



Speech by

**Mr TIM MULHERIN**

**MEMBER FOR MACKAY**

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Hansard 30 November 1999

### **RETIREMENT VILLAGES BILL**

**Mr MULHERIN** (Mackay—ALP) (5.55 p.m.): The retirement village industry in Queensland is currently governed by the Retirement Villages Act 1988. In the past 10 years there has been rapid growth and expansion in this sector, especially in the Gold and Sunshine Coast regions of our State. With an ever-increasing ageing population, Queensland is expected to see enormous growth in this sector over the coming years as the ageing in our community opt for the security of retirement villages.

In the Mackay, Whitsunday and Bowen regions there is great potential for this industry to develop rapidly from a relatively small base. A study commissioned by the former Mackay Regional Health Authority into ageing found that by the year 2011 the region's population of over 65 year olds will dramatically increase by 90%. If this is the case, no doubt there will be an accelerated expansion of this sector in the next few years to provide the ageing in the Mackay, Whitsunday and Bowen regions with first-class retirement villages taking advantage of the natural beauty the region has to offer.

The reason for this Bill is that the current Act has failed to address problems that have arisen for operators and consumers alike in this industry. This Bill hopefully will address these problems. The Minister has outlined various aspects of the legislation. I wish to speak briefly on restrictions on the grant of power of attorney provisions of the Bill which will provide consumer protection to resident unit owners. If a retirement village operator has been granted a power of attorney by a resident of the village, the operator will be prohibited by section 92 from exercising it except in three narrowly defined cases, namely: if the resident is a relative of the operator; when the power is granted for a purpose under the Body Corporate and Community Management Act 1997; or when the power is exercised to surrender a lease for the benefit of the resident.

The purpose of this provision is to protect residents who may be in a vulnerable position and who may find it difficult to resist pressure from an operator to grant the operator a power of attorney. In some cases, complaints have been made on behalf of residents that the effect of having granted an operator a power of attorney has been to put out of their hands any continuing ability to control the terms of their participation in the operation of the village, including rights to reside there.

The retirement villages working party, comprising representatives of both residents and operators, supported the inclusion of a provision to restrict the ability of operators to act upon a power of attorney granted by a resident in order to protect the rights of residents in retirement villages. It can be argued that residents are already protected, when granting a power of attorney, by the legal requirements that a witness must sign the power of attorney and certify that the resident was acting freely. However, residents were very much in support of the restrictions, and operators accepted the provision, subject to an exception being permitted to facilitate the process of having a lease surrendered in the case of a termination of a resident's contract.

Residents will continue to have a number of options for granting a power of attorney, including a relative, the Public Trustee, a solicitor, the retirement village scheme lawyer or any 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 is for the purpose of protecting the majority from the unscrupulous minority.

I wish to congratulate the Minister and her department on their efforts in getting all the stakeholders to the negotiating table by the innovative use of the Alternative Dispute Resolution Service. I congratulate them on reaching an agreement, thus enabling the Bill to be brought before the

Parliament today. As members know, there have been two previous unsuccessful attempts to introduce similar legislation since 1996. I believe that this new legislation will address the shortcomings of the old Act.

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