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TO: Dr Nicholas Horne - Inquiry Secretary, House of Representatives Standing Committee on Legal and Constitutional Affairs.

FROM: Adrian Pagett. Hon Solicitor Retirement Village Association Ltd

FAX No. 02 6277 4427 DATE: 21 August 2007

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Dear Dr. Horne,

Re: Retirement Village Association Limited submission in reply to Standing Committee's questions.

Further to your e mail containing the Standing Committee's further questions of me, I am faxing herewith my written reply made on behalf of the Retirement Village Association Limited.

Yours faithfully,


Adrian Pagett.



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21 August 2007.

Dr. Nicholas Horne
Inquiry Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Sir,

Questions of Standing Committee dated 3 August 2007 for Retirement Village Association arising from the Older people and the law inquiry public hearing in Perth, 30 July 2007.

As a witness giving evidence to the Standing Committee on behalf of the Retirement Village Association Limited, I provide the following answers to the questions asked by the Standing Committee as set out in your questions paper dated 3rd August 2007.

1. **The Committee has heard that retirement village agreements can be complex, difficult for older people to understand and skewed in favour of village operators and managers.**

• ***What is the RVA's view on this issue?***

Answer:

Retirement village agreements are of necessity quite lengthy documents so as to adequately deal with a substantial number of essential terms. For instance contracts usually deal with the following:

- (a) The grant or provision of occupancy rights subject to necessary reservations.
- (b) The consideration payable on entry and the financial entitlements of residents following termination.
- (c) The budgeting for, consulting on, fixing and payment of ongoing village operating costs.
- (d) The terms for payment of deferred fees and reserve fund contributions.
- (e) The operator's management, maintenance and marketing obligations.
- (f) Insurance, damage/destruction provisions.
- (g) Residents' obligations to maintain their residence.
- (h) The marketing procedures and obligations of the parties incidental to "re-sales" of residences.



- (i) Operator's financial reporting to residents obligations.
- (j) Procedures for residents' meetings.
- (k) Termination rights and controls.
- (l) Dispute provisions.
- (m) Emergency call service provisions.
- (n) Rules for occupancy and use of communal facilities.
- (o) Modification of scheme procedural provisions.

Although agreements are written succinctly and in plain English, the terms by the nature of their subject matter can in some instances be lengthy. The terms of the agreement must balance the rights, obligations and duties of the parties and ensure the professional long term management of the village. Villages are not self governed by residents, they are proprietor managed. The RVA considers that for the most part agreements are written on reasonable terms which allow the proper management of the village scheme.

The RVA encourages measures which assist residents to understand and obtain sound independent advice on their contracts. This is currently facilitated by extensive pre-contractual disclosure requirements and the various time frames specified from State to State that have to be observed which allow consumers time to consider and take professional advice on the real estate product offered before entering into binding contracts.

- ***Is there a "standard form" agreement that some or many retirement village operators can and do use?***

Answer:

This question has in part been answered by my written submission paper on page 3 in item 6 which I reiterate. The diversity of the title and legal arrangements on offer in the marketplace preclude a "one contract fits all" approach. The Standing Committee should also be mindful that various different taxation treatments apply to different title/scheme arrangements which is also not conducive to a standard contract approach. (See ATO's Taxation Ruling 2002/14.)

The RVA notes that the imposition of a standard contract would be a very difficult task which would have to allow for the inclusion of a substantial number of non standard terms. The resulting contract is likely to be disjointed and may not in fact produce a simplified, easy to understand contract for consumers. It is also noted that no other sector of the real estate industry has a compulsory standard contract imposed by law. In a free market society the RVA remains steadfastly in support of the current contractual system. The RVA supports commercial innovation and competition which benefits consumers.

The RVA does consider however that there are a limited number of contractual issues which could be subject of standard agreed terms. Examples for consideration are:

- (a) Operating costs financial reporting and consultation terms.
- (b) Contract termination rights.
- (c) Dispute and mediation process terms.
- (d) Procedures for the conduct of residents' meetings.

- (e) Contract/scheme variation terms.
- (f) Resident committee terms.

2. It has been stated in other evidence to the Committee that retirement village residents can be disadvantaged by having little or no meaningful involvement in budgetary decisions made by village operators - for example, there may be little or no scope for residents to have say in budget decisions.

- ***Does the RVA have a comment or a view on this issue?***

Answer:

The RVA strongly disagrees with the above stated view. The Code of Fair Practice for Retirement Villages 2006 ("Code") contains extensive provisions requiring the administering body (manager) to consult with residents on future planning, village budgeting and proposed changes to the administrative or operating financial arrangements of village scheme. In addition the manager must establish appropriate procedures to provide residents with access to management information on the village's administrative or operating financial arrangements. "Administrative or operating financial arrangements" are defined to include, but are not limited to:

- (a) as to amenities and services provided or available, any change which increases costs or results in the reduction or loss of an amenity or service;
- (b) the retirement village's operating budget;
- (c) plans to expand or substantially alter the village;
- (d) proposals to upgrade buildings, fixtures or fittings where residents' finance the upgrade in whole or in part; and
- (e) the making of or changing village rules.

The Code also requires that one month before the end of the financial year the manager must display at a central village location, and supply to a resident on request:

- (f) the proposed operating budget for the next financial year;
- (g) information used to prepare the budget must be made available to residents on request including but not limited to:
 - relevant accounts of actual expenditure;
 - information explaining proposed changes to fees or the supply of amenities or services.

The Code requires that the proposed operating budget must include:

- (h) the amount of the village's operating costs or charges payable by residents in the year;
- (i) any other form of income used to meet the villages operating costs (ie: owner's subsidy);
- (j) all proposed categories of expenditure without grouping unlike categories;
- (k) budget items which are GST- taxable supplies must be shown net of GST input tax credits available to the manager/owner;
- (l) if expenditure relates to more than one village the method by which it is apportioned to

- the village;
- (m) the total proposed expenditure for the year; and
- (n) the expected surplus or deficit for the year.

The Code also requires that the operating budget must not be finalised until:

- (o) each resident has been given at least 10 working days to consider the budget;
- (p) the manager has held an annual budget meeting of residents before the end of the current financial year to solely discuss matters relating to the budget.

In addition not later than one month after the expiry of each quarter in the financial year the manager must supply the residents with an operating income and expenditure statement for the village showing actual operating costs, income and expenditure compared with projections of them. It must also show payments into and from any reserve fund and the amount standing to its credit.

The Code requires an AGM of residents to be held each year within 5 months of the end of a financial year. At this meeting the manager must supply the residents with a clear written presentation of the operating financial position of the village as at the end of the last financial year. If the residents resolve by special resolution to require such accounts be audited then they must be audited.

As to budget surpluses, the Code requires any surplus to be applied to future village operating costs unless the residence contract requires a refund be paid to the residents, or unless the residents by special resolution resolve that the surplus be applied for some other purpose that generally benefits the residents.

From the above requirements it can be seen that there are extensive reporting and consultation requirements imposed by law. This allows the operating costs and budget process to be transparent and subject to resident scrutiny and consultation. Budgets do not however have to be approved by the residents. It is clearly a management obligation under the Code to provide prudent, efficient and economical management in accordance with the terms of the residence contract. Hence the final decision making on expenditures under the budget must be left for management to make. The RVA considers that the current law on budget matters is sensible, workable and appropriate to the industry and consumers.

3. *Would the RVA support the idea that those looking to reside in retirement villages should obtain independent legal and financial advice prior to entering into agreements?*

Answer:

The RVA has always agreed with the view that consumers should obtain independent legal and financial advice before entering into a retirement village contract. The RVA will support and assist the State government in developing strategies and requirements that ensure consumers are properly advised before entering into agreements.

4. **The Committee has heard that the WA legislation regulating retirement villages does not provide an adequate degree of protection for retirement village residents, and it does not properly take account of the various different ownership responsibilities attaching to various kinds of retirement village development.**

- ***What is the RVA's view of the legislation? Is it generally adequate?***

Answer:

The RVA considers that the current legislation does provide extensive protection to consumers and has worked reasonably well. This in part has been discussed in my oral evidence regarding protection from operator insolvency. The law is currently not overly prescriptive and allows reasonable flexibility for innovation and the meeting of consumer demands.

The RVA does agree that the legislation could do be expanded to overcome problems that can arise with purple title co-ownership of a village by residents. Also the inter-relationship of the Retirement Villages Act and Strata Titles Act could be improved.

Numerous issues have arisen over the past 15 years regarding the proper working of the Retirement Villages Act 1992 which now require attention. These have been dealt with by the RVA in depth its submission to the Department of Consumer and Employment Protection ("DOCEP") dated 15 September 2006 ("Review Submission Paper") a copy of which I have supplied to the Standing Committee. The RVA looks forward to consulting further with the government to assist in the enhancement and improvement of the Act and Code for the mutual benefit of consumers and industry.

- ***Are there any areas where the legislation needs to be changed?***

Answer:

Full details of the changes required to be made to the Retirement Villages Act 1992 are contained in the RVA's Review Submission Paper. Pages 1 to 4 contain an "Executive Summary" of the RVA's recommendations for change.

5. **The Committee has been informed that the WA Department of Consumer and Employment Protection has been undertaking a review of the legislation. The Committee has also hear that the consultation process was inadequate.**

- ***Has the RVA been satisfied with the progress of this review and its consultation mechanisms?***

Answer:

Generally speaking the RVA is reasonably satisfied with the review process and the methodology of that process. The process relies heavily on consumer and industry submissions and ongoing explanatory and consultative dialogue with DOCEP which it is receptive to. The RVA accepts that it was appropriate for the review to be conducted in a very public and participatory manner allowing full input from the consumers.

- ***As far as the RVA is aware, is the WA Government on track to have the final recommendations from the review process by mid 2007?***

Answer:

The RVA's understanding is that final recommendations will not be made until about mid 2008. From the outset DOCEP indicated this would be a lengthy process. The RVA would prefer that adequate time was given to consider the full implications of various issues raised to ensure workable improvements are made to the law which enhances better secures the retirement village product and the investments presently and in the future made therein by industry and consumers.

6. **The Committee understands that the WA government has put out some material to try and assist people contemplating going into retirement villages (e.g. a pamphlet called "So you are thinking of moving into a retirement village")**

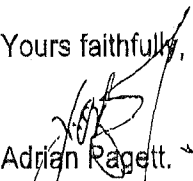
- ***Is the RVA aware of this material and, if so, does the RVA believe it is adequate?***

Answer:

The RVA is aware of the Government's publications on the subject. The RVA considers that all of these publications should be reviewed with a view to determining what amendments or further publications should be issued by DOCEP so as to better educate and inform the consumer.

I trust that this letter will be of assistance to the Standing Committee. The RVA will be pleased to advise the Standing Committee further on any issues if required.

Yours faithfully,


Adrian Pagett.

Hon. Solicitor for and Associate Member of the Retirement Village Association Limited.

PAGETT & CO.