

29 August 2017

Our ref (VK/Elder)

Committee Secretary  
Public Works and Utilities Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [PWUC@parliament.qld.gov.au](mailto:PWUC@parliament.qld.gov.au)

Dear Committee Secretary

## Housing Legislation (Building Better Futures) Amendment Bill 2017

Thank you for the opportunity to provide comments on the Housing Legislation (Building Better Futures) Amendment Bill 2017 (the **Bill**) Queensland Law Society (**QLS**) appreciates being provided with an opportunity to review and discuss these proposed reforms.

This response has been compiled with the assistance of the QLS Elder Law Committee, whose members have substantial expertise in this area. The Society appreciates that there is some urgency around this issue, and consequently the response period has not allowed for a comprehensive review of the Bill. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.

QLS is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS has identified several aspects of the Bill which we wish to highlight. Please note that we have included one issue which is of particular concern. These issues are set out for your consideration **below**.

### 1. General Services Charges - Section 106

The Bill significantly improves the consistency of language in the *Retirement Villages Act 1999* (the **RV Act**) regarding general services charges. The Society is pleased to see that the Bill resolves a fundamental problem in the RV Act that the Tribunal (and Courts) have been grappling with for over a decade. The problem arises because the language used in the RV

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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 and so forth). 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 by replacing ss 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.

### **2. CPI Issues - Section 106**

The draft amendments to this section overcome the long-standing error in s 106(2)(a) & (b) 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 s 102A, the CPI figure referred to in s 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 to s 106(2) in the Bill will overcome this issue.

### **3. Retirement Village Disputes - Section 21**

The jurisdiction of the Tribunal is currently limited by the definition of "retirement village dispute" under s 21 of the RV Act. This definition is limited to disputes about rights and obligations under:

- (a) the residence contract; or
- (b) the RV Act.

This definition does not extend to disputes regarding a resident's rights under the Australian Consumer Law (**ACL**), such as the general prohibitions in the ACL regarding misleading & deceptive conduct and unfair contract terms.

As it stands, when residents have disputes that involve a combination of alleged breaches of their contract, the RV Act and the ACL, 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 ACL. Normally this is too much of a hurdle and the ACL rights are simply not asserted.

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QLS suggests that the definition in s 21 of the RV Act should be expanded to include disputes about rights and obligations under the ACL.

Further, we wish to draw the Committee's attention to the limitations of this definition in respect of renovation works undertaken by the operator. The Bill seeks to introduce s 59A to the RV Act, which sets out that before renovation work commence the operator and former resident must agree on when it will be finished. In the event of a dispute about the date by which renovation work will be finished, the matter becomes a 'retirement village dispute'.

We note however, that any dispute in relation to this section is limited to the timing and completion of the renovation works. The inclusion of s 59A(3) may cause confusion as to whether a former resident may appeal a decision by the operator as to whether the renovation works are necessary or excessive under s 21 of the RV Act. A balance between the obligations of either party and the benefit of the retirement village and its residents as a whole must be carefully struck, and QLS suggests that the Committee consider if the Bill adequately addresses this balance.

### **4. Valuations of village units – Section 70**

The draft amendments 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; or
- (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 RV Act in relation to these provisions will act to ensure 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.

### **5. Including a reasonable limit on operator's ability to pass on legal costs to residents**

QLS suggests that that Bill ought to include a provision setting out reasonable limits to which a retirement village operator can pass on the legal costs accrued in relation to amending a residence contract to the resident. A similar provision exists pursuant to s 48 of the *Retail Shop Leases Act 1994*.

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The inclusion of a similar provision in the Bill would introduce greater clarity for residents and retirement village operators regarding liability for legal costs in the case of minor changes (such as adding a spouse) or surrendering of the residence contract, and would act to ensure that such changes are accessible to a resident without fear of incurring a liability for excessive legal fees accrued as a result of the change.

This does not constitute an exhaustive review of the Bill. QLS would be pleased to elaborate on the issues contained in this letter, if required. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin on 3842 5872 or at [v.krulin@qls.com.au](mailto:v.krulin@qls.com.au).

Yours faithfully

A handwritten signature in cursive script that reads "Christine Smyth".

Christine Smyth

**President**