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Submission No. 13
Date Received

BY: LACA
Committee Secretary,---

House of Representatives Legal and Constitutional Affairs Committee,
PO Box 6021, Parliament House,
Canberra ACT 2600

MH
Dear Sir/Madam,

RE: PUBLIC ENQUIRY INTO OLDER AUSTRALIANS AND THE LAW

My brief submission relates to **“barriers to older Australians accessing legal services”**.

My wife and I live in a Retirement Village in Patterson Lakes, Victoria.- Independent Living/Strata Title. All the residents own their own units – however the common property is owned by an unknown entity, and run on a day to day basis by a Service Company who are the Body Corporate Managers* who are also entitled to the Deferred Management Fee, on a change in ownership of the Units.

The residents are having an ongoing dispute over the last 3 years with the 2 company directors who operate the complex.

We* are covered by 3 State Acts – The Retirement Villages Act 1986 (RVA), The Subdivision (Body Corporate) Act and Regulations 2001, and the Fair Trading Act (1999), for the provision of goods and services.

The Dispute in the main covers the following areas:-

- 1) Overcharging of Maintenance fees in contravention of Section 38 of the RVA.
- 2) Non production of Insurance documentation in spite of repeated requests, which contravenes Regulation 312 of the Body Corp regulations.
- 3) We have had no AGM's for the last 3 years which breaches Section 33 of the RVA, and Section 402 of the Body Corp regulations.

There are other serious problems such as (a) not allowing the residents to have their own personal medical alarm systems, and imposing their own medical alarm systems, at a greatly inflated cost; (b) charging interest on so called unpaid amounts which we vigorously deny; and (c) Intimidation of the elderly residents (most of us are in our 70's or 80's) (d) the service company has a CAVEAT on our titles, this enables them to recover so called unpaid amounts which we suspect is not justifiable; – however it would appear that with the exception perhaps of (b) and (d) which appear to be contractual in nature, the others are “NON LEGAL”, hence I will ignore them in this submission.

The Residents have:-

- (1) Approached CAV* with a verbal complaint in early 2004, and a written complaint in November 2005. Very little has been done to date by CAV other than to try and arrange meetings between the 2 sides – unfortunately the Operator* concerned appears to get sick, or goes on overseas trips at the very time a meeting has been arranged.

(2) Approached VCAT* in 2004, but they have stated that they will only deal with each resident on an individual basis – whereas we would have preferred a “Class” action to cover **all** the residents. We let our complaint lapse on hearing of this process.

(3) An amended Section 38(D) 4 of the RVA (2005) removed the Operator’s proxy powers. The Residents attempted to hold a Body Corporate Meeting in February 2006, however the meeting was not held, as each resident was threatened with Supreme Court action. In addition the operator said he had a management deed in which he was appointed the Body Corporate Manager in 1989. We are not sure of the validity of this deed – if nothing else, it appears to be a conflict of interest, as the service company* has appointed itself as the Body Corp Manager.

The vast majority of residents in this village cannot afford Supreme Court action. The operators know this and constantly threaten us with Court action. They are relatively wealthy individuals and one of them in particular has been to Court many times on occasions not relevant to our particular dispute, but certainly related to other retirement entities and tax matters.

WE ARE DESPERATELY IN NEED OF LEGAL HELP TO SORT OUT THE LEGAL QUAGMIRE IN WHICH WE FIND OURSELVES IN – THIS IS NOT OF OUR DOING, IT WOULD APPEAR THAT THE CONTRACTS WHICH EACH RESIDENT HAS ENTERED INTO FOR THE PROVISION OF SERVICES HAS BEEN VERY POORLY WORDED, OR DONE WITH EVERY INTENTION OF PROTECTING THE RIGHTS OF THESE VERY GREEDY AND MANIPULATIVE INDIVIDUALS. I WOULD LIKE TO EMPHASISE THAT THE RETIREMENT VILLAGES AMENDMENT ACT (2005) GOES A LONG WAY TO PROTECTING RESIDENTS ENTERING RETIRMENT VILLAGES IN VICTORIA AFTER 2005 – HOWEVER IT DOES VERY LITTLE IF ANY TO PROTECT THOSE ALREADY LIVING IN RETIREMENT VILLAGES PRIOR TO 2005.

Could you please acknowledge receipt of this submission.

Yours truly,

*

Body Corporate Managers also referred to as Operator, Service company.

CAV = Consumer Affairs Victoria

VCAT = Victorian Civil and Administrative Tribunal

We = residents