



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

(Subcommittee)

Reference: Older people and the law

TUESDAY, 17 JULY 2007

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Tuesday, 17 July 2007

Members: Mr Slipper (*Chairman*), Mr Murphy (*Deputy Chair*), Mr Michael Ferguson, Mrs Hull, Mr Kerr, Mr Melham, Mrs Mirabella, Mr Secker, Mr Thomson and Mr Tollner

Members in attendance: Mr Slipper, Mr Thomson

Terms of reference for the inquiry:

To inquire into and report on:

The adequacy of current legislative regimes in addressing the legal needs of older Australians in the following specific areas:

- Fraud;
- Financial abuse;
- General and enduring 'power of attorney' provisions;
- Family agreements;
- Barriers to older Australians accessing legal services; and
- Discrimination.

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Subcommittee met at 10.46 am**MORRISH, Mrs Esther Frances, Private capacity**

CHAIRMAN (Mr Slipper)—I officially declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs' inquiry into older people and the law. The committee has been asked by Mr Ruddock, the Attorney-General, to inquire into and report upon the adequacy of the current legal regimes, both state and federal, in meeting the legal needs of older Australians. In particular, we have been asked to focus on the areas of fraud, financial abuse, general and enduring power of attorney provisions, family agreements, discrimination and any barriers to older Australians accessing legal services. This is a bipartisan committee and there are members of both the government and the opposition who contribute to the committee.

This is the eighth in a series of public hearings for this inquiry. Today we will be hearing from a number of individuals and organisations. Yesterday we had a number of people and organisations in Brisbane. There will also be an opportunity for members of the public to participate in the open forum section. During the forum, individuals will be invited to make a brief three-minute statement on any issues within our terms of reference.

I would like to welcome everyone here. I am sure our discussions will be informative. In the event that local media arrive, the subcommittee resolves to authorise the filming and televising of evidence taken by it at this public hearing this day.

I now welcome Mrs Esther Morrish to the table. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. In providing your evidence today we would ask that you do not name individuals or provide information that would adversely identify individuals because the committee is interested in the broader principles relating to the terms of reference and it does not want to provide the protection of parliamentary privilege to allegations about particular individuals. We have received your submission and it has been withheld from publication at your request. I would like you to make a brief opening statement and then we will proceed to questions.

Mrs Morrish—I do not have any formal legal qualifications. When I first joined the workforce it was as a shorthand typist in a solicitor's office in Sydney. Over the years I worked for a number of solicitors, many of them with practices in conveyancing, wills and probate. While I think an enduring power of attorney is a good idea, in my view the Queensland version is unsatisfactory. It is a lengthy and clumsily drafted document, as I wrote to this committee in my letter of 22 October last year. It consists of 18 pages. Pages 1 through to 7 are instructions for the person appointing an attorney, the donor. Despite these seven pages, further instructions are incorporated into the document itself. Appointing an attorney—the actual document—begins on page 8 and continues on pages 9 and 10. The subsequent pages 11 to 18 are mostly instructions to the witness or attorneys.

On page 4 of the instructions to the donor making the document, as I received it from the government printer, there is a list of powers that you cannot give your attorney. I especially want to read this one that says nor can you give your attorney power to authorise:

... withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or go into a state of permanent or persistent unconsciousness.

If you wish to—

... give instructions about this type of decision [you will need to] make an Advance Health Directive.

I think it is unfortunate that this very important item only appears in the instructions and not in the document itself. An enduring power of attorney involves complex legal decisions to be made by older persons who may previously have only sought legal advice for conveyancing or wills. Now, in their declining years, they are faced with understanding the full implications of the act. In Queensland they are giving their attorneys powers under the various further acts contained in it: the Trusts Act, the Powers of Attorney Act and the Guardianship and Administration Act.

Prior to obtaining professional legal advice, which I always do before signing any legal document, I purchased from the Queensland government printer a copy of the Powers of Attorney Act 1998—reprint No. 2 dated July 2000—together with the short forms parts 1 and 2. As advised in my letter to this committee, my solicitor informed me that he was not permitted to rearrange the sequence of the clauses or include certain specific conditions. As I planned to have joint attorneys—one an Australian citizen residing abroad—I wanted a safeguard to prevent my assets being taken out of Australia. I requested a condition that they can only be invested in banks where the Reserve Bank of Australia was the lender of last resort. I also wanted to limit their powers under the Trusts Act so that they could not invest any funds on any stock exchange. I was advised the prescribed form did not allow for these conditions to be included.

To ascertain how my attorneys would use a Queensland enduring power of attorney I approached the local branch of my bank, a major Australian one. As I wrote in my letter, I was informed that the bank would not accept a valid legal document without incorporating their own requirements. They required attorneys to complete the bank's 100 point system before being permitted to operate an account. It seems unacceptable that a valid legal document can be ignored by a bank or anyone else.

I have also discovered that an enduring power of attorney is not portable, that one completed under the Queensland act is not valid in other states. Indeed, it seems a complex web. The older person is faced with making important legal decisions at the latter end of their life, decisions that cannot be put indefinitely in the too hard basket. It leaves the older person uncertain where to turn for accurate information. I understand that your committee is investigating portability of enduring power of attorney. This is very welcome as many retirees appear to move a number of times and the necessity of completing new legal documents, especially in one's declining years, is a burden. It becomes complicated too if one's mental capacity is also diminished. I have also heard that some aged care facilities require potential residents to have an enduring power of attorney prior to admission. Lack of portability would be a difficult handicap.

While an Australia wide enduring power of attorney would be welcome, I appreciate it may not happen soon. Perhaps meanwhile the federal government can provide information by leaflet, the internet et cetera, indicating where to obtain information Australia wide. For example, it could provide all the explanatory information that people need to know before completing the document. It could also provide information as to whether it is possible to complete an enduring power of attorney for another state while living in a different one—for example, a New South Wales enduring power of attorney by a Queensland resident. If so, where could it be obtained and so on? As attorneys in Queensland appear to have powers under it, information on how guardianship acts operate there and in different states would be helpful. I am very pleased to have had this opportunity to address this committee today on this topic.

CHAIRMAN—Thank you, Mrs Morrish. What you have outlined are some of the problems with our federal system, where you have different documents and different laws across the various states. As you point out, a power of attorney in one state is not necessarily valid in another. It might be partly valid, it might be valid somewhere and it might not be valid somewhere else. I gather the Standing Committee of Attorneys-General is looking at this particular matter, but as you also point out the wheels of bureaucracy do not necessarily move as quickly as one would like. In fact, this committee, in a prior inquiry on harmonisation of laws, recommended that there ought to be this reciprocal impact of powers of attorney in different Australian jurisdictions.

You also focused on the lack of flexibility over what you were allowed to put in an enduring power of attorney. I think what you are really saying—and correct me if I am wrong—is that you would be happy to give someone authority over certain aspects of your finances but you do want to limit what that person can do in certain ways and you have been told that that cannot happen.

Mrs Morrish—I was not told that it could not happen. I was told that I could not have it inserted in the document in the way I wanted. I wanted to specifically put in this section about the Reserve Bank of Australia being the lender of last resort, and I was told I could not put that in the document. Also, as I pointed out, the document is very clumsily drafted. The first clause has to name all the attorneys whether or not they will be operating independently, jointly or subsequently. I pointed out that it seemed silly that I would like to nominate the first attorney as the principal person with all the powers and, in the event that that attorney was unavailable, unwilling or unable, I would like to nominate two other attorneys acting jointly. I asked why it could not be put in that fashion in the first clause, and I was told, no, I had to nominate everybody in clause 1 and how they operate in clause 7, or something like that. I thought that was a little foolish and pointed out that the secondary attorneys might never be called upon.

CHAIRMAN—So you would like to see more flexibility in how the document can actually be drawn?

Mrs Morrish—Yes.

CHAIRMAN—Also, what do you feel about a national register of powers of attorneys or maybe individual state registers which are accessible to the public throughout the country?

Mrs Morrish—It is a question to which I have not given any thought. Off the cuff, I really do not think it is a very good idea. Powers of attorney are made between individuals. They are a

private arrangement until such time as somebody wants to exercise that power. The point when they want to exercise that power is the only time it should be produced to anybody to whom it is relevant.

Mr KELVIN THOMSON—You make an interesting point about the flexibility. We have not really had it come up before us by way of evidence. On the face of it, I think we would be sympathetically disposed to that, that people should be able to design their own power of attorney to meet their own specific circumstances. We would probably want to take some evidence from others about how that would work in practice. Were you ultimately able to get the power of attorney that you wished with the content that you wished?

Mrs Morrish—No.

Mr KELVIN THOMSON—So you are saying it could not be done?

Mrs Morrish—It could not be done. One of the things I thought was very complicated about the form that the government printer gave me was that there were 18 pages but only three of the 18 pages were the actual document. When I subsequently approached bankers as to how many pages would have to be produced by my attorney, I was told the whole 18. I pointed out that most of the 18 pages were purely and simply instructions. There is a page for the witness to sign and for the attorneys to sign. I said, ‘Surely all this information about what can go into it et cetera is not necessarily part of the document.’

Even though they have all these pages of instructions about what you can have and what you cannot have, the document itself, at item 3, says: ‘Do you want to set out any terms for the powers given in the clause?’ It then says, ‘Write the terms here.’ If, for example, I prefer that my attorney does not sell my shares in ABC Ltd, or if I need nursing home care, I can say that I want my attorney to try X nursing home first. I have never seen a legal document where there are seven pages of prior instructions and further instructions of this nature in the document itself.

CHAIRMAN—You were fortunately able to go to see a solicitor to get advice. Would you say that many older Australians would not have that same access to legal advice and therefore may not be able, as you have been, to work out that the document that is available is not what is actually suitable?

Mrs Morrish—It is a question I am not certain about. I really cannot speak for a wide range of people. I am a member of the Association of Independent Retirees, and most of the people in that association would certainly seek legal advice before signing any legal document. Outside that, there is a range of other people for whom I cannot speak. I really do not know whether or not the document is freely available from, say, a stationer. If it is freely available from a stationer and somebody simply fills it in, I think that could be quite dangerous.

CHAIRMAN—I was a lawyer in a prior life. With wills you are allowed to put in what the client wants you to put in. So what you are really asking for is a similar level of flexibility with respect to powers of attorney.

Mrs Morrish—That is quite correct.

CHAIRMAN—Do you think that lawyers, generally speaking, are adequately aware of the legal needs of older Australians?

Mrs Morrish—It is becoming a very wide area, and lawyers tend to specialise. Some lawyers are in fact practising the so-called elder law. There are a number of areas where it is important for there to be specialists—for example, retirement village life, leases, licences and so forth for people who want to be admitted to aged-care facilities and so on. I think it is essential for these people to have access to good legal advice. I am not here representing the Association of Independent Retirees. I have no idea beyond that what other people might do. I have no idea where they could go and whether, for instance, legal aid, Centrelink or anyone else would be able to direct them. Perhaps it would be a good idea.

CHAIRMAN—We had some very interesting evidence yesterday from Mr Brian Herd, who is a solicitor practising in the area of elder law. In fact, he has addressed some of our local seniors forums here. His evidence will go up on the website; it was quite interesting. He did bring forward—and this is a little away from your submission—advice that in a number of states in America the law has been written that there is an obligation by younger people essentially to look after parents, so that the family acquires somewhat more of the responsibility that families historically had. If a person does not carry out this legal obligation, that person can be rendered liable in some way. Do you have a view on whether or not that would be a sensible way for us to go?

Mrs Morrish—I do not think it is always possible to incorporate what is done in America into Australia.

CHAIRMAN—I would be the first to agree.

Mrs Morrish—While it might be a nice thing in theory, in practice it might not work. Some of my siblings are living overseas, and when my parents were ill, especially my mother in the latter years of her life, a phone call from overseas was all one of my siblings could offer. They were not able to help in any other way. So, once again, I do not think it would be something that legislation could make work. It has to depend on the moral attitude of the family and their attitude of responsibility towards their parents.

CHAIRMAN—I think we all know why banks now require 100 credit points when people open accounts, but I did find it interesting that your bank said that even a person overseas who you had entrusted with the responsibility to be your attorney had to provide that 100 credit points, even though the person was not a resident of Australia.

Mrs Morrish—Yes, I was surprised too. I asked how I could possibly get around it. They suggested that if the person who lived overseas came to Australia with a foreign passport then that would automatically meet their requirements. If they did not, and they lived in a country where there was not a representative of their bank, it might be difficult to get the necessary legal qualifications from somebody to assure the bank that the person overseas was in fact the person who was entitled to operate the account.

CHAIRMAN—The committee would be happy to refer your evidence in relation to the lack of flexibility on the powers of attorney to the Queensland Attorney-General, because it is a state

matter, just for their comments on the evidence. It could be that it is just something that they have not previously thought of and it might be something that is easily fixed. I think we can do that without any great difficulty. Thank you very much for appearing.

[11.06 am]

PATON, Mr David John, Central Area Coordinator and Consultant, Manufactured Home Owners Association Inc

CHAIRMAN—Is there anything you would like to add to the capacity in which you are appearing before the committee today?

Mr Paton—I am also representing the Kurrajong Residents Association.

CHAIRMAN—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. In providing your evidence today we would ask that you not name individuals or provide information that would adversely identify individuals as we are interested in the broader principles related to the terms of reference. As a committee we are not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. We have received your submission and have authorised it for publication. I gather that originally you were going to be appearing in a personal capacity but now you are appearing in a representative capacity for this association as well as on your own behalf. Would you like to give us a brief opening statement of a couple of minutes and then we might proceed to some questions.

Mr Paton—There are many areas within the aged population of this country to which this committee will hopefully be exposed. It will hopefully give a snapshot of exactly what is going on. Fortunately, we do not find out until we get there—when we get old we find out that things are not so good. In my original letter to the committee, dated 10 November 2006, I outlined as comprehensively as possible the plight of the older generation at the hands of residential park operators and their staff. Since that time many more incidents of elder abuse in its broadest terms have emerged.

The Manufactured Homes (Residential Parks) Act 2003 has been under review since March 2006. I should make it clear here that we lease the land; we have the home built under a standard building contract in these modern parks. They are very nice homes and very nice environments.

CHAIRMAN—Do you still have to have wheels under them that cannot be used?

Mr Paton—No, those days have gone. Now they are building them slab on ground and brick veneer, so this act is redundant as such.

CHAIRMAN—They used to look ridiculous. You would have these large homes with two useless wheels just sitting there.

Mr Paton—They have long gone, but there are still some out there. Under this act the park operator can act as the selling agent if a homeowner decides to sell. This section of the act totally negates the Property Agents and Motor Dealers Act 2000, which lays down licensing

requirements, codes of conduct, education qualifications and acts of professionalism generally. No such provisions are even referred to under the manufactured homes act. Hence, this allows unlicensed, unprofessional people of very limited capacity to act as real estate and letting agents. Under this same act, park operators are allowed to insert special terms into a site agreement. In these terms, many park operators insert the right as sole agency for up to 90 days when the PAMD Act 2000 stipulates quite clearly that it can only be for 60 days.

CHAIRMAN—I understand from your submission that that is even if they do not hold a real estate agent's licence.

Mr Paton—Yes, that is correct. The latest one on special conditions was written up by a Brisbane firm of solicitors. It is anything from 12 to 25 pages. It is all in legalese, so, as you can imagine, it is very difficult to understand.

CHAIRMAN—Maybe you are not meant to understand.

Mr Paton—One thing that stands out in that is the fact that—referring back to what the other lady was talking about—they have included in that the right to this power of attorney. They have slotted that in there. For people coming into these places when they retire, the actual move is bad enough and stressful enough. I do believe, and I have heard said, that moving home is almost as bad as divorce or death. For a lot of these people one partner can be quite sick and there is all this stress. What you are faced with is a beautifully done, glossy brochure and the ever-smiling park operator reassuring you that all is well. You can go to a solicitor and have this checked out before signing, and indeed form 1 of the act suggests that you do so.

In a recent survey of our own residents' association in our park we found that 68 per cent of people did not bother, they just signed, which is a little bit disturbing. I went to a solicitor myself, a man I had used for a number of years on the Gold Coast. I put it before him and said, 'What do you reckon, Lionel; is this okay?' He had a look through it and said it was a standard document. It may be a standard document but at the moment I have an application before the tribunal to vary the special terms because of the unfairness of it.

The act also says that when you decide to sell your home you assign the agreement for that home. There is no legal involvement at all. There are no solicitor's fees, no searches of title, nothing like that goes on at all. There are three forms to be filled in and these have to go before the park operator. It says in the act that a park operator cannot interfere with the assignment of that agreement. Then it goes on to say a few lines down that the park operator can 'reasonably interfere'. What may be reasonable to one person, to you, may not be reasonable to me. If you have in your special conditions a situation where the park operator has the first option on the sale of your home and the last one, he can keep everybody else out until he has the best price. And they do that.

We do go to the Office of Fair Trading. This great bastion of fair dealing, the OFT—even though there be penalties in the act for all sorts of discrimination and unfair practice—has never ever prosecuted a park operator. That is true and they admit it. That is because they set the bar too high. I do not know of any other section of the community that owns a home that is not free to sell it without running the gauntlet of all this rubbish, just so that somebody else can make a quick dollar out of it.

CHAIRMAN—Could you wind up the opening as quickly as you can, and then we will ask you some questions.

Mr Paton—Yes. I think I have virtually covered it all. What I will say finally in winding up is that the upshot of the current act is that it is a redundant document, and park operators, aided and abetted by solicitors, exist on the fringes of the legislation to cheat, intimidate and apply fraudulent practices.

CHAIRMAN—Are you saying that this provision, which gives a park operator the right to charge an REIQ—a Real Estate Institute of Queensland—rate of commission, applies in all contracts or just in the contracts in your home or in some contracts but not in others?

Mr Paton—It is right throughout the industry.

CHAIRMAN—I think you said in your submission that that is because there is one firm of solicitors employed by all of the parks. Is that correct?

Mr Paton—That is correct.

CHAIRMAN—With your sort of park, do you get any sort of notation on the title that you have a lease of this particular block?

Mr Paton—Form 2 under the act is the actual site agreement. There are other areas on rent reviews and things like this that go on. All parks are a little bit different. I am not knocking all these parks because some of them are very well run.

CHAIRMAN—I think you said that your park was well run.

Mr Paton—I never said that.

CHAIRMAN—I may have misread what you said.

Mr Paton—I never said that our park was well run.

CHAIRMAN—You may have said it was a happy park or something to that effect.

Mr Paton—The people are nice. As you point out, I have to be careful what I say. The people, the community, are very nice. It is a very pleasant park. There are modern homes with two toilets and bathrooms—the whole bit. They are very nice three-bedroom homes, they really are.

CHAIRMAN—Just before I invited Mr Thomson to ask some questions, you mentioned intimidation. People are concerned to raise issues of concern with the proprietor because of a worry that they might be victimised or intimidated in some way. I think we have had evidence from others in retirement villages that there is this reluctance to raise matters because of that concern. What would be the best way to avoid people being intimidated in this way, because clearly it is pretty sad if people are not able to express things that they are not happy about?

Mr Paton—The way the system works—and, of course, the Retirement Villages Act is a totally different act—the operators of retirement villages are registered. The people who run these places are not. If you have the money and local council approval, you can set a place up. The marketing—and I know that the Office of Fair Trading admits this because I speak to them regularly—is operated purely towards retirees. What you end up with is a pseudoretirement village.

CHAIRMAN—Why does the state government not legislate to cover your sort of park in the same way as those officially designated as retirement villages?

Mr Paton—We are trying to have that. We have been hammering away at the minister and her department for a long time. We are well-known to the department.

CHAIRMAN—Do you know what the situation is in other states?

Mr Paton—I have received comment on letters I have had published in the *Senior* newspaper from virtually every state in Australia and we seem to be lucky in Queensland compared to what is going on in other states.

CHAIRMAN—Lucky?

Mr Paton—I am told by people who have written to me commenting on this that we are lucky and that it is worse in other states.

CHAIRMAN—But you are saying that they are not registered here. Would you like to see the committee consider recommending that there be a similar form of registration for these parks as for retirement villages?

Mr Paton—Yes, I would. Under the Retirement Villages Act and the body corporate act, anyone running these places has to go through a police check for a criminal record, but these people do not. There is no regulation at all. They virtually do as they like. Because they are not really taken on by the Office of Fair Trading, they are well aware of this, so therefore they are blasé. They say, ‘What the hell?’ and go for it.

Mr KELVIN THOMSON—Is the idea of people owning things on other people’s land an accident waiting to happen? Is the whole concept fraught with peril?

Mr Paton—I do not think so. It has got its merits in the fact that a lot of people buy into these places. There is one down the coast at the moment still being developed. They are paying up to \$439,000 for a home, but they are lovely homes with great facilities. When people sell up and buy into one of these places, instead of spending half a million dollars on a home with land and the whole bit, they can buy a very nice home for half that price. You have the money in the bank and you can enjoy it.

Mr KELVIN THOMSON—I understand the concept perfectly well, but it seems to me that the park owners or proprietors and the people who move in there have different things going on in their heads about where this is going to end, who is going to gain from asset appreciation and how various things will be charged for and worked through.

Mr Paton—Yes. But still, as with all these facilities where you are with your own age group, you are reasonably secure. We all know about how old people are beaten up in their homes and all this sort of thing, but we do not have that worry. Because it is a very large area of parkland, we can walk at night and nobody bothers us. There are very few people living in the suburbs who could enjoy that, so it has its merits.

The other thing is that, under one section of this act—and you raised this point—the park operator can decide at any time to apply to the local council to use the land for another purpose. If you had built your home there and it is not a mobile home but a standard building, what do you do? These are the things I am trying to address and I would like the committee to be aware of that.

Mr KELVIN THOMSON—You have a specific variation on these things that are called manufactured homes which are not genuinely portable.

Mr Paton—That is correct.

Mr KELVIN THOMSON—So it is unrealistic to say that I will pick up my bat and ball and my home and go somewhere else.

Mr Paton—The ones on the coast, the Golden Crest Manors, are double-storeyed. They are lovely homes.

Mr KELVIN THOMSON—Your view is that the existing act simply does not cover that situation.

Mr Paton—It is taken from the old Mobile Homes Act 1989. It has just been glossed up a little bit. The terms are basically the same.

CHAIRMAN—Thank you very much. We will send you a copy of what you have said, as recorded by Hansard. If you could check that draft and send it back as soon as possible that would be good. If you think of something else you would like to tell us, feel free to pass that on in addition.

Mr Paton—How much can I write?

CHAIRMAN—You can write as much as you want. The committee could look at that as a further submission. That goes for anyone else in the room as well. Thank you very much for appearing.

Proceedings suspended from 11.27 am to 11.45 am

PHILLIPS, Mr Philip Godfrey, President, Association of Residents of Queensland Retirement Villages Inc

CHAIRMAN—Welcome. Although the committee does not require you to give evidence under oath I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the house itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee has received your submission. It has been authorised for publication. I invite you to make a brief opening statement of five minutes and then we will ask you some questions.

Mr Phillips—Our concern and the concern of this parliamentary committee is about older people and the law. Within that broad framework the particular concern I shall briefly attempt to address is that of older people in retirement villages—a steadily increasing number—and how the law serves or, more pointedly, fails to serve them. The Association of Residents of Queensland Retirement Villages has made a fairly comprehensive submission to this parliamentary committee, but time constrains me this morning in elaborating on some of the reasons one sees for that submission.

The besetting problem for retirement village residents starts with their resident contract, which is always unconscionably unfair to the resident. Invariably, it is a contract which is not the subject of real negotiation or agreement; it is a contract where one party, the supplier—in our case, the village owner—draws up the contract and the other party—the resident—simply has to sign: take it or leave it. Such contracts are becoming all too common in every sphere of commerce and trade and they are largely unregulated. A new classic and growing example is the agreement you must accept before using some computer software. Do you ever read it all? That is the contractual situation for people going into a retirement village.

In the outside world, when one purchases a home for residential purposes and acquires a normal freehold title, or fee simple title, the documentation is not very large—just a few pages. When renting residential accommodation there is a rental agreement and, again, it comprises just a few pages. People seeking to become residents in a retirement village, however, are not presented with such contractual simplicity. They are faced with a contract which is likely to be 70 or 80 pages long, which is complicated, very repetitive, with many anomalies and inconsistencies which often breaches the relevant legislation.

Public information documents have to be submitted to the Office of Fair Trading and, although they are contracts, that office does not examine them or do anything to ensure their compliance with the law, of which the Office of Fair Trading is the custodian. Neither are the village operators required to certify that they comply with the law, just as they are not required to certify the accuracy of the financial statements that they are obliged to supply to residents to account for the expenditure of their money.

Under laws of equity, courts are willing to examine and set aside contracts which they deem procedurally unfair—that is to say, contracts where undue influence or advantage was used to procure a person to sign a contract. Courts are most unwilling to overturn contracts simply because their terms are unfair to one party or another. If you signed it willingly, and especially if

you had a lawyer act for you, you are stuck with it, however unfair it is. I believe that Victoria is the only state which has any sort of legislation under which substantive unfairness in a contract, as distinct from procedural unfairness, can be struck out. It is the terms of such substantively unfair contracts that the Association of Residents of Queensland Retirement Villages is concerned.

Contracts for residents in a retirement village are very much a case of take it or leave it. In the minds of those of us who have been closely involved with retirement village contracts, or rather their consequences for trusting unsuspecting residents, there is no doubt that in that respect the whole retirement village industry needs investigation by a thoroughly independent judicial body. As a fitting investigative body, the Australian Competition and Consumer Commission immediately springs to mind, but now so does this Standing Committee on Legal and Constitutional Affairs.

Some four years ago, the Office of Fair Trading in each of the states combined to form a working party to examine unfair terms in contracts—that is to say, contracts where the actual terms of the contract were unfair. Interested parties were invited to contribute to a discussion paper and many, including the Association of Residents of Queensland Retirement Villages, did so. Relevant consumer protection legislation in Australian states, Britain and the European Union was canvassed in the discussion paper.

It all seemed very encouraging, especially when submissions were given an airing on the Office of Fair Trading websites. Alas, it now all seems to be very dead in the water. We have heard nothing further—not even a dying splash. It seems to have been a waste of time, a waste of participants' time and a waste of public money. We sincerely and fervently hope that this initiative by the parliamentary committee will not turn out to be a similar failed foray. We hope that the committee will cause the bull of retirement village contracts to be taken firmly by its horns and given a thoroughly good shake.

CHAIRMAN—Thank you. Did you hear the evidence of Mr Paton from the Manufactured Home Owners Association? In those unfair contracts you mentioned, is there a provision there that the owner of the complex is able to take REIQ commission in the event of a home changing hands?

Mr Phillips—If retirement villages are leasehold villages, the tenure of the residents is protected by the registration of their lease on the owner's freehold title. Where that is not the case, where villages are what are called loan licence, where the tenant—that is, the resident—pays a loan and is given a licence to live in the village then the state government has a hold over the village, which guarantees the resident's continued tenure. So there is that degree of protection.

CHAIRMAN—What if a person wants to sell?

Mr Phillips—The only villages where the resident can sell are freehold villages, strata title.

CHAIRMAN—They are fewer than 15 per cent, aren't they?

Mr Phillips—Yes. Otherwise, all the resident has is not ownership of the unit in which he lives but the right to reside. That is an expression used in the act—‘The resident has the right to reside.’

CHAIRMAN—I think we have had other evidence which may have indicated that in some villages the contract may over time change and that at any one point you may have a number of different contracts in force. Is that your experience?

Mr Phillips—Yes, indeed. There may be as many as half-a-dozen different PIDs in one village. They change. Some of the scheme operators change their PIDs as often as they change their shirts. Each succeeding PID is more oppressive of residents than the previous one. But of course a PID applies only to that resident to whom it was issued.

CHAIRMAN—Do you find that there is a reluctance by residents of retirement villages to make complaints or raise concerns with the operators for fear of intimidation or victimisation?

Mr Phillips—Yes, there is every fear. The University of South Australia did an investigation into it some seven years ago and found that there was intimidation in retirement villages. The problem is that intimidation and coercion is very difficult to prove. First of all, somebody has to make the complaint. Then they have to produce evidence and that is difficult to produce. You need to have others who are willing to stand up in court and testify to that intimidation or that coercion.

CHAIRMAN—What can be done by the state government to bring about a circumstance where, if a person has a concern in a retirement village, that person could raise that worry without having a concern about victimisation, intimidation or perhaps eviction?

Mr Phillips—The only possible avenue they currently have is to tell me. There is precious little I can do if the resident concerned is not prepared to stand up in a commission or a court.

CHAIRMAN—You are right there.

Mr Phillips—But I really do not know what else I can suggest, except for state governments to appoint somebody to whom residents could take that sort of complaint.

CHAIRMAN—Like an ombudsman, perhaps?

Mr Phillips—Yes.

CHAIRMAN—How many members does your association have and across how many villages in Queensland?

Mr Phillips—It is across about 130 villages, which is only half the number in Queensland. Altogether, it covers about 7,000 persons.

CHAIRMAN—The concerns that you articulate are concerns that are expressed to you by your membership?

Mr Phillips—Yes. I deal with concerns that are expressed to me about all sorts of facets of retirement village life.

CHAIRMAN—In your submission you suggest that older people may not be aware of their legal rights. One aspect that the Attorney-General has asked us to look into is access to the law. Do you feel that older people may not have adequate access to the law, particularly in relation to enforcement of their rights in retirement villages? What can be done to improve this?

Mr Phillips—The average age of people living in a retirement village is 80. At that age, especially for elderly ladies on their own, there is nothing they can do except complain to me, and I can do precious little about it most of the time. They are not prepared to go to court. The very idea frightens them and they just put up with it.

CHAIRMAN—Before I ask Mr Thomson to ask a question, what sort of issues are the most commonly raised in your experience in disputes between residents and operators?

Mr Phillips—The most common dispute is financial. The most common dispute relates to the expenditure of residents' money, for which scheme operators do not account very well. It relates to increasing residents' fees without satisfactorily explaining why. That is the most common issue. Other issues include being denied, to some extent, the use of common facilities. Otherwise, the most common complaint from residents who are in the process of, or who have left, the village is about being, to put it in the vernacular, ripped off—and that happens frequently, despite the law.

Mr KELVIN THOMSON—You mention in your submission that a wholesale investigation by the ACCC is warranted. Has anyone taken complaints about retirement villages to the ACCC? Are you aware of that? If so, what was the response or outcome?

Mr Phillips—I wrote to the ACCC some years ago, perhaps half a dozen years ago, suggesting that that might be a good idea. I cannot remember what the response was exactly, but it was not encouraging.

Mr KELVIN THOMSON—It is certainly open to our committee to make comments or recommendations about that. The second thing in your submission I wanted to ask about was the idea of taking out legal representation before the Queensland Commercial and Consumer Tribunal. I just wondered what response you had had to that proposal or just how that idea had fared. In your submission you said that there was the possibility of neither party being allowed legal representation before the Queensland Commercial and Consumer Tribunal. What response have you had to the proposal to withdraw that right?

Mr Phillips—That is just a proposal I have put to the committee. I have not taken it up anywhere else, except to quote the Queensland Commercial and Consumer Tribunal Act, which expects people to represent themselves. There are difficulties for the tribunal in that.

Mr KELVIN THOMSON—I understand. The final thing is that your submission called for standardised contracts across the retirement village industry. I can see some difficulties in trying to impose standard form contracts when you get a variety of situations. Have you thought about some kind of approval process where contracts would have to be scrutinised by an appropriate

fair trading or ACCC type body, obviously without names and addresses but where you have various kinds of contracts that get approved before they get issued?

Mr Phillips—I have not thought about that very much, and I even mentioned that in my submission. The problem is that in Queensland—and I can only speak for Queensland, of course—all scheme operators are required to submit their PIDs to the Office of Fair Trading. One would like to think that the Office of Fair Trading scrutinised them to see that they complied with the law, the law of which the Office of Fair Trading is custodian, but they do not. They can put whatever they like in their PID. One hopes that they try to ensure that it is consistent with the law, but that does not always happen either. Yes, we would very much like to have contracts and PIDs scrutinised.

Mr KELVIN THOMSON—Are you saying there is an approval process in place but that it is inadequate?

Mr Phillips—Yes.

CHAIRMAN—Thank you very much for appearing before the committee. We will certainly take into account carefully what you have written and what you have said. We very much appreciate your time. We will now move to the public forum.

[12.05 pm]

SAVA, Mrs Helen Patricia, Company Secretary, Deputy President and Branch President, Sunshine Coast, Association of Independent Retirees

KEIR, Mr Graham, President, Sunshine Coast Crime Prevention Group

BYWATERS, Mr David John, Representative, former Federal Vice President and Vice President, Queensland Branch, Superannuated Commonwealth Officers Association Inc.

BRIGHT, Mr John Winston, Private capacity

KEOGH, Dr Peter John, Private capacity

CHAIRMAN—As I mentioned previously, the committee has set aside the next hour or so for members of the public to make brief three-minute statements to the committee. I would like to remind speakers that the committee is not able to investigate individual cases, provide legal advice or provide advice in relation to personal matters. Statements should focus on one or more of our terms of reference.

Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the house itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. In providing your evidence today we as a committee ask that you do not name individuals or provide information that would adversely identify individuals. We are interested in the broader principles related to the terms of reference. It is not appropriate for us to provide the protection of parliamentary privilege to allegations about particular individuals. I would like to welcome each of you.

Mr Keir—My complaint is typical of older persons who have no money to litigate having lost so much when they have been defrauded in their efforts to become financially independent. The company KT&G defrauded its 57 per cent subsidiary, KEID, and 32 of its 34 members from 1 July 1989 of over \$1 million in false charges and caused a further \$1 million loss by the use of a Ponzi device and a conspiracy among at least three and possibly six persons. The Ponzi—the paying of interest or dividends from capital—was first notable on a large scale in the South Sea Bubble in the early 18th century in Europe. It was named after Carlo Ponzi, who was jailed in Florida in the early 20th century. The name ‘Ponzi’ appeared in the AFR in an article by Gillian Bullock on 29 August 2001 and on page 20 of the Australian Security Investments Commission annual report for 2005-06. Offenders have been jailed for up to 11 years, yet, regarding KEID, ASIC has rebuffed all efforts for justice.

As you said in May 2006 in front of Senator Macdonald, Senator Mason, Senator Brandis, Senator Trood and Senator Santoro and your wife, Inge Hall, and as member of the House of Representatives Tony Abbot BA LLB said in May 2000 to a KEID shareholder, a Ponzi is a criminal offence. The Prime Minister John Howard BA LLB also agreed with me personally in September 2003. Our complaint was made in January 1995, well within the five-year preferred

period, to ASIC as well as the New South Wales Fraud Enforcement Agency. ASIC even misled the then minister Joe Hockey BALLB.

As it was a Pty Ltd matter, the New South Wales Fraud Enforcement Agency also gave it to ASIC, which handle civil, company and criminal matters for further investigation. Their income is approximately twice their expenditure and thus they are not short of funds as the New South Wales FEA is. In the three submissions since then, the New South Wales FEA CCA said it was an ASIC matter, yet on three trips to Sydney ASIC refused to see me or us and twice posted back submissions, while claiming insufficient evidence. The New South Wales FEA was racked by corruption. The chief, Robert Lysaught, was sacked, three assistants were put back into uniform and six others were dismissed, all in 1995, the year of our complaint. It was similar to the activities of Queensland's Terry Lewis and Jack Herbert.

CHAIRMAN—Your three minutes are up. If you wish to forward anything in writing to the committee, we would be happy to consider it as a submission.

Mr Keir—I appreciate that. I have one page and I will hand it in.

Dr Keogh—I believe governments are allowing corruption. It could be mismanagement, but it certainly appears like corruption. For instance, the wealthiest people in Australia do not pay tax. They simply register themselves off shore; earners of billions of dollars pay no tax. Surely this is an impost on the ordinary taxpayer and should be corrected. I can understand why the government is doing it because they get favours from these people in the form of good coverage, but I do not think it is fair. Also, to the ordinary person, it seems as though these people create anomalies in local, state and federal governments.

Take, for instance, the situation in Caloundra where the council is now colluding with the state government, no doubt at the behest of developers as opposed to councillors, and has changed the route of the proposed railway line through Caloundra. I have a map that shows it as a design to avoid the airfield, but what have they done? They have changed the route so it now goes through the airfield. There are not just millions of dollars involved here but billions because developers spent millions of dollars at their own behest to put out a plan showing the redevelopment of the airfield. For those 50-odd people employed at the airfield it provides work and it also provides a wonderful service for the city of Caloundra. But, at the behest of the developers, the state government has seen fit to propose a railway line down one of the runways. How ridiculous can you get? The air museum is worth millions. It would cost untold millions to move such a thing, but that is on the cards. Of course they say they will build an airfield, but we know they would not because it would cost them so many millions that the ratepayers would object. It is insane. If that is not corruption it will do, as far as I am concerned. I think that governments—state, local and federal—need to explain why these massive anomalies exist. Thank you.

Mrs Sava—Good morning, Mr Chairman, members of the committee and members of the public. I am speaking as a member of the Association of Independent Retirees, and I generally agree with many of the submissions as listed on the government website. This statement can be further qualified by a separate document if necessary. Many of the issues are common issues.

Amongst some organisations, there is mention of children looking after ageing parents, such as in California. I can understand that a government could find this advantageous. I would like to

address this issue of children looking after ageing parents. It is fraught with danger and will probably put family abuse back into the limelight. It is felt that there is already a barrier between generations, partially due to the younger generation having an increased usage and knowledge of electronic methods of communication and partially due to them seeing spending rather than saving as a way of life. Seniors are looked down upon by their children and grandchildren because of these issues.

There is also a total lack of respect for seniors as, to many younger ones, seniors are seen as living too long. This is reflected by the lack of savings of the next generation as there has been the anticipation of inheritance taking care of their senior days. This could then impact on the quality of care that children give to ageing parents. One could envisage children saying to their parents, for example, 'If you do not give us our way, or if you do not help us financially et cetera', it would then be implied that 'We will not look after you when it is our turn.' A form of blackmail could exist.

My grandmother, a pioneer, gave her farm to the youngest son with the verbal agreement that she would be allowed to live there for the rest of her life. She was given a one-room shed with a one-plate burner and occasionally allowed to mix with family members. Eventually the son's wife suggested she be moved into the city and she had to ask for family assistance from the rest of the family in order to eke out a living until she died.

I am also aware that there is an opinion that singles are overcoming families in the community and this leads to further misunderstanding in the committee, which will need to be addressed by this committee. Further, we as a community based group would ask that people of our generation be asked to take part in any planning committees formed in resolving some of the issues raised in this inquiry. To further engender respect between the generations, perhaps intergenerational communication could be established whereby meetings or forums are held where grandparents adopt a teenager and vice versa, and trade knowledge and techniques. This was discussed at a Queensland state government forum held last year at Caboolture but it never got off the ground. Thank you for listening to this verbal submission.

Mr Bywaters—I represent the Superannuated Commonwealth Officers Association and, by referral, the Australian Council of Public Sector Retiree Organisations. Our concern is to address discrimination items under the terms of reference. I have been directly involved in the application of Commonwealth superannuation since 1948. Our first priority is the justification established before two Senate select committees on superannuation to adjust Commonwealth superannuation pensions by a wages based indexation in lieu of the CPI. The Senate committee concerned recommended accordingly.

Also a priority is the immediate concern for beneficiaries from untaxed superannuation funds who do not receive the full benefits from the better superannuation legislation from 1 July 2007. We recommend that these self-funded retirees be provided with the full benefits from the better superannuation legislation. These superannuation matters have very serious implications. In particular, there are something in the order of 120,000 Commonwealth civilian superannuants, plus 60,000 Commonwealth civilian deferred beneficiaries. In addition, there are over 60,000 military superannuants, plus a significant number of state and local government retirees—and parliamentary benefits, in all probability. In total, we have identified close to one million electors dependent on public sector superannuation benefits for which they were required to contribute

from their taxed salary during their employment. We view this as a very serious thing for our electorates in Australia. Thank you.

Mr Bright—I am the former manager and owner of Healthequip. I act for a group of retirees who have lost millions of dollars to organised crime. My mother is 87 years of age. In particular, the day she came out of hospital from a cancer operation she was stood over by a common thug who tried to extort money from her. I am encouraged to read a book called *The Little Black Book of Scams: A Consumer's Guide to Scams, Swindles, Rorts and Rip Offs*, put together by the ACCC. The ACCC ran a case against the bank and Judge Susan Kiefel ruled for increased valuation. I have at this time 50 scams listed. I have received an apology from the Premier of Queensland. The Attorney-General Rod Welford stood down, personally apologised and said that this case is in the hands of the Queensland police.

The Queensland Law Society was chosen by the Crown through both a colonel and Judge Pat Shanahan. He said that he had 14 cases in front of him and the best case out of the 14 was mine. He failed simply because he was looking at cases involving solicitors. In our case it was a barrister. She worked with a plea bargaining scam that was put together by the DPP to protect the Commonwealth Bank fraud, where the Commonwealth Bank personally paid me 25 grand and was directed by the first Supreme Court Judge Mackenzie to go and mediate a solution. They refused to mediate and give a solution. Judge Margaret White ruled to gain disclosure. Why did the bank pay me \$25,000? Anybody else would have to give a valid reason. The bank wrote, 'We do not give disclosure to banks' business.'

Judge Muir confessed to me in court that he had no understanding or no clarity as to why we ran a \$10,000 trap, which was set up by the Queensland police force, and is explained in section 32 of the EPA Act. It is supported by the EPA Act, which is an integration of the Environmental Protection Act with both criminal law and the SAA rule book, which is engineering law. We were scammed in the Magistrates Court, the District Court, the Supreme Court and, moreover, in arbitration by a barrister who was protected by Rod Welford because they went to university together and they were good friends. He realised after two years, when she pleaded guilty to six scams with six banks where she forged my manager's signature, that my barrister was a criminal, and she confessed that she was a criminal. That barrister was protected by a friend, the Attorney-General, who overruled every judge in Queensland, because that is the law. You will see that if you study the Fair Trading Act, the Vexatious Litigants Act and the CMC Act. The CMC have done absolutely nothing.

We are getting very close to closure. With the Australian Tax Office, the investigators, my accountant was paid \$10,000 for a damages confession. The CIB told him to keep his mouth shut. I have been charged with theft, assault and child molestation. Can you believe it? Within one hour of leaving Channel 7, I was charged with molesting a schoolgirl in the Supreme Court coffee shop. Needless to say they dropped the charges. It was a DPP scam to shut me up. My girlfriend at the time was a nurse. She continually tried to commit suicide because the CIB were framing her, standing over her and intimidating her. I have suffered bikie gangs and thugs coming to my home to try and smash my head in. Boy am I passionate, and I am going to get justice, thanks to your help. The ACCC failed and only provided one witness, an architect. Judge Susan Kiefel ruled that there was insufficient evidence. So they need support from people like us.

CHAIRMAN—I would like to thank our first five participants for their fulsome contributions.

[12.25 pm]

McCAULAY, Mrs Meg, Member, Christian Science Church, Nambour, Queensland

BACKER, Mr Jack Cornelis, Private capacity

CRADDUCK, Ms Lucy, Private capacity

NOAKES, Ms Elizabeth Joy, Private capacity

SULLIVAN, Mr John Donald, Private capacity

CHAIRMAN—Welcome to this roundtable. Mr Sullivan, you will be the first person to make a contribution in this group of people.

Mr Sullivan—I would like to speak on the discriminatory penalties of the Retirement Villages Act 1999. My name is John, but I am known as John Adversity. The only way I can describe the despair and depression of our generation is as follows. If you happen to reside in a Queensland retirement village—and more so perhaps if you have, by necessity or adversity, invested your remaining modest capital in a village residency—your money fully retained by the landlord and makes you the direct target of an unprecedented legislative impost of financial, emotional and psychological abuse from the Queensland Retirement Villages Act 1999, with its section 97 maintenance and repair funding, now dumped on tenants unilaterally whether you hold equity or not.

My six years experience of this wilful and most deplorable acceptance of this massive investment dollars desperatism demand by a government agency charged with protecting honesty and fair trading has cost me nigh on \$4,000 of pension so far. That is just to care for units now scheduled for demolition. It is a strange law. The most unforgivable aspect I have found is the total absence of respect for aged people making inquiries. Administrators of the law—the ones I approached, anyway—I found terse, evasive, uncooperative and invariably hiding behind confidentiality. At least 50 per cent of written requests were totally ignored. To this day no person will answer my question: why was the maintenance and repair fund never classified as a key issue for consultation or discussion within the draft legislation working group?

It seems quite impossible to me to have a government department place a garnishee mechanism on the pension income of just one segment of the community, but that is just what the maintenance and repair fund is—a garnishee in perpetuity and a classic example of successful manipulation in the machinery of government. I found that professional help was very restricted. The Ombudsman was helpful but apologetic. We are as on our own as ever, but I feel the only fair solution can be made by federal government standardisation. That is what I would personally like to see. Thank you for listening.

Mrs McCauley—I am the assistant of the Committee of Publications for Queensland for the Christian Science Church, and I am also a Christian Science nurse. Christian Scientists are not

Scientists; they are not members of the Church of Scientology. The only way we differ from the rest of the population is that we rely on prayer for healing, although there is no church edict to say that we cannot attend a doctor if we so desire. As a Christian Science nurse, my concern is that there appears to be no accommodation under law for senior Christian Scientists who are put into hostels or nursing home care by family members who are not able to or no longer willing to care for their relatives. At that moment they are stripped of their right to choose what care they want and must submit to medical care. This causes much distress to these dear people who have found Christian Science an effective health care for most of their lives, some of them for 50 or 60 years.

It would be of great benefit to these Christian Scientists if an accommodation could be made where, in place of a doctor being called if they become ill, a Christian Science practitioner is called to support the person through prayer, which is the normal course of action taken by most Christian Scientists. I would also like to express some concern for the advance health directives. Under Queensland law, if you want to sign an advance health directive, you have to go to a doctor to prove that you are of sound mind, but in other states there is an accommodation where you can choose either a doctor or a lawyer. We were wondering if this could be standardised throughout all the states so that we could choose to go to a solicitor rather than to a doctor.

Ms Craddock—I am a lawyer; however, I am not here in any capacity other than as an interested member of the community and as someone whose parents are in a retirement village. I have an observation about the advance health directive. In Queensland it involves both a certificate from a doctor and going to your lawyer. They are both supposed to make sure that you know what you are doing before you sign it, which is the process I follow with my clients.

I want to make an observation about retirement village leases. First of all, in reference to a comment that the gentleman made before the open forum, I agree that they can be very lengthy documents, and having read several and had to explain them to clients, it is lengthy both for the solicitor as well as for the client. It would be good if the government federally could encourage these documents to be in plain English, as some mortgages are tending to be, so that it encourages clients to want to read them themselves instead of being bogged down in the legal jargon.

One thing we need to manage better for people moving into retirement villages, when they come to make the decision, is to manage expectations. If they were purchasing a house or purchasing a unit in a body corporate complex, there is an understanding that when you wish to move out it does not mean you will get your money immediately because you will need to market and sell the property. Yet I know from my own experience of when my parents moved into a retirement village, there was an expectation that it was something different; they thought they could move out tomorrow if they wanted to and recover their money tomorrow, which of course is not the case. It would be good if something was in process that makes it clear from the start that a retirement village, whilst it is a different scheme, is not that dissimilar from having your own home; it is simply a different choice and if you did want to move out, there is a delay.

I have another observation for the benefit of the committee. My understanding of freehold retirement villages is that, whilst somebody might own the underlying freehold for the land of the unit, the procedure some villages follow is that, if you wish to enter into the retirement village, you have a contract from perhaps a previous freehold owner to buy that unit. But as part

of the ability to be there which is tied up with contractual obligations, once you own a freehold, or as part of the conveyancing process, you must then sign a lease of the freehold to the village and the village will then give you a lease back of exactly the same unit. Therefore, effectively, you are bound by that second lease with similar terms to somebody who simply had a leasehold unit in the first place.

As with the advance health directive, regarding enduring powers of attorney, the federal government should look at having one system in place to make it easier when people move from state to state. It might be that you have an enduring power of attorney executed in Victoria. You then relocate to Queensland. If you fail to execute another document, by the time you need it you may not be able to use it because it is a document from Victoria relevant to Victoria.

Finally, and this is an area of my own research and interest—this is a difficult area, one that requires further investigations on a worldwide basis—there is fraud and financial abuse. The internet is a wonderful thing but it is something that is scary for some people. We tend to focus a lot on how things can be done and facilitated through the internet. We need to still remember that you can perpetrate fraud without any means of use of the internet, without necessarily even means of use of computers, and people need to be more aware and conscious of their own security and do something as simple as shredding envelopes that come to you with your own address on them.

Mr Backer—I wrote to you back on 25 September in the following terms. I said that older people have similar problems with the law as most other people. They view the law very sceptically as they cannot find any justice as far as the law is concerned. Most laws are a lawyers' picnic and, when it comes to dealing with any aspect of it, people become very disillusioned. Your committee intends to look at six aspects—in particular fraud, financial abuse, general and enduring power of attorney provisions, family agreements, and discrimination and barriers to all those Australians assessing legal services.

You state in your media release that studies have suggested that older people are less likely to take legal action where abuse has occurred. May I suggest to you that people in general are reluctant to take legal action if they know that it is going to cost them an arm and a leg and that, in the end, they will not receive justice at all. You also make reference to the fact that the legal framework is complex and point to the fact that the laws are made too difficult to be understood by mere mortals instead of a simple set of rules that can be understood by everybody. Also, we need judges who have not become anaesthetised and totally immune to the problems of ordinary people. If you can solve these problems you will have come a long way in overcoming many of the difficulties we face in Australia today.

I would like to add that there is another problem I feel very strongly about. Older people have to face death sooner or later, yet parliament has decided that euthanasia is not the right thing. And yet, if you look at the statistics of suicides, the highest rate of suicides is among males aged 70 and over. That rate is around about 47 or 48 per 100,000, compared with youth suicide where it is 23 per 100,000. I ask you: what is the dignity that you get in death when you blow your brains out or if you hang yourself. The police and ambulance people have to clean up the mess. If we do it in a reasonably normal manner—I experienced it myself when a friend of my father's in the Netherlands went through the legal processes there and was allowed to go this way. I

found that the death that occurred—and I was a witness to it—was a dignified death. I think that is what we all aspire to.

I remember that, in a television program called *Insight*, a previous Attorney-General of the Commonwealth under the Whitlam government stated that he would prefer to commit suicide rather than have a lingering, painful death. Those are the sorts of things we should consider. This committee, as far as I can see, and the Commonwealth have committed fraud and financial abuse in not allowing people to die this way. They have manipulated general and enduring powers of attorney provisions to make sure you cannot put it in there. Family agreements, discrimination and barriers are general sorts of things. You know my views; I have expressed these before to you, Mr Chairman. This committee would be wrong if it did not look at this question of euthanasia very seriously. It is a question that older people have a view about and you should consider it very seriously.

CHAIRMAN—Thank you, Mr Backer. Yes, you and I have had conversations on that topic.

Ms Noakes—I am a pensioner, a senior. I live in an independent living rental village. I am sorry, I have not written anything out; I did not think I would have the courage to come up here.

CHAIRMAN—We are not that intimidating.

Ms Noakes—Thank you. I can see that. We have a lot of DVA people there and they do not care; they just put up with anything. I feel as though I cannot follow things up on my own. I need some support and I do not know who to go to. We have a manager who was a gardener. The people who look after all the villages—they are just managers, because people own the units—do not listen to us. We have to put everything in to this manager, who is not professional. She gets upset and she upsets us. I just wanted to know who I should go to.

Interjector—There is a lack of training in the administration of the industry. That is what you are after.

Ms Noakes—Definitely. But, as well, she does not get paid.

Interjector—But there is that problem of lack of training.

Ms Noakes—Yes. She is the only one who will put up with it.

CHAIRMAN—I am not quite sure whether this was intended as an interactive session. Certainly it is the first one we have had, but there is no problem with it. Ms Noakes, if the gentleman from the association of Queensland retirement villages is still here—

Ms Noakes—Is that Phil?

Interjector—Yes.

CHAIRMAN—he might be prepared to have a bit of a private chat with you to point you in the right direction afterwards. Feel free to continue.

Ms Noakes—I have never been married. I have worked for 50 years. I have never saved enough money to get a house or a first home loan or anything like that.

CHAIRMAN—Thank you for that. I do not think that there are any other participants in the session. Those at the table can be excused. I thank them very much. We will send all 10 of our participants a draft of what they have said to check to make sure that Hansard has accurately recorded what they have said. We do have one more witness, who wants us to take his evidence in camera. On behalf of the committee I thank you all for your participation. I hope that you found it interesting. We have certainly found what has been told to us very useful. As I said at the outset, the reason that the committee has these open forum sessions is to listen to accounts of individual circumstances from people who, for whatever reason, have not been able to put in a personal submission. That gives us, as an all-party committee, the broadest possible range of evidence to take into account when framing our recommendations to the Attorney-General. I think Mr Thomson would agree that our committee works on a bipartisan basis. Often when we have a contribution you do not know who is Labor and who is Liberal. That has helped us as a committee to achieve the best possible outcomes. Thank you very much.

Resolved (on motion by **Mr Thomson**):

That this subcommittee authorises publication of the transcript of the evidence given before it at public hearing this day.

Evidence was then taken in camera—

Subcommittee adjourned at 1.09 pm