

updated submission

Chairman Nicolas Goiran MLC  
Select Committee into Elder Abuse  
Parliament House, 4 Harvest Terrace  
West Perth WA 6005

Dear the Hon. Nicolas Goiran MLC and members of the Select Committee into Elder Abuse,

We write to you in relation to concerns we have regarding the retirement and lifestyle village industry in Western Australia.

Our concerns include deferred management fees, complexity of contracts, transparency, the ongoing payment of fees and levies when a resident has vacated a unit or deceased, and the feeling that many residents have of being alienated, voiceless and trapped.

We believe that these concerns relate directly to terms C), D), G), H), I), and J) of the Terms of Reference.

### **Deferred Management Fees**

A common practice within the industry is the levy of deferred management fees (DMF). DMFs were originally implemented so that not-for-profit providers could offer village accommodation to residents significantly below the market value of the property. The management of the village may have also charged a percentage fee of an individual's pension or income, rather than a dollar fee that accurately represented the cost of managing the village. The DMF was then levied at the end of a resident's tenure or ownership to recoup this discount, as well as some of the growth in the value of the property.

As the industry has grown, private, for-profit providers have begun competing in the industry, but maintained the practice of levying a DMF against residents. However, the initial purchase price, or deposit or loan in the case of life-leases, is equivalent to the market value of the property. Often, this charge is above the value of an equivalent unit outside of the village to cover the construction costs of communal facilities. Residents also pay strata levies or management fees that cover the cost of running a village in its entirety which is often set by a village's residents' council. These budgets include the wages, leave entitlements, and superannuation for staff and managers. They also include stationary, IT infrastructure and equipment, power, water, and other expenses involved with the ongoing management of a village. As residents, we fail to see what aspect of village management or shortfall in income is being met by the DMF. Often, this fee is levied at a rate of 2.5% of the final sale price of a property, per year of residence, capped at 25% after 10 years of ownership. In most cases, that means that we will pay in excess of \$100,000 when we exit our villages. We also pay a percentage refurbishment fee on top.

To add insult to injury, we may also pay GST on our DMF. However, there are ATO tax rulings where this only applies to the first resale of a residence, which does not align with the idea that the fee is notionally for the ongoing management of the village, or a discount in the initial capital required to purchase a property. There is no apportionment between the capital discount and service components of the fee; indeed, there is absolutely no transparency from for-profit providers about what the DMF pays for so as to enable apportionment for tax purposes. The DMF appears to be blatant profiteering on the part of developers and village managers, where the fee is levied against the sale of every property, regardless of: previous residents having paid the fee, the actual cost incurred by providers of managing the village, or the ongoing contributions made by residents towards village management.

Note – submissions due to Select Committee by November 17, 2017.

There is absolutely no approximation of costs made when levying the DMF. The fee acts much more like a penalty for exiting a unit than an approximation of costs incurred for services prior to the termination of tenure. The effect of the DMF is that residents are financially trapped, which only worsens as time progresses. Should we sell our units while we are alive, we would be left without enough capital to purchase alternative accommodation. This means that we either apply for public housing or experience ongoing uncertainty by renting for the remainder of our lives.

### **Complexity of Contracts, Legislation and Structure**

Many of us do not have tertiary, or in some cases, high school qualifications. Our homes often represent the entirety of our retirement assets. The contracts that we receive are often very legalistic and incomprehensible without advice. Many of us cannot afford accountants, let alone lawyers, who could provide guidance or formal advice about our obligations under a contract of sale. On top of this, most villages also have residents' deeds and management agreements, which create further obligations. These deeds may also abrogate with many of the rights that we expect when we are told that we own our properties.

This complexity also applies to the title we receive when entering a village. In the Ellenbrook area alone we have a leasehold village, a purple title village, and a strata title village. Each structure is governed by different legislation and has markedly different ways in which we as residents can enforce our rights. Leasehold villages are more commonly referred to as lifestyle villages. They are governed by the *Residential Tenancies Act 1987* and *Residential Parks Act 2006*. Purple title falls under the *Retirement Villages Act 1992*, and strata title has additional obligations under the *Strata Title Act*. It is often not clear from the marketing materials we are provided with as to what proprietary interest we hold in our property. However, this can have serious implications our ability to appeal decisions and enforce our rights, management practices, and how long we may be charged ongoing fees and levies after vacating our property. There is no consistency across the industry and no uniform set of rights.

In addition to this, these state laws may also interact with the *Australian Consumer Law* and the *State's Fair Trading Act 2010*, which adds an additional layer of complexity. The multi-billion dollar companies that manage villages have the resources to both understand and enforce their rights under these acts. We, as residents often do not know what our rights are, let alone how to enforce them. If complaint can only be resolved by the State Administrative Tribunal, we often cannot afford legal advice or representation, and should we self-represent we cannot compete with the lawyers that management companies can afford. Some form of ombudsman or commission that has the power to deal with complaints, regardless of village structure, would go a long way to assisting residents. The current level of complexity in structure and contract is to the benefit of management companies only.

### **Transparency**

We as residents often feel that we have very little insight into the decisions made regarding the running of our villages. We have no rights to demand information, no avenue of appeal or redress in relation to decisions made, and no rights to initiate contracts for work on our property. Further to this, there is no transparency relating to quotes for services relating to maintenance or services performed in the village, no right to view contracts, and no right to view insurance contract.

In many cases, villages will have resident's councils which may have input into some areas of management. Some residents feel entirely alienated from their representative council, either through disagreements, social issues or having been dismissed as a troublemaker because of

