

Submission  
No 57

## INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Name: Name suppressed  
Date received: 13/11/2015

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Partially Confidential

12 November 2015

**SUBMISSION TO:** General Purpose Standing Committee No. 2  
**IN RELATION TO:** Inquiry into and report on matters relating to elder abuse in NSW

**A. OUTLINE OF SUBMISSION:**

1. The definitions of 'abuse' that I have adopted for the purpose of this paper are:
  - (a) ***"to use something for the wrong purpose in a way that is harmful or morally wrong"*** (Google search);
  - (b) ***"Use (something) to bad effect or for a bad purpose; misuse"*** (Oxford).To those ends I now reference evidence of instances I believe meet these definitions after consideration of my interpretations of the Terms of Reference governing this inquiry. Where thought fit I have offered suggestions proposing changes to legislation in the hope of minimising future abuse to those living in retirement villages in NSW.
2. This paper's content seeks to draw attention to instances of unfairnesses and oppressions perpetrated by some village operators upon residents with whom they have contracted the provision of premises and specified services. I will recount instances which conceivably may constitute abuse of the elderly because outcomes have had adverse effects on the living and financial positions, conditions and rights, as well as on the psychological well-being of many elderly residents, particularly those living in Retirement Village.
3. Living in this particular village for over 12 years has allowed me to observe and now share community experiences as well as management practices, and from those perspectives to express some of the residents' feelings and reactions to the contemptuous way the village operator has treated them.

Three prime areas of concern I will later describe in some detail are:

- (i) financial stresses and anxieties being experienced by residents as a result of inept, unskilled and untrained personnel being placed in charge by the operator of the administration and accounting of residents' village operational funds and associated activities;
- (ii) residents having to live with defects within their leased dwellings without any alternative than to have to put up with those defects because the operator has failed (or been tardy) to rectify them;
- (iii) bullying and dishonest behaviour experienced by some residents caused by employees of the operator.

4. I offer to testify if required to the Parliamentary Inquiry in support of this paper in which I contend that several differing types of elderly abuse can be evidenced within the relationships between the village's residents and the village operator, hereafter referred to as . If required I am prepared to add to this submission before any inquiry by presenting written evidence of contentions to which I make references within this paper.

**B. BACKGROUND TO THIS SUBMISSION:**

5. I relate my personal experiences and contentions in this submission arising from my perspectives as an 82 year old retired owner of several still successful small businesses I have founded during a year span. I served during in RAAF under S26 of National Service Act 1951 in the Citizens Air Force; I have invented/patented several products (which I also manufactured and marketed/sold). As a qualified accountant )

I have served as a Justice of the Peace for over years. My wife and I (married years) were one of Sydney's northern suburbs retirement villages (" ") on .

6. Creation of this village was financially subsidised by the Commonwealth Government who had discounted Crown land to allow to construct variable sized and differently styled dwellings. These were well publicised in disclosures/advertising/seminars from the start as being 'prestigious' and for life-time leasing, mainly to retirees over 55 years of age. Construction was carried out under SEPP5 requirements and began in . Over the first 4 years only dwellings were built. The postponement of the remainder caused financial disadvantage to residents for a decade due to the lower cost-sharing base. In was late in before all dwellings (housing approx residents) were completed and occupied.
7. Since before the year 2000 (including set-up planning time) a developer, being the group of entities, has been in full control of all planning and construction, all legal aspects and all daily management of this now fully developed retirement village. To build the village contracted as the developer to not only operate management of the village, but together with (which is the DA/DC officially named developer) and two other entities (one being the builder ), incorporated a company ( ) to carry out the actual construction work. That entity shared the profits made on construction.
8. From the time construction began obvious evidence appeared revealing many serious building defects but most of the underlying defects in dwellings were detected only after residents had moved into their new homes. Many defects have still not been rectified to this date in spite of Tribunal orders requiring that rectifications were to be made by which, in , purchased

the village from [redacted] whose voluntary committee at that time had advised residents they could no longer sustain any further involvement in the village.

9. [redacted] then became the owning-operating entity under the Retirement Villages Act 1999 and Regulation 2009. An ASIC search reveals a conglomerate of over 25 private companies (with trusts). [redacted]'s website gives an impression to a viewer that they have interests in about 9 villages; I understand that they only own one village, being [redacted], and the other villages were sold approx 8 years ago.
10. Since 2003 I have played active roles within the villages' various Residents Committees and/or its sub-committees. In conjunction with an external lawyer I have also Case Managed Tribunal Application matters for the Residents Committee and residents over the last four years. Most Tribunal matters heard have stemmed from both financial and performance disagreements between residents and the village's operator,

### **C. HISTORY – TRIBUNAL HEARINGS & EVIDENCE:**

11. Eleven Tribunal cases have already been heard and decided since 2011. The majority of the Tribunal's decisions have well favoured residents' positions but [redacted]'s failure to correctly comply as ordered under some Tribunal decisions frustrates, distresses and unsettles residents' entitlement and expectations of a quiet life in retirement. Many of past orders require [redacted] to rectify originally defective construction faults in homes. Failure and neglect to rectify defects means that many residents have no other choice than to have to live with these construction faults, sometimes for many years already. Other orders are for residents to receive reimbursements of money. The extent of these defects are well documented and available.
12. Presently approximately 28 different orders that were issued by Tribunal Members over past years have still not been adequately complied with by [redacted] to meet the times and/or actions ordered. These breaches have been reported to the Commissioner for Fair Trading (with copies sent to Members of Parliament) in recent months but to date no responsive action has been observed that would indicate any intentions on [redacted]'s part to comply.
13. An example now follows to illustrate [redacted]'s use of 'legal' tactics that avoids compliance with orders. Understandably, many residents find such tactics frustrating, and psychologically upsetting not knowing when all these legal matters will end or perhaps leading to unknown consequences. As well they impose unfair financial hardships onto those supportive residents who are then having to raise considerable legal funds to defend their position or else pay the possible penalty of losing their already Tribunal awarded benefits by default:

*Tribunal decisions (involving benefits approximating \$184,000 favourable to residents) arising from one recent case are now being*

*appealed by [redacted] who now claims legal errors were made by a Senior Tribunal Member (also a Senior Counsel) who heard and ruled upon the case. This particular case has a long history already. It was first heard and decided over two years ago with Tribunal orders issued in favour of residents, but [redacted] appealed that decision to the District Court. After six months of costly legal and confronting personal argument, [redacted] suddenly dropped that appeal but announced a new appeal to the Supreme Court. Six months later, the Hon Justice Sackar in that Court dismissed their appeal with effective admonishments in about ½ an hour sending the matters back to the Tribunal, where it was again heard and ruled in favour of residents, but those decisions are now once again being appealed.*

14. Evidence within submissions and hearing transcripts in a number of the Tribunal matters already decided includes in both statements and affidavits made by certain [redacted]’s personnel their sworn denials of having taken certain actions that have caused residents loss of money, together with other allegations of dishonesties on the part of some residents (certainly accusing myself). Although those allegations were later shown to be incorrect (evidenced by orders favourable to residents) the fact that these misleading statements were included in public record as sworn accusations against some residents’ actions, has had a divisive and argumentative effect within the village, particularly to some more frail and worried residents, not able to understand the issues or know what to believe or who now to trust.
15. There is also evidence of village management’s repeated misuse of residents’ Recurrent Charges (as defined within the Retirement Villages Act 1999 and Regulation 2009) (the Act). Many of the Tribunal’s decisions have ordered to refund money back to residents because management have incorrectly allocated expenses to be a residents’ cost instead of an operator’s cost. Yet, in spite of clearly worded decisions, the same accounting practices used in the first place which allowed these misuses of residents’ money, continues to this day unabated.
16. Other lease terms, together with the Act, require that the village’s operator to pay costs for replacement of assets, including for appliances inside dwellings, whilst lessees must pay the costs of maintaining those assets in use. The distinction in the Act, needed to decide where maintenance stops and replacement starts, is contentious and is the reason for many on-going arguments between residents and management who refuse to agree on rules suggested by residents offered in order to guide future sensible allocations of cost and eliminate arguments.

One argument relating to the costs of sensibly staffing the village led to a ‘no confidence’ motion being unanimously passed at a Residents Meeting in May 2015 by the large number of very angry residents attending, demanding the elimination of an unqualified and unnecessarily duplicated senior management position proposed in the current proposed FY16 budget which if allowed would cost residents over \$130,000 p.a. Irrespective of that rejection the person is still employed and still being paid out of residents funds.

It is instances like those that have caused residents in the village to dispute many expenses misuses in NSW Tribunals (now NCAT) seeking their decision as to who should rightfully pay. In most occasions orders have been given against [redacted] to reimburse residents. There are other occasions where residents had lost because they were unable to sufficiently prove their case because of failure to submit expert evidence (often costly) requiring the expert to then appear as a witness for cross examination by [redacted]'s lawyers [redacted] who are allowed by NCAT to defend all their case now. This latest Tribunal requirement for expert witnesses imposes a new costly and time consuming burden on residents who will to have to now locate and pay for a series of expert witnesses who meet with NCAT qualifications, to prove any assertions they include within their future submissions.

17. Even after [redacted] was given specific Tribunal orders that reflected unfavourably on their accounting and administration methods, and [redacted] were requested in writing by residents to observe improved practices, they have still not transparently altered their methods, or expressed any improved understandings of legislation and the systems they use when handling residents' funds. They simply do not respond to written requests to address such matters. This again has a frustrating effect on residents who are powerless to make demands and this generates wide and deep angst and feelings of uncertainty about the future of the village under this operator's management.
18. [redacted]'s refusal to communicate on some vital matters raised by residents, particularly concerning annual budgets and expenditures therein, has left residents uninformed and with unnecessary financial hardships with which they then must cope. This also can have a detrimental effect on often physically ailing elderly residents, who, before signing their lease contract and entering the village, had no concept of the diverse and disingenuous practises being systemically used by this operator's management personnel who relentlessly continue to try to extract village operational money unfairly out of residents' pockets and purses, whilst denying any appeal from residents that the operator should be meeting such costs under legislative requirements.
19. [redacted]'s ongoing failures to professionally manage the village and recognise both legislation and past Tribunal decisions has led to a wearying continuity of filing Tribunal applications as the only way left to residents to pursue fairness and truth. This in itself becomes a wearing and costly situation placed on all including those involved in the Tribunal process.

#### ***D. CONTRACTUAL IRREGULARITIES:***

20. I contend that, within the lease contracts issued at [redacted] exist arguable interpretations of certain terms and conditions. Consequent possible outcomes of interpretation may place outgoing lessees in unfavourable financial positions not contemplated, disclosed or explained to lessees before they signed the lease contract. The effects may not eventually come to light until the time the lease is terminated. When later discovered, further mental distress through suffering

unanticipated monetary losses is conceivable. I foresee potential financial losses to residents (as outgoing lessees) could emerge within these undisclosed areas:

- (i) Terms in my own lease required an 'incoming contribution' (defined in the Act) to be made. In 2003 I lodged this as an **unsecured no-interest-paid** loan of an amount that can be evidenced as equating to a (Torrens Title or Strata) purchase price of a similar style dwelling in the municipality. My own unsecured loan is \$630,000 and, as my lease contract does not show anything to the contrary, I have understood that this amount would remain intact for the duration of my loan - i.e. until the day I terminate my lease. I have reason to now believe (from a public opinion expressed by a leading accounting firm) that my (and others') loan amount may not in fact be intact so I have written to [redacted]'s Company Secretary seeking verification that mine is intact and remains static without [redacted] already having deducted progressive annual amounts by way of a Lease Departure Fee of 2.5% p.a. for a 10 year period (which is a period provided for under another lease term) but only when the lease is terminated. As yet I have not received a reply to verify that position. My concern here is that if [redacted] has already deducted (and possibly spent) 2.5% of my loan each year over the past 10 years (now equalling 25% or \$157,500) then my loan may be reduced to only \$472,500 whilst my lease and residency is still current.

I have two concerns about the financial position in which I may be placed should that situation turn out to be true:

- (a) if [redacted] were to be placed into liquidation and whilst in that state I or my wife should need urgent money to move out to perhaps enter higher health care, then I would by necessity have to find (at my cost) somebody new to lease my dwelling in order to provide new loan funds to allow me to recover my own money. Under circumstances of a pending liquidation of the owner-operator the chances of re-leasing may be completely unrealistic so all I may be entitled to recover is \$472,500 (and not much chance of even that as an unsecured creditor), and this recovery, under another lease term, could take up to 7 years to be repaid presuming any funds for unsecured creditors were left after wind-up proceedings;
- (b) A reasonable person could assume that the operator's business plans would have earlier recognised and addressed the possibility of such events arising, considering that adverse consequences could jeopardise the future preservation of all unsecured and unprotected residents' loan funds (probably over \$150,000,000 in total). Yet the potential danger to, or even loss of, my (and other) loan funds have not apparently been contemplated within disclosures made to me prior to my execution of my lease contract, nor reassurances given that financial guarantees are in place to assure my "incoming contributions" (defined under legislation) are protected whilst the lease remains current and my loan (minus LDF calculated at time of termination) will be available for payment;

- (ii) There is another undisclosed and non transparent aspect that concerns me and other residents I know, that may arise if \_\_\_\_\_ was to be successful in receiving Tribunal approval to alter 'purpose' of or 'substantial works' in the village that could have alter on my own and other dwellings under, say Section 136 of the Act:

***Termination on grounds of upgrade or change of use***

*(1) The Tribunal may, on application by the operator of a retirement village, make an order terminating a residence contract if it is satisfied that:*

- (a) for the purpose of improving the village, the operator intends to carry out such substantial works in the village as require vacant possession of the residential premises concerned, or  
(b) it is appropriate that the land on which the village is situated should be used for a purpose other than a retirement village.*

Nowhere in disclosures or in my lease is there notice, indication or warning that under certain circumstances the re-leasing of my dwelling may not be achievable (meaning that there would not be a new lessee to provide the funds needed for me to recover my own loan funds, minus LDF calculated on termination plus the previously disclosed possible capital gain). There is no mention of how \_\_\_\_\_ will 'make good' my entitlements. Nor has it been disclosed that monetary compensation would not be available to me (an innocent party in an S136 transaction as above without legal consumer protective rights or, for that matter, a home to live in). There has been no previous disclosure to me beforehand that I would no longer have the right to set the re-leasing or "sell" price, which traditionally in the village and the district usually includes a market-growing capital gain over the years of occupancy. Such an event, if it occurred, could result in financial loss to me but a potential loss possibility not disclosed to me before I signed my lease and it is a possibility sanctioned by legislation which could leave me without any obvious form of redress to seek any defined compensation.

- (iii) As previously indicated, when I (or my heirs) become an outgoing lessee then at my own cost I must find (by employing my own real estate agent and advertising for however long it may take) to "sell" what is in reality only a right to enter into a new lease for some new person willing to pay my asking price to occupy my dwelling after I vacate. What was not disclosed to me is that, even though I must find the new lessee at my own cost to next occupy my dwelling, any new lease issued by \_\_\_\_\_ can, and historically does, contain increasingly variable more onerous terms and conditions to those contained within my own lease without my knowledge or agreement. Yet it is my responsibility to "sell" this new contract containing content not to be made known to me. At the same time I endeavour to maximise my "sell" price amount. Conceivably, a new potential lessee may walk away from taking on a lease containing onerous terms considered unacceptable measured against terms I may have disclosed to the selling agent in my own lease. Alternatively, the new potential lessee may push my "sell" price down to compensate for the newer more unfavourable terms.
- (iv) Logically, assuming a healthy market, I will set my "sell" amount to be greater than my loan (guided by past "sales" amounts in the village) so I can enjoy the 100% "capital gain" disclosed/promised to me. However, as the same LDF %



that is applicable to my loan account is also going to be taken out of this potential 'capital gain' that becomes impossible. In other words if my LDF is 25% of the "sell" price I get at the time I terminate the lease then the best I can hope for is 75% of any capital gain within that "sell" price, but it will not, can not be the 100% as was disclosed. Clearly then this becomes another misrepresentation (or a non-disclosure of a hidden deduction) that may potentially impose upon me an unrevealed financial loss discovered only when I terminate my lease. If I do not receive the promised 100% capital gain, then that is another form of financial abuse to me.

#### **E. ILLUSTRATIONS OF 'ABUSES'**

##### **QUOTING THE INQUIRY'S TERMS OF REFERENCE:**

21. *The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales*

In the comments I made above I have provided broad details of different types of financial abuse experienced by residents.

A professional exploratory examination into [redacted]'s present and past management's modus operandi should reveal the present management's professional inability (and/or deliberate neglect) to learn, understand and apply legislation and take account of previous Tribunal decisions and orders that apply to retirement village financial budgeting and accounting for residents' money, which is monitored under the Retirement Villages Act 1999 and Regulation 2009.

This unexplained neglect on management's part to communicate and rationally discuss issues is presently leaving hundreds of elderly residents uncertain and unsure of their own future financial situation. I contend that this is a form of abuse.

##### ***A further instance of 'financial abuse':***

In an attempt to avoid having to pay back a large deficit in residents' funds that [redacted] had incurred over a two year period (FY12 & FY13) by their management's over-expenditure, [redacted] and their lawyers [redacted] embarked on a (long drawn out) legal process trying to avoid having to make good the deficits for those years (as is required under the Act).

Using their own interpretation of Tribunal orders as their justification they back-invoiced in May 2015 a total of \$154,042 to several hundred very upset residents. No doubt the thought that action would get rid of their deficit by passing it over to residents, but all they generated from that action was to stir the anger of several hundred residents incensed with this outrageous injustice.

After two Tribunal hearings on the matter (also involving their eventually dropped District Court appeal attempt followed then by a Supreme Court which quickly dismissed of their unfounded appeal in 2014) their act of invoicing this amount was ruled to be unjustified by a Tribunal and they were ordered to reverse all the invoices and refund money to anyone who had paid their

invoice.

Several weeks later (on -15), through their lawyers, filed yet another appeal to an NCAT Appeal Panel challenging the validity of the orders now citing incorrect legal decisions.

Many residents cannot understand the reasons for these persistent legal threats launched by and feel uncertain as to what future claims may be imposed on their savings. Some appear depressed and express feelings of uncertainty and mistrust of the operator and its management's motives because of their consistent lack of fairness, honesty of purpose and ability to accept legitimate legal decisions. These matters are widely discussed with considerable angst still entering the daily lives of residents who only wish the whole episode could be sensibly resolved and any financial commitments to be imposed on them finalised.

**Suggestion:** *Elderly people who have elected (and paid) to live in communities (e.g. retirement villages, residential parks, even higher care facilities) have high expectations and entitlements under their contracts to receive professional, qualified and honest management handling their financial contractual relationships with their provider.*

*As well there is an implied 'duty of care' for management to provide adequate monitoring of residents' progressive physical and mental welfare as they age.*

*All consumer-type legislation affecting their remaining lives whilst living in their particular community needs to be clearly and specifically oriented towards providing residents with those protections, and should no longer allow any 'loopholes' for providers to weasel out of their moral and professional commitments by using unqualified staff and management.*

*To that end, it should be legislated that all senior management operating a retirement village should be trained and qualified to be proficient in specific management, accounting and welfare related tasks as well as being registered with Fair Trading. Should mis-management by a person be proven, then de-registration should follow in the same way as tradesman who do not do the right thing can be de-registered.*

22. *The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs*

Village management can be evidenced to avoid close communication with certain village residents, causing those people, rightly or wrongly, to express concern they are being ignored or neglected.

There are other instances of management's failure to answer residents' specific written questions which also causes concerns. Overall these types of management failures can be seen to generate insecurity and often a feeling of isolation to those affected.

**Suggestion:** *Once again this reveals a need for relevant legislation governing community style living to be firmly regulated to assure that those who have elected to become owners-operators and day-to-day management and who thus*

*earn their profits and salaries in those roles, are fully trained to understand and cope with often unusual peculiarities possessed by the aged and elderly to assure they do not feel neglected and unwanted. When some elderly feel like that then, understandably, they will tend to feel a form of abuse.*

23. *The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations*

Residents in retirement villages trustingly contribute considerable amounts to the village operator as Recurrent Charges on a monthly basis. Yet the accounting methods and qualifications of those handling that money are not registered with or inspected and monitored by Government.

Instances of misuse by management of this residents' money held on trust when detected by residents then lead to the many retrospective Tribunal hearings being necessary to examine and decide upon the validity of perceived breaches of legislation concerning money handling but these hearings are held well after the disputed events have occurred.

Now all matters like this, following the filing of a Tribunal application, usually then stretch over many months and even years before decisions are finalised. Inevitably this generates continuous concern, requires extensive work by some on submissions and communications, often heavy costs, personal and health disturbances and uncertainty to residents (and all others concerned).

Importantly, many elderly residents have no understanding or comprehension of commercial realities. They faithfully assumed after reading marketing disclosures and advertising that their operator is a guardian angel on earth who will always treat them fairly and kindly. Some refuse to believe differently rejecting evidence to the contrary and express opposing viewpoints that create division to community spirit, sometimes with quite spiteful and sad consequences. It all amounts to yet another form of financial abuse.

**Suggestion:** Adopting traditional logic that it is far better (and cheaper) to have “a fence at the top of the cliff than have (to finance and keep) an ambulance at the bottom”, at least some finance abuse in future could be eliminated if legislation was structured to not only prevent inept and unqualified operators and management from being allowed to run retirement villages but also to additionally legislate (similar to the present requirements for an annual audit of financial account already required under section 119 of the Act) that a preset Fair Trading questionnaire report must be signed off annually by both management and Residents Committee Chairperson and filed with Fair Trading's Special Investigation Division for their appraisal as to whether both parties have or have not legitimate issues which may affect residents' wellbeing. If so, then any such matters be investigated by a qualified officer and the results reported to The Commissioner.

24. *The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse*

A staff member was employed as an after-business-hours Personal Services Assistant (PSA) at [redacted] during 2011-2013. During 2013 several residents reported they had evidence she was surreptitiously stealing items from them on a continuous basis. Some residents also claimed she allegedly bullied them when those residents confronted her with their allegations about missing items.

Two successive Village Managers had been advised of these alleged offences. No action was taken however until [redacted] 2014 when she was eventually dismissed but only after irrefutable evidence was gathered by residents and placed before that Village Manager.

Recorded voice evidence was given freely by one resident affected and is still available for this inquiry if required. This factual recording and other details of stolen objects were passed to [redacted] police by me with committee members.

I believe that this particular evidence was never used to stop this woman from carrying out further dishonest acts against other elderly residents as some months later the offender, by then employed by a higher care facility, but coincidentally that was the same facility into which a ex-[redacted] resident, who had suffered debilitating health had to move, befriended this over 90 year old WWII RAAF veteran, as an old friend from [redacted] but then systematically robbed him of money and possessions. His daughter discovered this and made the link back to [redacted]. She produced some evidence of this to me some time later and this was also passed to [redacted] police together with her offer to testify. I heard nothing more from the police about what steps they had taken although I made e-mail and phone attempts to establish what police intended to do to put a stop to this offender's activities.

This daughter of the ex [redacted] resident (the resident has since died) told me that the offender had been sacked by her second employer but I was given to understand that no action was ever taken by police to either prosecute her or to take visible steps to stop her from further abusive activities against the elderly.

Where this offender is now employed or what she is up to is unknown to me and that aspect still disturbs me.

Another instance of bullying occurred during the last year when a casual employee (an [redacted] and partner of the Village Manager at the time) literally "grilled" an elderly resident on a minor matter using unnecessary heated aggression in front of other residents, insisting that the resident had no right to have taken a sample floor tile without his permission and he kept demanding its return even though the resident was adamant that he did have management's prior permission to take the tile to a consultant for advice about appropriate cleaning methods. The resident was nearly reduced to tears of embarrassment as a result. Following combined residents objections over the next few weeks, eventually the employee was discharged.

**Suggestion:** Legislate in the RV Act that all persons classified as Personal Care Assistants (or a similar title) employed by operators of retirement villages who have given them the responsibility of accessing the homes of the elderly in order to provide assistance as may be required, should have to register their names and details with local police immediately when employed and for the duration of their employment. A further requirement should be that all reported incidents of elderly abuse by those employees then be dealt with by a formal report to the local police.

25. *Identifying any constraints to elder abuse being reported and best practice strategies to address such constraints*

Evidence is available that the Village Manager during 2013 carried out a deceptive action (unknown to residents until they discovered details by an application under Freedom of Information) of deliberately cancelling a current licence issued years before by a Government authority (NOWS) which authorised stored water to be pumped into an irrigation system. The irrigation system was required in any case under both the Development Application issued in 2001 and later Tribunal orders issued in 2012. The system is still not operational to date.

The Village Manager's action was apparently taken to save the operator from heavy capital expenditure (perhaps a cost of \$150,000) that would have had to be outlaid to carry out major rectifications to the (non working) irrigation system.

However, by his action, he had consequently then imposed unnecessary and unfair annual operation costs onto residents because residents would then have to pay the cost of 'Sydney Water' to water gardens and lawns. These costs were later assessed by a Tribunal Member to be an indexed \$8,000 per year the amount being then ordered as an annual compensation to residents until the irrigation system becomes operative.

The Village Manager denied in an Affidavit he had submitted as evidence to a Tribunal, knowledge of the circumstances surrounding the pump licence's cancellation but this can now be shown as being incorrect revealed under the documents issued by NOWS under Freedom of Information.

**Suggestion:** Penalties, to the extent of carrying out prosecutions, need to be enforced and imposed by Tribunals and Courts whenever evidence they hear proves to be false and misleading, and is often the cause of delaying and confusing the justice process. Such penalty/prosecution deterrents when seen as being enforced by Tribunals and Courts, may give solace and heart to the elderly (usually the underdog in many of these cases) who are often treated by operators as easy pickings, and easy to confuse through 'smoke and mirror' statements and representations.

26. *Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age*

I now suggest a "**strength based initiative**" that may help to minimise the opportunities of reoccurrence of one distressing type of elderly 'bullying' that has been used by the management of this retirement village (classed as an 'independent living' village).

On record are at least two known management requests (one request was made to the family of a resident) directed to residents, both under the circumstances reasonably healthy for their ages, delivered whilst the residents were out of the village recuperating after an illness. One letter stated that they would have to get "*a medical assessment to be completed before your return*", and that should be carried out by their doctor or ACAT and sent to management.

Naturally, this heavy handed demand caused great anxiety and angst to both residents and to their families at the suggestion that return to their homes could be conditional on some new assessment to determine their future capabilities to cope.

Both returned to their homes in the village without producing any such reports and still reside here happily after many months, both able to cope within their homes.

Importantly both of these residents have been living here for over 10 years so therefore 25% of each's dwelling "sell" price by way of the LDF is now owing to the operator, only to be released to the operator at the time the lease is terminated and re-leased by a new lessee. Each of these payouts to the operator could be between \$200,000 and \$250,000.

**Suggestion:** Within all appropriate legislations, being the RV Act and/or elsewhere, completely outlaw (as a "strength based initiative") any commercial entity and/or its representatives the opportunity to make and deliver judgmental pronouncements of any sort about any person's health or mental condition without first being legislatively required to establish (at the enquiring entity's full cost) fair and just cause to conduct the enquiry by presenting evidence and justified reasons to a specialist medical practitioner authorised to examine the full circumstances of the person's health and capabilities, and to then report professionally to all the parties involved of the findings.

27. *The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy Preventing and Responding to Abuse of Older People, in safeguarding older persons from abuse*

Covered elsewhere.

28. *The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse*

Governments owe a "duty of care" to those who have contributed to the development of our society. This "duty of care" does not stop with the provision of the physical structure of housing. It must extend to protecting the consumer rights of the elderly, the impact on their health and well-being that can result from anxiety and feeling of powerlessness when faced with complex, and sometimes unconscionable, terms and conditions which would be unacceptable to the community at large.

The core principle in any policy concerning the protection and welfare of residents in retirement villages should be to keep simple and transparently honest any legislation, rules, disclosures or contracts employed, and within the capacity of older people to understand and deal with their requirements. Complex matters required to be understood by many aged brains can mentally turn into anxieties and perceptions of threat; often younger members of society working as operatives within both villages and in Governments and/or its bureaucracies fail to identify and

appreciate those concerns and tend to dismiss them out of hand because of inexperience.

A second principle would be to endeavour to strike a balance between the owners'/operators' expectations and residents' aspirations which while divergent are not irreconcilable; to redress the existing inequality not just in financial terms but also in the power relationship between these two major stakeholders in the retirement villages sector.

It goes without saying that the establishment of a harmonious and co-operative relationship between these two groups would augur well for the future of the industry. It will contribute to the financial well-being and result in social and health benefits to residents. Through building up a reputation for fairness in dealing with residents the owners/operators will also create increased demand for this type of accommodation, which could bring operators financial rewards as well as assist Governments in solving future needs to down-size accommodate the growing numbers of the elderly, perhaps with the implementation of systems designed to introduce in-home health and palliative care to relieve the growing heavy financial burdens being placed on Government that will inevitably require enlargement of the hospital and health system and nursing homes to cope with the exponential growth in rising numbers of the aged who will require such future care .

In the long run, beside those possible tangible benefits, a co-operative and balanced relationship will also mean fewer disputes and applications to the consumer tribunal, which imposes financial and other costs not just on residents and operators, but also on the public purse.

*29. The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse, and*

Elaborating further on earlier comments made and illustrations provided to demonstrate reasons why there is urgent need for Government to provide adequate legislative protections to prevent rogue operators and their village managements from being able to financially exploit/abuse elderly residents in retirement villages (who enter innocently expecting happy retirement but often receiving instead angst and worry being forced to live with on-going financial rip-offs, broken promises, and inadequate disclosures) these suggestions are now offered as possible solutions:

- the RV Act be amended to insert minimum qualifications for officers of companies or persons who are retirement village operators. Apart from the usual caveats about not being a bankrupt or convicted of serious director offences, as it presently stands, anyone can set up as a retirement village operator with any \$1 paid up capital company structure. There is no adequate licensing and qualification regime at present which would seek to address some of the mismanagement/financial problems that have arisen;
- there is no capital adequacy standards that an operator must meet in order to run a village. Many villages are heavily leveraged and the banking system has tightened up lending arrangements coming off the insolvency experience of the GFC with some operators. This is particularly alarming in an ageing population when a lot of elderly persons have their entire life savings tied up in their residences, most under an interest free unsecured

loan through a loan/licence/lease occupation right. When PrimeTrust became insolvent during the GFC, many residents were adversely affected and could not obtain their funds when they were ready to leave for higher care purposes. Some were forced to borrow money from family, others had no alternative to take protracted legal action, often difficult and costly where most of their life savings were already tied up in the village;

- There is no fidelity fund presently set-up to step in if an operator becomes insolvent. This is notwithstanding the large amounts of money, probably billions collectively, that are under unsecured lending arrangements across the industry between operator and resident. It is also against a background of large amounts of money being made by operators mainly collected through exit fees only received at exit time from residents leaving retirement villages. Thus cash flows to keep the villages in good shape as required under present legislation become a critical factor as well.

30. *Any other related matter.*

No further comments.