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### **Caring for Older Australians – Productivity Commission. Submission**

Most matters mentioned are currently out of my field at present I am a hale and hearty 76 year old and probably entering the transitional period where higher care will be needed in the future.

One of the items that the productivity commission should look into is the 'set' of Retirement Villages. The reasons, I state this is, that there is currently somewhere between 100,000 and 150,000 residents (Australia wide). Residents in Retirement Villages are caught up in the deceitful practices of many of these villages by their management and operators' organisations. Many of these organisations are large corporate entities, whilst their advertising states that 'all is rosy in Retirement Villages' this is not the case, as all they are interested in is their 'bottom line and their shareholders'. Residents are considered a 'milch cow' and to be exploited to the hilt to grow their assets at no expense or cost to themselves. They (Companies) are more interested in 'turnover' or what we call 'hot beds' than the welfare of the elderly residents.

There are many items that still require attention in our legislation such as: -

- Standardisation of Contracts
- Transparency & Accountability by Management
- Education of all Stakeholders i.e. Residents, Operators, Local Managers and their staffs, Residents' Committees that should be acting for their Residents' best interests rather than act as a 'mouthpiece' for their Management.

### **SCOPE OF THE ENQUIRY**

I write from a Retired Village point of view and only comment on those points, that I believe affect us. I have had a long Association with the Retirement Village Residents' Assoc (NSW), as an active member of their committee for seven years and have been involved at the 'coalface' for the same amount of time. I have also appeared before the Senate Committee enquiry on 'Older People & the Law'.

#### **1<sup>st</sup> Point – “Systemically examine.....etc.”**

My main concern is that Residents of Retirement Villages have exceptional difficulties in disposing of their unit/villas under the varying tenures that they hold (I explain the tenures further down).

Many are unable to access satisfactory higher-care because it takes so long to dispose of their Unit/Villa to meet the requirement of the entry fees to the higher-care facility. Many of the current residents of Retirement Villages have not benefited from the 'Property Boom'. Most put the value from the sale of their family home into their Retirement Village Unit/Villa at a time when properties were at a reasonable price, whereas they held a **secure tenure** that they have swapped for the right to live in their Unit/Villa. Even those under Strata Title do not appear to have a secured tenure. To put it bluntly the Operators 'hold all the Aces'.

## **Explanation of the tenures in NSW**

**Loan Licence** This where an incoming resident pays the full price for the so-called lifestyle i.e. as much as the cost of a unit, villa or house would fetch in the suburb/town that they have decided to live in. They enter contracts that they do not fully understand and which many of the legal fraternity do not fully understand as well. The moneys are usually given on an 'interest free' basis less the deduction of the Deferred Management Fee (DMF) or Ingoing Contribution (IC). The DMF or IC varies from a lump sum or an instalment of 10 – 50% over a set period (e.g. say 5% for 5years). This is set out in the contracts; additionally these contracts can have Capital Gain in varying sums for 10% - 100%. Some even have a Capital Loss in their contracts.

This system basically had no guarantee of security of tenure for their free loans, though current legislation has given some relief (though this cannot be guaranteed all it does is give an indication that a resident ranks after the tax department providing there is funds left) and that is providing the Village has no mortgage over the land on which the Retirement Village sits. The licence was originally the province of the not for profit sector (churches, community and some others etc.) This gives the outgoing resident under the Law a return of his/her funds 14 days after the incoming resident comes in or at the end of six months after the former resident or beneficiaries have given the keys back to the empty Unit/Villa whichever is the lesser time. There is no standardisation of contracts and a myriad of variations (many are unconscionable, but time this was realised it was too late) – this is designed to give the Residents no chance of taking out a 'class action' against the Operator. This situation also occurs in the other tenures that I mention below.

**Leasehold** This tenure is where the most angst occurs between residents, beneficiaries and management. Holdings are similar to that of the Loan Licence except that there are more variations, more fees and more ways that operator/management etc. can obtain as much money from the residents. This is what creates the angst amongst the residents etc. in the ability to on sell the Unit/Villa. I know of cases where residents etc. have not been able to sell their Units/Villas for up to 8years and in some instances I have heard of longer periods. I believe that some residents, who have had to go to higher care, probably have been made bankrupt, because they have not been able to keep up the charges on the Unit/Villa as well as the Nursing home/ Hostel. Beneficiaries often have trouble in disposing of their relatives Unit/Villa and in some instances where they have tried to hand the Unit/Villa back to the operator, who refuses to accept it. This was done by them (beneficiaries) to release them from the continuing burden to have to pay the recurrent charges for an Unit/Villa, that which they (beneficiaries) cannot legitimately occupy.

Under the Retirement Villages Act 1999 (as amended) the new legislation alters the time to pay to 6 weeks once the keys have been returned, however in the case of the Leaseholders this is in relation to their Capital Gain (e.g. if 50% CG then they have to pay 50% of the recurrent charge until the property is sold and management has to pay the other 50%). This latter situation may speed up sales?????. One notices since this alteration to the Legislation many operators are now offering 100% CG, as this will delete their liability to pay. As mentioned before standardisations of contracts in this industry does not exist.

**Strata Title** This tenure is supposed to be where the owner of a Strata Title holds his/her lot by the number of entitlements shown on the Strata Plan (i.e. the entitlements show his/her share in the common area). Unfortunately this does not appear to be so in many Strata Retirement Villages as residents are finding out that their Operator seems to hold a controlling interest in the property through a covenant from the original developer or

through a so-called management agreement from the same above source or similar (the original owner). These contracts have many of the same terms as the leasehold ones above.

**Company and Community Title** These two tenures are rare and fall between the leasehold and strata title ones with the same inherent problems.

**2nd Point – “Develop Regulatory and Funding Options..... etc.”**

**2nd Point - Minor Dot Point 3 “Support Independence.....etc.”**

Most of the infrastructure ‘*that supports older people*’. My thoughts on this area and if I had my time over I would not enter a Retirement Village. I would seek to downsize and live in the same suburb or town and have the same services medical, chemist as well as utilise such organisations as ‘Meal on Wheels’, ‘Home Care’ etc. If I needed any of these types of service in that way I would have sufficient funds from the sale of my house/property to afford and when the time came to move into a better higher care facility. It is often difficult when you move from one area to another to obtain the same type of services that you currently use where you live

The Retirement Village industry is just an avenue for management to soak up the wealth of the middle/lower classes, who have struggled all their lives to own their own homes and raise their children and then have to transfer their meagre wealth to the big greedy corporations that have entered the industry to capitalise on this transfer. Big business is not interested in the village residents other than as a ‘milch cow’.

**2nd Point – Minor Dot Point 4 “Based on business models.....etc.”**

You briefly cover the above in minor dot point 3 mentioned above. In this paragraph the leading clause says it all ‘*Based on Business Models*’ as well as mentioning ‘*The forms of care that older people need and want*’ very rarely are the residents ever asked for their input on their ‘wants and needs’ and ‘*Allows providers to generate alternative revenue streams.....etc*’. I have already explained this minor dot point in my comments on the 1<sup>st</sup> Point ‘Systematically examine’.

**2nd Point – Minor Dot Point 6 “Financially Sustainable.....etc.”**

This paragraph looks good in print until you start to analyse it *Private contributions* – the inmates. *Transparent financing*’ if this follows the same track as the Retirement Villages Act 1999 (as amended) and as the State Minister spruiks “Transparency and Accountability” and the standard of the follow up by the legislature is virtually non-existent. I could express that until a ‘judicial enquiry is held to tidy up the iniquities in this Sector there will never be harmony.

**2nd Point – Minor Dot Point 7 “Consider the Regulatory Framework.....etc.”**

No matter what regulations are introduced there will always be exploiting the system and similar comments apply as in the minor dot points 4 & 6 above.

**2nd Point – Minor Dot Point 8 “Minimise the Complexity.....etc.”**

In theory this would be ideal, but in the ‘real world’ it would be as far apart as the poles

**2nd Point – Minor Dot Point 9 “Allow Smooth Transitions.....etc.”**

I make the same comment as I have in the minor dot point 8 above.

**3rd Point – “Systematically examine the future work force requirements...etc.”**

I believe this scope does not go far enough it should not only cover the work force, but should also cover all the proponents of the Retirement Village (i.e. the residents, prospective residents as well as those fore-mentioned under paragraph 3 Page 1) that enter on to the

grounds or use the facilities of a Retirement Village. I know the last mentioned statement could cause problems, because the elderly can suffer with mental incapacity, dementia, unable to fully understand and comprehend etc., but I think this is an essential, should the elderly not understand then their children or other siblings, relatives etc. should be added to the mix to be aware of their options and what is involved in the Retirement Village. I know that so-called Village rules are frequently broken not intentionally, but because the need to know has never been fully explained

Here I believe that the Commission should seek to **educate** (mentioned in my dot points on the needs of further legislative requirements) the management, but also the work force, as well as the residents etc. Many of the operating staff has no idea how to treat the elderly or any idea of what their needs or wants are. There is currently little training other than in house corporate style to ensure that the company gets the most return from the residents that it can 'screw' out of them. There is generally a plan afoot to ensure that those (residents) that have an inkling of what is right and what their Rights are, are singled out by management and see that they are 'blacklisted' by all the other residents. I know this to be true in my own and wife's case.

#### **5<sup>th</sup> Point – “Examine whether Regulation.....etc.”**

State Legislature controls Retirement Villages and as often occurs differences between Federal Issues and State ones can overlap as well as being poles apart in their contexts in the way legislation is formatted. One has to fit the 'big picture' (i.e. nationwide) whilst the other has to cater to its own segment (territory or local area interests). Maybe a greater consensus and co-operation between the States and the Federal Government can achieve the formulating of Law and Regulation that appear to affect the majority of Australians and whilst I am not essentially happy about a national policy for Retirement Villages as a whole. If it is able to straighten the current mess that the industry is in, as I have mentioned in the foregoing and it is in the national interest then so be it.

Finally I have no objection to you using or printing any of the foregoing, because I am in a situation that I can prove every thing I state. I would like to mention that until whatever Legislation that becomes available that is **transparent and accountable** by that I mean that the Government Dept that controls this Legislation is **prepared to back their law and act on the injustices that are perpetrated against the elderly**. I have a number of sayings, but the one that covers this situation is the reverse of the Robin Hood syndrome and i.e. **'Rob the Poor to feed the Rich'**. Until this is addressed along with education of all involved, people knowing their rights, but also their siblings carers or minders, simple contracts that set out what all parties will or not do or can or not do. When these matters are suitably attended to there will always be greed, avarice coercion, bullying and intimidation of the elderly by those that exercise the power.

Rob Harvie