

Saturday 14 May 2016

Mr Ian Smith



The Secretary  
Legal and Social Issues Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

REF. INQUIRY INTO THE RETIREMENT HOUSING SECTOR

Dear Sir / Madam,

Late last year (8 October 2015) I attended a Parliamentary function marking the International Day of the Older Person. It was evident that day - from presentations by retirement village residents and consumer action groups - that there was, and remains, urgent need for the establishment of a Retirement Housing Ombudsman to provide proper consumer protection for residents of retirement villages.

I attach for Committee's consideration a paper outlining issues that must be addressed as part of the enquiry. As a past Chairman of my village's original Residents' Committee I have personal experience in attempting to resolve a number of the examples presented in my paper.

The appointment of a dedicated Regulator with power to investigate and rule on unfair and unconscionable contracts is necessary. I am available to expand on the matters raised in my paper if required.

Yours Faithfully,



Ian Smith

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## SUBMISSION TO: INQUIRY INTO THE RETIREMENT HOUSING SECTOR

PRESENTED BY MR IAN SMITH, CARDINIA WATERS VILLAGE, PAKENHAM, VICTORIA

- The contracts of Retirement Villages are long, complex and complicated, regulated by overlapping and conflicting pieces of state legislation.
- It is so complicated that very few lawyers have the background knowledge to give advice to intending retirement village residents.
- There are at least seven different acts/pieces of state legislation that are relevant to retirement villages.
- Senior Victorians need to be confident that they will get a “fair go” when moving into, living in and exiting a retirement village.
- There are many unfair aspects that are in our particular deed/contract. One of these unfair aspects relates to the Association rules; the rules being based on the 1981 Association rules.

The owner operator/management stated to the resident members of the association that there was no need to update the rules to the new 2012 rules. This is in spite of such organisations as RRVV and Consumer Affairs Victoria suggesting it was best to update the rules.

Why did the operators/management take this path? So as they could continue to control the village.

- Example: At any general meeting of the association, the permanent members (operators/management) under the rules hold 30% of the vote, even if 100% of the voting residents wanted to vote in the opposite way.  
Many items to be voted upon (e.g. By-laws) under another State Act (Retirement Villages Act) require a 75% vote to pass a motion. Therefore there is little hope of residents having a voice in the management and development of their village.
- Example: Another unfair clause in the contract relates to when a resident intends to sell his/her villa. The wording is all in favour of the owner. The owner decides what refurbishment work is to be done and who will do the work. The contract also states “refurbishment work includes (but is not limited to)” – wording open to possible upgrading works at resident expense. Anecdotally this has happened.  
It also can be argued that fair wear and tear is a capital cost and any costs should be the responsibility of the owner/operator.
- The above examples (and there are others) in our deed/contract/rules can be classed as unfair as the owner/operator has embedded the right to decide the meaning or interpretation of contractual terms. These clauses could be null and void under the Fair Trading Act.

### What is needed?

- **Simplification of Contracts**
- **Financial transparency**
- **Removal of unfair clauses from contracts that mislead residents**