

**Health, Communities, Disability Services and Domestic and Family Violence Prevention Comr**

**From:** [REDACTED]  
**Sent:** Tuesday, 20 November 2018 1:05 PM  
**To:** Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee  
**Subject:** Submission: Health and Other Legislation Amendment Bill 2018  
**Categories:** Submission

20/12/18  
Gordon Saul

[REDACTED]

Health and Other Legislation Amendment Bill 2018  
Changes to The Retirement Villages Act, 1999.

Dear HCDSDFVP Committee members,

I have watched with some concern the changes that have been enacted to the Retirement Villages Act (1999) over the last number of months, however, it is the most recent proposed amendments that have prompted me to write this submission.

The proposed amendments to the Retirement Villages Act 1999 contained within the Health and Other Legislation Amendment Bill 2018 seek to provide parity between the obligations of Scheme Operators and Retirement Village owners within a compulsory buyback framework covering strata title, right to occupy and leasehold arrangements in retirement villages. These changes seek to require the scheme operator to purchase from the vendor their interests in a village, if that interest is not sold within 18 months of leaving a village.

I would argue that there is a fundamental difference between a right to occupy or leasehold arrangement, and an interest in a freehold strata title. The difference is both practical and philosophical. When a purchase is made in a freehold, that person owns the property, and is subject to the vagaries of the real estate market in the same sense as any land owner. When a person purchases a right to occupy or a leasehold interest, then their interests are governed by contract law. You may also bear in mind that those entering into a strata title purchase are not paying any moneys upfront directly to the scheme operator, in contrast to a right to occupy or leasehold arrangement. Rather, the strata title scheme operator is only remunerated when a unit sells, and doesn't have the luxury of an entry fee to rely on. It is noted in the discussion around these amendments that 7.4% of all retirement units available in Queensland have a strata title. I would point out that the majority of these are within smaller, owner operated villages that actually have significantly lower fees than many of the "corporate" villages with alternative fee models.

Previously, it has been in both the scheme operators and the resident interests to see an increase in value for the property as a whole. This is one of the rare occasions when a business operator and their clients (in this case the residents) interests precisely coincide. A better village, better services, better management, better maintenance and care is exactly what both parties want, as the results are an improved quality of life and hopefully, a waiting list of people wanting to enter a well run village. I am not sure that this will still be the case in the future, as there may be less incentive to both parties to improve a village, particularly if the village is caught in a real estate market lull with significant unsold units. Note that it is the strata title owners responsibility to sell their property, and to choose their own real estate agents. These amendments will adversely impact the scheme operator if the vendors choice of

agent or selling method is poor. One can well imagine the scenario where there is no incentive to promote a sale through advertising or flexibility on price, when the vendor can be assured a return through these proposed amendments. It is also the former residents responsibility to return the unit to a reasonable state for sale. This can often, and frequently does, take months. As scheme operator, we endeavour to assist in any way we can, however, particularly with deceased estates, this is often a long drawn out process that is out of the scheme operators control.

The end result of this amendment, should it be passed, will be for me to increase the cost of the deferred management fee charged on exit, actually resulting in a lower return to the seller or their estates, and increasing their financial hardship. Quite apart from that, I work very hard to ensure a friendly cohesive village environment, and this legislation simply lays the foundation for conflict and recrimination as former residents and their families battle with the scheme operator over the value of their unsold units. Indeed, I see this amendment being a lawyers and valuers picnic, resulting in increased costs to all parties and a resultant diminution in returns for all parties, barring the aforementioned lawyers and valuers. Another issue at play here is how the remaining residents see the value of their investment in their units. Whilst a scheme operator and a former resident is in a value dispute, the remaining resident will feel very uncertain and fearful about their investment. The great strength of strata title units is that it is a known ownership model, understood by all, and is secure. The proposed amendments may well increase a sense of insecurity, the opposite of the intention of these amendments, and may significantly erode the peace of mind and tranquillity we all seek as we grow older.

As discussed above, I believe this proposed legislation has a number of unintended consequences, and will probably result in increased deferred management fees in the strata sector and in increased incoming fees in the case of the leasehold and right to occupy sector – how can it not?. It increases the risk to the scheme operator, and the stated aim of providing “financial certainty” is uncertain, with the consequence to the resident seeking to move on to a higher level of care, being significantly less funds to contribute to their next choice, and may well result in a lowering of their standard of living and general well being. In many cases, the amendments proposed here will as often reward the beneficiaries of an estate, rather than the residents these amendments seek to protect. As studies have shown, 65% of residents in Nursing Homes die within 1 year of admission (Geripal, 2010), so sales proceeds are passed to the estate. This should also put into perspective the 18 month time frame proposed in these amendments.

I am the owner of a modest 51 unit independent living retirement village in Cairns, that I brought out of administration, and have spent the last eight years building up the village through caring, committed management, improved maintenance and security, improved facilities and services with significant financial contributions from myself well above those required under the act. A scheme operator often walks a tight rope between maintaining a nurturing, healthy village environment and making any return on investment, with residents being particularly sensitive to perceived inequity. The residents at Heritage Gardens are not wealthy retired professionals, and they are in the main reliant on their aged pensions rather than private superannuation. I understand the motives behind these proposed amendments, and we are very sensitive to the concerns of residents moving to higher care, however, the proposed amendments may well have an adverse effect on residents.

Please include me in any further correspondence or public discussion on this matter.

Yours Sincerely,

Gordon Saul

Bibliography:

Geripal. 2010.: <https://www.geripal.org/2010/08/length-of-stay-in-nursing-homes-at-end.html>