simple process. The meeting must be called by management, not by residents. If the village does not have a residents committee (many do not) 5 residents or 10% of residents, whichever number is greater, must request it. In some villages without residents' committees, 30 or 40 residents would have to make the request. At the meeting, a special resolution requires that 75% of those present (providing there is a quorum) must vote in favour

of the motion. The whole procedure is made more difficult by the aspects discussed in the following paragraphs.

- Although the legislation requires management to call the meeting, it does not require them to chair it. However calling the meeting gives managers the opportunity to take control of it, to control the wording of resolutions and to influence the outcome with reference to the possibility of substantial legal and accounting costs being incurred which residents would have to pay. New contracts brought to our attention have clauses to the effect that management is not bound to act on special resolutions passed by residents. Overall, it results in a situation where residents may be unclear about their rights and may be deterred from seeking or obtaining a successful outcome even when warranted.

- In addition, relatively few residents in a village will have the background to assess whether an increase in charges is excessive or unwarranted. Consequently the special resolution requirement for a 75% vote makes excessive demands on the few to 'campaign' for support both in having the meeting and in securing the 75% support needed. It places too high a burden on a few, who may have health and independence issues, without having to embark on a 'political campaign' in order to achieve a fair decision.

- It is worth noting that in many villages residents are required to pay recurrent charges by direct debit with automatic payment of increases and no monthly receipt given. When other accounts are also included it can become difficult to keep track of payments.

- The process required for a special resolution is intrinsically divisive. Some residents will be extremely anxious about upsetting management and even more worried about any suggestion of taking a matter to court. It will lead to some residents being labeled 'stirrers' and 'troublemakers' and others blamed for not helping to resolve the problem.

A recent letter from the Minister's office on this topic stated '*once residents appeal to the SAT against excessive or unwarranted fee increases, the SAT may order a stay on any fee increases until the matter is heard. This will provide a collective benefit to residents, but would be disruptive to the operation of the village.*' Such action is most unlikely to be disruptive to the operation of the village as all that would be stopped is the increase, not the normal monthly fee. If necessary, interim procedures could be considered and put in place, such as requiring the continuation of the previous recurrent charge perhaps with a CPI increase.

In summary the need for a special resolution is unfair, unnecessary and impractical. It is based on the idea the resident would otherwise be troublesome without recognising that the imbalance of power between resident and operator, and the lack of any avenue of legal or financial information and advice, places residents in a very difficult, frustrating position.