



TRANSPORT, HOUSING AND LOCAL GOVERNMENT COMMITTEE

Members present:

Mr HWT Hobbs MP (Chair)
Mr JB Grant MP
Mr DJ Grimwade MP
Mr TJ Ruthenberg MP
Mrs DC Scott MP
Mrs T Smith MP

Staff present:

Ms K McGuckin (Research Director)
Ms R Stacey (Principal Research Officer)
Ms D Cooper (Principal Research Officer)

PUBLIC HEARING—REVIEW OF THE RETIREMENT VILLAGES ACT 1999

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 26 OCTOBER 2012

Brisbane

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Committee met at 9.01 am

CHAIR: Good morning. I call this public hearing of the Transport, Housing and Local Government Committee to order. Thank you for your interest and your attendance here today. My name is Howard Hobbs. I am the member for Warrego and chair of the committee. Desley Scott, the member for Woodridge, is the deputy chair. The other committee members are Mr John Grant, the member for Springwood; Mr Trevor Ruthenberg, the member for Kallangur; Mr Anthony Shorten, who is an apology; Mr Darren Grimwade, the member for Morayfield; Mrs Tarnya Smith, the member for Mount Ommaney; and Mr Bill Byrne, the member for Rockhampton, who is an apology.

Today's public hearing is to assist us with our review of the Retirement Villages Act 1999. The committee has advised the public of the inquiry by advertising in the print media, on the parliamentary website and also by writing directly to a number of individuals and organisations. Witnesses at the public hearing today will appear in the order outlined in the hearing schedule.

The hearing is a formal proceeding of parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses so we will take those as read. Hansard will record the proceedings and witnesses will be provided with a transcript. Today's proceedings are being broadcast live on the parliament's website. I therefore ask you to please identify yourself when you first speak and to speak clearly and at a reasonable pace.

I remind all those attending the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the briefing at the discretion of the committee. I remind committee members that officers of the department are here to provide factual or technical information. Any questions about government or opposition policy should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. I also ask if departmental officers take a question on notice today that they provide the information to the committee by Wednesday, 7 November 2012. Before we commence, I ask that mobiles be turned off or switched to silent mode.

The committee will suspend proceedings for a break between 10.10 and 10.30. Before I call on the first witnesses, I would like to thank all the individuals and organisations that took the time to make submissions to this inquiry. The committee has had an opportunity to read all the submissions. The committee would therefore appreciate if you could focus your comments on the terms of reference for the inquiry and, where possible, avoid repeating the detailed evidence you have already provided in your submissions. I invite each witness to make a brief opening statement and then I will open it up to the committee to ask questions. I now call on our first witnesses.

ARMSTRONG, Mr Les, President, Association of Residents of Queensland Retirement Villages

CLAY, Ms Linda, Private capacity

MASSON, Mr Robert, Private capacity

Mr Masson: I chose to make the submission because I felt I had a little bit of expertise in the area of legislation. I had been involved with the racing and betting act and regulations in my time in the Queensland government. A lot of issues have arisen in the three years that I have been in the retirement village that I am in, and it seemed to me that the structure I had created with the constitution, which went more along the lines of an incorporated association and yet not incorporated, seemed to be the way to go. But I was recently advised by a solicitor that I could not automatically have members of the residence become members of the association. They actually had to apply. You cannot force people to be a member of an association. That was his view, anyway. I thought maybe that aspect could be addressed and clarified to make everyone who is an official resident of a retirement village automatically a member of a residents association. The present structure seems to provide for a number of residents to be elected as the residents committee and that committee then deals with the operator. It just seems to me that the more formal structure that we have with Sapphire was a better way to go and much more sophisticated than some of the retirement village residents committees' constitutions that I was provided with when I first went there.

I also touched on the voting aspect. I know that the legislation tends to lean towards one vote per unit as distinct from one vote per person, but I have set out in my submission a couple of reasons why I feel that the type of issue that has arisen that requires a vote needs to be taken into consideration. I have

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identified where there can be quite opposite views between a husband and a wife about certain issues. Where it relates to the unit itself, you do not want to disadvantage those people who are on their own in a unit. In my experience over the three years it has worked fine having everyone have a vote. There has never been any issue arise where single people have felt they are not getting heard.

Another issue is that I am not sure what constitutes a retirement village. My mother is in an aged-care facility at North Lakes called Arcare Endeavour. If that is a retirement village, then it is very difficult for legislation to cover that situation where she is in a dementia ward and also cover our situation where we have residents contributing as much as we are at Sapphire, which is supposed to be an up-market retirement village. It is a high rise for active retirees like these over-55s developments that private operators run. It is similar to other areas where you buy in and you have strata title and you have a say. You have a body corporate. RSL Care is the operator of Sapphire and is in charge of looking after the building, the maintenance of it and stuff like that. We feel it is being run very expensively and at an unnecessary expense. There are two staff members working full time—Monday to Friday, anyway. There are 60 units but after three years fewer than 30 are occupied. So it has not been a good investment for them, I do not think. It came on at the wrong time with the GFC. People cannot sell their houses. Plus there is the cost of these units. They were a little bit up-market. They are higher than a home unit in Hervey Bay, but we felt there were some benefits being under the Retirement Villages Act.

In my opinion, it is being run more like an institution rather than a body corporate arrangement. The legislation requires the operator to present a draft budget each year to the residents at a meeting. They do that, but I have posed a question to them: 'Why do you think the legislation requires you to do that? Wouldn't you expect some feedback or give credence to residents' views on the way you are operating?' But the reply is, 'Not unless the legislation requires it.' That operator is not interested in dealing with residents. They do not accept that a lot of the residents have had a fair bit of experience in all walks of life. They do not tap into that. You have no say whatsoever.

I was the secretary for three years, until August this year, and during that time several official complaints were made and we have not had the operator comply with the terms of the act. That was another point I made in my submission. There does not seem to be an appropriate level of compliance, either by residents or the operator, with by-laws that are created by the village or indeed with the act. As I have said in my submission, I cannot believe some of the penal provisions that are in the act. It sounds like they have been lifted from the Criminal Code—the powers of entry, seizing of documents and things like that. I cannot envisage anything in a retirement village situation like that.

The other point was that the matters where you can make a complaint, if it is not resolved by the operator and yourself, to the Queensland Civil and Administrative Tribunal seem to be confined to only disputes arising as a result of breaches of the act or of the resident's contract. But many issues arise where you would like something done differently, and if you cannot cooperate with the operator there should be a third party somewhere that you can put your case to. I think that is all.

CHAIR: Thank you. I would like to remind people that this session goes from nine to 9.20 so we really have to roll along fairly fast.

Ms Clay: I will be very brief. Thank you for the opportunity to have input into the review of the act. This is timely, as my mother passed away in June and we are in the throes of finalising her estate. She lived in a retirement village for six years and this retirement village is a large, profit-making enterprise. We acknowledge that not all retirement villages are profit making, but I just want to point out that this is my personal view of this one at least. She had lived in that village for six years. We have just been advised that the exit fee we will be liable for is in excess of \$97,000. On top of that, we will be paying in excess of \$15,000 for painting, new carpet and replacing the benchtop in the kitchen in order to get the unit to the state it was prior to her going in. So that is a large investment of \$100,000 that we will be making to this profit-making enterprise.

As I said, this review is based on my personal, firsthand and ongoing experience. I feel that the vulnerable people in our society—and my mother is one case in point—really need as much protection as the legislation can provide for them. She would not listen to family. She was very supposedly independent, but she was uneducated. She never went past grade 6, so she was exceptionally vulnerable signing this contract and we are trying to pick up the pieces at the moment. Thank you.

Mr Armstrong: Good morning. So that I do not get sidetracked, I will quickly summarise these three pages and leave a copy with you. One of the first issues we have been concerned about is the reluctance of many operators and other people in the industry to recognise that there is widespread dissatisfaction amongst residents and former residents. Evidence of that fact is that consumer advocacy groups like ours receive hundreds, indeed thousands, of complaints per year. This year, almost halfway through the financial year, we have received over 2,000 complaints, and that is a very serious threat to the future viability of the industry because this extensive dissatisfaction amongst current and former residents has deterred and we believe will continue to deter the entry of baby boomers into the retirement village industry.

There is obviously an urgent need to stem this tide of dissatisfaction, and I see three stages to that activity. Firstly, we need to improve protection for prospective residents in relation to disclosure. Secondly, we need to improve protection for existing residents to offset the disempowering effect of exit fees and exit charges. Thirdly, we need to improve the protections available for former residents once they leave a

village. Those protections must be imposed by law and not by industry self-regulation. An industry that profits from its customers cannot sensibly be expected to self-regulate, and we believe it is plainly evident that that is so in this particular case in Queensland. Queensland is lagging behind the other states in terms of consumer protections imposed by the act and there is an urgent need to increase the consistency between the states in this regard.

I have developed a number of key recommendations. The first one deals with prospective residents. In order to improve the disclosure to prospective residents, we believe it is essential that we ensure the details of exit charges are disclosed before the residents enter the particular village. That would of course increase the competition between villages on exit fee charges, provided they were available to prospective residents. It is essential that this earlier disclosure must cover both the exit fee and the operator's share of any capital gains.

The second point in that prospective resident disclosure is that the exit fee charges be disclosed in a standardised manner, and that must be reinforced, and that should facilitate easy comparison between villages; for instance, by requiring perhaps the maximum exit fee cost to be stated as a dollar figure or perhaps by mandating a form of comparison rate similar to that which is imposed on lenders under the Consumer Credit Code.

Simplification of the PID is essential, and that is not simply a matter of redrafting the standard form, as has recently been done by a working party including the RVA, Aged Care Queensland and ourselves. There must also be amendments to part 4 of the act to the extent necessary to declutter the PID—and I am talking about section 74 in this case—and to refocus that on the critical matters.

Finally in that prospective residents area, we have to ensure that the PID discloses the extent to which the ongoing costs can increase during residency so that a prospective resident can assess whether his or her limited fixed income is going to remain adequate, remembering that he or she will read in the initial documentation that the levies or the general services charge is capped to CPI. There will be more about that later. Obviously his or her income, if they are on a pension, will be capped at CPI. It would be nice if it was the same for the fees for the retirement village.

For existing residents, we ought to be imposing a set of basic rights including privacy, freedom from harassment and intimidation, the entitlement to quiet enjoyment of both your unit and the communal facilities, autonomy and freedom from adverse public comment within the village by the operator if you are unfortunate enough to have been classed as a troublemaker—and that is a very common complaint. We need to ensure that operators are obliged to take all reasonable steps to prevent a resident from interfering with the basic rights of any other resident, and at least 500 of the complaints we have received this year have been resident versus resident—barking dogs, noisy birds, motorbikes et cetera.

There needs to be an effective restriction on increases in the levy paid by residents in relation to general services, and the current regime in the act primarily is prescribed in sections 102A, 106 and 107. Those sections create a significant regulatory burden on the scheme operators, but they do not yet provide any meaningful protection for residents. Those fees generally increase at a rate well in excess of CPI, and that is the single greatest cause of dissatisfaction and of initiating disputes—that is, the increase of the general service charge above CPI.

We need to also look at increased transparency in budgets by ensuring, among other things, that no single line item in a budget can increase in excess of perhaps five per cent of the total budget such that we do not have conglomerate line items in budgets and to also ensure that any interested resident is entitled to access the village's financial records—those records that detail the individual items of expenditure making up each line item in the budget, and that is in addition to the disclosure required by sections 112 and 113.

We should ensure that every budget is subject to the approval of residents, not just those budgets where the consumer price index has been exceeded. We need to regulate the extent to which residents can be required to pay for the cost of replacing the capital items installed in their units—the operator owned appliances, for example—particularly in circumstances where the resident does not share in any capital gains on exit from the village.

We need to expand the dispute resolution process under the act so that it covers all disputes between an operator and a resident regardless of whether the resident is alleging a breach of the act or the resident's contract. For instance, that should be extended to include breaches of the Fair Trading Act. Finally in the existing residents section, we need to ensure that operators are not—repeat not—entitled to rent out vacant units via a residential tenancy agreement without the approval of the existing residents and certainly not without the approval of the departed tenant in the case where the exit fee has not been paid, and there is a case on that right now.

For former residents, the key issues are that we should ensure that those former residents can access their capital after a certain period of time regardless of whether the unit is sold or not, and we are suggesting six months might be appropriate here. This introduction would ensure that the market risk is shared between the operator and the resident rather than being foisted entirely upon the former resident—that is, the entity who has the least capacity to afford to bear that expense. That activity should also overcome many of the problems associated with village closures. We need to ensure that all exit fees are calculated on a daily pro rata basis regardless of when the contract was entered into and regardless of

what the contract indicates, such as it might be yearly based on the hackneyed phrase of, 'Your exit fee is calculated "as at the day you cease to reside"'—and that was the subject of the District Court case just recently.

Finally, we need to improve the provisions relating to the valuation of units so that, first of all, each unit is valued as if the village is operating normally as a going concern regardless of whether or not that is the case. It would be interesting if the committee looked at the Urimbirra situation, which is exactly what happened there. The village was downgraded for various reasons such that it is now worthless. Both the former resident and the operator should be able to make submissions to the valuer—we need that to happen—and the village should make available to that valuer all historical sales data and that the valuation is determined on the assumption that the new resident will come in under a similar contract to the former resident, particularly in terms of capital gains share and in exit fee conditions. Even if that is not the case—even if the new resident is being offered another type of contract, which is the operator's entitlement—the valuation needs to be done on the premise of the existing contract. We need to ensure that residents who do not share in any capital gains are also protected from any capital loss.

We need to close loopholes in the act which allow former residents to be charged a sales commission despite the very specific prohibition against that in section 68(3). We need to correct the act so that residents in freehold villages are only required to meet the cost of a reinstatement to the extent that they share in the capital gains on that unit.

In summary, we believe that these measures will greatly improve the consumer confidence in retirement villages and will in turn help to secure the future viability of the industry. Any resultant increase in the regulatory burden on operators will be a small price to pay for avoiding the looming crisis in consumer confidence about retirement villages amongst baby boomers. Thank you.

CHAIR: Did you want to table that?

Mr Armstrong: I certainly will, yes.

CHAIR: Leave is granted. Mr Armstrong, with all those sorts of conditions and improvements that you have talked about, do you think if they all came into being that would deter retirement village operators from setting up? Would it be to their detriment to actually want to construct these buildings?

Mr Armstrong: I am not a business principal on that, but there is no question that the more onerous you make the conditions of establishing and registering a retirement village and the more prescriptive you make the legislation that controls the operation of the village that is obviously going to influence the developer or the operator's decision as to whether he opens the village. But what we have to remember here is that if you tell people there is a certain set of conditions in the village, and you, perhaps somewhat clinically, might be saying that so that you would get the people into the village, that is the wrong way to go about it. In terms of improving the legislation or tightening up the consumer protection issues, the most important part arising from that is that the viability of the industry will improve, sales will improve and the operators will not have to be so concerned about lack of profit and lack of income.

CHAIR: Ms Clay, is what you are going through now still in accordance with the original contract? You said that she should not have signed the contract but she did. So basically, are they operating within the limits of the contract that she originally signed?

Ms Clay: They have 90 days in which to put the unit back into the condition it was and put it up for sale. That 90 days is up on Monday, and just this week we got the list of renovation works they want to do to the unit. I do not think they are going to make that, so that is one thing they have broken. Just their lack of consultation with us about what is going to be done and what they are going to do has also broken the residential agreement.

CHAIR: No. The question I asked was with regard to the original contract she signed. Has that original contract been breached?

Ms Clay: Yes.

Mr GRANT: Can you let us know the buy-in price for your mother's unit?

Ms Clay: It was about \$205,000.

Mr GRANT: Thank you.

CHAIR: Thank you very much for your contribution today. That was certainly very helpful. We appreciate it. I now call on industry representatives.

CARINS, Mr Andrew, Representative, Leading Aged Services Australia Queensland

EAGLESTON, Mr Mark, General Manager, Retirement Village Association

LYONS, Mr Robin, Partner, Minter Ellison Lawyers

MACINTOSH, Mr Andrew, Chair, Queensland Regional Committee, Retirement Village Association

TAYLOR, Ms Geri, Manager, Policy and Retirement Living, Leading Aged Services Australia Queensland

TEUDT, Mrs Kim, Board Member, Leading Aged Services Australia Queensland

CHAIR: We are limited to 30 minutes so please consider that when you are making your contribution because some of your fellow witnesses will also want to have a say. Who would like to start off?

Ms Taylor: I will start off. We are not going to make an opening statement. You have our submissions. We think the best use of the time that the committee have available is actually to talk to us about matters that you thought were important in our submissions. However, I would say at the beginning that LASA Queensland, which is the organisation whose members I represent, along with Kim Teudt, who is a board member of LASA Queensland, and Mr Andrew Carins, believe in transparency. We understand that there are a large number of people who will be moving to retirement villages. We are keen to ensure that all our members follow good corporate governance and do what they can to meet the needs of their residents. In this regard we work with colleagues at RVA, and also we have offered to work with Mr Les Armstrong to try to address any of the issues that his members may have about concerns in individual villages. The majority of our members are in the not-for-profit area in metropolitan areas and, very importantly, our members are in the rural and regional cities.

Mr Eagleston: We would support the comments made by Geri. We have worked closely with LASAQ over the years to ensure our long-term industry viability and resident satisfaction. We reiterate what we have said in our submissions, that in relation to any regulatory reform the industry would be ready and willing to work with the department and government in ensuring that any reform put forward maintains industry viability and is also supported by evidence and regulatory impact statements in relation to any impacts that they may have on the industry moving forward.

Mrs Teudt: I endorse the comments already made and I am thankful to the committee for their time in reading the submissions. I would like to reiterate the simplification of the PID—that is a common theme through all of the submissions—to ensure that the information that is available to consumers is easy for them to understand. The industry and the residents association have put significant time into that document. That would be of huge benefit to all concerned. When you look at win-win situations, that certainly is a very, very important issue.

I would ask the committee to certainly consider, when looking at the submissions that come up, the unique arrangements that are available within retirement villages, somewhat restricted by the Retirement Villages Act, as we have heard and as you can see through the submissions. What does the future hold for this form of accommodation and care for older people? That is of significant importance. Again, I am very keen to see the committee consider that and certainly look at any restricting sections of the act that may limit flexibility for consumers. Certainly I have heard what our residents say, and we certainly do listen to our residents very, very carefully, both people looking at coming into villages and people who live in villages. They are keen for flexibility, notwithstanding that the current framework of the Retirement Villages Act does provide a high level of protection for residents, and certainly as an industry we are always very careful and dedicate a lot of time to ensure that the retirement villages industry does comply.

There is still a great deal of confusion around what is a retirement village. A large number of complaints come through from people who do not actually live in retirement villages. They do think genuinely that they have bought into a retirement village when they have not. I do believe that restricting people to look and feel like a retirement village and perhaps promote themselves as a retirement village needs to be looked at carefully. When you do get a call from someone who believes they have had a raw deal, when you do get to the bottom of it they might be talking about some other over-50s resort but they do want the protections that we do enjoy for consumers within the Retirement Villages Act. There are a few key points there that I think are important to look at to ensure there is clarity around what a retirement village is. It is not an aged-care facility; it is completely different. It is a federal piece of legislation. We are not an over-50s environment. We are not manufactured home parks. At this point in time I think there is a lot of confusion over those sorts of misinterpretations of what it is they have bought into.

Mr Macintosh: I would just like to make a couple of points if I may. The first one is that there is no evidence of a looming consumer confidence crisis in relation to retirement village accommodation. We have done regular surveys and we can provide all that data to the committee, but I just do not think there is

anything to substantiate, that any of us have seen within our own residents or within prospective residents who wish to come into retirement villages, that there is any kind of confidence crisis. The committee should not come from that particular premise because there is no substantiation of that.

The second point is that a lot has been said about exit fees and how can they be better disclosed—managed, if you like. We are happy with disclosure—and the greater the disclosure, the more information there is in the market, the better, because it helps consumers decide what they want. The second issue is about exit fees generally. Understand that this model was developed in the eighties and it is tired. It is about paying less at the beginning and more at the end and different amounts, as it were, at the end or at the beginning. At times it is a complex bit of mathematics to understand, but bear in mind that out there in the world beyond Australia's shores there are all sorts of models for retirement villages. At the moment there are a couple we cannot implement here in Queensland because the act is restricting that.

For example, our company, FKP, has an interest in a couple of American villages where there is no such thing as general service charges and there is no such thing as exit fees. People pay a fee on a monthly basis. In the end, what you want to have is your accommodation costs matching your income style. You may be capital rich or you may actually be on some kind of annuity. What you really want to do is try to match up your acquisition cost with your financial position. The US—not that we necessarily slavishly follow that market—has options whereby people pay a certain amount per month and that pays for everything. Whatever they need they will have. There are no additional fees, no additional charges. It is fixed, it is in their contract and that is what they pay, perhaps subject to movements in costs of living. We cannot introduce that model here in Australia just yet—at least in Queensland—because we have a model which suggests you have to have an ingoing contribution, you have to have an exit entitlement and you have all the other things in between.

I think the committee needs to pay close attention to certainly providing consumer protections—I will talk a little bit about that in a moment—but we need to understand that there are models beyond what we have at the moment that some people will want to take up. We have a massive amount of people, we are told, in terms of boomers coming up. They will be a little bit more choosy than the Depression generation, who have been very cautious and very careful and who have been concentrating on homeownership and taking their capital and moving it somewhere else. Others will not have that view. They will be prepared to look at something which has more of a regular cashflow as opposed to lumps in terms of cash payments and receipts. So we have to have legislation that allows that to happen, obviously with the appropriate consumer protections. I would urge the committee not to think about caps and how can we tighten this up and tighten that up but to think about how can we ensure we have other new models that come in that people will want to use.

The second thing is be aware of increasing consumer protections. In New South Wales there were changes to regulation and general service charges in 2010. We are informed that the disputation levels of cases going to the tribunal have increased 258 per cent. Is that a good outcome? Probably not. Has it really delivered an improvement in consumer happiness in the villages and what have you? Definitely not, if disputation is the outcome. So be aware that sometimes you push a button down here and it has a big negative consequence. So what we need is clarity in the act. The big issue is clarity. There are quite a number of areas where the wording can be improved. We have put that into our submission.

I think the act as it is at the moment is a pretty good act, really. It can be improved certainly in terms of wording. It probably needs to be widened to allow operators to widen the choices or the possible options of accommodation payments with a view to then helping obviously increase investment. At the moment I know there is an operator who wants to do this but he has been told by his lawyers that he cannot really do it. So is he going to invest and build something? Probably not at this particular point. That is something the committee should think seriously about.

Mr Lyons: To reinforce that from a legal perspective, I am a lawyer who works in this industry and has done for many years. To echo Andrew's points about that, one of the consequences of increased regulation over a period of time—since the act first came in 1988, then 1999 and further amendments in 2006—is that there has been an almost unintentional, I believe, tendency to enshrine into the legislation the current financial model for retirement village schemes in Queensland which was most prevalent at the time. That is based on the concept of an ingoing contribution, resident funded recurrent charges as people live in the village and then at the end they pay an exit fee, which is the primary source of profit. As Andrew has said, the way the act is currently drafted almost railroads operators into that model whether they like it or not and whether in fact they want to even respond to the market. The feedback we are getting from people like Mr Les Armstrong is about the fact that they think the exit fee model may need to be reviewed. The difficulty is that the act has now enshrined it. So it is really important that any further reform of the act does not act to further entrench these models.

For example, at the moment operators do not have any other choice but to operate on an operating cost budget basis—that residents are going to basically pay the operating costs as they live in the village. A resident operator does not have a lot of freedom to say, 'I do not want to operate on that basis. I want to guarantee my group of residents a set of services. They need not be worried about the cost of it.' They will base their fees on some sort of rent that might increase over time in accordance with another index other than cost base; for example, just general CPI or percentage of pension or the way the pension increases. All those things are very difficult to do now under the current framework of the act. My fear is that if we further entrench these concepts by responding to some of the submissions from the ARQRV it is only going to make it even more difficult for operators to operate flexibly in the market going forward.

The key is, as Andrew has said, proper and thorough clear disclosure, freedom of contract—but make sure that the consumer knows entirely absolutely well what they are getting into and accept that fact. Operators cannot do a lot more, other than be very clear about what their financial offering is, and then it is up to the consumer to make a choice. Provided the consumer has been adequately informed in the clearest possible way, the industry believes that that is the business model they are running and that the consumer has a choice. So the solution is not to put undue restrictions on the models but to improve disclosure so that everyone is confident that people go into retirement villages fully understanding what they are signing up to.

That is where the industry believes there is an opportunity for great improvement. The source of it is the public information document and making that as effective as possible but also, by the same token, giving the industry as much flexibility as they need to respond to the changing marketplace. There are a lot of changes happening in this marketplace at the moment. There is a need for retirement villages to provide more low-care aged care. This is going to give rise to different financial models or the need for them. If the retirement village sector is going to do what it has to do to support the ageing population, it needs to have more flexibility.

Mr Carins: I am an independent private operator. There are a different set of constraints for private operators as opposed to those that act in the not-for-profit sector. While this is essentially state legislation—we recognise that—there are federal issues that impact on this. Some of that relates to the provision of care, particularly low care within retirement villages under community care programs.

The thing I wanted to highlight to you is around the exit fee. One of the comments Mr Armstrong made was that there needs to be an upfront comparison between villages for potential residents. As an operator we support that. That is very important. One of the major constraints for for-profit operators at the moment is that an exit fee that is linked to the original ingoing contribution is subject to income tax before the money is earned. That is fatal for a for-profit operator. If you can quantify what the exit fee is then you have to pay tax as soon as that amount starts to accrue. That is under the current public ruling 2004/D5, which I refer you to.

That is a constraint. I know that you have no control over that, but it is something that needs to be seriously considered because for-profit operators link their exit fees primarily to the future ingoing contribution—that is, the ingoing contribution that the next resident will pay, not what the initial resident paid. It is done for the very reason that as soon as they can quantify it they are paying tax. They are passing cash out years before they potentially get that cash in. You can see the disaster that that could deliver. So there are external constraints at a federal level that need to be considered in all of this.

CHAIR: It seems from what you have said that you believe you are operating a pretty good system. It seems as though we have a fair few people who oppose that view, and that is why the inquiry has been set up. We have to try to work out what is going on here. You people seem to be pretty happy with what you are doing but others are not. We need to try to work our way through the model. Mr Lyons said that disclosure is probably the answer to it yet we still have a 1980s model, as Mr Macintosh said. We are here to try to work our way through this and to hear all the views.

We want to make sure that the industry is a viable industry. More of us are going to be looking for these places to go into in due course. We have to try to make this as stress free as we can. Presently, it is not stress free. I do not doubt that when people make these decisions under pressure they may not understand everything as clearly as they should. I have had family who did not want to go into a place and then did go in in a rush. We have all been through it.

Mr RUTHENBERG: Mr Macintosh, if there was an ability for operators to utilise other financial models—and I am actually quite aware of the model used in the States—would banks back a model that was dependent on a month-by-month fee for a multimillion dollar project with no guaranteed income? By selling units or under the current model, they have some significant assurance that there is a strong financial resource which they can draw on. Moving to a month-by-month model, how does that change your whole financial setting? When you go to a bank to tell them what you are proposing, how do you sell that to a bank?

Mr Macintosh: We have not done it yet, but we think there is a good case. You are right: banks are aware of the current model. That is what they are familiar with. When we walk in the door saying that we want to build a new village, there will be that expectation. We need to be able to demonstrate that we have contracts that will provide sufficient income to repay the loan. That is really what the task is going to be to see the bank. It is not as though you are signing someone up on a week-by-week basis. I do not think that is going to work. You are still talking about longer term leases.

I think there is the possibility—and this is thinking out loud—to make changes. Certainly in the US you can buy shorter term leases or longer term leases. Most people want longer term leases because if the promise is that effectively you can have care until stumps, as it were, then why would you necessarily want to go somewhere else unless there was some key issue?

I have not really answered your question totally other than to say that that moment for us as an operator awaits us. But certainly we are in the throes of looking at these models very seriously as to how we would introduce them in Australia. We are looking at legal aspects. We have looked at the commercial aspects and they can work, but we have not been to the bank yet. That would be the next task.

Mr Lyons: It is not either/or necessarily; it is a combination of things. It could actually be reducing exit fees but increasing weekly fees. But in order to do that, operators need to be able to opt out of this regime of having to account to residents for costs. Operators need the ability to opt out of that and say, 'We do not need you to be worried about the cost. We are going to guarantee you a service and we are going to charge you a fee that you agree to and it is going to go up in a way that will give you certainty.'

At the moment that is a very difficult thing to implement because of the way the act is structured. I think the principle is that operators should—like any free-enterprise business—have the opportunity to go to the market with whatever package they want, provided it is lawful and they do everything fairly and properly, and then let the consumer decide which model they prefer. Operators are potentially going to experiment with these things and work out which ones ring the bells in the community that actually bring in the sales, because that is obviously fundamental to them. The market will sort itself out ultimately as to which model or combination of financial drivers is going to be the future. It will certainly be more than one. It will be a variety of different models for different age groups and different purposes.

Mr GRANT: I have two issues—one for Kim and one for Andrew. One is about the issue of care services and the delivery of them in retirement villages. There is a comment in your executive summary that this must be rectified to ensure good policy reactions. Can you inform us as to what the trend is with respect to the delivery of low care in residential retirement villages?

Mrs Teudt: Most certainly. The provision of care services has been supported by the federal government. People now should really be able to enter a retirement village and be able to access whatever community services they need to support them to live in their own home—not only their own home in a general residential area but also their own home being a retirement village unit.

Once upon a time you would have seen in some very old contracts that people needed to have a certificate from the doctor that they could no longer live independently and you could ask them to leave. There are certain circumstances where the accommodation may not be suitable for people, but most certainly today if a resident wants to remain in their own home in a retirement village unit and they can remain their safely, supported by community and care services, then that is where they should be able to reside. This is a very big push going forward.

There is no longer easy access to low-care residential aged care because there is really not a great deal of funding in that area. Residential aged care has really moved to high high care, high-dependency care and end-of-life care. People will be receiving their residential support type community care services in their retirement village unit until such a time that they either decease or need admittance to high high care.

Mr GRANT: I have a question to Andrew Cairns. I think some of the things you shared earlier this morning open up the whole question of the act with respect to percentages and exit fees, but maybe the marketplace has some very sophisticated, complex formulas that we know nothing about. Can you comment further on what variety of formulas are used to calculate exit fees? I was surprised to learn for the first time that exit fees can be based upon the incoming contribution. Can you help us to understand that better, please? How broad is the diversity of formulas used?

Mr Carins: It is not particularly broad except to the extent of the scales used. Some start with a loading towards the front, some are even and some are spread across six years, some eight years, some 10 years—probably not much more than 10 years. But the issue I was talking about was that when the industry started most exit fees were linked to what the resident paid when they came in—to that value. I think I am correct that most not-for-profits still adhere to that model. But in the for-profit sector, primarily because of the public ruling that the ATO brought down in 2004 and quantification of what the exit fees will be, most for-profit operators have linked their exit fees to what the new sale price of that unit will be, not what the original ingoing contribution was for that unit. Does that answer your question?

Mr GRANT: Based upon known percentages?

Mr Carins: Known percentages but not known values.

Mrs Teudt: May I also add to that as a not-for-profit operator. We have flexibility in our agreements. It is about resident choice. They can actually choose when they come in whether they want their exit fee linked to their ingoing contribution, whether they want their exit fee linked to their outgoing contribution, whether they want capital gains or not and even whether they want no exit fees. We also offer an option with no exit fees. We are not the only ones who do that. We have about six or seven different options, and it gives people choice based on their individual financial situation and what they believe is in their best interests.

CHAIR: Have you all had a read of the submissions that have come in from residents?

Mrs Teudt: Yes.

CHAIR: You put your submissions in at a similar time. Since reading those submissions, have you got any comments on what you need to do to address the specific issues—and I know that we have covered a lot of issues this morning—raised by people? Is there something new that is not in your submission that will address the issues that have been raised, particularly by the first group this morning?

Ms Taylor: As an industry we have to deal with fact. The submissions that came in where people are unhappy with their retirement villages are distressing. I am not aware of any industry anywhere—hospitals, schools, retail—where everybody is happy. What we have discounted with the submissions—
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and I refer you to our submissions—is that the majority of people who live in retirement villages are happy. It is not a residential aged-care facility; this is a choice they make. It is a niche market. It is going to grow in absolute numbers and it is going to grow in importance because, as Kim said, the residential aged-care facility, where you have no choice but to go in for your end stage of life, your last two years of life, has been constricted. The federal government is actually taking out 25,000 residential aged-care places over the next five years. That will put more pressure on having retirement village as low-care facilities.

It is very important that the industry does everything it can to make sure that for people who are unhappy we can change that around. Having said that, we deal in facts. The reality is that the industry works on you paying now—you pay less coming in and you pay more going out and your estate realises the remainder. There is no government subsidy in a retirement village as there is in a residential aged-care facility. It is 'pay as you go'. We are always prepared to do better. We are concerned with the blunt hand of regulation. You can regulate this industry out of existence.

CHAIR: I agree.

Ms Taylor: The banks are only lending 30 per cent currently to build a retirement village—that is from Jones Lang LaSalle—providing you are an existing operator. It is very hard to get more money, but places have to be built. The industry has to have confidence going forward that Queensland is a place where the retirement village industry can continue to be viable. I would recommend that you look at our submission, particularly in regard to small rural and regional retirement villages—mainly not-for-profit villages, such as through Churches of Christ that Kim is responsible for—because even now the regulations, the red tape that those small villages have to deal with it, are constraining their viability. If you want retirement villages in rural and regional communities, you do not regulate. But we will always work to improve the situation where we can.

Mrs SCOTT: I hearken back to the previous woman whose mum was paying the large exit fees and am just thinking about the people who are exiting a retirement village because they need to go into high care. If the retirement villages have such a substantial exit fee, then a lot of those people are not going to have a bond to pay into a high-care facility. In that there are going to be many more people with dementia and that type of thing, I am just wondering how that is going to fit with what is coming in the future.

Mrs Teudt: I will respond to that. When you leave a retirement village, an aged-care facility will require an asset assessment so that Centrelink can determine what you pay. There is no requirement to pay a bond in high care unless you are going into extra-services care. This is the fairness and equity that is being delivered by the Commonwealth government. Residential aged care is available to every individual who requires that care on an equal and even basis. So you may enter a residential aged-care facility in high care as a resident who has nothing and you will have the same room, same services, same delivery, same accreditation, same everything as the person next door who may have assets worth \$300,000. So there is no discrimination on that basis.

The issue is that if you enter low care—as I said before, it is not happening that way anymore very much—you used to pay a bond. Again, they only take that amount of money that leaves you with the minimum as determined by the government. So whether you have a \$1 million or whether you have \$90,000, it will not make any difference to whether you get a place because you get a place based on your needs assessment. In fact, if you have \$90,000 or below you are actually called a supported resident. So you get more support from the government the less money you have, interestingly enough.

CHAIR: That concludes the time allocated for industry representatives. Thank you for your time. It has been appreciated.

BIRD, Mr Robert, Member, Policy Advisory Group, National Seniors Australia Queensland

HOLT, Mr Ronald, Member, Policy Advisory Group, National Seniors Australia Queensland

SOMERWIL, Ms Vera, Chair, Policy Advisory Group, National Seniors Australia

TUCKER-EVANS, Mr Mark, Chief Executive, Council on the Ageing Queensland

Mr Tucker-Evans: Thank you very much for your time. I appreciate that you are running late, so I will try to be as brief as I can. Some of the points that we have put in our submission I have heard already expressed, so I will try not to duplicate those. COTA Queensland is in fact a consumer organisation that represents people who are ageing. One of the issues we see is that many people believe that retirement villages are part of the aged-care system. As you have heard earlier, that is not true but that belief still exists within the population. So people are going into retirement villages thinking they are going to get care from the providers of the villages.

Undoubtedly there are many benefits that can come from moving into a retirement village. Many residents feel that they are much less isolated and that they are more socially engaged, living with people of a similar age. But one of the misconceptions is that people believe that when they signed up they bought the property outright, and this is not true. They have actually bought the right to occupy the village. We need to make sure that people are actually getting the right advice before they make the decision to buy into a retirement village.

What we are suggesting is that we need to introduce simpler, standardised retirement village contracts that clarify the financial and legal commitments residents are making when they move into retirement villages. We have summarised our recommendations at the end of our submission and they basically fall into four or five areas. The first is around the public information document. We believe that it is confusing at the moment. It needs to be in plain English and available in other languages as well. One-third of the population in Queensland over the age of 65 now come from culturally and linguistically diverse backgrounds. These contracts are already confusing for people who are from an English background, so you can imagine that if you are from a non-English-speaking background those contracts are very confusing. So we have made four recommendations around the public information document. I will not go into them because they are at the end of the submission.

We have also made some recommendations around having a best practice contract. Again, we believe that should be in plain English and available in different languages. There are some issues around legislation. We believe that all operators, and particularly their employees, need to be trained in both the Retirement Villages Act and the Fair Trading Act so they can actually provide that information to the consumers who are making a decision often under stressful circumstances.

There are a number of recommendations around the finances. You have heard earlier from residents that there should be a restriction on the increase in general service charges to the CPI increase, and we would certainly support that. We believe that there also needs to be an enhanced consistency in setting exit fees across retirement villages and there needs to be a cap put on them. We believe that exiting residents should be paid their share of the money that is due to them within six months of leaving in appropriate circumstances. Often when people are leaving, as you heard earlier, they move into a high-care facility and that is a stressful period. We believe that a six-month cap on the time between exiting the retirement village and getting the money is a realistic time frame.

We do believe that there needs to be regular financial statements provided to the residents and that they also need to have access to the annual budget at the AGM of the retirement village. There is some confusion between the reinstatement work and the refurbishment work. So we believe that that also needs to be clarified. We also believe that there needs to be a mediation and dispute resolution process set up. Whilst many residents of retirement villages are satisfied, as in all situations inevitably there are going to be some disputes and it should be made as simple as possible to resolve those differences.

The last thing I would say is that we believe that there should be nationally consistent retirement village legislation. Often people are retiring to Queensland and at the moment there is no consistency between the legislation in Queensland and the legislation in the state that they are coming from. So we believe in the harmonisation of the legislation. I will leave it there so I do not rob National Seniors of their time.

CHAIR: Thank you for that. We appreciate it.

Ms Somerwil: National Seniors is a very large organisation, an independent organisation representing seniors. We have a large number of our members who are now entering into the next phase of their life which is going into retirement villages. So a large number of those have downsized their homes which means that their assets have been downsized so they can go into the next phase. There are also a group of people who are going into manufactured homes, which will be the topic for next year's investigations.

Residents entering retirement villages do so for a certain reason—that is, they are looking for a safe and secure environment. Often after selling their homes in a community where they knew everybody they are looking for a place that is situated somewhere where they are still familiar with their surroundings. Therefore, one of the things that they are looking for is security of tenure when they enter into a village.

They have made a large investment in their home. They have made a large investment going into a retirement village. That has to last them, and of course we know now that other costs are going to be imposed on them as they go through life—changes with the aged-care reforms. In the course of developing our submission, we have consulted with a number of our members. We have had some very raw evidence of what is happening in villages and we have had some very nice people who have said, 'We love it here.' So we know there is a cross-section.

Our submission has responded to the eight terms of reference. We have listed an awful lot of recommendations—15. We recognise that there are competing values within the villages and that there is a need to maintain profitability, otherwise people or organisations who operate villages are not going to want to build more villages. With the baby boomer group coming through—there is a large number—we are actually hearing some negative input from those people who are saying they might not consider going into retirement villages the way things are. So clearly there is a need to tidy up the industry. The implications can be quite big for the future, for operators as for the people who are choosing to go into retirement villages.

We do appreciate that legislation cannot cover everything. You cannot cover every circumstance that the act needs to cover. You cannot do it; that is it. So the best you can do is provide a level of consumer protection, and that is what we are looking at—consumer protection.

A summary of our main points, therefore, would be that there is a need to get to work on the PID, or the product information document, to ensure that potential residents coming into a retirement village can read it. You could say it is pretty waffly and it is not in plain English. Therefore, older people who are at the worst stage of their life making these big decisions are often confused and do not quite understand what is going on. There has been work done in the past with regard to this product information document. I have heard this mentioned already by previous groups. You should take a look at that. It is critical that people who are coming into a retirement village have the correct information upfront in an understandable language that they can deal with and that their lawyers can deal with. We must not forget that they, too, do not always understand it.

We believe that the level of exit fees should be regulated. Right now they can be from 10 per cent to 25 per cent, plus there are all the ongoing fees all the way through when you live in a retirement village. Exit fees are the cause of a lot of angst with our people who have complained. They can pay \$300,000 to go into a village and end up paying nearly \$100,000 to get out. There is a need to revisit the exit fees. Do you pay them going in? Is everybody told that? No. They are not told that. So at the end of the day when they want to leave they get this horrible shock of this great big bill of exit fees. So that needs to be looked at. We suggest it should be capped.

We believe that the issue of ongoing payments after termination of residence and capital gains should be revisited. Capital gains do not necessarily apply in all villages. Some villages have it; others do not. One place in Hervey Bay has 50 per cent capital gains—a terrible case that fellow has up there. Capital gains needs to be looked at to make sure that there is ongoing and fair treatment of the directly affected residents who are leaving.

Closure provisions need to be introduced into the act, including the payment of compensation to affected residents. We are not seeing retirement villages collapsing at present—we know some are in receivership—but other mobile homes or manufactured homes. The closure provisions are really hit and miss. We would like to see some effort put into including closure provisions for retirement villages.

The rights and obligations within the context of contracts and the PID should be clearly defined. With regard to accreditation, we know there is accreditation. There are 27 standards. As a person who has recently had to use them in the village where I live, they are as broad as they can be. I know they are made that way; they are made broad. However, they did not really answer the query that we had. Accreditation and training of village managers we submit should be mandatory because there are some managers out there who I suspect are not very well trained. They haven't got any training at all. I can give you an example if you want.

NSA sees it as important that throughout Australia there be some harmonisation of the industry, because what we see now is people who live in New South Wales and Victoria coming here but Queenslanders are also going there. Also, the operators are across states now. So when you finally put all this together there is a need to harmonise what is going on in the other states. That is my presentation.

Mr Bird: To follow on from what Vera said, is the RV Act sufficiently clear? No, it is not. It could be made clear. I think we have to recognise that people who read the act will principally be people in the business, the public at large, right through to the frail, elderly person who has no independent support at all and has to deal with this themselves. The clearer it can be made, the better for everybody involved.

Should we adopt best practice or require operators to comply with mandatory standards? I come from the aerospace industry. It is highly regulated and has mandatory standards. You all fly quite safely and feel quite safe driving around. Let us go to the other end of the scale, operating motor cars on the road, which I have to say is laissez faire. If we are dealing with our elderly folk in the community, I know what I prefer. These are people who cannot recover, who have no means of recovering from things that happen in their life and whose finances are structured the way they are. They cannot go back to work and earn more money so it becomes very difficult. That is why I think we support mandatory accreditation, not to the degree of the aerospace industry of course because that would be cost prohibitive for everyone involved.

Likewise, in order to operate a business today you really do not need any training. To be a member of parliament you do not need any training. I find that quite strange when I was going through the last election, but in many walks of life people require training to do the job. Why shouldn't that apply to managers and people who work in retirement villages? I am referring to simple things like basic first aid and how to deal with elderly folk. It is a specialised art form. A little bit of training would go a long way. How to operate a village economically I think comes with the business acumen that people bring with it.

Does it promote innovation? We believe the act does. I am also a firm believer that where there is an opportunity people in business will take that opportunity. I think the act is good in that respect. Should the residents be involved in decisions that affect their obligations in the park? This, I see, is quite a disparate area as it is currently managed. We have some people who are not even aware that they can be involved. We have others who will not do so out of fear of intimidation. I think that area must be addressed because, after all, it is the resident's home. It is their money. They must have some control, as we do over our homes and the way we live our lives outside of the village environment. So they must have some control over their own village.

Mr Holt: Most of the things I think have basically been covered, so I thought I would mention a couple of things that have been said to me. This is a fairly common comment that I have had from people: if they knew before entering the village what they know now they never would have moved in. That is a regular comment. I also spoke to a manager of a retirement village recently. The feeling I got was that there are three factions within his village: those who are for management, those who are against the management and those who just do not want to know anything at all.

The other point that has come to my attention is: I received a brochure from a village saying that they had reduced their exit fees from 40 per cent down to only 35 per cent. I do not know the details of it. It was just in an advertising brochure. How they were going to calculate that I do not know, but I think that is obscene. I think overall the legislation is complex. There needs to be more harmonisation within the act to cover more of these circumstances, and I think there needs to be greater harmonisation nationally.

Mr RUTHENBERG: Mr Bird, I have a question for you. I, too, come out of the aviation industry and the impeccable safety record in the aviation industry comes at a significant cost. On the other end of the extreme, you have the motor vehicle industry, and the means of transport through motor vehicles is substantially cheaper but again we suffer safety consequences. Using that analogy, where is the balance? If we heavily regulate the retirement village industry, surely to goodness there will be a significant cost increase to that? Is the regulation in legislation or are there opportunities for the industry—and I am talking about stakeholders across-the-board—to come together and agree, for example, on voluntary codes of conduct as opposed to trying to pin everything down into legislation, which I fear will drive costs through the roof?

Mr Bird: Yes, I understand what you are saying. As I said, I would not propose that any degree of regulation or accreditation follow what we currently see in the aerospace industry today, but the benefits that approach brings afford the individuals involved and the retirement village managers a degree of protection. Where it should be struck I really cannot answer. I would have to do an awful lot of study to say there, there, in the middle or just where I am not sure. Should it be in the act? I do not believe it will work unless it is in the act. A minimum standard should be stated and be considered by you folk for operators to meet. Yes, there are cost drivers there but that is part of business anyway. When you look at what we are dealing with, the residents need that comfort zone because without it they are not going to get it, as we see today.

Mr GRANT: This question is to anyone who wishes to comment. My mind is starting to go into the space of the contrast between the nature of complaints coming from residents in for-profits as distinct from the nature of complaints coming from residents in not-for-profits. Have you done analysis of your complaints? Can you give us clarity on any contrast in the nature of complaints?

Ms Somerwil: No, not in regard to analysing whether it is a for-profit or not-for-profit. No, I could not answer that question. It would be an interesting exercise.

Mr GRANT: Is there any perception that it is a different nature or, indeed, quantity of complaints?

Ms Somerwil: From my perspective from the number of complaints that I have received and responded to, it was actually the for-profit area.

Mr GRANT: Do any of you have opinions on whether the legislation should be more refined for the two sectors, because there are quite distinct different purposes?

Mr Tucker-Evans: I believe it should be the same whether it is for-profit or not-for-profit. It is about ensuring that the residents are fully aware of their rights and their responsibilities, and likewise it does not matter whether the operator is for-profit or not.

Ms Somerwil: I would agree.

Mr Bird: I think there is a cost driver there and that would be reflected in the costs that residents have put before them so they can make a clear decision or whether they wish to join that village or not. I think today there is a bias towards the higher end of the market. Our lower socioeconomic people do not have the same advantage to go to a village that the higher socioeconomic group does. Maybe that draws to the point you are trying to make.

Mr GRANT: Exactly. Does the legislation not care adequately for those at the opposite end of the financial spectrum?

Mr Bird: I have not analysed it to that degree, but I sense that is correct.

CHAIR: The committee will now break. The hearing will resume at 10.50. I thank you for your attendance.

Proceedings suspended from 10.28 am to 10.53 am

CRADDUCK, Dr Lucy, Lecturer, Faculty of Law, Queensland University of Technology

DUNN, Mr Matthew, Principal Policy Adviser, Queensland Law Society

NETHERTON, Mr David, Director of Pacific Law and Representative of Elder Law Committee, Queensland Law Society

PENNISI, Miss Louise, Policy Solicitor, Queensland Law Society

CHAIR: Ladies and gentlemen, the public hearing of the Transport, Housing and Local Government Committee review of the Retirement Villages Act 1999 is now resumed. I call the next group of witnesses. Who would like to start?

Dr Cradduck: How about I go first. I am not going to add anything to the submission I made in that I am not going to expand upon that. What I want to do is address a couple of additional issues that have come to my attention since I made the submission. One of the things I do talk about is the need for prospective residents to have the opportunity to be informed before they enter into retirement village lifestyle. An issue that all prospective residents face is that it is not easy to obtain the necessary information with which to make a comparison between the villages, both as to the tenure type and fees that attach and also to the other lifestyle facilities and fees that might attach in that respect.

This has come to my attention this week through contact with an older couple who is looking within the next two years to move to a village. This couple has no immediate need by health or other reasons to do so but is trying to make themselves informed. They have made some inquiries through various villages. Unfortunately, because there is no immediate need or desire for them to move, they have as of this morning still not received the promised public information documents or other paperwork from the respective villages that they have in several conversations been advised would be sent. I appreciate that people are very busy and I appreciate that villages operate on a commercial basis, but when you review my submission one of the big issues we have is people not being informed and here we have a couple who is seeking actively to make themselves informed and they are not able to do so.

The other issue that goes with being informed is that—and I believe one of the previous witnesses mentioned this—they have nothing against which to make a comparison. In my submission I refer to a paper that my colleague Ms Andrea Blake and I wrote earlier this year. In that paper we examined or sought to examine the available documentation—as in available on the web—from 523 villages. In my practice, when I was practising on the Sunshine Coast, I have advised clients about public information documents. I have advised clients who have moved into villages, and my clients, when they have moved in, are therefore fully informed and aware and are making a conscious choice both as to tenure and regarding deferred management fees and regarding lifestyle. They are the ones who sought out legal advice. You do not have to do so to move into a village and a lot of people do not because they think they do not need to.

In the digital economy these documents should be available on the website. I was the one who did a lot of searching for most of that particular data between Andrea and I and I can recall reaching a very high level of frustration when I am digitally literate, I know how to find documents on websites, I know what I am reading, I know what to look for because I have advised on these documents and yet I could not find the information that I needed to be able to advise anybody, let alone inform myself. There were less than 10 villages where we could find sufficient information. In fact, I can recall distinctly only one occasion where the public information document was accessible—that is, the current public information document was up there and accessible. I recall being so excited that I had to ring Andrea to say, 'I found one but that's it.'

The point I just want to reinforce from my submission is that I know retirement villages are a different system of accommodation than a unit complex or owning your own home. I know that. I work in that industry. I understand property law. I understand how property laws, because of the historical basis of how Australia was developed, are different from state to state. But as has already been stated, not every prospective resident is aware of that. They are not aware—and I know this from a conveyancing perspective generally—that we operate different conveyancing systems. So retirement villages just add another level of complexity and yet consumers have no means available to them easily to make themselves informed because, with all due respect to the retirement village operators, when you go to a village it is like a display home. When you go to see display homes and you look at plans and you talk to someone about what type of home you want, cost is in fact the last thing they want to talk to you about because they want to sell you on the beautiful lifestyle you will have in this home. The lifestyle is good and I understand villages operate on a commercial basis, but there is a level of complexity yet again that the ordinary Australian does not appreciate. So we need to make a system where people are fully informed before they move in so the choice is fully informed.

The last comment I want to make to the committee is an acknowledgement that you have a very awkward task because whatever change you make now to the law is only going to be prospective. It is not going to be retrospective, so this will apply from this point forward for new residents coming in. So I think the harder task for you and one that you need to address in the legislation is how to transition, if it is appropriate, the existing contracts and confusion to the new system, because you are not going to be able

to do that 100 per cent because there needs to be consistency across the villages both for the village operators so that the system still works, because if it does not work for them they will withdraw, and also so that residents have what they thought they were getting.

CHAIR: Thank you for that.

Mr Netherton: Good morning and thank you for the opportunity to present to you today. I am here today presenting on behalf of the Queensland Law Society, in particular the Elder Law Committee. As you may already know, the Queensland Law Society, or the QLS, is a professional body representing Queensland lawyers. Its members act for various stakeholders in the retirement village industry. These include residents, scheme operators, developers, local authorities, litigants and also a number of other peak bodies. The QLS aims to provide support to its members who advise residents and operators daily on various aspects of retirement village law and, accordingly, the QLS aims to provide a balanced view of the industry and the legislation.

With the limited time we have available to us today and already knowing that we have presented submissions to you, what we wanted to do was to highlight a number of key points. There are really three big-picture issues that we wanted to put forward to you today for consideration. They are simplicity, certainty and flexibility. In relation to simplicity, our members have observed that their clients are struggling with the complexity of the legislation and that there is a lack of understanding in the community when navigating through the various stages of the retirement village process. I know that you have already heard a lot about that this morning, but again to confirm, the PID is a very good example of where residents are obviously struggling to understand the complexity of it. It needs to be in a form of plain English. It needs to be easy to understand and it does need to provide, where possible, the information that allows comparison between villages.

In relation to certainty, the act needs to provide certainty for residents and for operators. Over the last 10 years there have been a number of changes to the legislation, many of which have caused arrangements for current residents to be changed retrospectively and many of these changes have had a negative impact, particularly on operators. The recent change to the exit fees being calculated on a pro rata basis is a good example of this. In simple terms, operators must already wait for the resident to leave the village before they are entitled to receive their exit fee, as you have heard earlier today. This has traditionally been known as a deferred management fee for that reason. So the operator gets no profit component until the resident leaves. By changing how the exit fees have been calculated over the years, the government has been changing how and potentially how much operators can be paid. Such retrospective changes need to be avoided or made with care, as Lucy has just said. This is really important, I think, so that operators can plan ahead to ensure they have viable businesses and we continue to have a retirement village industry and operators to operate them into the future.

The final point we wanted to make was flexibility. When compared with the retirement villages acts in other states and also across some of the other industries, including manufactured home parks for one, the Queensland Retirement Villages Act is becoming one of the most regulated, together with New South Wales. The society's view is that the act is becoming more and more restricted and as a result residents may have less options available to them in the marketplace for retirement village models—again, you have heard about that earlier today—and operators may be less likely to want to build and operate a retirement village in the market.

The society recommends that the provisions of the Retirement Villages Act encourage and allow flexibility and other viable accommodation options for residents into the future. For example, the QLS supports not just the traditional deferred management fee/exit fee model but maybe promoting a rental type model that allows weekly, monthly or other periodic payments by residents. This could be more akin to other models such as manufactured home park models or even pension models that are available in the industry at the moment. Such amendments would hopefully encourage more retirement village units to be built and allow residents who may not currently be able to afford to enter villages to enjoy the benefits of retirement village life.

In practice, where possible we suggest the legislation should promote flexibility and it should be left to the marketplace and the economic conditions to determine whether existing and future financial structures of retirement villages are comparable, viable and acceptable to residents. That concludes my presentation.

CHAIR: Dr Craddock, you mentioned when trying to get on the websites of the 523 retirement villages that fewer than 10 really had something. Why is that?

Dr Craddock: You would have to ask the village operators. They do have facilities, if you want more information, to put your contact details in. My personal view is that when you contact them then they can sell you lifestyle rather than provide, necessarily, information for you to be fully informed, as you should be. I am not trying to bag the retirement village industry but that is just my personal view, particularly based on the example I gave which was that, when it was clear that they were not looking to immediately move into the village, after several phone calls and several weeks this couple still have not received the promised information packages.

CHAIR: Do contracts vary or are they similar throughout a whole complex? Say, for instance, you might have 30 or 40 units in a complex. Would those contracts all vary or would they all be the same?

Dr Craddock: It depends on the size of the village and how the village operates. Because of the changes to the legislation over a number of years, as David mentioned, you will have adjustments being made to contracts within one particular village so that at each particular time you have got a certain type of contract being presented. I do not know of any village where they have a mix between, for example, long-term leases or freehold and rental arrangements, but you could possibly get a mix in villages. I cannot recall off the top of my head from the data we had.

Mr Netherton: If you do not mind, I might add to that. In relation to the first point, the public information documents, there is an obligation on operators, when they change a public information document, to actually lodge that with the Office of Fair Trading. There is a deposit of those documents and they are held on record by them. I also know that a number of the operators, some who presented to you earlier this morning, have quite large portfolios and they have one primary website that lists all of their villages. It may be confusing to residents to actually have every single public information document on that site as well. So that would need to be considered.

As far as the question about whether the documentation is consistent, whether there is a common document that is used every time, time and time again, generally speaking there is not much variation between residents entering into the village at the one time because the PID includes the contract documents internally in it. They are usually annexed to it and therefore they do not change very much. There may be small variations in things like price and obviously things like the unit number and maybe some certain special conditions that might apply particularly for that resident, but generally speaking they do not change a lot.

Dr Craddock: Can I add something to what David said? I dispute the fact that it would cause confusion, where the retirement village has multiple villages across all the states, to have a current PID for a particular state online. If you are inquiring about whatever village, it would be very easy to have a link that clicks to the link for the required PID and it states 'New South Wales', 'Queensland', 'Victoria' or whatever. I disagree with him on that. It would not make it more complicated. Then you could consider, as a prospective resident, differences between the requirements of the various states. It might influence you whether to move to Queensland or stay in Victoria, for example, or stay in Queensland or move to Victoria.

Mr GRANT: I would like to hear your comments on a couple of issues. We have read about the problems facing people when they are leaving a complex and how quickly it is sold and what they are exposed to for continued management fees et cetera. What happens if a person is so distressed in lifestyle that they have to leave after two months? What are they exposed to? If they buy in at \$300,000, what is a person—worst case scenario—exposed to?

Mr Netherton: The very first point I would make is to ask whether that is that different from a situation where someone has bought a home and for whatever circumstance they have to leave that home quickly. We are dealing in property here. Obviously there is generally a lag in time between deciding that you want to leave a particular property and putting it on the market to be resold. Nothing is stopping them leaving that particular premises and moving somewhere else, whether that is aged care as Kim Teudt said earlier today.

Mr GRANT: I wanted to focus specifically your knowledge on, whether they like it or not, purely because they have purchased into a retirement village, what are the ramifications there. I understand all the others you have spoken about. Are they locked in to something that is not pro rata for just two months by way of exit fee—all those sorts of implications?

Mr Netherton: The legislation states that at any point in time they can give notice that they want to leave. When they vacate the premises, as in they physically leave the premises, that actually stops the exit fee continuing to accrue. Does that answer your question?

Mr GRANT: What are they exposed to? Let us not talk in terms of percentages; let us talk in terms of likely dollars. It seems to me that there is a fair bit of flexibility under the legislation as it stands. There are a variety of formulas that are used to calculate the exit fees. My question really is: what is the worst case financial scenario that a person would be exposed to if they left after a very short number of months after having spent \$300,000?

Mr Netherton: You have used the example of \$300,000 and they left within the first two months. The general process would be that you would review the documentation and work out what the exit fee structure is. Most operators have an exit fee structure which is obviously an incremental exit fee structure—and that has been the traditional model, as you have heard earlier today. The question would be: what is their exit fee structure for that particular village? It may be three per cent for the first year, six per cent for the second and so on. The recent changes to the legislation have had an impact on that such that there is a calculation or pro rata daily item. But again, it is very specific as to what documents that particular village has as to what that particular resident would incur when they leave.

Mr GRANT: It is not uniform.

Mr Netherton: The other thing to add to that is that there are other costs that that resident would incur by leaving. They could be the resale costs associated, depending, again, on their structure. There may be some contribution towards the resale costs—the advertising and so forth. There may be some contribution to reinstatement. Again, it totally depends on that particular resident and what they have agreed to with the operator.

Dr Craddock: Can I add also that some villages enable residents to participate in capital gain but also it goes hand-in-hand that they participate in capital loss. So if there was unexpectedly another GFC I think the worst case scenario would be that they would be participating potentially in a capital loss. So they would walk away with less than \$300,000 but, again, that depends on the documentation they have signed at the time.

Mr GRANT: That is no different to any of us. We suffer the consequence of the market.

Dr Craddock: Yes, except I think for some there is a perception that they have paid in \$300,000 and therefore they are going to get at least \$300,000 back, which is not always the case.

Mr RUTHENBERG: I am going to go down this line of questioning a little bit further. When a person stops working, their capacity to engage in financial transactions starts to diminish as the financial transactions increase. That is just as a premise. Notwithstanding what you have just said about various villages et cetera, let us say someone has a house and they have sold the house and they get \$350,000 for it and it costs them \$300,000 to get into the retirement village. They spend a couple of years there and determine that it has come to a point where they have to move. Upon making that decision they investigate what it is going to take to get out of it and what they are going to lose. The probability is they will walk out in a circumstance that means that they will be struggling to buy into another village somewhere.

For those of us still actively in the workforce, if I buy a house and two years later I am sick and tired of the guy behind me because he is playing loud music all the time and all means of trying to get through that in other ways have failed and I determine I have to leave, I can leave. But if I buy into a retirement village and I get whammied a penalty—and please understand I am not having a shot at retirement village operators; I am looking at the circumstance—the probability is that actually I am going to have to put up with a circumstance I do not like because I am not going to be in a financial position to go and buy in another place. Do any of you have any thoughts on that?

Dr Craddock: With respect, the GFC meant that a lot of people who own their own home or unit not in a retirement village are in exactly that circumstance. So I do not think in that respect it is any different in a retirement village, but people might have a perception that it is so. That comes back to them being fully informed upfront.

Mr RUTHENBERG: The difference is, though, that if I am fully employed or if I am working I have options that potentially I do not have if I lose a substantial amount of my financial capability.

Mr Netherton: Lucy is 100 per cent right. How could the operators be forced to be in a position where they can cover that expense? It is market forces that are outside of what would normally be reasonable to expect an operator of that type of establishment to cover.

Mr RUTHENBERG: Perfect. So we have gone exactly where I needed. Is there a different financial model that could be used that would lessen that sort of impact?

Mr Netherton: The financial impact for a person would depend upon various things such as what they paid when they entered and what they are going to pay when they leave. So if they have paid a high ingoing contribution and there has been a huge loss for whatever reason in that residency, they will get less cash equity upfront. There is also a cash flow position for that particular resident whilst they are in the village and then ongoing when they move into whatever other accommodation they choose.

I think that all needs to be worked out and balanced, because it depends on what accommodation they need next. If it is aged care, they are likely to be catered for as far as their care needs are concerned, whereas if they are moving out of one retirement village into another or into a unit or something of that nature, it will be a totally different set of circumstances. It is going to depend critically on the set of circumstances for that particular resident. I think operators are pretty well known for trying their damndest to facilitate a transition for residents out of their village into other villages or other complexes in the smoothest way possible.

Mrs SMITH: I am very keen to hear how you think the disputes procedure could be improved. Given the age bracket of people in retirement villages, I would think some people may be discouraged from going through QCAT or legal processes or where it clearly states that the act only covers partial disputes, not all disputes. I would be interested in hearing your comments on how we could possibly improve the disputes procedure.

Dr Craddock: My suggestion is that you might want to consider having a specific ombudsman, because you have situations where people are not comfortable going to QCAT. They do not want to rock the boat. There might be a dispute that they have or a misunderstanding. It comes back to informed consent. There have been cases where people felt that they have had matters misrepresented to them before they had moved into the village and yet you have the dispute resolution procedure not enabling such matters to be considered. It is breaches of the act or breaches of the resident contract. Maybe you need to think about expanding what services are there to meet disputes head-on.

Can I make an overriding comment, though. I have had some clients who, when you advise them of everything—so they are the ones who take the step and get things checked before they move and they pay the fees associated with doing that—have elected not to move into the village. There was nothing wrong with the village. There was nothing wrong with the documents. There was nothing wrong with anything else but when they actually sat down and I walked them through it and explained what it all

meant, including the rules about the residences and the close proximity of others—it is close communal living—they made a decision not to move in. Some people have no concept of what it means to live in close proximity to others. I think that is some of the problem.

CHAIR: Do you have a solution to the situation where owners are not sure whether they are owners or renters? Obviously there are benefits available through Centrelink and local government discounts for owners. Is there some clarification you can make of that?

Dr Craddock: If I can refer you to the recommendations that Andrea and I made in our submission. One of them was referring the committee to the proposed standard form village contract that New South Wales put forward for consultation. I have a copy in front me and I am happy to leave it here if you would like. On the front page of that document it has a heading—and may I say I thought it was a very clearly worded document and should be straightforward for people, but I believe somebody else made the comment earlier that we need to have things in not only plain English but also plain other languages—‘Nature of resident’s right’. You tick the relevant box. All the other things stay. It goes through being lots and strata schemes, whether you are a registered interest holder or a non-registered holder, whether it is a long-term lease or if it is freehold it is a slightly different thing. I think that is something that needs to be clearly pointed out on the front of the document.

I also think—and we made this point in the submission as well—from a consumer protection provision requirement you should consider introducing something like a Retail Shop Leases Act requirement that everybody must have legal advice and financial advice before they enter into a contract. It is that simple. This is their home. This is the biggest investment that people make and yet we do not have it for something as simple as this but we do have it for retail shop leases which are a commercial operation.

CHAIR: Would you like to table that?

Dr Craddock: I would be very happy to table it. It is also available on the New South Wales government website.

CHAIR: Is leave granted for the tabling? There being no objection, it is so ordered. Thank you very much for your contribution. That was very helpful. I now call representatives from the Department of Housing and Public Works.

FLYNN, Mr Patrick, Senior Business Services Officer, Department of Housing and Public Works

FRANCIS, Mr Mark, Executive Director, Office of the Registrar, National Regulatory System

GREEN, Mr Terry, Acting Manager, Residential Services Unit, Department of Housing and Public Works

SAMMON, Mr Damian, Director, Office of the Registrar, National Regulatory System

ZGRAJEWSKI, Mr Mark, Principal Legal Officer, Office of the Registrar, National Regulatory System

CHAIR: Thank you for coming along. Who would like to lead off?

Mr Francis: I will. Thank you to the committee for the opportunity to speak with you this morning. We would like to cover four issues and then explore any other matters through questions. These are issues that have been covered during the course of this session.

The first is: should there be more flexibility in the design of retirement villages? The second is: should the act be amended to cap the amount of the exit fee? The third is: should there be a prescribed mandatory accreditation scheme? The fourth is: should the public information document be redrafted to make it simpler and more useful? I will take each of those issues in turn.

There is a great variety of retirement village schemes on offer in Queensland, ranging from leasehold to freehold. As we have heard, they range from small church run to large resort style for-profit operations and from modest to high-end facilities. In addition to those bricks-and-mortar differences, there are also variances in the contractual terms on offer—buy-in options, types of services available and the quantum and method of calculation of the exit fee. However, all villages must adhere to the basic retirement village model. That includes an ongoing contribution, maintenance and capital funds, cost-recovery budgeting and the exit fee and exit entitlement. Central to that model is the prohibition on the scheme operator to derive profit from any source other than the exit fee.

The act casts that model upon what was already standard practice across most of the industry at the time the act was developed and upon the best practice provisions of the day in other jurisdictions. Although it is unusual to enact legislation to regulate one specific type of contract, the unique contractual arrangements developed by the industry demanded such an approach to ensure consumer protection and a degree of certainty which would allow industry to develop and remain viable.

There has been a push over the past few years for some developers to propose retirement villages which push the boundaries of what is permitted under the basic model. In 2011, the then administering authority, the Office of Fair Trading, indicated, for example, it would not register a proposed scheme without modification to make it align closer to the act. Those modifications, to ensure residents were not liable for costs which are the sole responsibility of the operator under the act, were made and the scheme was then duly registered.

However, the then government proposed amendments to the act to clarify that the chief executive had power to refuse to register a scheme which did not comply with the regulatory framework of the act. Although the amendment would not prevent any accommodation development from proceeding, it would ensure only schemes conforming to the model envisaged by the act would be registered as a retirement village scheme. That bill lapsed with the proroguing of parliament.

What are the positives of such a proposal? Were the present strict model prescribed by the act to be relaxed, developers could design schemes to better meet the varied and ever-changing needs of consumers. We have heard that this morning. This could result in villages being more affordable to move into—were the ongoing contribution to be removed—ongoing costs being more stable—if a flat rent were charged instead of cost-recovery general service charges—and leaving the village being less stressful if the exit fee was replaced by a regular profit component included in ongoing rent or charges.

On the negative side, retirement villages, and particularly those operated for profit, depend on various sources of money—they being the ongoing contribution, general services charges and the exit fee—to maintain financial viability. That viability breaks down into funds to meet actual operating costs and the profit earned in running the village. As such, whichever way the present village model is modified, the same amount of funding must be secured to ensure viability. It is therefore unlikely any modification would make retirement villages more affordable overall than they are. It would simply perhaps change some of the stresses.

In other words, residents would still pay the same but just in different ways and at different times. Although this may not of itself be negative, allowing schemes to be structured any way the operator chooses would potentially lead to numerous materially different schemes being created. Some potential

residents have noted difficulty in comparing villages and understanding their ongoing and long-term financial obligations, and this problem may be expected to be exacerbated by that change. More fundamentally, the relevance of maintaining specific retirement village legislation may eventually need revisiting if the basic model becomes substantially diluted.

Do we need a separate piece of legislation? Ultimately, if a developer today proposed a scheme which is outside the model in the act they are free to proceed with that scheme; however, it would not then be a retirement village under the act. From a marketing perspective, there is perhaps an advantage to an operator if it is a retirement village because of the protections under the act and the perceptions of consumers beyond. This is evidenced by operators seeking further legislative prohibition on schemes that do hold out as retirement villages when they are clearly not. The act does not restrict the development of new and inventive accommodation models, merely the retirement village.

Should the act be amended to cap the amount of the exit fee? In budgeting for the village, the scheme operator must have regard to the recommendations of a quantity surveyor, and any surplus in the various funds must be carried forward to the following year. This cost-recovery financial model is designed to ensure residents are only liable for what is actually needed to maintain the amenity and facilities of the village. However, the act does not prescribe limits on the quantum of exit fee which may be charged when a resident leaves the village, nor the method by which the exit fee is calculated. As such, the exit fee represents the operator's sole source of profit in operating a village.

Across villages, as we have heard, there is considerable variation in the quantum of exit fees charged. A large, resort style village may be expected to charge a higher exit fee than a smaller, church run village. That reflects not only the ability of the respective residents in each village to pay the fee but also the profit levels which must be maintained to ensure the village remains viable.

There is also a great variety in exit fee calculation methods. Although a common method is to calculate the fee as a percentage of the outgoing or incoming resident's ingoing contribution, with this percentage increasing for each year of occupancy up to a maximum, the percentage range employed does differ between villages. A variation on this method features a very high exit fee percentage as a trade-off for charging a very low ingoing contribution. Another variation uses a higher exit fee percentage because the resident shares in any capital gain on resale of the unit. In some villages, the exit fee is a flat fee agreed at the time the resident enters the village. However, it is usually set high to ensure a guaranteed income stream.

Although the act does not regulate how the exit fee is calculated, this general rule has been subject to two recent consumer protection amendments. In 2006 the act was amended to require the exit fee to be calculated as at the day the resident vacates their village. The exit fee percentage usually increases each year and, in cases where a unit took a long time to resell, the next percentage increment could be reached between vacation and resale, thereby eroding the funds which the resident expected to have to pay for their accommodation choice. The amendment delivered greater certainty for residents and indirectly increased the onus on operators to ensure a swift resale of a vacated unit.

Then in 2012 the act was amended to require all future contracts to calculate the exit fee according to a proportional method—sometimes called pro rata. Exit fee percentages usually increase annually, although if a resident leaves part way through a year the percentage increase for the entire year may be charged. In extreme cases, a resident in situ for one year and one day would be charged the full exit fee percentage for two years. However, under the amendment, a resident in such a situation would only be charged the first year percentage and 1/365th of the second year percentage increase. The amendment also imposed this proportional method on existing contracts where it was unclear whether or not this method already applied—although given the importance of the exit fee, it is unlikely there are any such uncertain contracts still on foot.

In terms of the positives for capping, one of the key difficulties identified by potential residents is the inability to compare their likely exit fee liability across different villages, which we have heard extensively about. An amendment to require the exit fee calculation method to be standardised across the industry would assist potential residents to compare villages. Although a final exit fee will only be revealed once other factors are considered—such as outstanding fees and charges, any capital gain sharing, the cost of reinstatement, the resale price of the unit and so on—a consistent calculation method would at least allow potential residents to estimate a comparative exit fee for different villages using the same variables, such as the ingoing contribution amount, the expected length of occupancy and so on.

An amendment to limit the amount of exit fee which may be charged would assist potential residents by forewarning of their 'worst case' exit fee liability, thereby allowing the potential resident to decide if they could afford to bear this cost should they stay in the village long enough to reach the limit. Such an amendment would also assist in comparing between villages.

An amendment to require a fixed, final exit fee amount to be disclosed before the residence contract is entered into would assist potential residents by notifying them upfront about their ultimate exit fee liability. Such an amendment would significantly reduce the uncertainty about what a potential resident would have to pay and would again also assist in comparing between villages.

On the negative side of the equation, for many retirement villages, and particularly those on the for-profit side of the industry, the valuation of the village is partly based upon the expected exit fee income stream. A mandatory change to the exit fee calculation method, even if only applicable to future contracts, may prompt financiers to revise existing valuations in line with the resultant change in the expected exit fee income stream. A reduction in the value of the village will make it more difficult for the village to obtain finance for, say, any redevelopment purpose or expansion. Financiers also may begin to view retirement villages as a less profitable type of business venture and be less interested in lending.

In extreme cases, operators may consider closing their village if expected profit levels are reduced as a result of capping or limiting the exit fee. We must remember that, whilst the exit fee is only one term in the residence contract, it is an integral part of a suite of terms which comprise the financial arrangements under the contract. As such, a substantial change to the exit fee term would throw the other financial terms out of balance. For example, where an exit fee rate is high, that may be in recognition of a relatively low ingoing contribution to assist residents to buy into a village, therefore making entry affordable. An amendment reducing this exit fee rate would result in the operator receiving both a low ingoing contribution and a low, or at least lower than expected, exit fee.

Given expected exit fees are a key component of village valuation and viability, it may be that operators would seek to find ways of recouping any reduced profit occasioned by caps or limits to the exit fee. Although the budgeting provisions in the act require fees and charges to be levied on a cost-recovery basis, these restrictions do not apply to the exit fee or the ingoing contribution. As such, operators facing a drop in exit fee profit may increase their ingoing contribution, making the ability to purchase in the first instance less affordable. That could affect the ability of many potential residents to afford the accommodation option. Operators may also stop offering capital gain sharing or other similar measures in order to retain potential sources of profit.

The third issue is mandatory accreditation. Accreditation of villages is not prescribed under the act, nor is it prohibited. There are a number of industry led accreditation schemes which may enhance and build upon the consumer protections under the act and may therefore assist potential residents in deciding between villages.

The positives of mandatory accreditation are that it would ensure basic standards at all retirement villages and, depending on how the standards are framed, may provide residents with additional rights which are difficult to legislate for, such as quiet enjoyment, to be treated with dignity and to be free from intimidation or harassment. It may also make it easier for potential residents to compare villages, given there would be standards common to all villages.

On the negative side of the equation, given the variety of villages, as we know, and the differing contractual arrangements between them, it would be difficult to prescribe a one-size-fits-all set of accreditation standards. If the standards are pitched too high, that may prove prohibitively expensive for smaller villages. However, if set too low, that may actually reduce standards at high-end villages which already far exceed the base level. To ensure the standards are applicable to all villages, they would probably need to be very basic, which may render accreditation less useful than the present voluntary schemes which have a quality improvement type agenda.

Mandatory accreditation would also create additional red tape for scheme operators, particularly in those villages which do not presently participate in an accreditation scheme. Ultimately, the cost to operators of being accredited is highly likely to be passed on to residents by way of increased ingoing contributions and exit fees. Whatever benefit accreditation may yield must therefore justify any resultant increase in the cost of buying into a retirement village.

Finally, should the act be amended to require the prescribed form of the public information document to be redrafted to make it simpler and more useful? The public information document is an approved form under the act, as we have heard. The act also lists the content which must be canvassed in the document, being a mixture of general rights and obligations under the act and the specific details of the individual village. The public information document forms part of the residence contract entered into between the resident and the scheme operator.

Residents have long complained about the complexity and length of the public information document. In 2010, the lead stakeholder representatives for residents and operators undertook to revise the present approved form and then submit a new draft to government for consideration. This development process is presently ongoing and a final draft has not been provided, although we have, like the committee has, the current work in progress.

The positives of a simplified and more user-friendly public information document are that this may encourage potential residents to fully consider their rights and obligations before entering into a residence contract. That is a matter that has been noted by a previous speaker. It may also assist potential residents in comparing different villages.

On the negative side of the equation, the public information document, being an approved form under the act, must have a format which is usable for all schemes and contain sufficient critical information to ensure potential residents are fully advised of their rights and obligations. As such, simplification of the document must not compromise those important considerations.

However, regardless of how simplified and more focused this document is made, the inherent complexity of the retirement village deal necessitates that potential residents obtain both legal and financial advice before signing a residence contract. The legislation cannot make potential residents obtain such advice, but it can provide protection for consumers by way of clearly stated rights and obligations. We would note that sometimes people are more inclined to obtain advice if they are informed that the majority of others do it rather than being told that they should do it. Thank you.

CHAIR: That was very good. Thank you for that. Mr Francis, we know that the department had drafted legislation and it was before the House when parliament was prorogued. In view of the submissions that have come in this time, do you think you have covered a lot of those issues in the previous bill that hopefully we will see in due course?

Mr Francis: No. The bill was only to do with technical amendments dealing primarily with closures. I think a much broader range of issues has been raised.

CHAIR: You also mentioned a new format. Were you talking about the PID?

Mr Francis: Yes.

CHAIR: So you are working on a new format for the PID.

Mr Francis: To the extent to which we are supportive of the work that other stakeholders, industry and the residents association are working on it. We have not formally accepted it in deference to the work of the committee and any recommendations you might make on that matter.

Mr GRANT: Mark, with respect to accreditation, how workable is a sliding scale level of achievement for small, medium and large as compared to one-size-fits-all?

Mr Francis: I think the complexity lies in part around how you define differing levels. We would note that if a scheme is to be mandatory that is likely to have a pass-through cost to retirement village residents, as earlier Mark noted. Mandatory schemes can end in compliance as opposed to quality improvement, which a voluntary scheme might afford. Perhaps, Mr Grant, it is reasonable to look to some segmentation on size and scale of operation. Perhaps that could lead to differing accreditation schemes, but perhaps the key issue is whether it is mandatory or voluntary.

Mr GRANT: If we stayed with a voluntary scheme with some regulation, is there any way the act can delegate authority to a body to make decisions on what is appropriate for the specific type of scheme?

Mr Sammon: I think in other legislation there are schemes that the chief executive of a department can approve. An act could, for example, specify what elements of an accreditation standard or a standard would need to cover and you then leave it to industry to develop those standards on their own. Then the chief executive examines those standards and ensures that all the essentials are covered, but you might be able to include, for example, for a high-end industry additional standards around customer service that are not necessarily appropriate in other circumstances—additional levels of customer service given the amount that residents might be paying to go into a particular village, for example. I think there are other examples in legislation that indicate that such a scheme can be largely managed by industry but with a quality assurance role played by the government.

Mr RUTHENBERG: Following on from that, I think what you are saying is that we could actually determine a framework under which accreditation could be accomplished without going to the nth degree which becomes cumbersome and expensive.

Mr Francis: In essence, yes.

Mr Sammon: That is right. What you are then looking to, I suppose, are the benefits to industry that then flow on to residents in developing best practice and implementing best practice and providing a sufficient degree of flexibility to allow industry to strive for improving standards and using that as a marketing opportunity to say, 'We all comply with this certain set of standards and here they are. You can see this is what we do to implement them. This is the sort of training we require. This is the sort of relationship we ensure that we have with the residents and we understand their needs, and this makes us a better option for you than our competitors who don't offer you any of those things.'

Mr RUTHENBERG: I am going to ask some questions on areas that I am not clear on, and I think it relates probably to some federal law. Right now in the aged-care industry aged-care homes provide high-care needs. Some retirement villages are now in the process of offering some of that high-care responsibility. Is there any federal legislation that covers that care, or is a retirement village simply under the precinct of state legislation?

Mr Francis: The facilities offered for high care are governed by the Commonwealth legislation, whether they are provided on campus, off campus or in any other form—all of the quality assurance inspectorates, gate-keeping provisions through the aged-care assessment teams et cetera. The operations of the retirement village of course are under our act. I hope that clarifies your question.

Mr RUTHENBERG: That is fine, thank you.

CHAIR: You talked a while ago about flexibility, the cap, accreditation and the PID. Do those issues cover most of the submissions that have been made by residents?

Mr Francis: We saw 10 key issues. We have touched on four of the 10. Approval of draft village budgets by residents we saw as another key issue that arose out of reading the submissions. The scope of work required for reinstatement is another key issue. I believe that has been covered in presentations to the committee today. Who can initiate closure of a village is another key issue that came up for us. Compensation by the operator in the event of closure was a further matter—again, that has been raised today. A couple of matters related to dispute resolution, one of which I think has been touched on today through previous presentations—the expansion of the scope of the existing dispute resolution process. The second and final issue is parties to a dispute before QCAT having a right to legal representation in that dispute. They were the 10 key issues.

CHAIR: Would you be willing to table the summaries of what you have there?

Mr Francis: I think so, yes.

CHAIR: Is leave granted? Leave is granted. Thank you, that will certainly be very helpful.

Mr GRANT: Mark, we heard this morning about the need to look to the future to create schemes that do not even exist yet using research, imagination et cetera. Have any of your staff or officers had a chance to look at innovative, new ways of making it work for both the operator and the resident that we have not even conceived of or may not have conceived of? Some of us may; others may not.

Mr Francis: We have not researched particular business models as such. The act, as you are well aware, defines a particular business model—a matter subject to discussion and some critique today. We recognise there are other business models. I hope the remarks I made about flexibility, trying very carefully not to take a particular position but rather point to both potential positives and some pitfalls too, cover some of the territory that you are going to. But have we landed on a particular model? No. Have we researched in any depth a variety of models as yet? No.

Mr GRANT: Are the results of any research known to you as to how affordable it is compared to a similar lifestyle or a similar dwelling in another type of residential complex? Once you take everything into account—the low buy-in price, the elevated exit fees—how affordable is it compared to a reasonably low-end resort style living where you buy a town house?

Mr Francis: That is a good question. We have not done a comparison to say whether you could buy into a town house in the general community and how that might track—the differences et cetera. We have awareness of the costs associated with the manufactured home parks that are a not incomparable model. They offer a different business model where the incoming homeowner purchases their home—not the land on which it sits but the home itself. So they buy at a reduced price compared to a similar home in the broader community, recognising they do not purchase the land so that is excluded. The business model afforded in manufactured homes allows the park owner to charge a weekly rent that is their source of profit. In a simplistic affordability sense, we get lots of complaints from manufactured home residents about the lack of affordability because their out-of-pocket expenses are increasing. They do not increase by CPI. They are subject to less control. So we can observe that as a simplistic but major difference between the two accommodation types.

Mr Zgrajewski: I might also mention that in a retirement village residents may pay more to get in, and pay the exit fee and so forth, because they are paying for things which they are not able to get at another type of accommodation which might look the same but does not offer things such as security of tenure, which you do not necessarily get at a manufactured home park, or access to services that are offered at a retirement village which are not offered in a normal group title scheme such as a normal block of units. There is also the sense of community, particularly with people of your own age, which is of course one of the key things that attracts people to retirement villages. In terms of comparing different types of accommodation models, those are important things which are difficult to put a monetary figure on but are certainly an important part of the retirement village model.

Mr GRANT: I have a follow-on question. I hear what you say loud and clear. Has any analysis been done on the total cost to the operator to operate a retirement village compared to the costing of a roughly equivalent manufactured homes park with as best a match as one could hope to achieve? Is one much cheaper to manage and maintain than the other, or is there no value in comparing such apples and oranges?

Mr Sammon: I imagine if anybody has done it—we have not done that research ourselves—it would probably be the industry.

Mr GRANT: Thank you.

CHAIR: Thank you very much for that. I want to thank everybody who has made submissions to this inquiry. We understand the issues that are out there. We also appreciate the input from the industry because we do not want to have more regulation; we want to have less regulation, generally speaking. We want to ensure they are viable. They have to be able to operate. We want a retirement village system that will take our mums, dads and grandparents into the future with some security and some peace. As the phrase goes about the wisdom of Solomon, we might not be quite up to that but we will do the best we can to come up with a workable solution. I thank everyone for coming. I declare the hearing closed.

Committee adjourned at 11.54 am