

[REDACTED]

From: Inquiry into the Retirement Housing Sector POV eSubmission Form
[REDACTED]
Sent: Tuesday, 7 June 2016 3:13 PM
To: LSIC
Subject: New Submission to Inquiry into the Retirement Housing Sector
Attachments: [REDACTED] [REDACTED]

Inquiry Name: Inquiry into the Retirement Housing Sector

Mr John Leslie Lander
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

SUBMISSION CONTENT:

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My submission addresses the gross financial exploitation of the frail aged by [REDACTED].

I, and many others in my and other [REDACTED] villages, were duped into so-called 'standard' Service Agreements, which are anything but 'standard' They so severely restrict Freehold rights to make it virtually impossible to sell through or to anyone but [REDACTED]. Other estate agents have described our properties as 'unsaleable' on the open market, because of the restrictions in the Service Agreements.

If the vendor agrees to sell to [REDACTED] the restrictions imposed through the Service Agreements are waived, so that [REDACTED] does not conform to the restrictions it places on all other buyers.

By so limiting the market, [REDACTED] can acquire village freehold properties at severely depressed prices, leaving the vendor with so little return that funding a move to higher care is impossible.

I would welcome an opportunity to appear at the Enquiry in person, to address this issue at greater length.
(as attached)

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File1: [REDACTED]

File2:

File3:

[REDACTED]

- There is no current contract of appointment of an OC Manager, the last having expired in 2008.
- [REDACTED] has been acting in the capacity of OC Manager since that time, without any form of agreement with the OC.
- [REDACTED] have improperly asserted that their status as 'Manager' gives them leasehold rights over the Common Property of the OC and the right to control OC Funds without supervision/verification by the OC.
- [REDACTED] has been managing provision of services under Service Agreements/Management Contracts with each individual Lot Owner, entered into when the Lot Owner purchased their ILU.
- We have obtained legal advice that the OC is free to appoint a new OC Manager, a fact also acknowledged by [REDACTED].
- The main impediment to doing so appears to be legal difficulty in setting aside the individual Service Agreements/Management Contracts, even though they devolve from the expired contract of appointment of OC Manager.

Service Agreements/Management Contracts

- Legal advice was obtained and circulated to all VG Lot owners that the Service Agreements/Management Contracts are unlawful, in that they infringe the *Retirement Villages Act 1986* and the *Owners Corporation Act 2006* in many respects.
- The conditions for sale/purchase that [REDACTED] imposes through the Service Agreements/Management Contracts, are infringement of the *Owners Corporation Act* and the *Transfer of Land Act*, which prohibit restrictions on the right to deal in Freehold property.
- The Service Agreements/Management Contracts are directed in very small part at provision of retirement services and management, but are in major part designed to restrict, inhibit and nullify freehold title rights and, as such, are an attempt to contract out of law.

The [REDACTED]

- Land Victoria confirmed that the *Transfer of Land Act* and the *Owners Corporation Act* protect a Freehold Title holder's right to sell to any individual or company, or to lease their property to any individual or company.
- It is these legal protections of Freehold rights that [REDACTED] is relying on to buy Lots and issue leases over them. The problem is that, in several instances, they are not actually buying the Lots before selling the leases.
- [REDACTED] obtained professional legal opinion from [REDACTED] that [REDACTED] method of acting as Sales Agent to sell a Freehold Title but only selling a lease and writing the Freehold Title into their possession, was a breach of the *Consumer Law and Fair Trade Act*, insofar as [REDACTED] did not pay fair market consideration to acquire the Freehold Title.

- When challenged with this formal legal view, [REDACTED] representatives simply respond that it is a process of “simultaneous transfer” that they have been doing with great success in many Villages around Australia.
- They have made it clear that they intend to continue until they have gained possession of sufficient Freehold Titles to be able to develop or redevelop Villages at their sole discretion.
- [REDACTED] have been registered as owners of four Lots and are in the process of selling leases over another two.
- They only need to own 7 Lots to be able to dominate the Owners Corporation Committee.
- Acting as both Manager setting onerous conditions on purchase and as Sales Agent determining all aspects of marketing and sale, they have been able to delay the sale of vacant Lots for up to three years, thus causing a fall in market value most advantageous to themselves when they make an offer to frustrated vendors.
- Acting as Sales Agent and conveying the property into their own possession without first explaining to the vendor the nature of the benefit they are acquiring and obtaining an acknowledgement in writing from the vendor that the vendor is satisfied with the arrangement, [REDACTED] are also in breach of the *Victorian Estate Agents Act*.
- By not obtaining an independent market valuation for the property they are commissioned to sell, [REDACTED] set their own (low) price, further breaching the *Victorian Estate Agents Act*
- In selling a lease over a property for which they have not previously paid full market consideration (they pay the vendor after the lease is sold), they are deceiving the leasehold buyer, since they are selling the lease over a property that they do not actually own at the time.

JLL

7 June 2016