

### Agreement in Principle

**Ms LINDA BURNLEY** (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering)  
[10.04 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Retirement Villages Amendment Bill 2008. The bill amends the existing Retirement Villages Act 1999, which commenced on 1 July 2000 and regulates the retirement village industry in New South Wales. Retirement villages are becoming an increasingly popular housing option for our elderly citizens. Hundreds of village operators in New South Wales currently provide accommodation for tens of thousands of retirees. With the ageing of our population, unquestionably the retirement village industry will continue to grow in the coming years. It is important for both residents and operators that the Government stamps out unfair practices and protects vulnerable consumers while at the same time setting clear guidelines for operators in the management of their villages.

When the Act was introduced it contained a five-year statutory review requirement, which was brought forward by 12 months as part of an earlier package of amendments passed in 2004 in response to concerns from residents. No doubt some will be critical of the Government for the delay in introducing this bill. Given the importance of the legislation to so many people, the Government has put considerable effort into consulting and listening to the views of all interested parties. The bill deals with a range of complex issues and I make no apology for taking the time needed to get it right. More than 300 submissions were received in response to the Issues Paper in 2004, illustrating the high level of interest in this review. Around 50 submissions followed the tabling of the review's report in 2005, even though submissions were not actively sought at the time. The bill largely implements the recommendations outlined in the report.

A consultation draft amendment bill was tabled in November 2006, giving all interested parties the opportunity to have a look at the detail of the proposed reforms. More than 500 additional letters and submissions have been received since the draft bill was publicly released. Both my staff and I, along with my predecessors and the Office of Fair Trading, have visited retirement villages, talked to residents and operators about the reforms, and carefully considered all the concerns and issues that have been raised. It cannot be said that the consultation on this bill has been anything other than comprehensive. As a result of this extensive consultation process, the bill that is being introduced today contains a substantial number of refinements and improvements when compared with the exposure draft. This shows that the Government is listening to the community. However, the key elements of the reform package have remained essentially the same.

I am fortunate as Minister to have a ministerial advisory council that specifically considers issues relating to retirement villages. Naturally, the advisory council has played an important role in the development of these amendments. I want to take this opportunity to publicly thank all the members of the council for their diligent consideration of the issues and their constructive advice. One of the resident representatives on the council has this to say:

The Review has been going on for a long time and it is certainly not before time that it be brought to an end. Obviously, that time is now. In our system of government matters like this are determined by the Minister, the Government and ultimately Parliament. It is rare that any proponent gets all they ask for. That is true of this Bill. A number of good, sincere and experienced people have had an input. We could not all be right about everything. However, any outcome is an outcome that is negotiated and understood to be a negotiation. This has certainly been the case in relation to this Bill.

The above statements reflect the views of many residents who have written to me on this subject. Equally, operators have expressed the view that they are keen to see the bill finalised as soon as possible. Turning now to the provisions of the bill, there are a wide range of changes to the law that will benefit both residents and operators.

The bill seeks to lift some of the compliance burden from smaller village operators. These are often run by a group of community-minded volunteers in regional and country towns. With the consent of residents, the bill will provide that operators with an annual recurrent income of less than \$50,000 will no longer have to incur the expense of having their annual accounts audited or providing quarterly accounts to residents. These operators will be able to use the money saved to provide more worthwhile services to residents. The lemma Government is committed to reducing red tape and removing unnecessary restrictions on business. Under the bill village operators will no longer need to seek the consent of residents to the continual appointment of the same village auditor from year to year.

Operators will be able to make allowance for contingencies and to vary expenditure between line items in a village budget. This will provide them with greater flexibility over the financial management of their village.

Operators will also be able to seek the consent of residents not to have to supply them with a budget prior to each financial year—but that is only with consent. Additionally, operators will no longer have to seek the consent of residents for increases in recurrent charges that are at or below the rate of inflation. This will be an incentive to operators to keep their costs down, which should help residents struggling to meet rising costs on fixed incomes.

The bill makes a number of changes to the law regarding the provision of information to retirees thinking about moving into a retirement village. Under the reforms, prospective residents will need to be given a general inquiry document when they make an initial inquiry, followed by a more detailed disclosure statement if they decide to go ahead and move in and express an interest in a particular unit.

These amendments should help to better inform prospective residents by providing the right sort of information at each appropriate stage in the decision-making process. A significant new change is the introduction of a 90-day settling-in period for incoming residents. During this time if a resident passes away, needs to move to a nursing home or hostel, or finds that retirement village life is just not for them and elects to move out, they will be liable only for fair market rent for the period of their occupancy and a reasonable administration fee.

Under the bill all operators will be required to notify the Department of Lands that land they own is being used to operate a retirement village. This will lead to the creation for the first time of a comprehensive public register of all retirement villages in New South Wales. It will provide accurate statistics and assist education and compliance programs.

Unquestionably, the most significant changes in the bill involve the treatment of capital maintenance and capital replacement in both the homes of residents and common areas of retirement villages. Of the submissions that were received during the course of the review, this was by far the biggest issue that drew the most comment. All sides agree that the present approach, which makes residents responsible for maintenance and operators liable for replacing capital items, is not working. It creates disputes over definitions, encourages attempts at cost shifting, and leads to situations where items are repeatedly repaired beyond their economic life simply because the residents have to foot the bill.

Under the amendments introduced today, all capital works, including maintenance, replacement or new improvements, will be treated in the same way. The cost of such work will be required to be shared between the residents and each operator as agreed between the two, with no more—and I repeat, no more—than 50 per cent being funded by residents. These changes should take some of the pressure off the need for recurrent charges to rise, and in some cases may result in a reduction in the charges residents are currently paying. This will be particularly beneficial to residents on fixed incomes who struggle to meet the rising costs each year.

Another reform likely to be well received by residents is that operators will be required to meet any budget deficits at the end of each financial year, rather than simply rolling them over or asking the residents to pay a special levy. This should minimise overspending and help to make operators more financially accountable for their decisions. Transitional provisions will be put in place to fairly deal with existing budget deficits.

Safety and security are important issues for many of the elderly in our community, including those living in retirement villages. The bill will require operators to prepare written safety and emergency procedures and to take reasonable steps to ensure that all residents and staff are familiar with such procedures. They will also be required to undertake a safety inspection at least once a year and report back to residents on the findings of each inspection.

Relief is to be given to hardworking volunteers who find themselves elected to the same position on residents committees year after year. A three-year cap is to be introduced that should encourage other residents to become involved and lead to a rotation of positions, which should increase the knowledge base among residents.

The maximum number of proxies any person can hold is to be reduced from five to two, and a ballot voting system will be introduced for matters requiring special resolution. This should increase the participation level of residents and result in voting outcomes that are more representative of the resident population.

The bill proposes to give residents of retirement villages greater control over their living environments. Residents will be able to add or remove fixtures, or make alterations to the premises with the consent of the operator, which shall not be unreasonably refused. Many residents pay a large amount of money to enter a retirement village and occupy their premises for many years. It is only fair and reasonable to expect that they may wish to make changes inside the premises to suit their individual tastes or needs.

Often disputes arise in retirement villages because of a lack of communication between residents and the operator. To improve communication, under the bill operators will be required to hold annual management meetings with their residents. Importantly, residents will have the opportunity to raise questions prior to or at these meetings and the operator or their representative will be obliged to provide answers in reasonable detail.

A concern for many residents and their families is the ongoing charges they remain liable to pay even though they have moved out of a village or passed away. It can be particularly onerous on those who move to a nursing home or hostel and are faced with paying two lots of fees. Currently, where a resident does not own their premises, the maximum period charges can continue is six months from the time they vacate or die. The bill will reduce this period to six weeks, which should encourage operators to take all reasonable steps to find another resident as soon as possible.

Regrettably, there are occasional instances when a retirement village operator goes broke and the village cannot be sold. This can place residents in a difficult position in terms of getting their money back as an unsecured creditor. To address this issue the bill will introduce a statutory charge, which will give residents priority over certain other registered interest holders in the event of a Supreme Court ordered sale of the village.

Extensive consultation has been conducted during all stages of the review process and on the bill itself. Many submissions were received from residents of villages and their families, individual village operators, and from the lead stakeholder groups: the Retirement Village Association, the Aged and Community Services Association and the Retirement Village Residents Association. The issues raised in all the submissions were carefully considered in developing and finalising the bill.

This bill will not only protect the rights of residents of retirement villages but also provide a legislative framework that will allow the retirement village industry to continue to develop and expand. I am proud to introduce the Retirement Villages Amendment Bill 2008 because it demonstrates the Government's commitment to ensuring appropriate consumer protection for a vulnerable segment of our population without compromising the viability of this important and growing industry. I commend the bill to the House.