

7 January 2019

HCDSDFVP Committee
Parliament House
George Street
Brisbane Qld 4000
By email: health@parliament.qld.gov.au

Submission on the *Health and Other Legislation Amendment Bill 2018*

Thank you for the opportunity to make this submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the **Committee**) inquiry into the *Health and Other Legislation Amendment Bill 2018* (the **Bill**).

Caxton Legal Centre is Queensland's largest community legal centre. Caxton Legal Centre's objects are to provide legal and social welfare services to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness, and to educate such people in legal, social welfare and related matters. We are an independent, non-profit community organisation providing free legal advice, social work services, information and referrals.

Queensland Retirement Village and Parks Advice Service

Caxton Legal Centre's Queensland Retirement Village and Park Advice Service (**QRVPAS**), formerly known as the Park and Village Information Link (**PAVIL**), has a particular interest in the proposed amendments to the *Retirement Villages Act 1999 (Qld)* (the **RV Act**), given our ongoing involvement in providing legal advice, education and advocacy services for residents of retirement villages across Queensland.

QRVPAS is a community legal service that is funded by the Department of Housing and Public Works, and has been delivered by Caxton Legal Centre since the program was first piloted in 2014. The aim of our service is to provide increased housing security to Queenslanders living in retirement villages by assisting them to:

- understand their rights and responsibilities under the relevant legislation
- build capacity to present their interests to scheme operators, and
- have increased access to appropriate legal advice services.

To achieve these aims, QRVPAS provides free legal advice, information, community legal education and referral services to residents of retirement villages across Queensland.

We are also involved in ongoing consultation with other stakeholders (including the Department of Housing and Public Works, resident advocacy groups, seniors organisations and industry representatives) who contribute to the development of legislation, community education and policy in this area.

As the only community legal centre program in Queensland that has a specific focus on this area of law, we are uniquely placed to comment on the proposed changes to the RV Act and how they will operate in practice. For these reasons, this submission is aimed at addressing issues that we have identified as being of concern to residents, based on our experience working in this area.

The current 18-month buy-back provisions

Since the *Housing Legislation (Building Better Futures) Amendment Act 2017* (Qld) (the **Building Better Futures Act**) was passed by Parliament last year, we have received many enquiries regarding the application of section 63(1)(c) (known as the **18-month buy-back provision**). In particular, we have spoken to a number of concerned residents who have been seeking clarity about whether this provision will apply to their freehold interests in retirement village accommodation units.

We have also dealt with former residents who have been very distressed by the suggestion that the 18-month buy-back provision may not apply to their freehold interest, due to certain issues with the drafting of the legislation. Their concerns are understandable when we consider that many former residents were relying on representations made about the 18-month timeframe to give them certainty as to when they would be able to access the funds that are tied-up in their former home.

In this regard it is important to appreciate that former residents often move out of their village for medical reasons, and urgently need to be able to access these funds to cover medical expenses and costs associated with aged care. Even if former residents have not moved out for medical reasons, the unfortunate reality is that the RV Act requires them to vacate their home before it can be placed on the market, and this results in many elderly people having to find temporary accommodation until their former home is sold and they can afford more secure housing.

The 18-month buy-back provisions attempt to address this concern by ensuring that there is at least a fixed date by which former residents can access the funds invested in their retirement village home. However the current wording of the RV Act limits the application of these provisions so that they do not apply to residents with a freehold interest. This disparity means that freehold residents could have to wait much longer than 18 months before they can access the funds that are tied-up in their retirement village home, which in turn could exacerbate issues they may experience with accessing medical treatment, aged care services or secure housing.

Accordingly, the mandatory 18-month buy-back provisions that currently exist under the RV Act do not provide sufficient protections for residents who own freehold interests in retirement village homes. We understand that this was not the intention of the Parliament when the

Building Better Futures Act was passed, but has now been recognised as a deficiency in the drafting of the legislation that needs to be corrected.

Proposed amendments to the 18-month buy-back provisions

QRVPAS strongly supports clauses 35 to 46 of the Bill, which introduce new sections to the RV Act to make it clear that the mandatory 18-month buy-back provisions will also apply to resident interests in freehold retirement village properties, with retrospective commencement.

To ensure that equal treatment is extended to all residents, it is also essential that the new buy-back provisions apply retrospectively. In this regard QRVPAS strongly support the introduction of new section 237Q, which will ensure that former residents with freehold interests can expect to have their homes bought-back in approximately the same timeframe as other retirement village residents. This amendment is necessary to rectify the situation for former residents with freehold interests, who may have moved out of their retirement village with the mistaken belief that the 18-month buy-back provisions would apply, and will ensure that they are not unfairly excluded by the earlier amendments to the RV Act.

We anticipate that the retirement village industry may argue that the retrospective application of the 18-month timeframe for freehold units will create additional costs for scheme operators, without providing them with adequate notice. However it is clear from the explanatory notes to the Building Better Futures Act, and submissions made during the consultation process, that it was always intended that the legislation apply to all types of retirement village interests. In any event, the industry is now aware of the proposed changes (some 6 months before they will take effect), which should provide them with adequate time to budget for any mandatory buy-back costs. In the circumstances we submit that the retrospective application is justified, and will protect freehold residents from unnecessary disadvantage caused by their exclusion from the Building Better Futures Act. This should, in our submission, outweigh any concerns about the financial consequences for the industry.

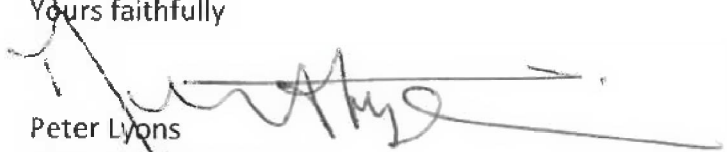
QRVPAS also supports clauses 9 and 10 of the Bill, which amend the *Duties Act 2001 (Qld)* to clarify that transfer duty will not be imposed on this type of transaction. This will ensure that former residents with freehold interests are not left in a less favourable financial position once they have sold their home.

In our view, these amendments are necessary to ensure that residents who own a freehold interest receive the same protections under the law as residents who own some other right to reside in their retirement village home (e.g. under a lease or licence arrangement). Without such amendments, the RV Act unfairly favours certain residents over others, on an arbitrary basis that is inconsistent with the policy aims of the legislation.

We would be happy to provide supplementary submissions and to consult further with the Committee on the above matters and generally with respect to the Bill.

This submission was prepared by Brittany Smeed, QRVPAS Solicitor, and Peter Lyons, Chief Executive Officer of Caxton Legal Centre. For further information, please contact the writer on [REDACTED]

Yours faithfully



Peter Lyons
Chief Executive Officer
Caxton Legal Centre Inc.
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Addendum

The following organisations confirm that they support the submissions of Caxton Legal Centre Inc. as set out in this letter: National Seniors Australia (**NSA**), the Association of Residents of Queensland Retirement Villages (**ARQRV**) and Tenants Queensland (**TQ**).

National Seniors
AUSTRALIA



Ian Henscke
Chief Advocate
National Seniors Australia
Contact: [REDACTED]



Judy Mayfield
President
ARQRV
Contact: [REDACTED]



Penny Carr
Chief Executive Officer
Tenants Queensland
[REDACTED]