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Speech by Adam Graycar:

"State approaches to housing for the ageing"

presented at the National Conference on Resident  
Funded Housing for the Ageing, Canberra, 27th  
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NATIONAL CONFERENCE ON RESIDENT  
FUNDED HOUSING FOR THE AGEING

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STATE APPROACHES

ADAM GRAYCAR  
COMMISSIONER FOR THE AGEING  
Box 1765  
GPO ADELAIDE. 5001

Australia's elderly population is extremely diverse. Of the 1.6 million people aged 65 and over, we find as wide a range of incomes, health statuses, accommodation types, likes and dislikes as we find in the population as a whole. Some older people like where they live, some don't. Some people can comfortably afford their accommodation, some can't. Some need better access to community services, some don't. Most older Australians live independently in ordinary housing but a significant number don't. In South Australia about 4½% of people aged 65 and over live in nursing homes, about 2½% in hostels, about 2½% in South Australian Housing Trust cottage flats and about 1% in resident funded units usually in "retirement villages". (At a rough guess we have estimated that around about 10% of the older population lives with adult children).

Given that some of our older people have substantial assets and given that many of our older people have fears and insecurities about impending dependencies, they are an easy mark for people selling some form of comfortable accommodation, particularly if it includes some form of security. In examining accommodation policies there are numerous types of options, some in the public sector, some in the private sector and some developed by non profit charitable and religious organizations (which do make profits). There are numerous preferences, numerous hopes, numerous aspirations and if we put all of that

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against a backdrop of a poorly planned, privatised, inconsistently regulated federal system, we can see accommodation policies that border on the incoherent, incompatible and incomprehensible.

As we look to the future and see very steep growth curves among our oldest population cohorts we see contradictory elements. We see people living longer and striving fiercely to maximise their independence. Given changing demographic, family composition, morbidity and mortality data we also see the likelihood of greater dependence on formal care. As we try to reconcile these issues we are all faced with challenges in planning, structuring and delivering services which have to be relevant, effective and compassionate, and these challenges are spectacular, formidable and unprecedented.

In the aged care industry, one of the great growth industries in our society, the area of resident funded retirement villages is of concern to us right now. As you are all aware on May 1 1985 the Ministerial Council for Companies and Securities resolved to exclude resident funded retirement villages from the ambit of Companies and Securities legislation. It agreed that each State could choose to enact legislation for its own jurisdiction before July 1 1987. Victoria has already prepared legislation, South Australia and Queensland are in the process of preparing legislation, Western Australia may establish a committee to see if there is a need for legislation, and as far as I can tell Tasmania has made no moves to date.

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In South Australia the government has made an electoral commitment to ensure that persons who take up residence in resident funded retirement villages are accorded that degree of protection and security of tenure that is appropriate for an investment of this type. The Corporate Affairs Commission has determined that there is a need for protecting the investing public, particularly when it comprises older people who are not fully appraised of their legal rights and entitlements, and in consequence are open to the potential for exploitation. Consequently a key feature of the legislation relates to protection of investment and security of tenure.

Many of the older people who invest in resident funded villages do so in the belief that they are buying the unit. In fact many do not appreciate the only entitlement that they have is of a licence to occupy a particular unit in the village and to use certain community facilities. The licence to occupy the unit can be revoked and this can cause hardship for the resident.

Because the "licence" is not an interest in land it cannot be registered on the title deed. Accordingly the licensee is at risk if the village is sold by either the promoter or by a mortgagee exercising a power of sale.

It is proposed that all retirement villages will be required to be registered, and the registration of a retirement village will be noted on the appropriate certificate of title. An owner or promoter of a village will have to ensure that all prior encumbrances have been released, or where this is not possible

that these do not take priority over the rights of the residents.

In addition to providing security of tenure for the village as a whole, and for the residents within the village, the legislation will ensure full disclosure of the rights of the intending retirement village occupier, and an adequate system for settlement of disputes. Details about amounts to be refunded on termination of licence, and details about maintenance charges have yet to be determined. The draft Bill is presently with the Parliamentary Counsel and it is proposed that the Minister will table the Bill before the end of this year and that the Bill will lay on the table during the parliamentary recess and be subject to critical evaluation and wide community consultation.

My Office, the Office of the Commissioner for the Ageing acts as advocate for older people and provides policy advice to the government. It plays a brokerage role in advocacy, policy and planning, and in doing so we have received complaints about certain practices in resident funded villages, issued warnings through the press, and acted as intermediaries in some disputes.

We have received complaints about excessive maintenance (rent) increases, in particular about the heavy handed way in which some increases have been announced and implemented. We have received complaints about salesmen who are more interested in the sale than in the people to whom they are selling. We have had complaints about people unhappy with their

accommodation yet absolutely trapped within the complex and unable not only to move out the complex but unable to move from one unit to another within the same complex and within the same category. We have received complaints about maintenance not being undertaken.

In our advocacy role we have investigated the complaints and made public any concerns that we may have had. We have acted as intermediaries where some sort of dispute resolution seemed reasonable. In our policy role we have contributed to discussions about the structuring of the legislation and also are trying to develop a more comprehensive set of accommodation policies for older people in South Australia. In our planning role we are grappling with what seems to me to be the real crux of the issue, and that is are resident funded retirement villages real estate ventures or aged care ventures? Coming to grips with this question is crucial to the whole future of resident funded retirement villages.

If we are talking about something that is merely a real estate venture, then we can talk about protecting the consumer by ensuring an approved trustee, an approved trust deed, and a prospectus. We can write in provision for security of tenure for the village as an entity and full disclosure of the rights of the intending resident. Seeing that people do not buy their units but in fact are only occupants, then they could be treated as tenants under our Residential Tenancies Act. As tenants they now have (unless exemptions are granted) the same rights as residents in other rented property. We are not able to determine however whether all the procedures of the Residential

Tenancies Act are being followed. Under the Residential Tenancies Act disputes are adjudicated upon and resolved by the Residential Tenancies Tribunal and this is funded by investing all bond money in rental agreements. An extreme interpretation would be to see the licence fee paid by an occupant of a resident funded unit as a bond, and require that fee or part of that fee to be deposited under the provisions of the Residential Tenancies Act. This would be quite fanciful, but logically consistent with a view of resident funded villages as mere real estate ventures. It would not, of course, encourage developers.

If however resident funded retirement villages are seen as part of an aged care plan then we are in a very different ball game. As things now stand in South Australia about one third of the resident funded villages have hostels on site, a further third say they intend to construct hostels, and a further third do not intend to construct hostels. Furthermore about two thirds of all resident funded villages are located within five local government areas in South Australia.

Developing an aged care plan means understanding the dynamics of ageing, understanding needs and services, understanding pressures that apply to service providers, understanding the balance between formal and informal, statutory and non-statutory and understanding the mix of government and commercial, family and voluntary sector support for older people. Our aged care service system is under enormous pressure at the moment as we try to re-orient the balance between institutional services and home care services. The development with resident funded retirement villages will continue to place



pressure on our severely stretched home care services and many of these pressures will be on local government and regionally based domiciliary and district nursing services.

It would be very limited and very narrow-minded to think of resident funded retirement villages purely as real estate activities because if one is to sell to a group of people all reasonably fit, reasonably independent and reasonably self contained, and assume that their conditions will not change, one's view of the world is less than real. This is not to say that the solution lies in drawing up a site plan and saying to people 'this is where we plan to build the hostel, this is where we plan to build the nursing home'. What is clearly important is to understand the capacity of other service providing organisations and determine realistically whether they need to be supplemented or supported. Any concentration of older people clearly places an obligation on the developer to do more than put a roof over their head. It places an obligation on the developer to ensure that their well being is taken into account and that any future deterioration in their mobility or health or any future increase in their dependency can be catered for without incurring massive additional costs for the resident.

What we are talking about is not just bricks and mortar. We are not talking about just the roof over one's head. We are talking about many complex issues - issues of philosophy, issues of services, issues of ongoing care, issues relating to good design, and of course issues relating to funding.

Governments have an important role to play. Governments are not likely to meet all the demands on them in the future and where there are people prepared to develop services for older people then clearly they need support from government. By the same token government has an acute responsibility to its older citizens. The service structure is such that there are limited resources and given the expediency and opportunism that characterise the service structure it seems always to be worth a try to get somebody else to fill the gap. There are never enough dollars, never the right planning and co-ordinating mechanisms and this is most obvious in planning for our older population - securing the right mix of services and the right funding arrangements.

In structuring a suitable environment for our older population we have to seize the planning initiative, develop our allocative mechanisms along credible and humane lines, ensure that we have suitable regulatory activities but ensure that they do not stifle good quality, sensitive and humane service developments, and ensure we have a good theoretical and empirical base for social activity and interventionist practices effecting the lives of older people.