



Speech by

Hon. JUDY SPENCE

MEMBER FOR MOUNT GRAVATT

Hansard 21 July 1999

RETIREMENT VILLAGES BILL

Hon. J. C. SPENCE (Mount Gravatt— ALP) (Minister for Aboriginal and Torres Strait Islander Policy and Minister for Women's Policy and Minister for Fair Trading) (11.51 a.m.): I move—

"That the Bill be now read a second time."

The objectives of this Bill are to—

- declare the rights and obligations of residents and scheme operators;
- promote fair trading practices in operating retirement villages and to bring about disclosure of information to prospective residents of retirement villages;
- also, to encourage the continued growth and viability of and adoption of best practice standards by the retirement village industry;
- and facilitate participation by residents in the affairs of retirement villages;
- as well, to provide a clear regulatory framework, including a dispute resolution process for the retirement village industry.

The retirement village industry in Queensland is currently governed by the Retirement Villages Act 1988—"the Act". Problems have arisen in the industry due to changes over the last decade. The Act has been subject to criticism from both village operators and residents because of its failure to address many issues that are of concern—

- there has been no easy way for residents or prospective residents to compare one village with another;
- there are restrictions on residents' ability to dispose of units;
- residents or their estates may be obliged to continue paying maintenance fees long after they have vacated the village;
- residents or their estates may be required to continue to pay for personal services long after they have vacated the village;
- there is no mechanism for settling disputes arising over who is responsible for capital replacement and maintenance;
- there is also no special mechanism for dealing with other disputes between residents and operators.

In July 1998, I established a working group comprising representatives from key operator and resident groups, which met between August 1998 and January 1999. This working group was facilitated through the mediation services provided by the Alternative Dispute Resolution Branch in the Department of Justice and Attorney-General. I released a draft Bill for consultation in May, and industry and resident comments were welcomed in the further development of the Bill. The provisions in the Bill will—

- replace the approval process with a more streamlined registration process, provide operators with a right to appeal the chief executive's decision, and provide for a means to cancel registration of a retirement village scheme;
- establish minimum requirements for residence contracts, including content of contracts, holding deposits on trust, cooling-off period, termination rights and processes for reselling a resident's right to reside in a unit;

ensure prospective residents are provided with relevant information in the form of a public information document before they sign residence contracts;

clearly outline village operator's obligations, including the establishment of separate capital replacement and maintenance reserve funds, working out paying and increasing general service charges and the cessation of personal and general service charges for former residents;

limit the scope of general and enduring powers of attorney given by residents to village operators;

clearly outline village operators' obligations in relation to insurance for the village, the provision of financial statements to residents on a quarterly and annual basis;

include enhanced provisions for the creation and release of statutory charges over retirement village land;

provide residents with opportunities to participate in the affairs of the village through the establishment of residents' committees;

introduce a three-stage dispute resolution procedure, including the establishment of a new retirement village dispute tribunal.

Retrospectivity

Many of the provisions in the Bill will apply to existing residence contracts. These provisions relate to—

termination rights;

the resale process;

the prohibition on operators exercising powers of attorney for residents;

the obligation on operators to establish capital replacement and maintenance funds;

the cessation of personal services charges 28 days after a resident vacates the village;

the dispute resolution process; and

the timing of payment of exit entitlements.

Also, under the transitional provisions of the Bill, operators of existing schemes are given a period of six months in which to provide to the chief executive updated public information documents.

The working party considered the application of the Bill to existing villages and residence contracts and it was considered that these matters are the responsibilities of operators and residents and the Bill is merely setting out a structure for both. Some provisions are stated not to apply differently to existing contracts. These include—

the nature and cost of reinstatement work in the context of a resale of a unit;

the ability of an existing contract to provide for a resident's service charge to contain a contribution to a capital replacement fund; and

the continuation of a former resident's responsibility to pay a service charge after vacating a unit.

The working party considered that, if the Bill applied to existing contracts in these cases, it would create undue financial hardship on operators and their financial structure could be affected. The working party agreed that the main disagreement about the continuation of service charges after vacation would be dealt with more effectively by having stricter processes in place to encourage more timely resale of units. In this case, any breach would entitle a resident to seek intervention by the tribunal.

Approval/registration process

The Bill introduces a new registration process that will oblige operators and their solicitors to provide the chief executive with copies of residence contracts and public information documents that will comply with the requirements of the Bill. If the chief executive is satisfied that the documents meet the requirements of the Bill, the operators will then be able to promote the village and enter into residence contracts.

Villages currently approved under the Act will be deemed to be registered under the Bill but will be required, within six months of the Bill's commencement, to update their contracts and public information documents to comply with the requirements of the Bill. Existing exemptions from the Act or from specific provisions of the Act will continue for two years from the date of commencement of the Bill.

The Bill contains appeal mechanisms if the chief executive refuses to register a village and it will be an offence to operate an unregistered village. Residents of an unregistered village can terminate their contracts if they learn the scheme is not registered.

Residence contracts, rescission, termination and sale of residence rights and refunds

The Bill allows a prospective resident to terminate a residence contract within 14 days after signing the contract. If the contract is terminated in this period, the resident is entitled to a full refund of any money paid to the operator. In other cases—except where the scheme is not registered—a resident may terminate a contract by giving one month's notice to the operator. If the scheme is not registered, the resident can terminate by written notice within 14 days after becoming aware that the scheme is not registered. An operator can terminate a resident's right to reside in limited circumstances relating to breach of contract, damage to the unit or to another person or another person's unit or if the accommodation becomes unsuitable for the resident. If the right to reside is terminated and the operator has the right to resell the right to reside, the parties are encouraged to agree about the work needed to reinstate the unit to its condition prior to occupation by the resident. The work must be completed within 90 days after the resident vacates the unit or within a time agreed between the parties.

The Bill sets out the circumstances in which the resident or the operator would be liable to pay the cost of reinstatement. Within 30 days after the termination notice is given, the parties are encouraged to agree in writing of the resale value of the right to reside. If they are unable to agree, the operator must obtain a written valuation within a further 14 days from a valuer. If a right to reside is not sold within six months after termination, the resale value may be updated. If a right to reside is not sold within six months after termination, the resident may engage a real estate agent to sell the right to reside.

A resident will also be entitled to be paid an exit entitlement within 28 days after the right to reside is sold. The Bill sets out the procedure to be adopted when a right to reside is being resold. This includes advising the resident of all offers for the right and procedures where the right is sold for less than the agreed value. The costs of selling the right to reside are to be shared by the resident and the operator in the same proportion as they are to share the proceeds of sale.

Public Information Documents

Operators will be required to provide prospective residents with a standard form public information document that focuses on the most important information residents need to know. The document forms part of the village's residence contracts and must be registered.

Responsibility for Capital Replacement and Maintenance

Expenditure for capital replacement will generally be the responsibility of the operator, with a number of exceptions including:

- capital items not owned by the operator,
- expenditure due to deliberate or wilful damage, or accelerated wear, and
- all existing contractual arrangements whereby residents are responsible for the cost of refurbishing their units.

The Bill provides that the village operator is solely responsible for the cost of the village's capital improvement including capital improvement of the communal facilities. Residents will be generally responsible for the ongoing maintenance of their villages. The maintenance of a village's assets, including residential units, is important for the long-term life of the village.

The financial strength of villages and the maintenance of the value of the residential units in them may depend to a large extent on their physical condition. As residents move in and out of villages, it is clear a commitment to maintaining standards must be long-term. Incoming residents have a right to expect that adequate provisions have been made for the ongoing maintenance of the villages.

Before deciding a budget for the capital replacement fund, the operator must obtain a quantity surveyor's report about the expected capital replacement costs for the village for the next 10 years and then decide the amount to be held in the fund based on the report. The operator must adopt a budget for the fund for each financial year based on the amounts needed over the next 10 years. The operator must also establish a maintenance reserve fund for maintaining and repairing the village's capital items.

Residents are solely responsible for contributing to the fund. The operator must decide a budget for the maintenance reserve fund and after obtaining a quantity surveyor's report about expected maintenance costs for the village for the next 10 years.

Service Charges

The Bill provides that residents will collectively pay for the general operational costs of maintaining, managing and servicing the village, with operators being responsible for their share of the costs associated with any unsold units owned by them. No new service charges will be allowed to be introduced to an existing village without the approval of the majority of the residents likely to receive those services.

For new contracts, when a resident leaves a village, the resident will be liable for general service charges for either the period after the resident vacates the unit until the right to reside is sold, or 90

days, whichever period is the shorter. If the right to reside is not sold within 90 days, the resident and operator are each liable to pay the general service charge in the same proportion as they are to share the sale proceeds for the unit.

After a great deal of discussion with the working party, it was agreed that these provisions would not apply to existing residence contracts. The agreement was reached after operator representatives agreed to the remainder of the resale provisions applying to existing residence contracts and agreed to giving the tribunal power to order the payment of an exit entitlement to a resident if those resale provisions are not complied with.

Statutory Charge Provisions

The Bill provides that the statutory charge secures residents' rights to occupy their residential premises, to use the common facilities of the village and to the payment of refunds due on the termination of their residence contracts. If new land becomes retirement village land, the charge on the original retirement village land will be made to include the new land. The Bill contains provisions in relation to orders by the Supreme Court for the sale of land the subject of the charge.

Dispute Resolution Process

The Bill provides a new three-stage process for the resolution of disputes between operators and residents relating to the parties' rights and obligations under the residence contract or under the Bill. The first stage of the process involves a mandatory dispute resolution process within the village. Where the dispute cannot be resolved, a mediator can be appointed to resolve a dispute after a notice of the dispute is lodged with the chief executive. If an agreement is reached, the Bill provides for a mediated agreement to be made.

If the dispute is still not resolved, the Bill provides for a dispute to be referred to the chief executive, upon the payment of a fee. The chief executive will then appoint a tribunal from an available panel. The tribunal will be composed of an appointed chair and representatives from industry and residents. The chair will be a person who has been a District or Supreme Court judge, or lawyer of at least five years standing. The tribunal can make the orders it considers appropriate to resolve a dispute.

There is provision in the Bill for applications to be made directly to the tribunal where:

- a resident is threatened with removal, deprivation or restriction,
- a resident is given false or misleading documents, or
- an operator contravenes provisions relating to the resale process.

In relation to contraventions of the resale process provisions, the tribunal will have the power to order that a resident's exit entitlement be paid. This was agreed to by the working party in the face of opposing views about the residents' calls for a compulsory buy-back scheme.

Powers of Attorney

The Bill prohibits an operator from exercising or purporting to exercise a power of attorney under either a limited, general or enduring power of attorney. This will apply to both existing and future contracts. There are three exceptions that are limited to certain specified cases: when the resident is a relative of the operator, when the power is granted under the Body Corporate and Community Management Act 1997, or when the power is exercised to surrender a lease. The purpose of this clause is to protect residents who may be in a vulnerable position and who may be coerced by an operator to grant a power of attorney to the operator merely because of the position of power of the operator compared to that of the resident.

Residents have a number of options regarding giving a power of attorney, including a relative, the public trustee, a solicitor, the scheme lawyer or another person other than the operator. The restriction on granting a power of attorney to an operator is recognised as a possible disadvantage for a few, but it is for the purpose of protecting the majority. The working party agreed that this provision was needed to protect the rights of residents in retirement villages.

Other Matters

The Bill contains other provisions relating to the obligation to insure the village for full replacement value, the obligation to make quarterly and annual financial statements available to residents and the ability of residents to request further information. The Bill contains significant and important innovations for the retirement village industry and will assist in the protection of residents of retirement villages. It will also operate to foster confidence in the retirement village industry and will encourage the continued growth of this aspect of the Queensland economy. I commend the Bill to the House.