

25 May 2016

Submission: Consumer Law Review

1.00: *How I view the relativity of the review’s objectives to the needs of residents living in retirement villages and residential parks that now have need for assistance under consumer law to reach beyond States’ legislation applicable to those residential facilities:*

1.01: Assuming that the issue surrounding the present definition of ‘consumer’ is revised to reflect today’s more wide-spread realities – i.e. the \$40,000 limit is eliminated completely:

Issues

Issues that have been raised about the definition of ‘consumer’ include:

- whether the \$40,000 threshold remains appropriate and relevant in today’s market

and after having viewed the stated “**overarching objective**”, being:

To improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

as well as the **Regulation Impact Statement** that accompanied the ACL:

National consistency in consumer laws provides a strong argument for a national approach as consumers and businesses would only need to be familiar with a single, national law. It would empower Australian consumers and businesses to participate in national markets with greater confidence, and result in compliance cost savings for businesses as they would only be required to comply with a single national law, instead of multiple regulatory regimes. Consumers would also benefit from access to consistent remedies and legal certainty, regardless of where they reside in Australia.

I contend that those commendable objectives relate to the needs of all residents (being bona fide consumers) who are already residing, or intend to reside, in retirement villages and residential parks throughout Australia and who are subjected to the provisions of their residency contracts which determine the conditions under which they occupy their premises.

1.02: Those residents are in need of additional legislative protections by way of:

- Federal legislation that will provide a simple mechanism to decide a specific range of disputes between residents and operators without residents or operators having to resort to the potentially distressing, ponderous and

costly Tribunal and Court processes, frequently evidenced to be failing in application and enforcement within the States' individual procedures;

- Appointment of a Federal Ombudsman to administer a specialised department to which residents with grievances, providing they reside in Australian residential facilities, and the operators of those facilities, could apply for resolution of their disputes (operating in a similar way to the banking Ombudsman for example) under the provisions of specific 'dispute' legislation designed to dispense with individual States' legislation involving Tribunal or Court processes as the available option; if the matter could not be resolved through the Ombudsman then the applicable State legislation could still be adopted as a remaining choice.

2.00: Examples of issues that have arisen in the NSW retirement village in which I reside which point to the suitability and desirability for primary intervention by an Ombudsman in preference to either party having to resort to Tribunal applications and hearings:

2.01: Since 2011 eleven Tribunal cases (the majority challenging whether the cost of certain items was residents' or operator's responsibility) have already been heard and decided usually many months after the application is lodged. The majority of the Tribunal's decisions have well favoured residents' positions. Two of those matters when 'won' by residents were taken by the operator to firstly the District Court before the operator dropped that court and proceeded to the Supreme Court which immediately directed the matter be returned to the original Tribunal. The matter took well over 18 months to resolve and the final outcome did not disadvantage residents' position after all the drama.

2.02: One Tribunal application, commenced by the operator on 10 December 2015 many months after residents had first disagreed with certain expense items included within the operator's proposed budget for the year to 30 June 2016 (FY16) but considered not to be residents' cost responsibility, is still unfinished, and therefore undecided, to date. Following a two day start in April 2016, dates for the three day continuation have still not been set by the Tribunal. Both sides have to have legal representation and the anticipated total legal costs for both parties combined are estimated to probably exceed \$300,000. Based on past time allocations set by the Tribunal, final decisions, which will certainly affect residents' financial contributions for the FY16 year, will probably not be given by the Tribunal until possibly 3 or 4 months after the financial year is over. By then the proposed annual budget will have 'expired' so the rulings may become meaningless.

2.03: The village operator's failures to correctly comply as ordered under other past Tribunal decisions has frustrated, distressed and unsettled residents' entitlement and expectations for a quiet life in retirement. Many of past orders required the operator to rectify originally defective construction faults in homes. The operator's failure and neglect to rectify many defects has meant that many residents have had no other choice than to live with serious construction faults, sometimes for many years. Other orders were for residents to receive reimbursements of money, either not paid or not paid as ordered. The extent of these defects and the operator's other failures, is well documented and available if required. The non-

compliant behaviour of the operator of our village appears to reflect their contempt of a system that is failing to protect the interests of vulnerable and elderly retirees

2.04: Presently there are approximately 28 different orders that have been issued by Tribunal Members over past years which have still not been adequately complied with by the village operator to meet the times and/or actions ordered. These breaches have been reported to the Commissioner for Fair Trading and also to its Compliance and Enforcement Department, with copies sent to Members of Parliament but to date no positive response has been received to indicate that any party intends to take action.

2.05: Understandably, many residents find such tactics frustrating, and psychologically upsetting not knowing when all these legal matters will end or perhaps leading to unknown consequences. As well they impose unfair financial hardships onto those supportive residents who are then having to raise considerable legal funds to defend their position or else pay the possible penalty of losing their already Tribunal awarded benefits by default.

3.00 Conclusion:

Conceivably, great cost savings and personnel advantages could accrue to both State and Federal Governments by reducing, even eliminating, the numbers of Tribunal and Court hearings being needed to decide disputes between residents and operators involved with community facilities, particularly those issues relating to simple “who pays” decisions for identifiable types of expenses which are left unclear, and therefore open to contrary interpretation, in all legislations.

Most desirable to many elderly residents would be the appointment of an Ombudsman to control a dedicated department of legally qualified specialists in understanding the ‘correctness’ of different State legislations which presently govern the way community living facilities, such as retirement villages and residential parks, now being increasingly patronised as a way elderly resident consumers are choosing to spend their latter years ... and doing so in growing numbers.

If it is considered to be informative to Government I am quite prepared to produce considerable evidence to any inquiry in order to demonstrate that communities like mine continue to be operated with ongoing imbalances of interpretations argued between residents and operators. These issues result in simple disputes being blown into major slow, costly and frustrating tribunal and court hearings from which only attending lawyers benefit in the long run. It is Governments, residents and operators who are really paying the unnecessary price when it is all said and done. Changes to consumer law involving only minimum Government participation could alleviate the difficulties being experienced by this already large class of consumers.

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