REVIEW OF RETIREMENT VILLAGES ACT 1986

Submission of

Gavan Harkin

[redacted]

[redacted]

REVIEW OF RETIREMENT VILLAGES ACT

Elderly financial abuse

Exploitation of the elderly in Retirement Villages (RVs) - The "Get Poor Quick" scheme.

INTRODUCTION

1. A major, if not the most important, issue for the elderly, people approaching retirement and old age is their housing and accommodation in old age.

2. The decision is between remaining in their home or downsizing into a unit / townhouse or into a retirement village.

3. Often the decision is based on a lifestyle choice of maintaining their independence in their own home, in which they have built significant equity, and wish **to continue to build equity** to

a. Provide for their own needs into the future; if one dies and the other desires to move elsewhere nearer to family;
b. Ensure they have sufficient equity should they need to enter aged care accommodation in the future;
c. Pass on their wealth to their family (and other beneficiaries) rather than have it dissipated to or by others;
d. Allow them to make their own "lifestyle" decision whereby they disregard the passing on their wealth to their family. A "ski" decision – "spending the kids inheritance".

4. In current times, with home rising house prices and many among the younger generations not having the funds to afford their own home, they rely on their parents to house them, even into late 20s or even 30s; for many of these younger generations, the only way they will be able to get into the housing market is to rely on their potential inheritance from parents for a deposit or a significant portion of the purchase price.

5. For the parents, this can create a dilemma particularly where they wish to downsize and:

a. Purchase a Unit/Townhouse in a small development, under a body corporate, strata or similar plan, or
b. Purchase a Unit in a retirement village (an RV Unit), and
c. Add to their superannuation using funds any remaining funds from sale of home.

6. Under Option 5a. they retain their **growing** equity, which remains theirs and

a. Is available for them to draw upon for whatever purpose they determine.
b. Is available for them to bequeath to their children/other beneficiaries as they desire.
c. Is available for them to assist their children in acquiring their own homes.

7. Under Option 5b. generally (but not always)

a. Residents "owners" do not acquire any equity in the Retirement Village Unit, but merely acquire a "right to occupy" – or similar - the unit during their lifetime.
b. The capital amount they pay for the "right to occupy" **effectively does not increase** their equity in anything at all, notwithstanding that the unit will increase in value significantly during their occupancy.
c. The increase in value of the unit will generally be to the benefit of the Retirement Village Operator, through a combination of;

- A contract clause providing for any capital gain to be limited to a small percentage, **if any**, of the capital gain, and in most cases to **no gain** accruing to the aged person;

- The imposition of a deferred management (DMF) (or Exit) fee to absorb the balance (or the significant portion of the balance) of any capital gain they may (but often do not) receive;

- Refurbishment costs, which are usually done by the RV Operator at cost to the outgoing resident, with the RV Operator obtaining the only quotation allowed. The outgoing owner is generally **NOT PERMITTED to obtain his/her own quote and / or have the refurbishment undertaken by his tradesman.** The work is undertaken by or for the RV Operator, with the outgoing owner usually paying exorbitant prices dictated by the Operator, the result being that the RV Operator profits from the refurbishment. (In some cases, where the outgoing owners' family are tradesmen themselves, they are not permitted to do the work themselves);
- the question is **WHY should the departing resident required to pay when he/ she has no equity in the unit and gets no benefit from the refurbishment. ?**

- v. Imposition of a selling fee/ commission, like a real estate commission, even though the resident had no equity in the RV Unit, simply a "right to occupy" or similar. This fee is deducted by the RV Operator from the "outgoing owners" reduced proceeds. **This is inequitable.**

- The imposition of Operator "Membership Fees", another fee "gouging" exercise.

8. By these mechanisms, in most instances, the Operator usually gains not only the entire increase in value of the RV Unit, but more, at the expense of the departing resident. THIS SHOULD NOT BE PERMITTED TO OCCUR.

9. On death, or departure from the RV Unit to a Hostel Unit or Aged Care home, all that is left to the family/estate of the former RV unit resident is an amount approximating, and usually less than, that which they paid to enter the RV Unit.

10. The **<u>gouging of wealth from the elderly and their families constitutes elderly financial abuse</u>**, which has been ignored by successive Federal and State Governments which have failed to take action, notwithstanding that it has been brought to light by many Government and other reports.

<u>EXECUTIVE SUMMARY</u>

11. The practices of RV Operators include questionable business practices which result in the exploitation of the elderly, **"gouging wealth"** from residents and their families, through

a. resident churn as part of the business plan;
b. fee gouging;
c. imposition of unreasonable exit and selling fees;
d. unreasonable restrictions on capital gain sharing; and
e. imposition of unreasonable refurbishment conditions,

f. failure to live up to the marketing promises made.
g. failure to properly market and sell departing residents units in a timely manner.
h. Departing residents' "ingoing contribution" withheld by Operators for far too long.

12. Notwithstanding the findings of the ABC Four Corners /Fairfax investigations into the [redacted] Group operations in 2017,

a. Both Federal and Victorian governments have failed to act to protect the interests of the elderly;

b. **12 years ago,** in September 2007 a Federal Parliamentary Inquiry, whose members included Tony Abbott and Malcolm Turnbull, published its report "**Older People and the Law"**, and recommended for the ACCC to look at exit fees to see if they can be abolished .

c. The ACCC merely "handballed" it to the States suggesting that it is a State matter. The ACCC has failed to act to protect the interests of people entering into contracts with RV Operators

d. The Productivity Commission reviewed the sector and again recommended further regulation.

e. The **Federal Minister for Aged Care** Ken Wyatt absolved himself of any responsibility when he said that "…….Retirement villages are governed by state and territory legislation and not by the Australian Government.

f. After the **2016** Victorian Parliamentary Inquiry, the Victorian Consumer Affairs Minister Marlene Kairouz said the state government was still considering the report. "We're aware of the concerns that have been raised, and will take action where necessary to strengthen regulation on retirement homes and ensure residents aren't ripped off."

g. In 2017 the ABC Four Corners /Fairfax investigation highlighted the practices of the [redacted] group in its retirement villages whereby it was evicting residents, gouging wealth from residents, imposing exorbitant exit fees, charging exorbitant refurbishment costs, charging residents families even after residents had departed and failing to prioritise sales of departed residents' units. This continued to occur in September 2018.

h. Governments have done NOTHING to curb the practices of groups like [redacted]. And other RV Operators continue similar practices as [redacted].

g. It is clear that parliaments and regulatory authorities **have no interest in protecting the rights or even in getting involved in any action of the vulnerable elderly** in our communities who acquire, or intend to acquire an interest in a Retirement Village unit.

i. Notwithstanding the inquiries and investigation, Federal and State government have been derelict in failing to protect the interests of the most vulnerable, the elderly.

13. RECOMMENDATIONS

a. That this Review by the Victorian Government, rather than being conducted within the Department of justice and Consumer Affairs should be conducted in an open (to the public) and transparent way in the same manner as a Royal Commission. And it should include in its Terms of Reference the investigation of Retirement Villages including;

> **- the practices of RV Operators in operating and maintaining RVs;**
> **- fees including weekly and/or monthly maintenance fees, Deferred Management and Exit fees;**
> **-the practice requiring vendor residents and/or former residents' estates' to refurbish RV units at their cost prior to sale;**
> **- protection of capital gains for residents;**
> **- the sale practices of managers to ensure that managers operate in a proper fiduciary capacity to ensure that all vendors are treated equally;**
> **- that a register of units for sale be established to ensure that potential incoming residents are made aware of all units that become available once a resident(or their estate) advises of its availability.**

b. The lack of action by both Federal and Sate governments requires the establishment of a Royal Commission to independently and tranbsparently review the RV industry.

c. That URGENT ACTION be taken jointly by both Federal and State Governments to introduce a new mandated National model for Retirement Villages to protect the interests of the vulnerable elderly.

d. In light of the failure of RV Operators to fairly deal with elderly owners of RV Units, that a Standard model be applied and introduced by all RV Operators that fairly deals with the purchasers and vendors of units in RVs, along similar lines to the sale of other real estate.

e. That a new model include –

1. **Provision of equity to buyers of retirement Village Units in the same way as any ordinary real estate purchase; that is an outright purchase at realistic prices;**

2. **Purchase be by way of purchase of a unit in a body corporate; body corporate fees are payable;**

3. **Protection for purchasers' interests in the capital gain on the residential unit that they acquire;**

4. **A ban on Exit fees and/or Deferred management fees charged by RV Operators. Buyers acquiring equity should not have to pay DMFs;**

5. **a. IF purchased as a unit in a body corporate, owners pay for any refurbishments;**

b. if only purchasing a right to occupy, the Operators pays for the refurbishment; but only if refurbishments are required.

c. Requirement to refurbish be based on a decision by an independent arbitrator; or by the incoming purchaser, if they require/request refurbishment;

d. That for any refurbishments required of units in RVs, those costs to be borne by the purchaser, along the same lines as a purchaser of other residential property.

e. That a ban be imposed on RV Operators requiring, and undertaking, refurbishments at the sole discretion of the RV Operator and on the basis of solely the RV Operators quote.

6. The introduction of a Regulator and /or an Ombudsman to deal with the retirement village industry with the appropriate powers to deal effectively with abuse of the elderly and to administer sanctions against behaviour adverse to the interest of RV Unit residents/"owners" or former owners and their estates.

7. As an alternative model, consideration be given to the introduction of a Co-Operative model for Retirement Villages, managed by a Board consisting of a majority of members being co-operative members.

8. That a Council chaired by of the Minister for Aged Care be charged by the Prime Minister with responsibility for acting with in concert with the relevant State and Territory Ministers to implement such a National model WITH ALL DUE SPEED.

DISCUSSION

ABC/FAIRFAX INVESTIGATION INTO [redacted] - July 2017

14. Attached are links to 4 online articles describing the practices of [redacted] as found by the investigation which resulted in comments that –

a. One former resident commenting that "[redacted]'s business practices are totally rapacious. I don't know how they get away with it."
b. Some lawyers describe clauses in [redacted] contracts as "complex and draconian", "not only are they over 120 pages (in one case 172 pages) in length, they're dense, hard to understand and legalistic."
c. "Buying into a retirement village as a" financial sinkhole".
d. The investigation discovered a litany of questionable practices including churning of residents, fee gouging, safety issue and misleading marketing promises".
e. A resident evicted after his partner died moved to a small unit nearby where instead of paying "body corporate fees " of $6000 at [redacted], he now pays only $1300 and gets the same benefits.

ABC NEWS – Exploitation of the elderly rife in retirement villages – refer attachment link below

http://www.abc.net.au/news/2017-06-24/elderly-exploited-in-[redacted]retirement-villages/8645876

Sydney Morning Herald - The "get poor quick scheme" - refer attachment link below

Buying into a Retirement village described by residents as a **"financial sinkhole"**

https://www.smh.com.au/interactive/2017/retirement-racket/the-get-poor-quick-scheme/

This describes one family having to surrender more than $150,000 in exit fees, capital losses and other fees.

One resident was effectively "encouraged" to move out when she became ill, supporting the claim that [redacted] relies on "churn". After her death, it took more than 2 $^{1/2}$ years for [redacted] to sell the unit, the family ended up with $94,000 after the original $250,000 investment. The clear priority was for the company to sell the newer units, and the deceased unit was not shown to prospective purchasers. Meantime, the family was required to continue paying the monthly bills. (see Example 2 attached where the same thing is currently happening).

<u>Sydney Morning Herald-</u> [redacted] ***<u>sales of existing retirement units slump 42 percent</u>***

https://www.smh.com.au/business/banking-and-finance/aveo-s-sales-of-existing-retirement-units-slump-42-per-cent-20180214-p4z0cn.html

Company concedes it **has done little to improve the financial outcomes for thousands of its residents** still on old and allegedly unfair contracts

<u>ABC News - Retirement Village residents unhappy about complex contracts and fees</u>

https://www.abc.net.au/news/2019-06-20/retirement-village-residents-unhappy-about-complex-contracts-fee/11224072

A [redacted] said she as stuck in a RV she no longer wants to live in but cannot get out and after 15 months on the market and no inspections for 7 months, she is frustrated with [redacted] and the stress has had an impact on her health.

And the Property Council's Executive Director [redacted] said "we're just not really thinking about housing supply, what older people are going need in our community."

15. As discovered by the ABC / Fairfax investigation in the ABC's "Four Corners" program in July 2017,

a. [redacted] evicted a resident partner ([redacted]) of the deceased owner, on basis that the partner's name was not on title, even though the deceased left his entire estate to [redacted].

b. [redacted] could have stayed but only if he paid exit fees of $115,000 and then signed up as a new resident under a new contract.

c. He subsequently moved to a small unit in a nearby suburb, away from his friends at the village. Instead of paying $6000 a year in body corporate fees, he now pays $1300 a year with the same benefits except for the alarm at [redacted] which apparently did not work anyway.

d. [redacted]'s new contracts under their [redacted] charge Exit Fees of 35 % after 3 years and "[redacted]" charge 40% after 2 years. In some cases, this has been charged as a percentage of the selling price to the new owner, not the purchase price of the seller, thus maximising the Exit fee charged by [redacted]. (T<u>he eventual Exit Fee to be paid on</u>

departure is growing from the date of purchase until date of departure, as a percentage of the eventual exit price). If the DMF is based on selling price, the capital gain should be paid to the outgoing residents.

e. With [redacted] seeking to transition existing residents to their new [redacted], residents have baulked at the prospect where "....they receive no capital gains, pay a higher exit fee and lose their freehold title."

f. 'Current and former residents described the company's model – which takes an exit fee as high as 40% of the original purchase price, leaving outgoing residents often forking out in excess of $100,000 – as "financial abuse of the elderly".

16. The ABC /Fairfax report disclosed that the majority of [redacted] profits of $116 million in 2016 came from the exit fees extracted from residents on their departure.

17. In addition to the questionable business practices of [redacted], it appears that they are moving into the aged care sector while receiving $20 million in government grants. See the extract below from an article from the following link;

[redacted]

"After the construction giant [redacted], [redacted] is Australia's largest operator of retirement villages and it appears the company has been keeping shareholders in the dark about related party transactions which may deliver benefits to other companies connected with its chairman and largest shareholder.

Along with [redacted] and other senior living companies, [redacted] is rapidly expanding into government-funded residential aged care industry – nursing homes that is. Over the past two years, the group has picked up close to $20 million in government grants. The strategy is to lock in payments from retirees until the end of life. Despite the important place which aged care occupies in society however, sector transparency and public accountability is poor.

As is their track record on tax, across the entire "for-profit" sector. Like traditional for-profit aged care providers, [redacted] is adept at eliminating its taxable income and therefore its tax bill. Over the three years of available Tax Office transparency data, the group recorded $1.4 billion in total income and showed zero tax payable. The company only reported taxable income in one of the three years, $714,286 in 2013-2014. There is no suggestion in this story of illegality, merely sprightly tax management.

18. One can expect that similar complaints will arise out of the way [redacted] applies its "questionable business practices" into the aged car sector.

19. The article referenced above in the [redacted] report disclose that [redacted] is also introducing its Australian business model into China.

20. While the above comments relate to [redacted], they are not necessarily applicable to other RV Operators, however it is known that other Operators operate along similar lines to [redacted].

21. **<u>Attached at page 19 is a copy of an article in the Melbourne "Sunday Age"</u>** of 16 September 2018.

> "[redacted] announced would be following its competitors to provide payment options to its retirement village residents…." following similar moves by [redacted] and [redacted]."
>
> The article goes on to outline that for the 3 payment options, there is
>
> - A Deferred Management Fee (DMF) of 35 percent (25 per cent in new villages), calculated on the purchase price,
> - There is no sharing of capital gain (or loss),
> - The operator covers refurbishment costs and selling fees.

22. The article also explains that there is the possibility of a double DMF and that it is **"an industry wide issue".**

23. The example it quotes is one where you might -

Pay to move in		$500,000
Value in 5 years' time		$550,000
Exit fee 35% of $500,000		$175,000
EXIT ENTITLEMENT		$325,000
LOSS ON CAPITAL		
Exit fee	$175,000	
Loss of Capital Gain	<u>$ 50,000</u>	
TOTAL LOSS	<u>$225,000</u>	

24. Even though they may have altered the contract to remove the existing unreasonable requirement for the vendor/ departing resident to pay the refurbishment costs, there is still a massive loss of $225,000.

25***. The RV Operator continues to gouge the capital of the former resident***. <u>And it is an industry wide issue.</u>

26. Where a resident wants to depart for one reason or another, like many they find that they do not have sufficient funds to purchase anywhere else because they have lost any equity they had before they went into a village through the imposition of a DMF and no capital gain.

27. That is, the decision to enter a village is a "ONCE AND FOREVER DECISION" in most cases. They cannot move, they are locked in. They cannot afford to move, and in many cases they cannot afford to get into and Aged Care facility.

<u>Personal experience</u>

28. From personal experience with my mother's sale at [redacted] Retirement Village at [redacted] some years ago, set out at **Example 1 (Page 16),** the RV Operator used similar methods as other Operators, whereby the Sale price of $235,000 was reduced to $140,280 by charges for –

Deferred Management fees (Exit Fees)	- $46,000
Loss of 50 % of Capital Gain	- $42,875
Selling Commission -contrary to terms of contract	- $ 5,875
TOTAL DEDUCTIONS FROM SALE PRICE	$ 94,720

(Note: additionally, no credit was given for Verandah additions paid for by my mother -$8000 est. The sale price was described verbally as the Standard price at time for that (style of) unit, without regard to the additions made by my mother.

Total Loss - Over $102,720

29. When my mother sold to move into Hostel accommodation at the same Village, she was required to put up an interest free refundable bond of $220,000. ***This was $80,000 more than she received from sale of her "right to occupy" her unit.***

30. A similar experience was had by my mother-in-law at [redacted] Retirement Village, [redacted].

31. In **Example 2** (Page 17), the experience of **"**Mr and Mrs XY", the family of deceased residents - of only 2 years and 1 month - have experienced the **gouging by a RV Operator (**[redacted]. This was a case of some friends who experienced the gouging of **$125,321** from the Settlement price of the sale of their parents unit.

32. This is additional to the **loss of $125,000** of capital value, due to the RV Operator ([redacted]) retaining the entire Capital Gain. A total loss of $250,321 over a period of 2 years 1month. And the ***RV Operator had still failed to have the unit sold, nearly 12months after the death of the last remaining resident.***

Total Fees on exit	$125.321
Capital Gain Lost	$125,000
Total Loss	$250,231

That amounted to $10,00 per month, a far greater amount than they would have paid in rent.

33. In each case where I have spoken to residents or former residents of RV units, or their family members, the outcome has been that the recent and current arrangements for Retirement villages generally are simply a means for the Operators to **GOUGE THE WEALTH** (the growth in value during their occupancy) from "owners" and /or families, who generally speaking are not in the "higher wealth" brackets in our economy / society.

34. This **gouging of wealth** is additional to the ongoing weekly/monthly fees that resident "owners" must pay as maintenance fees – or effectively as a "body corporate fee" payment to cover garden maintenance, building insurance etc that are normally covered by a body corporate fee - notwithstanding that they have paid a capital sum to "buy " their unit, actually their right to occupy.

35. But in a similar unit not in a Retirement Village, the body corporate fees are far less than charged by the RV, and **there are no exit fees and no loss of capital gain**. (refer to the case of [redacted] in the example above (***ABC NEWS – Exploitation of the elderly rife in retirement villages).***

OUTCOME FOR "RESIDENT OWNERS" AND THEIR ESTATES

36. The outcome for the elderly "resident owners" and/or their estate is that whatever investment they put into a RV unit, that is the absolute maximum amount they, or their estate, will receive on vacating the unit. In fact, they will receive FAR LESS THAN THEIR INGONG CONTRIBUTION.

37. That may leave them in a position where they do not have sufficient capital to make the transition to either-

a. Hostel or Aged care accommodation, where they are required to provide an Accommodation bond, which in Example 1 (my own mother's example) attached was $80,000 more than received from sale of her RV unit; or
b. Exiting the RV unit and Village to purchase another unit or townhouse.

38. The equity that they have in their homes is valuable, and could be better used, as a tool for growing of wealth, wealth redistribution to their families rather than to be gouged by the Operators of Retirement Villages. And with many people entering villages at the age of 55, they still need to grow their wealth otherwise their entry is certainly going to be a "ONCE AND FOREVER" decision. They will be locked in forever.

39. While many who enter the Villages are un-concerned about leaving their home equity to their family, on the grounds that they are buying a lifestyle, there are a far greater number of people – I believe - who consider that their hard work in generating that equity should **NOT BE HANDED OVER** to companies which operate on the business model of "gouging family wealth."

40. The link attached above at paragraph 14 states that

> " the media (ABC/Fairfax) investigation found that " churn" is a key part of the business model with [redacted] targeting a "turnover" of as much as 12 per cent per year, or 1200 residents"
>
> That tactic is leading to calls by residents and consumer lobby groups for the competition and consumer watchdog, the ACCC, to intervene.

41. Village operators are looking for quick churn, turnover; their business model is based on it, so they can realise

- Capital gains quickly
- Deferred Management or Exit fees
- Refurbishment fees - at potentially inflated prices

as quickly and as often as possible. Essentially, that is acknowledged as part of their business plan. As I was advised in February 2019 by an [redacted] salesman when I accompanied neighbours who wanted to enter an [redacted] village, against my better financial judgment,

> "[redacted] doesn't make any money on the monthly fees, its only when the resident leaves that they make money".

<u>The Industry</u>

42. The following extract from a "Retirement Living Council" report highlights the size of the industry.

“ **Diversity and distribution**
Like many other human service industries, the players in the retirement village sector vary widely in size and structure. Owners range from small, independent businesses operating one village, to large national businesses operating many villages across multiple states. Operators may be not-for-profit (NFP) entities such as churches or charities, or commercial for-profit businesses. Some are aligned with particular religions or cultures. Both NFP and commercial operators have villages to suit all budgets – from villages with basic comforts and facilities, to high-end resort-style complexes.
Growth and development
The number of older people in Australia is increasing rapidly due to ageing of the existing population, lower birth rates and immigration. In June 2011, there were 3.1 million people aged 65 years or older. Population projections by the Australian Bureau of Statistics are that by 2056, around one in four Australians will be 65 years or older.

This presents the need for more retirement villages. Operators continue to develop new villages as well as expand existing villages

Economic benefits of the industry
The retirement village industry is a large contributor to Australia’s economy, and contributes significantly to taxpayer savings on health and aged care services.
The for-profit retirement village industry is worth **$50 billion**. These villages contribute up to **$4.7B in turnover** annually to the Australian economy. It is estimated that the sector contributes (both directly and indirectly) to **38,300 jobs**. This includes people who are employed by retirement village operators, as well as construction jobs.
The industry contributes to the Australian economy via construction and expansion of retirement villages as well as recurrent operational expenditure. Direct construction expenditure by for-profit villages in Australia is estimated to be $1.2-$2 billion per annum. Direct expenditure on existing for-profit village operations is estimated to be around $1.2 billion per year.

Key challenges
Australian governments, state and federal, face ballooning health and aged care costs. In the 2011/12 financial year alone, $12.9 billion was spent on aged care (residential and community care only) by the Australian and state and territory governments.
Given Australia’s rapidly ageing population, it is important that governments support the growth of the village sector, which is wholly privately financed, houses many people on low incomes, and gives more people dignity and happiness in their old age. However there are a number of acute challenges faced by operators including:

- An uncertain and negative **taxation environment**, for example:
- How stamp duty is calculated on the sale of retirement villages;
- The imposition of GST on commercial retirement village developments which has flow-on effects to the location of new villages.
- **Constant changes to regulation** of the industry and red tape.
- Ignorance by some in the financial and government sectors about the unique **contract and financial model** used by the sector;
- **Planning and zoning laws** which do not facilitate seniors accommodation in areas where land is more expensive ;
- Restrictive **age pension income rules** which penalise seniors who wish to downsize to retirement villages (or elsewhere).

<u>Governments need to care for the vulnerable</u>.

43. While it is vitally important that the RV industry - both the “For profits” and the “Not for Profits” - survive and their interests are looked after, it is the elderly market they service - the vulnerable - who have the weaker position.

They deserve and need to be cared for.

44. As evidenced by the ABC/Fairfax investigation,

a. Exploitation of the elderly is rife in retirement villages.

b. Among residents there is a sense of powerlessness against the corporate giant.

c. [redacted] is undertaking a process of buying up freehold and converting villages to leasehold. It is part of the recent business initiative, known as the [redacted], where they obtain freehold rights at virtually no cost to the company.

d. And other RV Operators continue to do the same.

Federal Parliamentary Inquiry

45. As far back as September 2007, a parliamentary inquiry, which included among its members Tony Abbott and Malcolm Turnbull, was aware of the problems. Its report, titled ***"Older People and the Law"***, recommended that the ACCC look at exit fees to see if they should be abolished.

46. It recommended that the **ACCC** should look at it in conjunction with its state and territory Fair Trading colleagues and playing a stronger role in monitoring consumer protection for retirement village residents.

> "The Committee believes that the ACCC, in consultation with its state and territory fair trading colleagues, should be playing a stronger role in monitoring consumer protection for retirement village residents," the report said. "While the matter should continue to be managed at the state level for the time being, should there be insufficient improvement in the level of protection for consumers, the Australian government should consider regulating this industry using its powers under Corporation legislation."
>
> It supported the concept of a statutory supervisor, such as the creation of an ombudsman, and found that contracts were too complex and some of the advertising was misleading. The report's recommendations were never acted on.

47. But the "Get Poor Quick scheme" attachment (see the link at paragraph 14) draws attention to the fact that

> ".....the regulation of retirement villages at a federal level has fallen through the cracks. They are not in any federal minister's portfolio."

48. *Fairfax and* Four Corners approached **Rod Sims, head of the ACCC** for comment, but in a statement the ACCC said:

> "The specific state legislation will often be the most suitable regulatory avenue to address many concerns."

It went on to say it shares responsibility for enforcing consumer law with state-based fair trading agencies.

49**. Federal Minister for Aged Care** Ken Wyatt said in a statement:

"Retirement villages are governed by state and territory legislation and not by the Australian government."

In 2011 the Productivity Commission reviewed the sector and again recommended further regulation.

50. And more recently in 2016, the **Victorian government held a parliamentary inquiry** that received nearly 800 submissions, the vast majority from elderly residents aggrieved by the financial rip-offs in the sector.

51. In March 2017, the <u>inquiry recommended</u> training lawyers to understand retirement contracts, improving dispute resolution mechanisms for retirees, including possibly introducing a new ombudsman for the sector. Is that all they could reasonably conclude?? **But nothing about protection of the elderly financial position !!**

52**. Victorian Consumer Affairs Minister Marlene Kairouz** says the state government was still considering the report. "We're aware of the concerns that have been raised, and will take action where necessary to strengthen regulation on retirement homes and ensure residents aren't ripped off."

53.But has the Minister Kairouz done since then ???

54. In NSW, it's a similar story. A spokesman for NSW Fair Trading says the organisation "acknowledges that despite the introduction of the standard contract, retirement village fees are often complex and confusing for prospective residents and their families". As a result, NSW Fair Trading is introducing a calculator that is similar to that developed by Macquarie University senior lecturer and actuary [redacted].

<u>CONCLUSIONS ON PARLIAMENTARY AND REGULATORY INVOLVEMENT</u>

55. **IT IS CLEAR** that parliaments and regulatory authorities have displayed **no interest in actually protecting the rights, or even in getting involved in any action,** of the vulnerable elderly in our communities who acquire, or intend to acquire an interest in a Retirement Village unit.

a. The Federal parliament recommended that the ACCC take action –

THIS WAS 12 YEARS AGO

b. The Productivity Commission reviewed the sector and again recommended further regulation.

c. The ACCC, while acknowledging that it shares responsibility with State fair trading agencies, went on to say that " …….The specific state legislation will often be the most suitable regulatory avenue to address many concerns."

d. The **Federal Minister for Aged Care** Ken Wyatt absolved himself of any responsibility when he said that "…….Retirement villages are governed by state and territory legislation and not by the Australian Government."

e. **After the 2016 Victorian Parliamentary Inquiry in 2016, the Victorian Consumer Affairs Minister Marlene Kairouz** says the state government was still considering the report. "We're aware of the concerns that have been raised, and **will take action where necessary** to strengthen regulation on retirement homes and ensure residents aren't ripped off."

THIS WAS 3 YEARS AGO

56. AND AFTER ALL THIS - WHAT HAS HAPPENED ? NOTHING.

57. Retirement Villages will grow enormously over the years to 2050, with more stress on the aged sector and more cost to Governments if the aged finance their entry into aged car homes. With the percentage of the ageing population growing year by year, the number of people requiring aged care and RV units will grow.

58. Failure to address the gouging of family wealth will have an enormous adverse impact on future Government budgets.

<u>PROPOSAL - TIME FOR ACTION AND A NEW MODEL FOR RETIREMENT VILLAGES</u>

59. I believe and submit that it is time for -

a. An open and fully transparent Royal Commission into the Retirement industry along the lines of the Financial Royal Commission and the Aged Care Royal Commission to uncover and identify all the questionable practices of RV Operators, so that elderly financial abuse can be brought to a conclusion;

b. Government action to better and effectively regulate Retirement Villages: or

d. A new model for Retirement Villages - a body corporate model.

so that **<u>family wealth is protected</u>** for people who wish to downsize from existing family homes into smaller homes/ units.

60. Stronger Government action and a new model would allow people to acquire a smaller home / unit in a village "environment" so that they

a. can enjoy their aging years in company with like-minded aging people;
b. Can acquire a unit **without the encumbrances of** -

i. Loss of capital gain;

ii. Deferred management (Exit) fees

iii. Requirement to pay for refurbishment of units to standards desired /dictated by RV Operators, without gaining any benefit from the refurbishment;

iv. Requirement to have refurbishment undertaken by the RV Operator, in accordance with the RV Operators one quote, **without** allowing the outgoing owner opportunity to obtain their own quote. (This is another area where price gouging can and does take place)

61. While there can be a variety of different models proferred, the alternatives include

A. Most obvious is the Body Corporate solution in which all owners have their own title and pay “reasonable“ body corporate fees for the services that may be required, but without the negative aspects mentioned above.
B. A Co- operative entity.

62. While there were many Co-operative housing societies in the 1950s to 1970s, they were largely for the arranging of housing finance; however in recent year consideration has been given to the use of Co-operatives as an answer to affordable housing. The link that follows canvasses the view that more consideration should be given to co-operatives in light of the increasing pressure on policymakers to find creative solutions to the housing affordability crisis.

https://www.crikey.com.au/2013/02/19/co-operatives-an-answer-to-affordable-housing/

63. Also attached is a link to a manual entitled “Co-Operatives in Australia – A Manual”.

http://www.rdamnc.org.au/wp-content/uploads/Coop_Manual_FINAL.pdf

I believe that a **co-operative model could be adapted** to provide a way forward as a new model for retirement Villages.

POTENTIAL BENEFITS

64. The benefits that flow from my proposal are that –

a. Aged people’s equity is protected so that they have funds available for their potential “aged care needs” should they require to be move either to be closer to family, into hostel accommodation or put in care such that they need to provide an interest free accommodation bond, at an outlay greater than the proceeds of their unit “sale”.
b. Stops the **gouging of families’ equity** by the RV sector.
c. Reduces the strain on families to find the funds for their parents’ aged car needs.
d. Would encourage more older Australians to consider a move to Retirement Villages if they are more comfortable with the financial arrangements of the Retirement Village sector.

More older people moving into RVs would free up more homes for purchase by younger generations in the inner suburbs, removing the need for them to buy in outlying suburbs.

EXAMPLES OF EXIT FEES

EXAMPLE 1

A perfect example is that which applied to my own mother's unit at [redacted] Retirement Village, [redacted], some years ago.

Right to occupy acquired in March 1998		$143,000
Addition- 2 Verandahs enclosed- front and rear (approx.)		$ 8,000
Total Cost		$151,000
Sale Price in May 2004 - (with no allowance for Verandahs additions)		$235,000
Less		
- 50 % of Capital gain ($245000 - $143000)	$46,000	
- Deferred Management fee - 2.5% pa for each year and part thereof -7 years - 17.5 % of $245,000	$42,875	
Selling Commission – (but see NOTE below)	$ 5,875	$ 94,720
Net amount received on sale		**$140,280**

NOTE – Operator charged a Selling Commission of 2.5% on basis that such a sale condition was contained in the purchase contract existing at sale date (2004) . But the condition in the actual 1998 purchase contract only allowed the sale commission to be simply "The costs of Sale , if any".

As the only costs were the cost of a Phone call to the person on top of the waiting list, who inspected and agreed to purchase the day after it was decided to sell, we were prepared to allow $0.25 for the costs of phone call. The matter eventually went to arbitration which we won, except for the legal costs of arbitration, approx. $1500.

This was a perfect example of the RV Operator NOT APPLYING the terms of the Contract with my mother, but seeking to apply the terms of a completely different contract which had no application to her whatsoever.

That was a case of malfeasance and merely displayed the lack of legal and moral ethics and practice.

My mother decided to sell so that she could transfer to the Hostel accommodation located at Cumberland View. To do that, she had to contribute an interest free accommodation bond of **$220,000**, which was approx. **$80,000 more** than she received on sale of her "Right to Occupy" the RV Unit. And that was over 15 years ago when prices were much lower.

EXAMPLE 2 - Mr. and Mrs. "XY"

a. Unit acquired in an [redacted] Retirement Village Unit in September 2015 - $475,000.
b. In addition to the ingoing contribution, the incoming residents (Mr and Mrs XY) were required to pay the RV Operator's legal fees for the purchase contract - rather than the RV Operator paying its own legal fees – together with their own legal fees. **(Another example of fee gouging).**
c. In this case Mrs XY died in February 2016.
d. Mr XY continued to live in the Unit but he died suddenly in October 2017. The estate continued to pay Monthly maintenance fees until approximately June 2018.
f. As at September 2018 the Unit has still not been sold, but for some time it had been advertised for sale at $600,000. (The Village had a number of new Units which have been sold in priority to the older unit "owned" by the estate of the husband.) very little effort seemed to have been applied to sale. On-line advertising ceased for a time.

g. Sale Value in October 2017 and advertised at	$600,000
Actual Increase in Value	$125,000
Proposed settlement Price on sale at January 2018 and September 2018	$475,000
- no sharing of capital gain with the outgoing resident	

Deductions from Sale price

Departure Fee/ Deferred Management Fees	$120,519.86	
Reinstatement	$ 1,000.00	
Legal costs	$ 764.00	
Service Fee	TBA	
RV Operator Membership Fee	$ 3,037.50	$125,321.36
EXIT ASSESSMENT VALUE		**$ 349,678.64**

NOTE :- The contract did not provide for any sharing of Capital gain with the outgoing resident, even though it had increased in Sale Value by 27.77% over the period of occupation (2 years and 1month).

Profit by [redacted] over the period - $250,321.36

[redacted] also advised the estate that If they had lived in Unit for 10 years

Advice received by the Estate was that if the deceased had lived in the Unit for 10 years, and then sold for $500,000, they would have received only $259,925.00, calculated as follows :

Ingoing contribution			$475,000
Less			
Deferred Management Fee (35% of $475,000)	$ 166,250.00		
Cost of finding a new resident	$ 15,000.00	Est	
Reinstatement	$ 2,000.00	Est	
Legal Costs (RV Operators costs)	$ 1,500.00	Est	
6 months maintenance fees	$ 2,000.00	Est	
GST on above amounts	$ 18, 825.00		
RV Operators membership Fees	$ 8,000.00		$215,075.00
BALANCE PAYABLE TO OUTGOING RESIDENT/ ESTATE			$259,925.00

But of course, after 10 years, and as evidenced by the increase over the 25 months period, it would be expected that the Capital Value of the Unit would far exceed $500,000 and therefore the Capital Gain lost would be considerable, possibly as much as $400,00 to $500,000.

Attachment - redacted