




Speech by

Michael Crandon

MEMBER FOR COOMERA

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CIVIL PROCEEDINGS BILL

 **Mr CRANDON** (Coomera—LNP) (4.02 pm): I rise to contribute to the debate on the Civil Proceedings Bill. The main objectives of the bill are to implement the recommendations of the Rules Committee for the repeal, reform or relocation of the provisions of the 1995 act, and to modernise and simplify provisions governing civil proceedings. The bill also amends the Associations Incorporation Act 1981, the Births, Deaths and Marriages Registration Act 2003, the Electoral Act 1992, the Justices of the Peace and Commissioners for Declarations Act 1991, the Queensland Civil and Administrative Tribunal Act 2009, the Retirement Villages Act 1999 and the Right to Information Act 2009.

I am going to restrict my comments to the Retirement Villages Act 1999 and the issue of exit fees in retirement villages. The bill will amend the Retirement Villages Act in relation to exit fees. An exit fee is the amount paid by a resident to the scheme operator upon the resident leaving the village as prescribed in the residence contract between the two parties.

When I was a financial planner I heard many stories, more often than not from families of people who had left retirement villages as a result of death or because they moved into a nursing home or moved home with family to be nursed by family in their home. Some of the stories were absolutely amazing. I used to sit and wonder how someone would enter into a contract that was so draconian that people were going to lose half of the value—the increased value in many cases—of the home that they had bought into. It amazed me, but it did happen.

The point about the pro rata treatment of the fee was never really something that I delved into with people. I looked at various contracts, and I think the member for Kawana made the comment that in his role as a solicitor he looked at many contracts and found them all to be very different. However, that was the past and this is the present. The explanatory notes state that the bill amends—

the Retirement Villages Act 1999 to provide that, in relation to particular exit fees paid to a scheme operator upon a resident leaving a retirement village, the daily pro rata calculation method will be (a) the default method for existing residence contracts where the contract does not provided an alternate method; and (b) the mandatory method for all future contracts and cannot be contracted out of ...

It takes away the possibility of an unscrupulous retirement village manager pulling the wool over someone's eyes. I think we would all agree that whenever people enter into a contract they should take legal advice so that they know upfront what their position is in their particular circumstances and what they would be up for going forward if something were to happen. So often people simply take it for granted that the people they are dealing with are being straightforward, honest and 'just like them'. Many times as a financial planner I would come across people who had just entered into a contract because they believed that everything was going to be hunky-dory. How could it possibly be wrong?

New section 53A defines how to work out exit fees for residence contracts. It talks about the section applying to an exit fee having regard to the length of time a resident has resided in the accommodation unit. If the contract was entered into before the commencement of this section, the exit fee must be worked out on a daily basis—we cannot get very much clearer than that—unless the contract provides a way of working out the exit fee that is not on a daily basis. There needs to be some other satisfactory method of doing the calculation. New section 53A(3) states—

If the contract is entered into after the commencement of this section, the exit fee must be worked out on a daily basis.

It is high time that occurred. It is going to bring fairness to the situation.

I would like to comment on the ease with which members of parliament are able to access properly researched information under the new committee system. To my mind, the committee system is working. It is also providing an opportunity for stakeholders to outline issues. For example, the QRVSO submitted that the exit fee is a key component of what residents pay. There was an opportunity for stakeholders on both sides to come forward and put their argument, and in this case they said that it is a key component of what residents pay for living in a village and enjoying the infrastructure. Exit fees constitute the primary source of income for scheme operators. It is important to know that, because we have to protect the viability of retirement villages as well. There is no point enacting legislation that brings a retirement village to its knees over time because they cannot afford to update. Capital improvement costs are always there. Capital replacement funds are always needed. The scheme operator's share of reinstatement costs is there. There are compliance costs, shortfalls in general service budgets and so on.

In its submission the QRVSO explained that the maximum percentage of exit fees is critically important in terms of how long it takes to reach the maximum and how it is calculated if the resident leaves before the fee reaches the maximum, and there are numerous ways of coming to that in the marketplace at present. It provided us with a classic example in that for a period of one year there is a 7½ per cent fee and for two years a 15 per cent fee. We immediately see the issue of the argument and the changes that are being proposed in this bill—that is, 7½ per cent for one year and 15 per cent for two years but more than one year. Straightaway we see the problem. One year and one day means an exit fee of 15 per cent, and that is why we are looking at this pro rata matter.

The member for Kawana also mentioned *Saunders v Paragon Property Investments Pty Ltd*. The matter of *Saunders and Paragon Property*, or the *Paragon* case as it is referred to in the committee's paper, was one of the main impetuses for the proposed amendments to subsection 15(2). For two years and one day the resident was charged an exit fee of 15 per cent. The resident appealed to the District Court where Judge Robin QC found in favour of the resident. So the tribunal found in favour of the retirement village and of course it was found by Judge Robin QC in favour of the resident.

In the judgement His Honour suggested that fairness is regarded as promoted by apportionment. So he is making the argument that, to be fair, if someone has been there for 1½ years charge them 1½ years worth of exit fees, not two years, and that one of the objectives of the Retirement Villages Act 1999 is to promote fair trading practices. His Honour saw no threat to viability of a village under the daily calculation method as he could not imagine any prudent operator designing a project whose profitability or viability depended on windfalls, because he referred in his judgement to the concept of someone dying after one year and one day and therefore having to pay a two-year fee as simply being a windfall. No-one in their right mind would rely on windfalls to ensure that they were viable. His Honour also referred to the daily method as the more natural approach to calculating exit fees. In closing, I say that having experienced this over the years as a financial planner it is high time that fairness becomes law. The opposition supports the bill.