

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.08 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill now read a second time.

This bill demonstrates this Government's commitment to ensuring appropriate consumer protection for a vulnerable segment of our population—that is, the people who live in retirement villages. It does that without compromising the viability of this important and growing industry. Sadly, there has been a significant degree of intentional misinformation circulated about this bill, primarily by the Opposition. Either the Opposition does not understand the bill or members opposite are deliberately trying to scare retirement village residents. That is simply disgraceful.

The new Minister committed to meet with peak groups to discuss the bill, and those meetings have taken place. Key stakeholders have expressed strong general support for the proposals in the bill and all want to see the bill passed by the Parliament. One set of amendments in the bill proposes to introduce a new model for sharing the costs of maintenance and replacement of capital items. Although this proposal would have removed a major area of conflict it has nevertheless caused concern among some residents.

Many people living in retirement villages are on low or fixed incomes, and the suggestions of massive fee increases that they have been hearing from the Opposition have naturally caused them great anxiety. Those concerned residents have now said they want to keep the current system: they pay for maintenance and the operator pays for replacement. The Government has decided that, given the level of concern of residents, the best option right now to allay these concerns is to make these changes to the bill. I foreshadow that in Committee the Government will move amendments that will take account of those concerns. I am pleased that these arrangements were reached following discussion with the Retirement Village Residents Association, the Retirement Village Association and the Aged and Community Services Association, which represents the not-for-profit sector. I can advise honourable members that those key stakeholder groups fully support these measures.

We nevertheless acknowledge that residents still have some concerns about new sections in the bill. The Minister has been hard at work talking to residents and I am happy to say most of their concerns have been put to rest. However, the residents association has raised the distinction made between registered interest holders and residents on loan/licence arrangements when it comes to paying recurrent charges after vacating and to the statutory charge that will be placed over land to protect residents' refund entitlements. Those issues raise legal and financial questions that would need to be examined in detail before they could be addressed in legislation.

The Government is not going to rush in and make last minute changes to the bill that could have unanticipated negative impacts on residents and operators. However, the Minister has committed to giving further consideration to these issues as they operate in practice. She has also undertaken to consult residents and other stakeholders in preparing regulations to address any further concerns about the details of some aspects of the bill, for example, defining more clearly what constitutes capital repair and replacement.

The bill includes many other amendments that will benefit residents and streamline procedures for operators, and I will go through those briefly. Retirement villages are becoming an increasingly popular lifestyle choice for our older citizens. Hundreds of villages operate in New South Wales, providing accommodation for tens of thousands of retirees. The Retirement Villages Amendment Bill 2008 deals with a range of complex issues, and time was needed to properly consult on the proposals. Given the significance of the legislation to so many people, the Government has put considerable effort into consulting and listening to the views of all interested parties. More than 300 submissions were received in response to the issues paper that was released in 2004, illustrating the high level of interest in this review. Further submissions followed the tabling of the report of the review in 2005. This bill largely implements the recommendations outlined in that report.

A consultation draft amendment bill was then tabled in November 2006, giving all interested parties the opportunity to examine the detail of the proposed reforms, prompting more than 500 additional letters and submissions. It is fair to say that both residents and operators have been involved in the development of the reforms. The concerns and issues that they raised have been carefully considered. It cannot be said that the consultation on this bill has been anything other than comprehensive. The proposals in the bill are the result of this process and clearly demonstrate that the Government is listening to the community. The Retirement Villages Advisory Council has also played an important role in the development of these amendments. Their diligent consideration of the issues and constructive advice is acknowledged and appreciated by the Government. All parties involved have expressed the view that they are keen to see the bill finalised as soon as possible.

I turn now to the provisions of the bill. A wide range of changes will benefit both residents and operators. The

New South Wales Government is committed to reducing red tape and removing unnecessary restrictions on business. The bill seeks to reduce the compliance burden for smaller village operators. Community-minded volunteers in regional and country towns often run these smaller villages. The bill will provide for residents of villages with an annual recurrent income of less than \$50,000 to consent not to have their annual accounts audited, or not to be provided with quarterly accounts. They will also be able to consent to not being supplied with a proposed annual budget. These smaller villages will be able to use the money saved to provide more worthwhile services to residents.

In addition, operators of villages of all sizes 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 vary expenditure between line items in a village budget as long as the level of services in the village is not reduced and total approved expenditure is not exceeded. This will provide greater flexibility over the financial management of a village. 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, and this should help those residents trying to meet rising costs on fixed incomes.

The bill makes a number of changes to the law regarding the provision of information to prospective residents. 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. They will also reduce the compliance and cost burden for operators.

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 only be liable for fair market rent for the period of their occupancy and a reasonable administration fee. However, I should point out that the outgoing resident's entitlements will not be affected if the new resident decides to leave.

All operators will be required under the bill 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, which will provide accurate statistics and assist education and compliance programs. 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 just 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 are included in the bill to fairly deal with existing budget deficits as well as providing a time frame for the removal of these existing deficits.

Safety and security are important issues for many elderly people, 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 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 those hardworking volunteers who find themselves elected to the same position on residents' committees year after year. A three-year cap is to be introduced, which should encourage other residents to become involved and lead to a rotation of positions that 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 is to be introduced on 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 also 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 allow them to make changes to the inside of their residence 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, operators will be required under the bill 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 a particular concern for those who move to a nursing home or hostel and are faced with paying two lots of fees.

Currently, when a resident is not an owner or registered long-term lease holder, the maximum period over which charges can continue is six months from the time the resident vacates the premises. 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. Registered interest holders, including owners, currently face paying these ongoing fees indefinitely until the unit is sold. The bill significantly improves this situation for these residents by capping the

length of time they are solely responsible for these fees to 42 days. After this time they will only be required to pay a share of these fees in the same proportion as they will share in the capital gains from the sale of their unit.

Regrettably there are occasional, albeit rare, instances when a retirement village operator goes broke and the village cannot be sold as an ongoing concern. 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 those residents who are not owners or registered long-term leaseholders priority 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 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 of the submissions were carefully considered in developing and finalising the bill. This bill not only will protect the rights of residents of retirement villages but also provide a legislative framework that will enable the retirement village industry to continue to develop and expand to meet the needs of our ageing population. I commend the bill to the House.