

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 28 September 2016

Members

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Ms Nina Springle — Deputy Chair

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Witnesses

Mr Simon Cohen, Director, Consumer Affairs Victoria, and Deputy Secretary, Regulation,

Dr Elizabeth Lanyon, Director, Regulation and Policy, and

Ms Claire Davie, Senior Legal Policy Officer, Regulation and Policy, Department of Justice and Regulation.

The CHAIR — I declare open the Legislative Council legal and social issues committee public hearing in relation to retirement housing. I would like to welcome Mr Simon Cohen, the Director of Consumer Affairs Victoria; Dr Elizabeth Lanyon, Director of Regulation and Policy, Department of Justice and Regulation; and Ms Claire Davie from the Department of Justice and Regulation. Thank you all very much for being here this morning. Before I invite you to make opening remarks, I caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. Today's evidence is being recorded. You will be provided with proof versions of the transcript within the next week, and transcripts will be ultimately made public and posted on the committee's website. We have allowed an hour for our session this morning. I would like to thank you for being here as our first witnesses to give us in effect a background briefing on the issues as you see them. I invite you to make opening remarks, and thereafter the committee will have questions. Thanks again for being with us.

Mr COHEN — Thank you, Chair. Good morning, committee members. My name is Simon Cohen. I am the Director of Consumer Affairs and also a Deputy Secretary at the Department of Justice and Regulation. My colleague Dr Elizabeth Lanyon and I welcome the opportunity to speak to the committee to assist with this inquiry into the retirement housing sector.

In a community with an increasing number of older Victorians the need for appropriate retirement housing options is presently and increasingly important. A range of factors, including economic, lifestyle, health and safety factors, impact on the options available and the housing decisions made by Victorians in retirement. One option for some Victorians is that they remain in houses or apartments that they own. However, there are a range of other options that may include renting a home; residing in a caravan park or rental village or in a residential park as a site tenant, an arrangement regulated under the Residential Tenancies Act; living in an aged-care home or residential care facility, generally regulated under commonwealth aged-care laws; or residing in a retirement village either as an owner-occupier or a leasehold resident, with these arrangements primarily dealt with under the Victorian Retirement Villages Act.

For housing options such as tenancies, caravan parks, residential parks and rental villages there are a range of consumer protections in place. These protections extend to all residents regardless of their age. These protections and other arrangements under the Residential Tenancies Act are currently the subject of review through the government's Fairer Safer Housing initiative, with the options for reform scheduled to be available for consultation in late 2016.

Retirement villages are a housing option that specifically caters for older Victorians, so for the remainder of my opening remarks I will focus on these arrangements. A retirement village is one where most of the residents are aged 55 years or over, they are retired and they are provided with services other than aged-care services. In addition, at least one of the residents must have paid an ingoing contribution — that is, a payment that is not rent or bond and is made to secure the right to live in the village. The effect of the Retirement Villages Act is that it provides for secure, long-term accommodation for residents. This right continues even where the operator of the village changes hands. Retirement villages are a popular option for retired Victorians. Consumer Affairs registers villages, and at present there are some 439 villages housing some 40 000 Victorians. The sector is a diverse one, with a number of small and some very large operators and villages with a diverse range of both not-for-profit and for-profit providers.

The Retirement Villages Act does not prescribe the legal structure of residency, and as a result there are a range of resident tenures from long-term leases — the most prevalent model in Victoria — to strata title ownership and unit trust or company title schemes.

The Retirement Villages Act has evolved since its commencement in 1987 to respond to key causes of resident concern. For example, amendments in 2006 provided for clearer rules about exit arrangements for residents. Changes in 2014 increased the transparency of retirement village contracts, including by requiring the provision of fact sheets and disclosure statements and the standardising of the format of retirement village contracts.

A feature of the Act is that it is not prescriptive about the services to be provided in retirement villages. These are matters that are generally provided for in contracts between residents and operators. While there are some specific resident protections in the Retirement Villages Act providing a focus on financial matters, such as the

protection of ingoing contributions, service charge increases and the payment of exit entitlements, the Act generally does not otherwise set out what is in or what is out of retirement village contracts.

The role of Consumer Affairs in respect of retirement villages is limited. What we can do, and where we focus much of our efforts, is provide expert information services to residents and village operators. Each year some 50 000 visits are made to our website, where Victorians find information about the rights and responsibilities of retirement village residents and operators. We have also developed publications targeted at both residents and operators, with a good practice protocol setting out the legal framework and best practice tips to deal with common areas of dispute, such as changes to charges and services and presenting financial information. This is a guide developed by a working group of industry and resident representatives, and it emphasises the importance of clear communication, thorough consultation and accurate documentation to deal with important matters that affect retirement villages and their residents.

We also have a guide about retirement village living to explain what these villages are, the cost of living in villages and other rights and responsibilities of residents and operators. Almost 25 000 hard copies of this guide have been distributed in the last three years. The introduction of publications such as this have been accompanied by media campaigns to raise awareness of the retirement village resources available to older Victorians. We also offer a telephone information service, accessed more than 600 times in each of the last three years, and community services are funded by Consumer Affairs, such as the Housing for the Aged Action Group, to provide face-to-face assistance to some Victorians who live in retirement villages.

In addition to our information role, we receive and, where appropriate, attempt to resolve complaints. There are not many complaints that we receive. Last year we received approximately 40 and in the year before about 60 complaints. There are limits on what we can do with these complaints. We can only offer a conciliation service in limited cases — on average about 20 cases in each of the last three years — for reasons including that some disputes are outside of our jurisdiction, such as matters between residents, and that it is not mandatory to conciliate and that parties are not bound to reach an agreed outcome or have one imposed upon them. That said, of the matters where we have been able to conciliate, between 80 to 95 per cent have been resolved. In other cases, though, the only action we can take is to refer the consumer to another organisation, such as the Victorian Civil and Administrative Tribunal.

We are also able to seek compliance in respect of certain legislative requirements under the Retirement Villages Act. These primarily relate to matters concerning disclosure obligations, the holding of meetings and the management of complaints. Our compliance approach is a graduated one. We will first educate an operator and encourage compliance. Where this is not successful, other options can be considered. For example, we currently have a matter before the Supreme Court where a retirement village operator has not met their obligation to provide a fact sheet. We have also engaged with a retirement village through our Better Business Initiative. This confidential process allows my staff to provide detailed information about systemic issues raised in complaints and agree on a remediation plan with the operator so as to reduce the cause of complaint.

It is of note, however, that many of the causes of complaint to Consumer Affairs about matters such as the cost of retirement village fees, repairs and maintenance or poor customer service are not matters of legislation but rather matters of contract or commercial practice. These are not currently amenable to a regulatory response, and indeed, if a party does not agree, nor can they be conciliated by Consumer Affairs. In addition, it is important to acknowledge that there are some cases — thankfully, comparatively uncommon cases — where an operator's financial failure or inability to complete village facilities impacts significantly on village residents, and where there is no effective remedy currently available. These matters can result in intractable disputes and significant impacts upon residents.

I have for the committee a folder of material to hand up. I have one for the committee and one for the secretariat. It provides further statistical information about Consumer Affairs services for retirement housing, Consumer Affairs publications that relate to retirement villages and information about a number of other reviews in addition to this inquiry that touch on the Retirement Villages Act and that are currently in train. This includes the Access to Justice review commissioned by the Attorney-General, which is considering the external dispute resolution options for retirement villages, amongst many other matters. In addition, Consumer Affairs Victoria is to undertake a review of villages' own internal dispute resolution processes. A further area subject to review is the at times complex interaction between the Owners Corporations Act and the Retirement Villages

Act, a matter being canvassed in the consumer property law acts review commissioned by the Minister For Consumer Affairs, with options for reform presently being considered for broad community consultation.

These reviews and the variety of retirement housing options reflect that this is an area with a range of legal settings, both state and federal. It is an area where a number of agencies, including Consumer Affairs but also including the Victorian Department of Health and Human Services and its commonwealth equivalent, the Commissioner for Senior Victorians, the Victorian Civil and Administrative Tribunal and others, have important roles. For our part, Consumer Affairs looks forward to assisting the committee in this important inquiry, and we welcome your questions.

The CHAIR — Thank you, Mr Cohen. Dr Lanyon, do you have anything further to add? No. Perhaps, Mr Cohen, I might start with the questions and just respond to some of the material you have put before the committee. Thank you very much for the detailed introduction. You would have seen from our website we have received hundreds of submissions, many that have complaints about particular issues at a village or the impacts on an individual or a couple and their situation. You have just described the sort of legal framework that applies, the powers that Consumer Affairs Victoria has and the role of different departments at a state and commonwealth level. Do you think the general consumer understands how the system operates? How could it be simplified or improved so that consumers have a better understanding of the arrangements they are entering into?

Mr COHEN — I will say at the outset that I am reasonably new to the sector myself, having been Director of Consumer Affairs for about 12 months now. I think it would be a fair reflection of my own experience that there are some significant complexities in understanding the options available to residents who are looking for housing in their retirement. Some of those are matters that concern the complexities around arrangements that confront all Victorians. For example, many Victorians are not aware of their rights in relation to residential tenancies, or their responsibilities. There are particular rules that relate to caravan parks. There are particular rules that relate to residential parks. There are different rules then that relate to retirement villages, and there are also different rules in relation to aged care, so you are absolutely right that there is some complexity in relation to the framework around which the options are.

I think if we were to focus specifically in relation to retirement villages, which is a particular responsibility that Consumer Affairs has, one of the things that we have sought to do is to try and take out the complexity by describing in simple ways what retirement villages are, what the sorts of fees are that are likely to be incurred by people at the time of entering, during their period of time in the village and on exit of the village, and some of the responsibilities and rights that accrue both to owners and village residents. That is one of the publications that I have handed up to the committee. One of the particular elements around how we have promoted that guide is that we undertook some market research to understand how older Victorians would want that information communicated to them and really sought to tailor our information campaigns to make sure that they had the maximum reach to people who were likely to need or have use of that information.

But there are certainly some complexities in it. Our own review, for example, of the interaction between the owners corporation laws and retirement villages laws in the context of the consumer property law acts review highlights some of the complexities that come about where, for example, there are a number of different possible scenarios that might include a situation where retirement village residents have strata title for all of the units but the owners corporation for the common areas includes the village operator, or it may not include the village operator but in fact they are just contracted to provide services, or the village operator may own some of the units and have them out on long-term leases. There are a range of different iterations in there.

A strength of it, can I say, is that it does, I suppose, provide opportunities for the market to respond to the needs of ageing Victorians, but a pitfall of it is that it can be a very complex environment and hence the responsibility, I think, on agencies like ours to try and assist people to engage with that as best they can.

The CHAIR — Thank you for that answer. Just to pick up on your answer and cite the statistics that you referred to earlier that there are, I think, 50 000 visits to your website each year and you publish a good practice guide that has been distributed to 25 000 — —

Mr COHEN — In the last three years.

The CHAIR — In the last three years, which is a significant volume. With that sort of volume of contact I am surprised at the small number of complaints you receive — 40 last year, 60 the year before — particularly given that I have experienced as an MP, as I am sure my colleagues have, a number of people who come through the door who have issues and seek for us to advocate on their behalf. Do you think the small number of complaints that you receive is a reflection of the limited power you have through conciliation only? Would you like to comment on that issue?

Mr COHEN — It is a very good question. I can firstly reflect that we receive around 600 inquiries each year, and during those inquiries people might be ringing us up for information on how to deal with the matter. If it is something that we are not able to deal with, we are able to give that information up-front so that in that circumstance, if it is clearly not a matter where we have a role, that can be clearly communicated to the caller.

But I think you are absolutely correct to say that there are significant limitations on what Consumer Affairs Victoria is able to do. We cannot deal with all complaints, so, for example, if a resident has a dispute with a fellow resident, that is not a matter that we are able to conciliate at all. Nor generally would we be able to deal with a matter where a resident had not sought to resolve it with the retirement village itself in the first instance. Only where both the resident and the retirement village operator agree that we can deal with the complaint through conciliation are we able to even attempt that process, and even if we are able to do that, either party can pull out at any time. They are not required to reach an agreement. If they do not, the only options that we often have are to refer them off to a tribunal or court to have it dealt with. So I do think there is certainly a limited role that we presently have. I expect that that is reflected in the limited number of complaints that we receive.

I think the only other thing I would say is that in the last year we have seen fewer complaints than in the year before. One possible explanation for that is that the improvements that were made to contract disclosures in 2014 may be reducing some of the common causes of complaint that we have seen. Perhaps just as a final point, where we can conciliate, we are generally pretty successful. In the last three years between 80 and 95 per cent of the matters that we have sought to conciliate — so about 20 complaints each year — have been resolved. So the sorts of matters that we are actually dealing with, we are able to get some good traction in relation to.

The CHAIR — And typically what are those matters that you end up conciliating? Is there a profile that is usual?

Mr COHEN — I can tell you the most common causes of complaint that we receive are complaints that relate to increases in fees and charges, they relate to the services provided by the retirement village, they relate to customer services issues between the retirement village operator and the retirement village resident and they relate to exiting — so delays in selling of the property and delays in receipt of exit entitlements. In terms of the specific matters that are subject to conciliation, I would have to take that matter under advisement.

The CHAIR — That is fine. A final question from me before I hand to Mr Mulino: again you referenced these 439 villages with 40 000 residents — and this may be a matter for other agencies and other parts of government — but do you have an estimation of what that is likely to grow to in the coming years given the ageing profile of our population?

Mr COHEN — No. What I can tell you is that over the past three years we have seen a gradual increase in the number of villages on our register. It was 415 in 2013–14, 426 in 2014–15 and 439 in 2015–16, so that is about a 5 per cent increase over that three-year period. But in terms of projections of the number of retirement villages or residents, that is not something that we have done.

Mr MULINO — Thanks for your evidence. I want to ask a few questions around the disclosure regime. It is interesting, I think, that you have moved towards fact sheets as one mechanism to try to improve people's awareness of their rights and the product that they have purchased, and in a sense that reflects regulatory trends in other areas, like insurance and mortgages and other complicated financial and related products. I am just wondering whether you have got a view as to how effective that has been to date?

Mr COHEN — It is a very good question. If I could offer an observation from a different context at the outset, I attended a conference in Sydney several weeks ago which was looking at telecommunication contracts, which are, I think, notoriously complex. There have been some recent law reforms in that space to require simple critical information statements to be provided to consumers about the key elements of those contracts. There is some research that has been done in relation to those matters that has shown that if you give consumers

the critical information statement only, their understanding of their arrangements is likely to be better than if they get the contract only or if they get both the contract and the critical information statement. So I think, firstly, providing information in a way that is understandable is a legitimate response to try and increase people's ability to understand what they might be committing in relation to.

I think the second element of it is that in the context of the retirement villages there are three elements: firstly, there is the information sheet that is given, and that would generally be at the beginning stage when someone is considering and looking around at their options; there is a specific disclosure statement that includes quite detailed information particularly in relation to exit entitlements at key points; and there is also a requirement for contracts to be in a standard form to enable them to be compared more easily. So it is a reasonably comprehensive package of information requirements.

But in some ways they look forward, and I am aware of the range of issues that have arisen in relation to contracts that have been entered previously and particularly in relation, I suppose, to some of the surprises people get when it comes to the exiting of a retirement village and the amount of exit entitlement they may receive. These sorts of reforms do not mend things that have happened before; they really look forward and hopefully improve the situation for people into the future. I think it is the sort of thing where you would look to us after a period of time to actually be undertaking some assessment to understand how successful those have been, but they are reasonably recent reforms, and at this point in time we have not done that. Is there anything else, Elizabeth?

Dr LANYON — No, that is it exactly.

Mr MULINO — My sense is that one of the difficulties with something like a product disclosure statement, a summary statement, is that in order to make it comprehensible you have got to make it simple, and yet the challenge, of course, is that the simpler you make it, the more that you potentially do not inform somebody about some clauses that might be of great relevance and might come back to bite them. As you say, at the moment our regime covers off on that in the sense that you start with a simple document but then you have ultimately three stages where the person reviews the detail of their exit arrangements, for example. So in a sense that should cover off on that detail at some point in the process. I am just wondering: is your sense that most people obtain professional advice, whether it be from a lawyer or a financial advisor, before they sign off and when they have reviewed that more complicated document? Do we have data on that?

Mr COHEN — Can I address the issue firstly in a slightly broader context, and can I say that we do not have specific data in relation to that, so that is my response to the specific question. But I think the point that you make highlights that information is but one of a range of things that need to be put in place to provide the right protections. In the current Retirement Villages Act there are some other arrangements that enhance the protections that include, for example, a time period within which information is given and contracts can be entered and also some cooling-off provisions after the contract has been signed. But there is certainly an encouragement given, both in our guides and in other information, to people to do exactly as you suggest: to get expert advice. These are very, very significant investments people are making. Often it constitutes the entirety of people's retirement savings to enter into them, and so the significance and importance of those contractual arrangements is something that absolutely needs to be front and centre when people make them.

I think the other thing that we are seeing is that there have been some village operators who have responded to this issue of complexity by trying to think of simpler models that they can promote to residents, so in essence a market response to that. I think that that is another way that we can see the variety enabled by the current legislation responding to the various needs of retirement village residents.

Mr MULINO — Well, that segues into my last two questions, talking about that market response. In a sense one regulatory response to complexity and vulnerability on the consumer side might be to put some constraints on what goes in contracts or to require certain standard forms. Some in marketplaces — not just this, but in other marketplaces, financial services, telecoms, whatever — say that that can at times be problematic in that it reduces the competitive tension to innovate and provide a range of products. In this sector, like many others, there are going to be a whole range of needs in the people who are retired; they have a whole range of different preferences and financial situations. What is your sense of that kind of balance?

Mr COHEN — I think that indeed is the conundrum. At the moment the legislative preference is to provide a reasonably bare skeleton that protects primarily the financial interests of people who enter into retirement

village arrangements to try and promote disclosure about what those financial commitments are, to provide for clear internal dispute resolution processes and not to specify in any great detail other matters that are the subject of retirement village living.

What that has resulted in is a reasonably diverse retirement village offering from large and small providers, some providing very, very luxurious and comprehensive services and others providing something that is much more modest, and I suppose that is responsive to the economic needs of residents who use that. It is the precise trade-off that needs to be made; the more that standards are prescribed the prospect is that there will be an increased cost that results from that and the consequence may be that in fact it reduces that ability as a housing choice for some Victorians who might not be able to afford it, or it creates other impacts in relation to it.

Mr MULINO — So my last question relates to that, and it is more of an empirical one. When you look at some products like insurance, market forces push products towards uniformity along most dimensions, and so other than, say, flood when it came to fire risk pretty much every policy covered fully for fire. On every single key fact sheet that would always be ticked off. I am just curious as to whether there is much data. You referred earlier to the fact that there is some market pressure towards uniformity in some regards. Are there any comments you could make about areas where perhaps market pressure is leading to an attempt to differentiate? I am asking here in particular in relation to some areas which can be controversial like exit arrangements. Is that an area where there is a limit of complexity and heterogeneity which can be problematic for consumers? Are there any trends that are particularly noteworthy?

Mr COHEN — Look, there is no question that there are considerable complexities in exit entitlements as a particular example of it, and I suppose the regulatory response has pushed some consistency in terms of people being given information at specific periods of time as to what their exit entitlement will be. I suppose that has the prospect of driving competition as it were around the cost or the price of those retirement village services. I might, though, just ask my colleague Elizabeth if she can further elucidate.

Dr LANYON — There is quite substantial diversity between not-for-profits and for-profits and even within for-profits, say, the handling of whether a capital gain is returned back to the resident and on what basis. So that is quite tricky for people to understand. I think that is one of the reasons why the decision was made in the precontractual disclosure to require actual modelling of figures, because I think in that sense that is the bottom line that really counts rather than necessarily understanding. Some people will understand the concept of capital gains return or not, but to bring it home as an actual number that is modelled, rather than to say — —

Mr MULINO — So that has to be disclosed to the person before — —

Dr LANYON — Correct. In the precontractual disclosure when we were doing that work to bring about the reforms in 2014, really it was people not understanding the exit entitlement because of this diversity in the pricing to which you refer, whether the calculation was done based on an ingoing price or an outgoing price dependent on whether capital gains were being returned or not being returned and then what other deductions were being made. That is highly complex and it does change from village to village and depending on time it can change within the village. So that is why that actual disclosure that the resident gets before they sign up actually models that outcome.

Mr MULINO — And is that based on a standardised modelling approach?

Dr LANYON — Well, it is based on the figures that the retirement village use and they have to disclose the underlying assumptions they have made. It is prospective, obviously. I mean, that was the trade-off. We cannot guarantee that there will not be a financial crash — —

Mr MULINO — No, but it is clearer than not having the number.

Dr LANYON — but it is to try to help people. Claire is pointing out to me that the modelling occurs whether you have been in the village 1, 2, 5 or 10 years, to try to give you that concept of what the end result might be for you, because even the retirement village model is quite unfamiliar to people who have owned their own home up to that point. They may be familiar with renting, but the retirement village financial model itself is often not familiar to them.

Ms HARTLAND — I have got a few questions. It has been really interesting listening to this because it sounds like the Department feels like they have actually got a handle on most of these problems. Yet roughly about 1700 submissions have come in through — —

The CHAIR — Something like that — 700 to 800.

Ms HARTLAND — Seven hundred to 800 submissions, many of those from older residents who talk about the problems that they are having — the complexities with their contracts, the exit part of the contract, the fact that there is not any one specific organisation within government that actually assists them. You have mainly been talking about the Retirement Villages Act but there is also obviously the Residential Tenancies Act, which is the caravan parks et cetera. I have got a whole range of questions, which have mainly been sent to me by people who actually live in these villages, so I am going to ask on their behalf. People are telling me that CAV seldom exercise their enforcement powers in matters of non-compliance in the retirement housing sector. Is there a reason why the agency is hesitant to exert its authority in this area?

Mr COHEN — Perhaps if I can reflect that there are few matters where we actually are able to exercise enforcement functions. So matters, for example, of contract are matters where generally we are not permitted to or do not have a regulatory function in relation to. Where there are matters where we do have a regulatory function, our approach tends to be a graduated one. In the first instance we will seek to make contact with the operator, we will inform them about their legal requirements and we will seek to get their agreement to improve their practice, and often those types of approaches are very successful.

It is only where they are not successful that we would look for more intensive responses. My inquiries within our organisation suggest that for retirement villages that has not often been required. There are two current matters. The Better Business Initiative matter I indicated to the committee, where we have engaged with an operator through a confidential process to identify trends in complaints and to seek undertakings to improve their practice, and a matter which is absolutely a regulatory matter in relation to the provision of the information sheet, where that obligation has not been met and where we have taken strong enforcement action in relation to it.

Ms HARTLAND — That is not what I am being told by residents, which is really interesting. It would seem that the Department is doing what it can, but it is actually not helping, especially around the complexities. I understand from residents as well that one of their biggest concerns is the lack of a standard contract — that within a village there may be a dozen different contracts floating around. They are sometimes 80 pages long and they are incomprehensible. Do you see the Department having any role in looking at legislative change to make it so that there is a standardised contract across all villages — the entire retirement village sector?

Mr COHEN — The first thing I would say is I absolutely have no cavil with what you have been told by residents. I am aware that there has been in the past a great deal of variety in terms of the arrangements and the contracts that have been struck between retirement village residents and retirement village operators. The 2014 amendments seek to address that issue by providing for a standard form of contract, and that is for reasons including to permit people to be able to compare the conditions between contracts. But of course that is something that only applies prospectively; it does not apply retrospectively in relation to contracts that have been entered into before that period of time. There is certainly no provision in the legislation, for example, for how to seek an operator to revisit and reframe contracts that were entered into prior to the commencement of those regulatory changes.

I would say that there has been legislative responsiveness to the issue that you raise, but it is really focused on matters going forward rather than seeking to back-capture arrangements that impact on retirement village residents who entered their contracts prior to the commencement of those changes in 2014.

Dr LANYON — Simon has referred to the balancing act necessary if you take into account that retirement villages as we sort of know them came into existence in around the late 1980s. What we have seen in retirement villages now is quite a range, as I said, of for-profit and not-for-profit, but even within one retirement village you might have condominiums, you might have one and two and three-bedroom units, you might have leaseholds and you might have serviced apartments. Also people come and go and operators do change hands, and there is of course the security of tenure that residents enjoy. One of the balancing factors to the lack of standard contract and the fact that there are diversity of contracts means that residents' new needs can be continually met by new contracts, new arrangements and new service fees. A standard contract applying to

everyone in the village would imply that it always has to be standard, and therefore that would mean that residents who may have struck one deal would then be asked to strike a different deal and that could be very detrimental to residents who have made their financial decisions on one basis to be asked to sign something different.

Ms HARTLAND — The problem from what I can see is that the owners are using the variance on these contracts as a way to not deal with residents, especially around exit fees and especially around refurbishment fees that children or the person who is going into nursing home care are then required to conform with. I am not sure that what you think is happening is actually happening. From what I hear from residents these non-standardised contracts are being used against them.

Dr LANYON — I would say that we understand the point you are making very well, and I suppose the process we went into in settling some good practice protocols, where we had the opportunity to hear from consumer representatives, peaks and Residents of Retirement Villages Victoria means that we understood in great detail what those issues are. I think the protocols document which speaks about best practice does illustrate the detail of those concerns. You will probably see that they reflect the points you put to us.

Ms HARTLAND — Can we go back to the 2014 legislation that you talked about that creates a standardised contract?

Dr LANYON — Format — standardised format.

Ms HARTLAND — Format, so not a standardised contract? That is an entirely different thing. That is not a standardised contract.

Mr COHEN — No. It is a standard form of contract, and it is prescribed in the regulations.

Ms HARTLAND — Was that federal or state?

Dr LANYON — State.

Ms HARTLAND — Okay. Can you tell me what that was? It is just that I would have done it and I do not remember it. You have confirmed that it is not actually a standardised contract; it is a standardised format, which is clearly not enough for what people are requiring.

Mr COHEN — It is the Retirement Villages (Contractual Arrangements) Regulations 2013.

Ms HARTLAND — Yes, I do remember that one now. I have got a few more questions. You said that last year that there were about 40 dispute resolutions and that there were 600 inquiries. Can you give us a bit of an idea about what the inquiries were?

Mr COHEN — The data that I do have is in relation to complaints, so I do not have specific breakdown on data in relation to the inquiries. I am happy to take that question on notice and see if I can provide further detail.

Ms HARTLAND — That would be great. Also on that, I understand that especially telephone staff at Consumer Affairs Victoria have to deal with a huge range of complex issues. Do you have a specialised team that actually deal with retirement villages rather than it just being a general complaint, because that is something that has come up to me as well, that they need someone to talk to who actually understands what the Act means.

Mr COHEN — We do not have a specialised team within our contact team per se that deal with retirement villages. The way that our contact centre works is that calls are in the first instance dealt with by our general inquiries office staff. They are aided by information on what is called our wiki that has a range of information in relation to the sorts of common inquiries or disputes that we deal with. If it is a matter that is not within their ability to deal with they have a number of seniors who have subject matter expertise across the 30 pieces of legislation that CAV administers, and where required — there are deep policy subject matter experts within Consumer Affairs Victoria that can be accessed — to answer particular questions. So it is more of a graduated approach that applies across our area.

I must say the reports that we have and the satisfaction surveys that we have suggest that our overall service is very well received and well regarded, so I am not aware of any particular concerns about the expertise or quality

of advice that we provide in terms of retirement village matters. I am certainly happy, if there are particular concerns, to take those matters away and consider them.

Ms HARTLAND — Does Consumer Affairs Victoria ever actually visit or audit retirement housing — you know, actually go out to visit?

Mr COHEN — We have a state inspection program. That is something that we have been recently implementing. In 2016–17 there will be a number of retirement villages that we will be visiting as part of that program. But also where we receive complaints about matters, and particularly where we are considering a regulatory response, we will go and attend villages when required to deal with those matters as well. But we do not, separate from that, have a specific program of visiting villages.

The only additional matter I would add is that the Department of Justice and Regulation has a regional service network that provides Department of Justice services across eight regions in metro and regional and rural Victoria, and Consumer Affairs officers from those regional service networks will present information sessions to senior Victorians, including in relation to the Retirement Villages Act. For example, in 2013–14, 33 information sessions were conducted; and in 2014–15, 29 information sessions were conducted.

Ms HARTLAND — On the issue around deferred management fees, or exit fees, clearly this is something that comes up a lot and so it would seem to me that there is a real need to regulate. Do you feel or have you seen where they have actually been improperly used in some areas to price-gouge residents by not providing a sufficient or equivalent discount on the entry price?

Mr COHEN — I must say that is not a question that I am able to answer. I am not aware of any specific circumstance. I absolutely acknowledge the part of the premise in the question that there is complexity in deferred management fees, that there is no consistent approach taken in relation to the setting of deferred management fees across retirement villages, and that there can be a considerable difference between the expectation of the resident or, in circumstances where the resident has passed, their family in terms of what that entitlement might be vis-a-vis the ingoing contribution.

The 2014 reforms, I suppose, were really designed to try and address that quite directly by giving much better disclosure about what that entitlement might be at specific periods of time after the entering into of the contract, but those disclosure requirements only apply in relation to contracts entered into on or after the commencement of the regulations in 2014, so they do not address that issue that might be present for people, which would be the vast majority of current residents, who entered into retirement villages prior to the commencement of those changes.

Ms HARTLAND — Managers of a number of these facilities, it has been told to me, often are bullies; they do not really know what they are doing; they tend to isolate residents who make complaints. Do you think we need a standard for managers, in the same way that you would do for someone who works in a child-care centre or someone who works in a nursing home — they have to have a particular standard and they need to be a responsible and appropriate person? Do you think this is something that we should be looking at?

Mr COHEN — I think the question of qualifications across a range of occupational areas is a very live one at the moment. We have certainly seen evidence of it, for example, in the context of owners corporations and managers in those circumstances. So I think it is an absolutely appropriate area of inquiry for this committee. I am aware of residents raising concerns about the conduct of managers, so I am alive to the issue that you raise.

The one thing I suppose I would just note is that, be it either on the basis of research done by industry or research done on behalf of residents, the significant majority of residents of retirement villages express their satisfaction with those villages. I think it is to the credit of the industry that to a significant extent it is providing the sort of retirement housing that Victorians are looking for. But that said, there are circumstances, and in the context of older Victorians and residents, where those situations do not work out well and where they have a significant impact on residents' welfare, and I absolutely acknowledge that. But I think that needs to be seen in the context of the overall performance of the industry, where there seems to be some information that suggests it is performing quite well in terms of providing the sort of retirement housing living that Victorians are looking for.

Ms HARTLAND — I am sure there are some providers who are doing that, but it feels to me, from the conversations that I have had over the last two years with residents and agencies, it is not uniform, and so that is a real problem.

Mr COHEN — And I would agree with that. I certainly would not suggest that every single retirement village is one where residents are entirely satisfied.

Ms HARTLAND — One last question, and again this goes back to the complexity of the contracts. So when I have spoken to residents — or sometimes it is the children that I speak to when their parent has gone into nursing care or they have died — and they are trying to deal with the contract, it is so complex. How do you think older people can manage — or anybody? I mean, I have read some of these contracts, and I would have a lot of trouble actually managing them. So what would you suggest needs to happen so that we have a simple, standard contract across the industry?

Mr COHEN — Well, if I could reflect, I think there has been significant enhancement since 2014 to actually improve the information for residents. I think, again, those improvements have not had a flow-on effect to people who entered into those contracts prior to that. And often of course where people are in the process of leaving retirement villages, which by and large are contracts where these arrangements did not apply to, the complexity that was the precise reason that led to these legislative changes is actually apparent, so I absolutely acknowledge the point that you are making.

I would say that the changes that have been made in 2014 are part of the solution to that, and I think that there is a need to come back and assess how successful those have been. I would continue to give residents of retirement villages and their families the same advice as we have given and continue to consistently give them, which is that these are significant and important contracts that they are entering and they are matters where we strongly recommend that they obtain specialist legal advice and will require financial advice to understand the impact of those arrangements. These are investments of people's life savings for their secure tenure in some of the most vulnerable years of their lives, and we absolutely think that in that circumstance the gravity of that contractual arrangement and the need to be properly advised in relation to it is absolutely critical.

The CHAIR — We have just got a couple of minutes left. I have got a couple of follow-up questions, if I may, Mr Cohen. Just in relation to the standards of managers in the industry — and I note your sort of general comments about this being a live issue across a number of sectors — are you seeing much consolidation of the industry as it matures, as it grows to a more professional, multi-centred — —

Mr COHEN — I think the only comment that I could make about that is that it is an industry where there are a diverse range of operators from very small family-owned retirement village operations to some very significant and substantial professional firms that are ASX-listed. Our review of just some of the information that we are aware of would suggest, for example, that even the three biggest players in the sector have less than 10 per cent of the villages, that being by numerical number, albeit the number of beds that they have in those villages is a high proportion. But I expect others are probably better placed to provide more detailed comment to the committee on that than I am.

The CHAIR — Sure. Just a final question: you referred to the situation, I think, in your earlier evidence where early residents in a village maybe move in on the prospect of future infrastructure being delivered down the track, and of course that may or may not happen depending on sales rates and available capital and a range of other factors. Is that an issue that you receive complaints about a lot, because that is something I have had through my office?

Mr COHEN — As to whether we receive a lot of complaints about it, I cannot answer that question accurately for you. We certainly do receive complaints about it as well, and it is a very complex and difficult issue to work through, so I am happy to see if I can get some precise information on those matters over the last several years in addition to a better breakdown of our inquiry information.

The CHAIR — That would be great, thank you. I suppose that goes to potentially misleading advertising versus contractual rights enshrined in a contract and what is the prospect in the future and what is a contractual right.

Mr COHEN — And that reflects, I suppose, that in addition to industry-specific legislation there are the general consumer protections that apply to retirement villages as much as they do anywhere else. So, for example, if there was misleading advertising or representations that were known not to be true, those are absolutely matters that would come under Australian Consumer Law, along with where residents who enter those arrangements would have the same rights as consumers of any services.

The CHAIR — Mr Cohen, Dr Lanyon and Ms Davie, thank you very much for your evidence today and your preparedness to be with us. As I say, the transcript will be with you in the coming days, and we thank you for your time and look forward to the answers to the questions taken on notice.

Mr COHEN — Thank you, Chair. If we can be of any further assistance, please let us know.

The CHAIR — Thank you very much.

Witnesses withdrew.