

**From:** [Inquiry into the Retirement Housing Sector POV eSubmission Form](#)  
**To:** [LSIC](#)  
**Subject:** New Submission to Inquiry into the Retirement Housing Sector  
**Date:** Tuesday, 21 June 2016 12:56:31 PM  
**Attachments:** [REDACTED]

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Inquiry Name: Inquiry into the Retirement Housing Sector

Mr Glenn Birrell  
[REDACTED]

[REDACTED]

[REDACTED]

**SUBMISSION CONTENT:**

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Per attachments

Please advise if unable to open and print file - 15 pages in total

Glenn Birrell [REDACTED]

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File1: [REDACTED]

File2: [REDACTED]

File3:

21 June 2016

The Secretary  
 Inquiry into the Retirement Housing Sector  
 Legal and Social Issues Committee  
 Parliament House, Spring Street  
 EAST MELBOURNE VIC 3002

Author Glenn W Birrell

## **SUBMISSION – INQUIRY INTO THE RETIREMENT HOUSING SECTOR (2016)**

I appreciate the opportunity provided by the Victorian Legislative Council pursuant to  
 5 Sessional Order 6 on 24 February 2016 to make the following submission as it relates to the  
 Terms of Reference at 1, 3 and 4.

### **About the author**

10 I am a former member of the Victoria Police for over twenty-one years reaching the rank of  
 Detective Sergeant in the Major Fraud Group before retiring in 2001. I was awarded a  
 National Medal and Victoria Police 15 & 20 year medals for ethical conduct. I obtained  
 extensive experience in all facets of investigation specialising in large and complex fraud  
 matters.

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Following the completion of my police service, I have continued to provide investigation and  
 training support to private and government organisations in my capacity as the Director of  
 aCKTiF Solutions, an investigations and training business [www.acktifsolutions.com](http://www.acktifsolutions.com).

20 I regularly undertake pro bono investigations for community groups and not for profit  
 organisations.

I am a member of the Australian Professional Institute of Investigators. I have a Certificate IV in  
 Investigations, Certificate IV in Fraud Control and a Graduate Certificate in Fraud Investigation.

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My mother-in-law [REDACTED] is a resident and the owner of a strata titled unit at  
 [REDACTED] at [REDACTED] from 30 November  
 2009. She is a widow and retired from teaching after 30 plus years having travelled to  
 Australia on an assisted passage to work for the Victorian Government.

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### **Background**

The basis for my submission arises *inter alia* from being asked by my mother-in-law and the  
 vast majority of the other residents in the Village to assist with a fee dispute with [REDACTED]

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It has been prepared from two archive boxes of information collected over a three and half year  
 period and includes reports prepared for CAV and other bodies, submission of statements of  
 claim and points of defence to VCAT and evidence secured arising from the review of  
 40 “discovery” documents pursuant to a VCAT order on 10 October 2013.

It arose in the financial year 2011/2012 in which [REDACTED] Management increased the Owner (resident) monthly fee for those with an emergency 24/7 telephone from on average \$228.63 including GST to \$503.44 including GST (**120.2% increase**).

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For those without an emergency 24/7 telephone it increased from an average \$215.00 including GST in the financial year 2011/2012 to \$489.82 including GST (**127.8% increase**).

The majority of the owners elected to not pay the increased fees.

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The average age of a retiree in the retirement village at that time was 74 years old.

On 25 September 2012 I prepared a nineteen page (19) report and presented a folder of evidence to The Hon. Michael O'Brien, MP, the then Minister for Consumer Affairs for alleged breaches by [REDACTED] (Operator of The Retirement Village) of The Retirement Villages Act 1986 (Vic) & Retirement Villages (Contractual Arrangements) Regulations 2006. The matter was referred by his office to Consumer Affairs Victoria (CAV). No action was taken in relation to the 2011 breach and the other matters were referred to Ms Dorothy Morton at CAV.

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In October and November 2012, twenty-four (24) of the thirty (30) Owners of strata titled units at [REDACTED] made Residential Accommodation Complaints to CAV. Note four (4) of the units were empty at the time. Mediation took place in December 2012 and January 2013. Mediation ceased after one of the directors of [REDACTED] Management Pty Ltd, [REDACTED], withdrew from the process on 25 February 2013. [REDACTED] stated the only option available to the owners was VCAT. VCAT action was taken by two (2) of the owners on behalf of fifteen (15) others on 23 August 2013 but [REDACTED] responded by engaging counsel and initiating their own action for unpaid fees on 4 September 2013. Aside from the two (2) owners who initiated the action, the remainder settled their fee dispute on 17 March 2015 as they could not afford or obtain legal assistance and did not want to risk VCAT awarding costs against them. The two (2) owners who initiated the action went to a full hearing at VCAT for five (5) days with the member delivering his decision on 22 April 2015. The owners were unrepresented. [REDACTED] Management was represented by a solicitor and a barrister.

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The VCAT process did identify items which should not have been charged for and non-compliance with the section 34(3) of the Retirement Villages Act 1986. It resulted in the reduction of monthly fees referenced at lines 43 and 46 of this submission by approximately \$100 per month.

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## **Opportunities for Improvement**

**1 existing legislation that relates to retirement housing, in particular recommendations for reform of retirement housing legislation to ensure it —**

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- (a) reflects the diversity of retirement housing types;**
- (b) includes proper consumer protections, dispute resolution procedures, fair pricing, and consistent, simplified management standards and regulations across the sector; and**

- (c) **has a focus on dignity, respect, appropriate care and quality of life for retirees;**

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### Diversity of Retirement Housing Types

95 The present Retirement Villages Act 1986 (Vic) & Retirement Villages (Contractual Arrangements) Regulations 2006 does not reflect the diversity of retirement housing and in particular small independent living centre villages with all strata units or a hybrid of strata and leasehold units. Such environments are further compounded by the conflict with the Owners Corporation Act 2006 (Vic).

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██████████ provides an example of this and consists of 31 strata titled units, with Unit One used by ██████████ for their onsite manager. The Village and Units were constructed by the ██████████ (██████████) in 1986/7. The parents ██████████ (deceased) and ██████████ relinquished control of the Village circa 2001 to their children ██████████ who are the current directors of ██████████

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██████████ was appointed by the Body Corporate as it was then known, which consisted only of ██████████ on 2 November 1987 to operate and manage the Village. It does not own any land or property and is not a member of the Owners Corporation.

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It resigned as the Owners Corporation Manager in 2009 with the owners taking over the responsibilities under the Owners Corporations Act 2006 and the regulations under that Act. An Owners Corporation Management company ██████████, now known as ██████████ was appointed in 2009 by the unit owners to assist with their Owners Corporation responsibilities. The new Owners Corporation was faced with over \$300,000 in maintenance required with only approximately \$7,000 handed over by the old Owners Corporation. There was no maintenance or sinking fund in place. ██████████ Management claimed it was the victim of an unsubstantiated employee fraud. Regardless it was evident no maintenance had been done for many years.

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Current Retirement Village legislation/regulation doesn't contain any provision for a long term maintenance or sinking fund to be maintained. Such legislation/regulation is required as a matter of priority to ensure that Retirement Villages have a long term maintenance or sinking fund in place with retrospective effect which is managed with the owners/residents and audited annually by the Regulator, and in strata title villages where the maintenance is undertaken by the Owners Corporation, the Retirement Village Management Company should contribute a percentage of their deferred Management fee received on the sale of units to this fund. Seaclyff Management's current Management Service Agreements with strata title owners, excluding Tidak, does not have a long term maintenance fund clause.

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In leasehold villages where the maintenance is undertaken by the Retirement Village Management Company, a percentage of the sale price of property should be paid into a long term maintenance or sinking fund, managed with the leaseholders and audited annually by the Regulator. My research shows this is already being done in a number of leasehold villages.

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The [REDACTED] leasehold "Resident Agreement" with the resident and [REDACTED] Management does contain a Long Term Maintenance fund, which is defined in the definitions at 1.1 of the Agreement, "means a fund established and maintained to pay the cost, other than those costs included in the Operating Costs, of capital works, new equipment, repairs, renovations, refurbishment and maintenance as the Owner or Management Company shall in their sole discretion deem necessary or beneficial to Seacliffs." Under Item 11 of the Resident Agreement it states the Long Term Maintenance fund shall be "an amount equal to 4% of the greater of

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145 (a) the new Ingoing Contribution or Market Value (if applicable); and  
(b) the Ingoing Contribution."

The application of [REDACTED] "Long Term Maintenance Fund" is unclear with only one known sale of a [REDACTED] leasehold property having occurred. The terms and conditions of that sale are not known. No benefit was paid to the Owners Corporation or improvements were made to the Retirement Village post that sale.

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[REDACTED] Management as the Village Operator and the Owners Corporation operate autonomously of each other. Both maintain their own financial records, conduct separate AGMs and set budgets. Each set fees to be paid by the Owners for services provided by them.

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### **Proper Consumer Protections**

#### **Service Agreements**

[REDACTED] Management remain the Retirement Village Operator and has individual Management Service Agreements with each of the owners. There is no complete uniformity as to their application. The Agreements are unclear and ambiguous with [REDACTED] Management still referred to in the majority of the Agreements as the Owners Corporation Manager. The current Owners Corporation cannot vote to remove [REDACTED] Management despite its appointment under the same framework in 1987.

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These Agreements are bad on their face and unconscionable at Consumer law yet there is no relief short of VCAT and the Supreme Court. Both of these options are out of reach of owners and residents who simply cannot afford legal costs particularly in small villages of thirty units or less, and less than forty residents. Applications to Consumer groups, legal aid and legal firms for pro bono support are met with "sorry, we wish we could but we can't." Probing deeper as to why, one establishes that quite simply there are better causes than senior citizens in strata titled units, who are ironically considered wealthy by their ownership and outside the rules. They fail to realise that ownership is encumbered to the Management Company and its Agreement which prohibits using it as a security for a loan.

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New CAV template or model Contracts do nothing for existing Agreements and CAV have shunned any responsibility.

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Retirement Village Managers like [REDACTED] exploit old unconscionable Agreements and the inability of owners and residents to challenge them. Any resistance is met with a barrage of threatening and intimidating letters from the resident Manager followed by legal letters. A by-product of [REDACTED] Management increased fee regime is depressed prices of units making

185 them virtually unsellable. Many of the strata units are now worth less than what they were five years ago despite renovations to them and their setting and locale.

The [REDACTED] Management Agreements with all strata titled unit owners except [REDACTED] explicitly prohibit the leasing of their properties. The “special” relationship of [REDACTED] to [REDACTED] Management has enabled it to take advantage of the depressed unit valuation and acquire eight, and up to two more in the short term, strata title units. [REDACTED] has sold the eight units on 49 year leases. [REDACTED] ownership and voting rights enables it to now effectively veto any Owners’ Corporation proposals. This is a clear example of [REDACTED] Management’s unfair and inequitable Management Service agreements and resultant control of the Owners’ Corporation yet CAV say it can take no action.

The agreement [REDACTED] has with [REDACTED] Management has never been provided despite a VCAT order issued on 10 October 2013 which it failed to comply with. In a subsequent VCAT application to a Senior Member by the owners seeking compliance with the order, the Senior Member decided [REDACTED] Management did not have to provide its agreement with [REDACTED] as the Senior Member did not consider it was relevant to the proceeding.

This further highlights the failure of existing legislation to address the diversity and complex nature of this retirement housing type where you can have the circumstance where the original developer of a strata titled village, [REDACTED], can own up to ten strata titled units and lease them owing to its “special” relationship with the retirement management company, [REDACTED] Management, which it appointed when there was only a body corporate of one. This has changed [REDACTED] Retirement Village from a strata titled village to a hybrid of strata and leasehold units.

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It should be legislated and regulated in strata titled retirement villages that: -

- (i) no company or individual owner should be permitted to purchase multiple units and lease them with retrospective effect, and
- (ii) an Owners’ Corporation on a majority vote can appoint and remove the Village Management Company.

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### **Registration/Licensing of Retirement Village Operators/Managers**

This also raises the registration/licensing of Retirement Village Operators/Managers in which there should be a stringent probity regime put in place. The Directors and Managers should be subjected to a fit and proper person test at the time of registration and post supported by legislation/regulation monitoring and enforcement. The lack of independence of the development company and management company in the scenario described, where the directors of both entities are the same, would fail probity given the inherent conflict of interest. Similarly, the conduct of the directors and manager would fail a fit and proper person test. Information to support these contentions can be found at Transparency in Financial Accounts, Fair Pricing and Dignity, Respect, appropriate care and quality of life for retirees sections of this submission.

### **230 Dispute Resolution Procedures**

235 [REDACTED] Management does not have internal dispute resolution and told VCAT it was a family business and too small to have one. Despite being a requirement and breach of Part 6A Operation and Management of Retirement Villages Division 3 Dispute mediation of the Retirement Village Act 1986 (Vic), CAV elected to take no action. VCAT made no recommendation. This again left owners and residents with no recourse other than mediation at CAV or VCAT. This has proved totally ineffective and there is an urgent requirement for an independent body to arbitrate disputes and direct parties to undertake certain actions/implement remedies etc with appropriate sanctions in place for non-compliance.

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### **Fair Pricing**

245 [REDACTED] Management has been allowed by CAV to repeatedly fail to provide a list of the services its 24/7 resident On-Site Manager and relievers deliver to substantiate the cost. Its budget delivered at its 2014/2015 AGM on 24 September 2014 detailed the annual employment costs of \$108,280.20 out of a total budget of \$130,290.20. It is worth noting the resident Manager is provided with fully paid accommodation and all associated on costs, telephone, electricity and gas etc whereas previously a percentage of those costs were met by the resident Manager. The employment costs represented a \$12,292.00 increase over the prior financial year or approximately 13%. No redress is presently available to owners and residents as there is no dispute resolution procedures or external Authority that exists to direct Seacliff Management to provide the list of services, and salary costs are exempt from the CPI calculation under the Retirement Villages Act 1986 (Vic) & Retirement Villages (Contractual Arrangements) Regulations 2006.

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The owners/residents sought and were denied the opportunity to be included in the selection process of the last two on-site Managers yet meet as stated the full cost of the resident on-site Manager who is employed to deliver "unspecified" services to them. The services detailed and outlined in Schedules attached to the existing Agreements are no longer provided.

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What is more disturbing and the cause of great anxiety to the owners/residents is the resident on-site Manager has access to their homes yet they are denied access to the selection process, the result of their National Criminal History check and information relating to their background and qualifications.

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Prior to 2012, [REDACTED] Management's on-site Manager was not employed under an Award and without consultation with the owners, [REDACTED] Management employed the last two Managers under the Age Care Award 2010. It refused to state the reasons for changing from a negotiated contract model ('Enterprise Bargaining') to an award base structure. It has contributed significantly to the increase in fees of over 100%.

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My research has found that it is not mandatory for a Retirement Village Manager to be employed under an Award for a small independent living centre which is not an aged care facility, and an example is the Manager of the [REDACTED] of 50 Units in [REDACTED], Victoria. Some direction should be provided in legislation and/or regulations on what basis employees should be employed and paid.

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280 Other than issue directives and invoices the Village Manager performs no function. ██████  
 Management do no maintenance, no rubbish removal and provide no community bus or  
 community room facilities. These services are all provided by the Owners Corporation.

285 ██████ if Management monthly fee is \$428.00 or \$5136.00\* annually. The Owners Corporation  
 fees are split in an administration/service fee and a maintenance levy. The monthly fee  
 administration/service fee amounts to \$183.98 and the maintenance levy is \$109.53 making a  
 combined monthly amount of \$293.51 or \$3522.16 annually.

Note: Management Fee\* is based on an owner/resident having in place the externally  
 monitored emergency call service.

290 Owners Corporation Fees are based on lot number and lot liability.

The combined ██████ Management and Owners Corporation fees equates to \$8658.16  
 annually and on top of this each owner has to pay Council rates and all utilities charges.

295 In addition to the ██████ Management's monthly fee, on the sale of an owner strata unit,  
 expect where the owner is ██████, which can only be completed with the approval of ██████  
 Management, it charges "a deferred management fee calculated at the rate of 2.5% per annual  
 up to a maximum of ten (10) years (25%)." This does not apply to ██████ and its leasing  
 arrangements.

300 In reference to ██████ Resident Leasehold Agreement with the Resident and ██████  
 Management, it states at Item 10, "An amount equal to 5.5% for the first year is payable and  
 thereafter Deferred Management Fee of 3.0% for each full and part year of the Term of the  
 greater of:

305 (a) the New Ingoing Contribution or Market Value (if applicable); and  
 (b) the Ingoing Contribution,  
 provided however the Deferred Management Fee shall not under any circumstances be more  
 than 32.5%."

310 An approximate \$10,000 annual cost subject to CPI plus the deferred management fee to  
 reside in an independent living retirement village where emergency monitoring is external, paid  
 for by the owner/resident and not compulsory is not fair pricing.

315 The village facilities provided by ██████ Management is a no thrills environment. It is a thirty-  
 year-old village with no community bus, scheduled activities, kitchen/dining facilities, rooms for  
 visiting doctors/hairdressers to use etc as in other Retirement Villages where the  
 owners/residents are paying far less than the amount charged by ██████ Management. Even  
 activities organised in the Owners Corporation's Community Room by ██████ Management  
 are paid for out of petty cash and charged back to the Owners Corporation and/or included in  
 320 the monthly management fee.

325 No external activities are arranged and managed by ██████ Management. For all intent and  
 purposes ██████ Retirement Village is no different than a group of units other than a special  
 rule that you have to be aged fifty-five years and above to buy the unit.

Fees charged by Retirement Village Management companies for services should be regulated and audited to ensure the fee charged is commensurate to the service provided.

330 Present Retirement Village legislation and regulations and powers available in Victoria are grossly inadequate and this provides possibly the only explanation as to why the current regulator, CAV, has failed to act.

### 335 **Transparency in Financial Accounts**

340 Current legislation requiring the Owner/Manager of a retirement village to prepare and present a financial statement is legislated under section 34 of the Retirement Villages Act 1986 (Vic). Under subsection (4) there is also a mandatory requirement for the statement prepared to be audited by a registered company auditor with the meaning of the Corporations Act unless in the year previous the residents decide by special resolution to dispense with the auditing requirement.

345 I was present when ██████ Management as the Manager of a Retirement Village failed to prepare and present at its Annual General Meeting on 26 July 2012 in which the fees were increased (refer lines of 41 - 46 of this submission), a financial statement under Section 34 (3) Retirement Village Act 1986 which had been audited by a registered company auditor within the meaning of the Corporations Act. The owner/residents to my knowledge at no time decided by special resolution at any AGM prior to dispense with the auditing requirements. 350 Infact no financial statement was provided for the financial year 2010/2011. This was acknowledged by ██████ Management who said it had not had accounts audited to save the owners/residents money because the cost to undertake the process would have to be passed on to them.

355 ██████ Management was directed by way of a motion passed by the owners at the AGM on 26 July 2012 to have its financial statements for 2010/11 and 2011/12 audited. It appointed ██████ Registered Company Auditor 8040 of ██████ to prepare and provide financial statements for 2010/11 and 2011/12 as required under Section 34 (4) Retirement Village Act 1986.

360 ██████ Management provided *inter alia* Independent Auditor's Reports dated 3 September 2012 for financial years 2010/11 and 2011/12 on 24 September 2012 and charged the owners \$2909.50 for the Audit by way of its retirement monthly fees despite it being a cost associated with its operating as a retirement village. CAV said ██████ Management was 365 entitled to pass on the cost to the owners.

370 The owners wrote to the Auditor on 8 October 2012, a copy of which was sent to ██████ Management, after a failure of the Auditor to take telephone calls, seeking clarity in relation to the books and records (documents) examined and assumptions on which the Auditor based its audit and conclusions. The Auditor was advised that repeated requests had been made to ██████ Management for copies of invoices which form the basis of the monthly ██████ Management Village fees which had not been complied with.

375 No response was received from [REDACTED] to the letter of 8 October 2012. A further letter was sent on 5 November 2012 and copied to [REDACTED] Management seeking acknowledgement of the owners' letter and a response by the C.O.B. 16 November 2012. The Auditor was advised that if the owners failed to receive a response, the owners had no alternative, on the advice of CAV, but to report the matter to the Australian Securities and Investments Commission (ASIC.) Audit Complaint Team.

380 No response was received from [REDACTED] to the letter of 5 November 2012. Seacliff Management failed to instruct their appointed Auditor to respond to the concerns of the owners. It is on this basis a complaint was written to ASIC's Audit Complaint Team who stated that they were not the proper authority to respond and said the Retirement Village Act 1986 (Vic) was administered by CAV.

CAV advised it had no power to compel the Auditor to respond and the only redress option was VCAT.

390 The owners dispute the accuracy of Independent Auditor's Reports dated 3 September 2012 for financial years 2010/11 and 2011/12 provided by [REDACTED] Registered Company Auditor [REDACTED]

395 A VCAT order on 10 October 2013 later provided two owners and myself access to records which confirmed suspicions that the financial statements were materially misleading and not accurate.

400 The records examined which included bank statements showed expenses including rent for the unit of the onsite resident Manager allegedly incurred by [REDACTED] Management and owed to [REDACTED] were not paid to [REDACTED]. [REDACTED] Management agreed it did not pay monthly rent charges (annually circa \$20,000) for the period of 2012 to 2015 yet this cost was charged to and paid by owners/residents as an expense/outgoing by way of their monthly retirement village fees, although it was not transferred to [REDACTED] in accordance with their lease agreement as it claimed it could not afford to. No further explanation was provided.

405 VCAT did acknowledge there were deficiencies in the accounting records of [REDACTED] Management but it was not prepared to engage in a line by line examination of cost items. VCAT further concluded the format of the financial statement did not comply.

410 The VCAT order of 22 April 2015 stated *inter alia*

"The Tribunal declares that the financial statements which the respondent presented to general meetings of residents of [REDACTED] retirement village between 12 November 2010 and 24 September 2014:

- 415 (a) did not comply with the requirements of s 34(3) of the Retirement Villages Act 1986 because "they did not provide details of expenditure on the provision of goods and services by the respondent; and
- (b) did not comply with clause 3(c) of the respective management agreements between the respondent and *names of three owners removed for privacy* because they did not
- 420 contain reasonable detail of actual expenses and outgoings of the respondent."

425 The Australian Taxation Office (ATO) was informed of the accounting irregularities observed in the review of ██████ Management accounting records. CAV was also notified of the VCAT order. No feedback has been provided back to the owners from the ATO or CAV. In fairness to the CAV it did advise after being notified that it does not provide any feedback on the outcome of its investigations.

430 The current system where the auditor appointed to audit the annual financial statement of the Manager of a Retirement Village under s34(3) of the Retirement Villages Act 1986 cannot be interviewed on what records the auditor inspected to form their opinion "*the statement of income and expenditure presently fairly, in all material aspects*" does not provide any assurances to owners/residents and regulator as to compliance with the section.

435 The deficiencies in the current Retirement Village legislation and regulations as they relate to AGM financial statements and auditing of those statements needs to be rectified as a matter of priority.

440 A defined audit process should be implemented. Owners/residents should have a say in which Auditor is appointed given they presently pay for it. Further they should have access to the Auditor to ascertain documentation relied upon to form their opinion, and discuss any queries owners/residents may have arising from the findings of the Audit.

445 The regulator, CAV or other body, must be given appropriate legislative powers to interview the Auditor and inspect/examine records on which the auditor relied upon to form their opinion.

Templates of the format of Annual Financial Statements etc to support CAV education materials should be created and form part of the regulations to the Act to ensure consistency.

450 Further an examination of which expenses incurred by the Retirement Village Company can be claimed back from the Village owners/residents as part of their fees should be undertaken. Expenses such as compliance with legislation e.g. an audit should form part of the registration and ongoing licensing requirements of the Retirement Village Company to operate and as such it is in my view an expense of the company and not the Village owners/residents.

### **Delivery of Services that reflects Diversity of Housing Types**

460 The delivery of services provided should reflect the retirement housing type. In the independent living centre operated by ██████ Management, it dogmatically states it must have a resident onsite Manager to provide a 24/7 emergency call system in accordance with its Management Agreements. Yet the emergency call system described in the Agreements which consisted of red coloured emergency wall mounted buttons in the unit which were connected to the on-site resident Manager's unit, was disconnected by it in 2009 and replaced with an external emergency monitoring service. Not all the owners/resident units have installed, at their cost, the new monitoring service which is delivered by way of a telephone handset in their unit connected to an external third party. It only protects the owner/resident when in the unit and is dependent on the owner/resident being able to reach or be in close proximity to the telephone. No emergency calls go direct to the on-site resident

470 Manager. The third party decides if it is necessary to contact the on-site resident Manager. The resident Village Manager does not provide any first aid. The owner/resident has to wait for the ambulance to arrive.

475 The remaining owners/residents have elected to either have no emergency monitoring service or have installed again at their cost their own monitoring service which is not connected to the resident Village Manager. This is absurd in that how can the registration/licensing of a retirement village not require as a minimum an emergency monitoring system for all its owners/residents at its cost as part of establishing its business. A failure to provide this should result in a breach of the registration/licensing of that retirement village and be enforced by the regulator, presently CAV. Further the emergency monitoring equipment and system should be tested no different to electrical test and tag at least every two years to make sure it works. This is not done at the [REDACTED] Retirement Village.

485 Retirement Villages of a similar size and structure (independent living centres of less than 50 Units) to [REDACTED] Management do not have an onsite resident 24/7 Retirement Village Manager and have instead a part time non-resident Manager. This has not resulted in the failure to deliver adequate services or had any impact on their Retirement Village registration.

490 Under [REDACTED] Management's patchwork quilt of agreements (strata and lease) all state if a resident is not capable of living independently then he or she is out of the Village. An eligible resident is defined as *inter alia* a "person of a reasonable state of health". A 24/7 on-site Manager is only required when residents require a higher level of care and cannot live independently of the Manager. This is the test used by Retirement Villages across Victoria. This needs to be legislated.

500 The majority of owners/residents want the 24/7 presence of a resident onsite Manager to be discontinued based on no service provided and the cost. This was supported by way of a ballot but rejected by [REDACTED] Management without an explanation. VCAT's view was if only one person wanted a 24/7 on-site Manager, [REDACTED] Management had to retain it notwithstanding the majority view was to not have it. A vote passed by 75% or more of owners/residents in an independent living centre should be able to determine the services and conditions of employment (full/part time, residential or not etc) of the Village Manager. This should be legislated.

510 The owners and residents even went so far as to provide a lease at no cost to [REDACTED] Management for part of their Community Room and a portion of common property land for the Respondent to build an office for its onsite daytime Manager. No work has commenced despite the passage of fifteen months since the signing of the lease.

515 The continuance of a 24/7 resident on site Manager and associated relievers cost which presently sits at approximately \$115,000 is not economically viable for a 30-unit independent living retirement village. Legislation needs to recognise the diversity of retirement housing types and that one size does not fit all. It should stipulate as part of the registration/licensing of the Retirement Village Management company, the requirements for its Management

based on the type of Village e.g. Age Care, Supported Accommodation, Independent living centre and number of units.

520 **Dignity, Respect, appropriate care and quality of life for retirees**

My mother-in-law entered retirement village life with high hopes and justifiably in my view feels she has been let down by poor Management and the regulator CAV. Fortunately, she has good relationships with the majority of her fellow retirees in the Village.

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She felt deceived that she was not told during the buying process that there was an Owners Corporation in addition to ██████ Management. The presence of one monthly fee from the Village operator concealed the deception. It wasn't until the fracturing of the relationship of ██████ Management and Owners Corporation which led to the issuing of two invoices that she gradually became aware of the historical issues between the owners and ██████ Management and the existence of the two separate entities.

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She decided to do something about it and joined the Owners Corporation Committee and is now the chairperson. The role is extremely time consuming and made stressful in dealing with ██████ Management. This is not something she ever contemplated for her retirement. She fell in love with the notion of living in a small seaside hamlet close to her family but she has found herself in very different circumstances. She is the victim of repeated bullying, intimidation and threats from ██████ Management and has no recourse.

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██████ Management fails to treat her and the residents with dignity and respect. These are senior citizens who have contributed professionally, parented children, act as volunteers to the community and rightly deserve to be respected. Tradesmen have intervened on a number of occasions to stop verbal abuse of management to owners and residents who are simply trying to have works done on their homes and/or common property for the Owners Corporation.

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My mother-in-law is totally reliant on the external monitoring service, her family and residents to which she is close for emergency care. She does not believe the onsite resident manager would attend her unit even in an emergency based on her observations of the number of ambulances arriving and leaving without the onsite resident manager coming to the unit of the resident who made the emergency request. This causes her great concern given she has suffered a heart attack previously. It is not the standard of care she expected or pays highly for to be in a retirement village.

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Even a trip to the letterbox creates anxiety as so many letters come from the Village Manager relating to maintenance of the retirement village which is the responsibility of the Owners' Corporation not Seacliff Management. The Village Manager is clearly acting for and writing on behalf of ██████ as the owner of multiple units yet it all comes on the one letter head of ██████ Management. I have read many of the letters and the majority are aggressive and abusive in tone and written in the absence of the facts.

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560

The current Retirement Village legislation and regulations to resolve disputes are inadequate.

The described events at the ██████ Retirement Village highlight the internal dispute resolution procedures in the current legislation can be simply ignored without repercussions being

565 brought to bear on the Village Manager by the regulator, don't work in small villages where you have to lodge your dispute with the very Manager and/or Director with whom you are in dispute. It further supports as raised previously in this submission the urgent need for the establishment of an independent body to arbitrate disputes.

570 CAV mediation has proved ineffective. The process is voluntary and it does not consider the facts (evidence) or make enforcement undertakings. VCAT is a slow, arduous process where the owners/residents in retirement village disputes are outgunned by solicitors and barristers engaged by the Retirement Management Company.

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### **(3) the experiences and views of residents of retirement housing and their families and retirement housing owners and managers;**

580 I watch the life of my mother-in-law and many others in the retirement village at [REDACTED] being drained from them. Conversations are always mixed and turn to the Management Company. I don't think it is too strong to say that it is a toxic environment and for some all-consuming. Stories like that of a now 95-year-old female resident in the Village with no real family to speak of who forgoes clothing and other luxuries to make sure her only form of  
585 income, her pension goes far enough so that she can eat, pay utilities and rates etc. Out of her fortnightly pension of \$794 she has to set aside \$333 for the combined charges of [REDACTED] Management (\$197.53) and the Owners Corporation (\$135.47 including maintenance). This equates to approximately 42% of her pension and shows the gravity of her situation.

590

It is extremely frustrating to observe owners/residents make cuts to their expenses and lifestyles yet the Management Company is not being prepared to engage with those to whom it is meant to be providing services to and look at ways in which efficiencies and savings can be made. A full time resident Manager is not required on the basis of what  
595 services are presently being delivered. I struggle to find any benefit for the payment of a Manager afterhours and overnight where the emergency monitoring system is paid for by the resident and managed by an external third party in a small thirty-unit village with an average of 25 to 30 residents. The replacement of the resident manager with a daytime manger would cut the costs of [REDACTED] Management by more than 50% without impacting  
600 on the safety and wellbeing of residents of this independent living centre yet this cannot be done despite more than 75% of residents wanting it.

I have been an investigator for close to 35 years and around the courts. I've never witnessed a more inefficient and slow process as VCAT where members are out of touch  
605 with retirement villages. Proceedings at VCAT, a tribunal established for ordinary people to come to resolve disputes has now become a quasi-court where parties (companies) are legally represented and individuals try to represent themselves. Disputes invariably don't get resolve as individuals simply get tired and don't want to run the risk of costs so they settle. The dispute simply carries on like a recurring nightmare.

610

I was never more affronted than by my experiences before a Senior member at VCAT who

would ignore me and would focus away from non-represented parties and face legal counsel and have them address him first. I have given evidence in every court in Victoria on multiple occasions. The conduct of the member in my view showed a total lack of respect and to be dismissed on evidence which clearly shows financial statements and tampering with discovered documents was extremely disheartening not just for me but for the residents I was trying to represent and help. Unfortunately, Victoria Police do not have the appetite or resources for these types of matters which from my experience based on the evidence reviewed showed a prima facie case existed for a criminal investigation and prosecution.

CAV was equally totally ineffective and the pendulum has swung too far in that too greater emphasis has been placed on mediation and education. A return to the carrot and stick should be instituted. Repeated offences committed against an Act of parliament and regulation under that Act by Retirement Village Management companies should be prosecuted. Presently, there is no deterrence to stop non-compliance.

After failed attempts to CAV, briefings to Ministers and other sitting members of parliament, consumer groups etc to act and legal aid and corporate firms to assist pro bono or lowered fees, I had to tell residents ashamedly in the village to simply pay your fees, enjoy your life and try to ignore the behaviour of the Village Company directors and manager. It is dangerous to their health to not do otherwise. False hopes that CAV, politicians, law firms and other agencies would help left many angry and depressed.

To not to be able to right a wrong is demoralising for all particularly as the victims here are senior citizens in our community who are being subjected to elder abuse on a significant scale. ██████ Management by way of its agreement with ██████, is allowing ██████ to buy up units at deflated prices due to ██████ Management's high cost structure and behaviour with the only obvious motive to enable ██████ to take control. Action needs to be taken now. Regulatory bodies such as CAV, ASIC and the ATO should be compelled to exercise their existing powers under the various Acts of Parliament which they are charged with administering until reforms to legislation including new/increased powers and other initiatives can be implemented.

#### **(4) the option to appoint a Retirement Housing Ombudsman**

The Retirement Housing Industry is one of the fastest growing sectors in not only Victoria but the country. This sector will only continue to grow with the aging population.

The appointment of a Retirement Housing Ombudsman is urgently required. The present system of CAV as the regulator and VCAT as the umpire is broken and does not work. It is slow, cumbersome and the dignity and respect of senior citizens is being trodden over by rouge Retirement Village Companies and Managers motivated by profit who flout existing legislation and regulations and exploit its deficiencies, and do not have a genuine interest in the care of and quality of life for retirees.

A more efficient and speedier process is required as the victims are senior citizens in the latter years of their lives who don't have time on their side or the resources to contend with the legal might of the Retirement Village Companies and Managers who hijack the current processes.

660 The legal maxim "Justice delayed is justice denied" aptly describes the current dilemma  
faced by too many living in Retirement Villages. Retirees should be enjoying the fruits of their  
working life and not wasting it in legal stoushes which can stretch over many years. In the  
case of the [REDACTED] Retirement Village close to four years and despite the VCAT hearing still  
no resolution in sight.

665 The appointment of a Retirement Housing Ombudsman must be supported by better and  
strong legislative and regulatory powers than those that currently exist.

670 The Retirement Housing Ombudsman must be able to settle disputes including Agreements  
and direct parties to undertake certain actions/implement remedies etc with appropriate  
sanctions in place for non-compliance.

675 To achieve this the office of Retirement Housing Ombudsman must be provided with  
sufficient resources including multi discipline investigation teams consisting of legal,  
accounting and investigation employees to evaluate, investigate and resolve complaints from  
owners/residents and Retirement Village Companies and Managers.

680 Should you wish to view any of the materials relied upon for this submission or have any  
queries or wish to discuss any issue further please do not hesitate to contact me on [REDACTED]  
[REDACTED].

Yours sincerely



685 **Glenn W. Birrell**

690 [REDACTED]