Speech By

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## MEMBER FOR BURNETT

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## PENALTIES AND SENTENCES (DRUG AND ALCOHOL TREATMENT ORDERS) AND OTHER LEGISLATION AMENDMENT BILL

**Mr BENNETT** (Burnett—LNP) (5.37 pm): It is agreed that we all support legislation that is consistent with the right of every person to an adequate standard of living and that seeks to protect the most vulnerable members of our society. Access to housing is a basic right. For older Queenslanders, secure accommodation, both for personal security and for tenure, have become increasingly important. Given our rapidly ageing population and increasing need to provide more aged care and nursing home facilities, these issues need close attention to ensure regulations are working so that elderly and vulnerable Queenslanders and their families are not being ripped off by unscrupulous operators.

We acknowledge the origins of the legislation from the many reviews of retirement villages over recent years, including the review in 2012. We reported the findings of that review to parliament in 2013 and we are well on the way to implementation. There was also a 2015 submission to a Queensland parliamentary inquiry into the adequacy of protections for seniors' financial arrangements. We also know that overall many things need changing in parts of the retirement village and nursing home sector.

We were mortified when we all saw the ABC *Four Corners* program 'Bleed Them Dry Until They Die', highlighting concerns regarding high entry and exit and service charges by some retirement village operators—and I want to emphasise some, not all, retirement village operators. While *Four Corners* focused on one operator, there are many operating aged-care facilities and nursing homes that are operating fairly, clearly focused on the welfare of its residents. We know that there are many facilities operated by not-for-profit and church based groups which provide a high standard of care at a reasonable cost without fee gouging.

While there is a need for scrutiny and reform of malpractices, we should not discredit the entire sector because there are many good operators out there. I thank those stakeholders who have engaged. I have enjoyed visiting many villages from Cairns to Coolangatta and everywhere in between. I especially thank those residents who provided much insight and information for me and also the committee, going by the number of submissions it received. Currently, there are 315 retirement village schemes registered in Queensland accommodating some 42,000 residents. These villages are regulated by the Queensland Retirement Villages Act 1999.

The stated objectives of the Housing Legislation (Building Better Futures) Amendment Bill are to amend the Housing Act 2003, the Manufactured Homes (Residential Parks) Act 2003, the Residential Services (Accreditation) Act 2002, the Residential Tenancies and Rooming Accommodation Act 2008 and the Retirement Villages Act 1999. The key changes I will talk to that are being introduced in the bill relating to manufactured homes include the replacement of the form 1 home owners information document with a new two-stage disclosure process for entry into site agreements. Similar increased disclosure and cooling-off stages will apply in relation to assignments. There will be a new regime for section 69 including prohibition on a park owner working out an increase in site rent using more than

one 'basis' at a time, for example, the site rent cannot increase by the CPI. A park owner must nominate a general increase day when site rents for all eligible sites in the park will be increased on the same basis, with the next general increase day being at least one year afterwards.

For a market review, the park owner must arrange for a valuer to first consult with the home owners committee for preparing a written valuation of the market rent and must ensure that the valuation prepared is enclosed with the site rent increase notification and given to home owners. The tribunal is now empowered to appoint an independent valuer if certain criteria are met and, if so, the costs of that valuer are to be paid by the park owner.

The bill introduces a new regime for section 71. The same categories of special costs remain, but the provision's applicability has been substantially restricted. For an increase on the basis of a repair cost or an upgrade cost, the notice must state the period for which the proposed increased site rent will be payable to cover that cost. For an increase on the basis of an upgrade cost, if 75 per cent of the home owners notified agree in writing to the increase, the balance of home owners are deemed to have agreed to it as well. The tribunal is only empowered to confirm or reduce the proposed increase if it is satisfied that the proposed increase has not been included wholly or partly in an increase of site rent before; for a proposed increase to cover an operational cost or a repair cost, that if the site rent is not increased as proposed the residential park will not be commercially viable without significantly reducing the park owner's capacity to carry out the park owner's responsibilities under section 17; and for a proposed increase to cover a repair cost, the park owner could not reasonably have obtained insurance to cover the cost. These are important provisions that are now included.

Park owners must prepare an emergency plan with respect to emergency procedures, testing of those procedures and information training and instruction—this is all about making sure that the tenants are well protected—as well as maintaining the plan and implementing it in an emergency. Park owners are prohibited from restricting visitors to home owners who are providing a health or community service. Park owners are prohibited from restricting a visitor from visiting a home owner or other resident unless the park owner has a reasonable excuse. We have seen many horror stories about where park owners can utilise and abuse this provision. Section 99 now goes further to prohibit a park owner from charging a home owner administrative or meter-reading fees for the supply of utilities to a site even if the amount is charged by or for the entity supplying the utility or another entity.

There are new behavioural obligations for park owners and home owners including a requirement for park owners to provide, within 21 days, a 'complete response' to any correspondence about a complaint, proposal or question about the operation of the park received from a home owner or other resident, or a representative of a home owner or other resident. In terms of dispute resolution, the categories of 'residential park dispute', formerly a 'site agreement dispute', have been broadened and now also include the ability of a home owners committee to bring a dispute against the park owner about a matter relating to the day-to-day running or operation of a residential park, including a failure to communicate or cooperate in dealing with the matter; and the ability of a home owner to bring a dispute against another home owner about a home owner's rights or obligations under the MHRP Act. Secondly, residential park disputes are to proceed by way of a three-step process: negotiation between the parties, mediation before a mediator appointed by the principal registrar of QCAT and then an application to the tribunal.

The key changes introduced in the bill relating to the Retirement Villages Act include mandatory buyback if the accommodation unit has not sold within 18 months of termination of the residence contract, and I will have more to say on that later; regulation about the form and content of residence contracts with the requirement that scheme operators use the approved form for residence contracts; and a 21-day precontractual disclosure period, which may be waived by the resident provided the resident has received legal advice. The existing 14-day cooling-off period following the signing of the residence contract continues to apply.

The bill deals with the replacement of public information documents, and many conversations about these documents were had over a long period. I acknowledge the work of the committee in listening to and dealing with these issues. There is now a requirement for a 'village comparison document' that will be registered and must be available on the scheme operator's website for the village and provided with all promotional material; a 'prospective costs document' that contains a summary of the estimated costs of moving into, living in, and leaving the retirement village and must be in the approved form; a condition report for the accommodation unit with a process on entry and exit similar to that under the Residential Tenancies and Rooming Accommodation Act; and separation of the general services charges fund and the maintenance reserve fund with distinct obligations in respect of each fund. Separate accounts will be required for each fund, as well as an account for the capital replacement fund. There will be a distinction between 'reinstatement work', which the resident is

responsible for, and 'renovation work', which the scheme operator is responsible for, including regulation as to timing for works.

If an accommodation unit has not sold within three months of the termination date, there is a requirement to reconsider or obtain a new valuation of the resale value every three months, which has been reduced from the current six-month time frame. The amount determined by the valuer is not the new agreed resale value if it is less than the previous agreed resale value, a ratchet type provision that was well debated.

The redevelopment of a retirement village will be regulated and will require the scheme operator to comply with an approved redevelopment plan. The definition of 'redevelopment' is extraordinarily broad and includes the expansion or reduction of the size or area of a retirement village. There are new mechanics for the winding down or closure of a retirement village, which must be in accordance with an approved closure plan. There are new requirements if a scheme operator proposes to transfer control of a retirement village scheme's operation to another scheme operator. The transfer must be in accordance with a transition plan that has been approved by the chief executive. There are broader powers for the chief executive to appoint a manager of a retirement village if certain provisions of the act are not complied with, including if a closure plan or transition plan is not complied with. There will be enforceable behavioural standards for scheme operators and residents.

The bill significantly improves the consistency of language in the Retirement Villages Act 1999 regarding general services charges in section 106. The committee heard from submitters who were pleased to see that the bill resolves a fundamental problem in the RV Act that the tribunal and the courts have been grappling with for over a decade. The problem arises because the language used in the RV Act does not reflect the charging practice in villages for general services. In practice, a village prepares a budget for the cost of providing the general services for the coming financial year, and that budget sets out in separate line items the anticipated expenditure for each general service in the village such as rates, insurance, administration, gardening et cetera. The total cost of providing all services is then divided among the units in the village, in accordance with a formula in the residence contracts, to produce a monthly charge payable by each unit during the relevant financial year. That charge is known in practice as the 'general services charge'. It is a single charge covering all general services.

The amendments proposed by the bill to the RV Act in replacing sections 106 and 107 and amending the definition to 'total general services charge' will reconcile the language with the practice in villages. This change will alleviate a number of issues encountered with the existing version of these provisions. The draft amendments that will replace section 106 overcome a longstanding error regarding the CPI percentages to be applied. There is a delay in the publication of CPI figures after the end of each quarter. When a retirement village budget is produced under section 102A, the CPI figure referred to in section 106(2)(a) is not available as the current RV Act suggests. It should refer to the CPI figure last published at that time. The proposed changes in the bill will overcome this issue.

The jurisdiction of the tribunal is currently limited by the definition of 'retirement village dispute' in the RV Act. This definition is limited to disputes about rights and obligations under the residence contract, or the RV Act. This definition does not extend to disputes regarding a resident's rights under the Australian Consumer Law. As it stands, when residents have disputes that involve a combination of alleged breaches of their contract, under the RV Act and the Australian Consumer Law they are forced to run two parallel actions: one in the tribunal's retirement village dispute jurisdiction and one in the tribunal's general consumer jurisdiction, which has a monetary cap of just $25,000. If the dispute involves more than $25,000, as they often do, the resident is forced to run a parallel claim in a court in order to enforce their rights under the Australian Consumer Law. Normally this is far too much of a hurdle and the Australian Consumer Law rights are simply not asserted.

The amendments to section 70 seek to establish some parameters for the valuation of village units generally or in the context of a closure. This omission by the current legislation has exposed residents to the risk of their unit being devalued on exit as a result of business decisions by the operator during their residence which are beyond their control, such as (a) a decision to close or wind down a village; (b) an increase in the exit fees in the contracts offered by the village; or (c) a decrease in the capital gain share for residents in the contracts offered by the village. The proposed amendments to the Retirement Villages Act in relation to these provisions will act to ensure that a resident's unit is valued (a) on the assumption that the village is, and will continue, to operate as a going concern in the normal way; and (b) by reference to the exit fee and capital gain sharing arrangements in the outgoing resident's contract and not some less valuable form of contract that might be obtained by the next resident.

I turn to the proposed buyback provision, section 63. There is some support for the concept of a buyback provision to be introduced for new contracts on the understanding that there are appropriate supporting provisions. It is, however, important to note that the financial impact of this amendment will vary between operators depending on their operating model and scale. It is not reasonable for the provision to apply retrospectively to residence contracts entered into prior to the commencement of the bill; therefore, the application should be limited to residence contracts entered into after the commencement of the bill. It is acknowledged there are potential problems in relation to different tenants having different provisions within the same village.

Furthermore, it is only fair and reasonable that the 18-month period should commence on the last to occur of: the termination date within the meaning of the RV Act; the date the resident or their estate gives vacant possession of the unit; the date the resale value is agreed between the operator and the former resident or, failing agreement, a valuation is obtained that determines the resale value at which the unit is able to be marketed; or the date any reinstatement and/or renovation works to the unit are completed. It is only after the above occurs that the marketing of a unit is able to properly commence. This is important because the cooperation of the former resident or their estate is required for the above things to occur, and if they do not cooperate the sale process cannot begin.

In addition, if the operator is to be subject to a buyback obligation, the time within which a former resident may engage a real estate agent to effect a sale of the right to reside should be extended from six months to at least 12 months after the termination date so that an operator's ability to sell the right to reside is not hampered by a former resident deciding to take control of the sale by appointing a real estate agent. As above, that time frame should not commence from the termination date but from the last to occur of the above four mentioned items.

The ability for an operator to apply to the tribunal for an extension under section 171A is supported. We do not support the proposed amendments of the member for Buderim in relation to shortening this to nine months, and there is good reason for that. There are a lot of depressed markets, particularly in rural and remote Queensland. If you are in one of the cities or towns that has a market where your unit may not sell, taking it back to nine months and forcing the operator to buy that unit may have a detrimental effect.

I will turn to the proposed amendments to the Residential Tenancies and Rooming Accommodation Act 2008, in particular minimum housing standards. While there are a range of proposed amendments, of concern is the amendment proposed in the bill to allow for a prescribed minimum housing standard to be introduced by a regulation. It lists examples of matters that could be included. I do not think anyone is against the introduction of a minimum housing standard; however, the inclusion of matters such as the dimensions of rooms in the premises along with privacy and security are of concern.

It is imperative that matters prescribed in the minimum standard do not conflict or override other legislation, including the Building Act 1975, the Planning Act 2016 and local government planning schemes. The failure to consider existing legislation and regulations could lead to a dwelling being legitimately constructed but unable to be rented out due to a requirement prescribed in the minimum standard such as the dimension of rooms. Additionally, many existing properties, such as those which are heritage listed or preserved as character housing, may not be able to meet minimum privacy or security standards due to restrictions on modifying features such as windows and doors.

The amendments to the Residential Tenancies and Rooming Accommodation Act 2008 in relation to minimum housing standards generated many concerned submissions regarding the proposed insertion of 17A, prescribed minimum housing standards. It is difficult to support if we do not know the impact on financial and regulatory operations until the proposed minimum standards are drafted within the regulation; however, many submissions expressed preliminary concerns about the need for, and implementation of, this proposed insertion. There are concerns regarding the duplication of existing building codes and regulations. The RTRA Act contains an obligation for lessors to provide and maintain premises that are fit to live in and in good repair and for lessors to comply with health and safety legislation. Specific requirements for these obligations are established through current building codes and regulated through local governments including the Building Act 1975, Building Regulation 2006, Local Government Act 2009, Electrical Safety Act 2002, Fire and Emergency Services Act 1990 and Building Fire Safety Regulation 2008. A prescribed minimum housing standards regulation is likely to duplicate these existing requirements. If it is identical to existing standards this regulation achieves no improved outcomes for tenants; however, it imposes another regulatory compliance for building owners. If it is not identical to existing standards this regulation risks causing confusion as to which standard has precedent.

There is concern about the cost to property tenants and the impact on the community housing market. Rental affordability is already of significant concern to Queensland tenants, and many affordable rental properties within the private market may be deemed below standard should minimum standards be introduced. While some submitters welcome improved living conditions for tenants in private rentals and acknowledge that any significant investment towards improvements are likely to result in increased rental prices and a reduction in affordable private rentals for vulnerable tenants, this may also result in more Queenslanders seeking affordable housing through the limited stock managed and owned by community housing providers. Once again this is an important consideration which needs to be addressed.

Enforcing a minimum standards regulation would require the enforcing body to have officers skilled in building frameworks and capable of undertaking inspections across Queensland, including in rural and remote areas, to determine if standards were met. The enforcement of this regulation, therefore, would require a significant investment by the Department of Housing and Public Works and the Queensland government more generally. It could be argued that the expenditure could be better directed towards projects that increase social and affordable housing stock. We ask the minister to consider that, if this amendment to insert minimum standards is approved, the regulation only refers to items that are not currently covered by existing building codes and regulations and that the development of the regulation is done in consultation with industry. We acknowledge that the department has committed to consulting on the minimum standards before they are implemented through a regulation; however, we hold significant concerns.

While many submitters to the committee welcomed steps to provide greater certainty and equity to the rights and obligations of both landlords and tenants, we have a problem supporting measures which may instead erode landlords' rights and undermine investment in the Queensland residential property market. According to the bill, minimum housing standards may be prescribed in regulation at a future date. The explanatory notes accompanying the bill state that the term 'premises' extends to all residential premises which are, or can be, let under a residential tenancy agreement. Whilst the bill does not specify what the minimum housing standards will be, it does provide that such standards, if and when regulated, may be for any matter relating to a residential premise.

It was acknowledged that not all owners of the approximately 566,478 private rented dwellings in Queensland will be prepared—or in a financial position—to absorb additional costs that may be associated with ensuring those dwellings meet minimum housing standards. Also, given the failure of the government to specify minimum housing standards in either the bill or any accompanying regulation, investors intending to purchase new or existing dwellings to let under new residential tenancy agreements may also pass costs of compliance on to tenants. Given the already rising cost-of-living pressures associated with increased food and utility costs, we ask why minimal housing standards under regulation are necessary, or should it be done in another way?

In closing, I want to thank those non-government and government members of the Public Works and Utilities Committee. We do acknowledge the 18 recommendations that have generally been accepted. I encourage the minister to accept the recommendations with regard to reporting back to the House within 12 months in relation to: clause 49, charges for utilities, recommendation 6; clause 101, change of scheme operator, recommendation 12; clause 103, content of a residence contract, recommendation 13; clause 128, general service charge budget, recommendation 14; clause 132, increasing the general services charge, recommendation 16; and clause 138, redevelopment including approval of redevelopment plan.

We look forward to the second reading debate amendments that have been proposed. A lot of the amendments have come out of the committee's recommendations. I think it is good that the committee has worked to ensure good public policy is reflected in this legislation. We look forward to hearing the contributions of other members. I commend the bill to the House.