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BY: LACA

Submission No. 15
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FROM: Jean Lehmann

TO: Committee Secretary
House of Representatives Legal & Constitutional Affairs Committee
P.O. Box 6021
Parliament House
CANBERRA ACT 2600

Dear Secretary,

I am an 85 year old aged pensioner, living in retirement village, Queensland, and am responding to your invitation to have "my say" with regard to the legal needs of older Australians. My letter is in respect of older Australians living in, or contemplating living in, retirement villages.

re: **Fraud**

From personal experience it is desirable to ensure that operators of retirement villages advertise their village in a truthful manner. Many prospective retirees, including widows who may not have made decisions for themselves for many years, are inexperienced, and are easily influenced by clever sales persons who fail to clearly and fully disclose all matters which will materially affect prospective residents.

e.g. Advertising material of claimed that a nursing home was part of the village when final plans have not yet received approval. If/when approved, the nursing home would not be part of the village but a separate income-earning facility, admission to which will be governed by external factors, which fact is not mentioned to unsuspecting prospective residents who feel that their future within the village is secure.

Financial abuse

In legal documents there should be clear definitions of capital expense, capital improvement, repairs and maintenance, to ensure that residents are not subsidising the capital improvement of the operator from their maintenance fees.

In the operator breached the Act and lease contracts by using residents funds on items of capital expenditure and was forced to refund over \$100,000 to the residents' funds following a Tribunal decision.

There is a continuing breach because the operator is presently combining expenses of with main village expenses, thereby calculating CPI increases on this higher expense figure, causing general service fees to be above that required for village residents.

It appears to be policy of operators to breach contracts and the Act when it suits them, hopeful that elderly residents who object will take no action because of the expense of legal expertise necessary to counteract the enormous resources of the operator, and because retirees desire peace and quiet and not the pressure of legal procedures.

There is need for appointment of an Ombudsman-type person in each State who can give advice and act for residents, and who has financial backing from a government source.

re: Accessing legal services

As mentioned above, the cost of legal services to residents many of whom are on limited fixed incomes, is daunting, and can be the deciding factor whether or not an apparent breach of contract by an operator will be contested.

At a group of residents proceeded with a Tribunal Hearing to its conclusion, but first had to raise a preliminary \$15,000 between them for engaging experts necessary to ensure a successful Hearing. This was independent of legal expenses. A decision by the Tribunal directing the operator to pay costs was a tension-relieving outcome, and made it possible to meet our legal expenses of approx. \$47,000.

Appointment of a Retirement Villages Ombudsman in each State would ensure a "fair go" for residents who are in a David and Goliath situation with operators, who have extensive resources to defend legal actions. Such appointments would obviate the main barrier (costs) for accessing advice and legal service for these older Australians.

The Government is to be complimented for initiating this investigation, and it is hoped positive results will be the outcome.

Yours faithfully,

(Jean Lehmann)