

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Retirement Villages Amendment Bill 2023

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Mr Speaker, I move that the Bill now be read a second time.

This Bill makes amendments to the *Retirement Villages Act 2004* to more appropriately balance the rights of residents of retirement villages and the interests of operators of those villages. In doing so, the amendments further regulate the circumstances in which operators of retirement villages may increase recurrent charges, and impose levies.

There are several instruments, or areas of the law, that play a part in regulating the retirement village industry in Tasmania, the primary one being the *Retirement Villages Act*. The Act, amongst other things, regulates the types of fees and charges residents are liable to pay, including recurrent charges and levies.

Over the course of this year, I have met with a number of residents of retirement villages and representative groups, including the newly formed Tasmanian Association of Residents of Retirement Villages. It became clear through those meetings that there is a high level of concern among the residents about significant increases to recurrent charges and levies. While we all know the cost of living is increasing, the concerns raised with me were about significant increases above the consumer price index (CPI), and in circumstances where there was a lack of transparency around why such a significant increase, or a new levy, was being imposed.

While these concerns have been raised with me, it is also clear that the majority of operators do the right thing by residents, and make every effort to minimise fee increases. The purpose of this Bill is not to punish operators – it is to provide more structure around the fees and levies, which the Government believes is to the benefit of all parties, and the community more broadly. These aims can only be achieved through legislative amendment.

Recurrent charges are those paid on an ongoing basis, often fortnightly or monthly, for general services such as village facilities and management. Currently, section 14 of the Act provides that recurrent charges may only be increased if the increase is shown to be reasonable, and based on the accounts from the previous year, estimates for the current financial year and after being explained to residents at the annual general meeting.

However, unlike most other jurisdictions, the statutory framework in Tasmania does not currently distinguish between increases to recurrent charges which are below CPI, and those that are above - the process in section 14 applies regardless of how much the increase is. While the Act requires the fee increase to be 'reasonable', it is unclear how that is to be established, and it does not require any approval by residents and has not

functioned to provide sufficient protection to residents. While there are dispute resolution mechanisms that can be utilised in the event the requirements of section 14 are not complied with, this is not considered adequate protection for residents against unreasonable increases.

In contrast to recurrent charges, the Act also regulates the imposition of levies that are not authorised by the village rules or a residence contract. These levies, often referred to as 'special levies', are generally used to meet unforeseen expenses such as unexpected repairs. These levies are currently regulated by section 14(11), which requires that they be authorised by a 'special resolution' (in effect, approved by at least 75% of the residents and tenants voting at a meeting after receiving adequate notice).

My Department of Justice has reviewed the legislative arrangements in other jurisdictions, and it is clear that there are gaps in the Tasmanian regulatory scheme. In order to protect vulnerable residents of retirement villages, many of whom have low fixed incomes, this Bill will further regulate the imposition of these charges, consistent with most other jurisdictions. Importantly, the amendments are appropriately balanced to ensure that they do not undermine the financial sustainability of the villages.

I will now address the substantive clauses of the Bill.

Clause 6 makes amendments to existing section 14, and inserts three new sections into the Act. I will deal with each of those individually.

Firstly, the Bill replaces existing subsections (10) and (11) of section 14. Those provisions are no longer necessary as they are substantially dealt with in the new sections being inserted. The subsections are instead replaced with new provisions, requiring the operator to produce minutes of any meetings convened by the operator, and to make those minutes available to residents and tenants. This was an amendment that came about as a result of consultation.

Proposed new section 14A will regulate increases to recurrent fees. Subsection (1) concerns how the CPI figure is ascertained. Subsection (2)(a) applies to all recurrent fee increases – both those at or below the CPI figure, and those above. Subsection (2)(a) is largely consistent with the current process for increases, as provided for in section 14(10) of the Act. However, the requirements in subsection (2)(a) are more clearly expressed, including by specifying that an explanation of the increase needs to be given to residents, in writing. This minor adjustment will increase transparency, and clarify for the benefit of all parties how increases are to be explained to residents.

Importantly, subsection (2)(b) introduces restrictions for increases above CPI, largely based on the comparable Victorian legislation. The provision will only permit increases to recurrent charges above CPI in the following circumstances.

Firstly, if the increase is authorised by a majority of the residents and tenants voting at a meeting (in this case, a majority is over 50%).

Second, the increase represents an increase in rates, taxes or charges payable in respect of the retirement village land. For example, an increase in land tax.

Third, the increase represents an increase in salaries or wages of the manager or employees of the retirement village, pursuant to an award, agreement, or other industrial instrument.

Finally, the increase is due to an increase in insurance premiums or excesses paid, in relation to the retirement village or its use. This was also added after consultation, and is based on the comparable provision in the Queensland legislation.

By restricting above CPI increases in this way, the amendments provide more certainty to residents about their fees, while still permitting other necessary increases to proceed.

Subsection (3) also relates to calculating the CPI figure. Subsection (4) creates an offence for an operator to increase, or attempt to increase, recurrent charges in ways other than as permitted by the Act. The offence is punishable by a fine not exceeding 200 penalty units, which is consistent with the current offence provisions in the Act.

Subsection (5) then provides that any increase that does not comply with the new requirements outlined in this section will be void and not payable by the residents, unless ordered under section 14B.

Proposed new section 14B inserts a right for the operator of a retirement village to apply to the Tasmanian Civil and Administrative Tribunal ('TASCAT') to have an above CPI recurrent fee increase approved in the absence of the agreement of residents under the proposed section 14A(2)(b).

This is an important safeguard. Our Government acknowledges that there may be circumstances, outside of those listed, where it is necessary for there to be an above CPI increase. However, we consider that in such circumstances, increases should be subject to the oversight of TASCAT. Subsection (3) ensures that residents and tenants will be given notice of such an application being made. Subsection (5) is modelled on comparable legislation in New South Wales, and contains a number of factors TASCAT may have regard to in considering the application, such as the charges at similar retirement villages, and the frequency and amount of past increases to recurrent charges. There were some additional factors added into that provision following consultation.

Proposed new section 14C relates to the ability to impose levies. This section in fact expands the circumstances in which a levy can be imposed, however those circumstances are limited, and clearly defined, to provide certainty. This is an important balancing factor given the restrictions made to recurrent fee increases, and is reasonable when consideration is given to the arrangements in other jurisdictions. Section 14C would still permit any levies authorised by a special resolution of the residents and tenants, as is the case now. However, it would also authorise the imposition of a special levy where one has not been imposed in the preceding 12 months, and either:

1. the levy is due to legislative requirements or the order of a court or tribunal; or

2. the village rules or residence contract stipulate that residents are responsible for the class of expenditure that the levy is intended to cover.

The clauses in Part 3 of the Bill are administrative amendments needed as a consequence of giving jurisdiction to TASCAT.

This Bill was subject to a public consultation period, and I would like to take this opportunity to thank everyone who took the time to make a submission. I would particularly like to thank Mr Ian Green, from the Tasmanian Association for Residents of Retirement Villages (the TARRV) for his and their strong and dedicated advocacy on this issue. As I have outlined, there were some adjustments made to the Bill as a result of feedback received during consultation. Some of those adjustments were sought by residents, or resident committees, and others were suggested by operators or organisations associated with operators. A number of stakeholders, while supporting the Bill, also sought a more comprehensive and wide-ranging review of the Act. As always, I will take that under consideration.

Our Government is pleased to progress these reforms, which will result in an Act that more appropriately balances the rights and interests of residents and operators, thereby providing more certainty for all parties in relation to charges and levies. The changes have also been carefully considered to ensure they will not have a negative impact on the quality and level of services received by residents.

Mr Speaker, I commend the Bill to the House.