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SUBMISSION TO

**HOUSE STANDING COMMITTEE ON
LEGAL & CONSTITUTIONAL AFFAIRS**

SUBJECT

INQUIRY INTO OLDER PEOPLE AND THE LAW

From:

Robert W Harvie

I have no objection to any matter in this submission being reprinted.

BACKGROUND

I am 72 years old. My working life was spent mainly in finance with the last 10 years as owner of a Postal Agency, having taken early retirement at age 54. I moved into a retirement village at 65 and believe I have a fair idea as to how the elderly view their situation. The entering of a Retirement Village was supposed to be the best lifestyle move I ever made for my wife and me. I soon learnt about the apathy of the elderly and their control by the management of the Village. Since June 2000 I have tried to obtain a 'fairer go' for this type of extremely vulnerable citizen.

The elderly are subjected to many abuses, intimidations, coercions, threats, deceits, falsehoods etc. by all sorts of people in particular operators, management, tradesman, family, 'scammers' and con artists etc. Unfortunately 90% are prepared to sit back and take all of the foregoing. They (elderly) will talk about it, but not prepared to do anything to better their lot. It is on their behalf one of the 10%, who is prepared to speak about their plight, as I have been at the coal-face. I was Treasurer of a NSW Residents' Association for 3yrs and this gave me an insight into what is going on and being carried out in this field. Many residents of various Villages, from rural areas through urban to city and coastal ones, would contact us to explain some concern they were having. Most of these contacts had the same or similar problems and abuses to me as covered above.

CURRENT SITUATION

The current situation has arisen because there is no doubt that lawyers or those with a legal background formulate the legislature that goes before the Parliament, hence their complexity because they (Lawyers/Legal people) are not going to do away with their livelihood. A similar problem occurs with the Health system. Doctors rarely prescribe a 100% cure and the Pharmaceutical Companies never manufacture a drug that will 100% cure one for the same reasons as quoted for the lawyers etc. above. Many elderly will not contemplate going to Court, because it scares them, to seek satisfaction of their complaint, abuse etc. Main reasons being that they were born in the 1920's, Depression (1930's), WWII (1940's) and the 1950's. They were educated, but not to the extent that people are these days. They rarely borrowed money, respected authority, generally obeyed the Law and trusted people, who stated they were going to do something or deliver the goods. How the world has changed since those days.

Most have a short time span if matters are not satisfactorily resolved quickly then they are more likely to give up irrespective of whether they are right or wrong. Therefore if any proponent in a Court case can draw matters out then they (proponent) will always win.

Unfortunately the large % age of residents are women 75+ at least 80% if not higher. These women are the easily coerced, intimidated etc and therefore the most susceptible and vulnerable to the abovementioned abuses.

HOW CAN THE LAW MATTER ASSIST THE ELDERLY

1. Reduce the complexities of the Statutes that they introduce. Why make life complicated?
2. Write the Laws so that they can be understood (plain English). Many current elderly have limited educational skills and this makes them particularly vulnerable.
3. Because of their mind scale (elderly) insert a time frame into which a court case can run for. Giving the Judge the power and sole responsibility for handing down the outcome of the case if one side wishes to draw matters out. You only need to look at the Court Lists to see the number of cases that are continually adjourned. Can this be construed as Justice?
4. Introduce an Ombudsman, Disputes Commission, Tribunal where the elderly can go to discuss their complaint etc. prior to having to take legal action. This would help them to overcome their timidity in relation to Laws and Legal Systems.
5. Reduce the costs of legal actions, as these are a major factor that the current crop of elderly deeply worry about. However this may alter as those who are better educated come into this 'age field'.
6. Rights are something that many elderly do not understand.
7. I know it is hard to teach 'old dogs' new tricks, but an educational scheme, brochures, learning aids could help break the negativity attitude of the elderly towards the Law and cause them to seek rectification of their justifiable causes.

THE AREA THAT THE LAW COVERS IN REGARDS TO MY SPHERE.

The Retirement Village area that is basically a State Jurisdiction, although there are many Federal Laws that we have to take into consideration. Regrettably many of the Operators/Management Companies are becoming larger interstate and globally ones that makes it extremely difficult for people of similar ilk as myself to keep up with all the twists and turns that these Operators/Companies seek to introduce. Usually means that you have to look up a whole new raft of Laws to put yourself as near to a level playing field that you can get it to oppose matters they wish to introduce that maybe to the detriment to the Villagers in these complexes and not covered by the State Legislature.

The Elderly have done all their fighting during their working years. Bringing up children, educating them (children) to a higher standard than they achieved, paying off their homes and when they retire they expect this to be a period of rest, relaxation, free of worry and do many of those things that the previous 30/40 years did not permit. Unfortunately this often is not the reality, many of them will put their heads in the sand (figuratively speaking) and trust that the problems that have arisen will magically disappear and go away, but regrettably by becoming a 'mushroom' it will not. Eventually it will come to a head and they will have to face that their quiet sojourn has been turned upside down. So it is better to face their nemeses and use whatever skills or resources that they possess to get those wrongs/torts reversed or sorted out. More understandable and easy readable Laws will go along way to solving many of their problems.

FURTHER INSENSITIVITY BY GOVERNMENT

In April 2004 another villager and I had a meeting with the then State Minister for Fair Trading, Reba Meagher, who advised after hearing our complaint indicated that she had been hearing a number of serious problems with the Retirement Villages Act (1999). Shortly after that time because of the anomalies in the Act Minister Meagher brought forward the Review that was due in 2005 by 12 months. There was a Clause in the Act that stated at the end of five years the Act was to again be looked at after its passing into the Statute Books.

In Sept 2004 an Issues Paper was available to all interested parties. The report called for submissions setting out the basic problems that needed to be considered in any Review. Including the 50 Recommendations from the earlier information submitted to the Department. A cut off date in Nov 2004 for submissions was given by the Government (NSW State) so that interested persons could respond. The responses came from mainly by stakeholders (Retirement Village Assoc. (operators) ACSA (Church & Community) and the Retirement Village Residents Assoc. (the vulnerable Residents)) and 300 other members of the public. The abovementioned Minister was given another portfolio and our new Minister was John Hazistergos by the time he was fully briefed and acquainted with the problems the Industry was facing. He in turn was transferred to another portfolio when the Premier Bob Carr resigned. Our new Minister appointed was Diane Beamer who has held the portfolio since ...2005.

This meant a further delay in bringing the Legislation forward whilst the Minister was again brought up to speed. M/s Beamer set her own agenda and visited numerous villages throughout the State to get a feel for what the Government had in mind.

The Legislation was finally introduced at 3.51 p.m. on the final day of sitting i.e. the day that the State Parliament broke up for the Christmas period (2006) and will not sit again until after the State Elections. The Bill was issued as a Consultation Bill and again called for submissions to be made. In other words the State Government is seeking a further Review of its Legislation before it puts its finalized Statute into Law. That is surmising that they win the forthcoming election. Should there be a change of Government then we really do not know where we stand.

The Consultation Bill as stated above allows for a further review of "the Review" and any relief for the 'vulnerable elderly' from the excesses of the 'big business' end of town will be negated and further eroded. Legislation that the elderly particularly those that are on a 'licence' (that is where they generally have given an interest 'free loan' of many thousands of dollars normally 90/100% of the purchase price of the equivalent of the buying of a unit/villa/townhouse of similar size in their area with no security whatsoever) for the right to live in such premises. These moneys (interest 'free loans') will still remain unprotected and further 'Woolcott Courts' could be in the offing.

Finally

Thank you for allowing me the opportunity to put before you my comments on behalf of the elderly.