

# TRANSCRIPT

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### Subcommittee

#### Inquiry into the retirement housing sector

Melbourne — 16 November 2016

#### Members

Mr Edward O'Donohue — Chair

Ms Nina Springle — Deputy Chair

Ms Margaret Fitzherbert

Mr Daniel Mulino

Ms Fiona Patten

Mrs Inga Peulich

Mr Adem Somyurek

Ms Jaelyn Symes

#### Participating Members

Ms Colleen Hartland

Mr Gordon Rich-Phillips

#### Staff

Acting Secretary: Mr Patrick O'Brien

#### Witness

Mr Lawrie Robertson, Vice-President, Residents of Retirement Villages Victoria.

**The DEPUTY CHAIR** — I would like to welcome you to this public hearing of the legal and social issues committee. We have Lawrie Robertson here with us, who is the vice-president of Residents of Retirement Villages Victoria. All evidence taken at this hearing is protected by parliamentary privilege; therefore you are protected against any action for what you say in here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. I would like to inform you that we have allowed 45 minutes for today's timeslot. If you could keep your opening statement to about 5 to 10 minutes, then we will have time for questions.

**Mr ROBERTSON** — Thank you for your invitation to give evidence and thank you for your interest in our generation. Our case for reform was given in our submission. It is quite lengthy. My opening remarks are quite brief. RRVV members are customers of village owners and operators. They are also customers of Consumer Affairs Victoria. This should suggest a high degree of common interest. Why then do our various residents submissions and oral evidence reveal significant differences in relation to owners and operators?

Much of our work is in resolving problems. Much of the evidence you have heard from owners and operators, I suggest, focuses on denying the existence of problems or the extent of those problems. For years both CAV and the property council have asserted that all is well with retirement villages because the complaint rate is low. At the first public session the CAV reported 40 complaints for the most recent statistical year, down from 60 in the prior year. Why? Does CAV suggest that system health jumped dramatically? Of course it does not. There is something wrong with the measure of system health. We submit the low recorded complaint rate is the product of CAV's restricted scope. We know of lots of complaints that just simply get rejected.

Owners have for years claimed that people moving into retirement villages pay a discounted price. The property council explained that residents pay for their units in two components — the ingoing amount, and the deferred fee, which it says compensates for the discount. Our calculations suggest that any discount is small because corporate operating expenses and profits consume most of the deferred fee. If you like, at some later stage I can take you through the calculations. It is quite detailed.

Owners argue that the reforms we seek will add to costs. We counter that our reforms will make the system more efficient and retirement villages more attractive. Our written submission covers five topics. The first one is fair, accessible and effective dispute resolution service. In our submission — and most particularly in our submission to the access to justice review, of which you have a copy — we set out what our members want from a dispute resolution service. Take it as a user specification, if you like. Our preference is for service delivery by a specialised ombudsman. Most owners prefer residents to have a government-funded advocate but otherwise to leave the current system as it is. RRVV members' experiences show that the current system is flawed.

Russell Kennedy, a law firm of choice for owners, does not see any need for an ombudsman, and that is in earlier evidence you have received. The Victorian Ombudsman, however, suggests beefing up the CAV service rather than appointing a new ombudsman. Why are there these differences? We point out that the people proposing an ombudsman alternative do not live in retirement villages and most of them do not socialise with residents of retirement villages. Ombudsman opponents also mention the likely added cost but do not acknowledge the likely system-level benefits, such as more effective and efficient use of our funds.

Two is the impact of local government rating on retirement housing. Residents and owners want a fairer system, whether through a differential rate or some other mechanism. We submit that the existing rating treatment is inequitable and a drag on system growth. Firstly, residents pay twice for facilities and services; councils get a free ride out of that. Secondly, current valuation methodology and practice overvalues retirement village units. It means residents thus bear a disproportionate share of the municipal rate burden. Only a few councils recognise this inequity in any meaningful way; it is clear that the remainder will not act unless pushed. We prefer a mandated solution.

Failing that, we see greatly strengthened ministerial guidelines on differential rates and greatly strengthened guidelines for valuers. We have additional detail on that. Your secretary has a copy of our updated and most detailed arguments submitted to the Local Government Act review. Patrick has them and will distribute them if you like.

Three is maintenance. Residents pay for certain maintenance, and many believe the operator does not deliver in full or on time. This suggests a level of systemic failure. In earlier evidence you heard from a Cardinia Waters

resident who explained the difficulties he faced in having construction faults rectified. We also heard a similar account from the residents of Peninsula Grange retirement community. RRVV knows of many like cases. We add that owners sometimes use residents' contributed funds to fix construction faults, rather than pursue the builder. We suggest this is misappropriation of those funds.

Four is residents right to protections and participation in village affairs. Residents want more and more user friendly legislation. CAV acknowledges some difficulty between the Retirement Villages Act and the Owners Corporations Act. This is an understatement. Residents in mixed strata title and leasehold villages urgently need a solution. Russell Kennedy and other owner-oriented lawyers suggest the Retirement Villages Act is okay as it stands. RRVV frequently asks CAV to explain sections of the act. We actually get a very good service from them. However, these explanations reveal that the act simply does not have answers for many of the common problems that trouble residents. Residents want fairer and simpler contracts and independent prerelease vetting of contracts. Russell Kennedy and other owner-oriented lawyers only see a need for some reorganisation of the contract template.

Ryman, an earlier operator giving evidence, and others suggested requiring prospective residents to obtain legal advice before signing a contract. As best we can judge around 75 per cent of new entrants to a retirement village do have legal advice. The fact that these people have legal advice does not mean that they received good advice or understood that advice. We submit that the number of people who received inadequate legal advice presents at least as big a problem as those who received no advice at all.

CAV, Russell Kennedy and owners see recent disclosure changes as significant reforms. These changes are of some value, but they are not the full answer to the problems they seek to address. In this respect RRVV endorses the work of Dr Timothy Kyng, who you heard from earlier. We submit that lack of clarity and specificity in both legislation and contracts inevitably disadvantages residents because it leaves the owners with their hands on the levers of control, and control is what owners are all about.

Five. Management selection and training. Residents want greatly improved management standards. The property council submits its training program is good. RRVV sees it as lightweight and biased. The property council submits that its Lifemark accreditation program is good. Residents see it more as a marketing gimmick than a commitment to quality. Residents involved in obtaining accreditation acknowledge that the required process is onerous but say the lasting practical benefits are minimal. RRVV recommends independent training and licensing. I look forward to your questions.

**Mrs PEULICH** — Thank you for your presentation. You would accept that a retirement village is a business.

**Mr ROBERTSON** — Indeed it is.

**Mrs PEULICH** — I am going to be a devil's advocate, especially in view of the fact that as a society we are going to have to provide much more accommodation for older persons. When I buy into a two-bedroom unit that is my own I can be as transparent as I like, but when I buy into somebody else's business model it seems to me that your expectations are perhaps a little unrealistic. Is there a halfway measure that can protect the necessary investment that is going to be required from the private sector, because clearly governments will not be able to provide for the growth of an aged demographic, and also addressing the needs of concerned residents?

**Mr ROBERTSON** — You might have to prompt me because I want to go back a step. The financial structure, the business structure, of a retirement village is one in which the owner has transferred a lot of the risk to the residents. You will have heard the term 'resident-funded village' or 'self-funded village'. Essentially there are two pots of money that are used to operate a village. There is the operations account, the pot of money where the monthly fee goes into that, and the manager of the village can draw from that to operate the village on a day-to-day basis. The second pot of money is filled either from an exit fee or from taking a cut out of the monthly service fee, for long-term maintenance work. The money that runs the village is our money. It makes no difference to the profit of the business whether they do a good job of running the village or they do a bad job of running the village. This promotes complacency. When we talk about reform we are trying to put some true business pressure into the running of a retirement village. It does not exist today. Yes, we acknowledge that they are business. We acknowledge that they have a right to make a profit. I think they could be a darn sight more efficient in the way they go about it.

As some simple examples, I can quote from my own village: we spend about \$400 000 a year on long-term maintenance. I have worked out that we waste about 20 per cent of that because of the lack of incentive for them to actually do it efficiently. There is no real pressure on the person letting the contract to get the best deal.

**Mrs PEULICH** — Could I say that all levels of government face the same contests.

**Mr ROBERTSON** — Do you want us to suffer the same way?

**Mrs PEULICH** — No. All I am saying is it is very difficult. To me it sounds like you want a nationalised system of aged care.

**Mr ROBERTSON** — Absolutely not.

**Mrs PEULICH** — We are not going to get that level of investment that we are going to require to meet the needs of an ageing community. If you were able to cherrypick the top three reforms that you wanted, what would they be?

**Mr ROBERTSON** — I will give you the top five.

**Mrs PEULICH** — No, three.

**Mr ROBERTSON** — Okay. First of all, undoubtedly, an ombudsman — that is number one on our list.

**Mrs PEULICH** — Is there any other dispute resolution mechanism that is more effective than what is currently in play?

**Mr ROBERTSON** — The reason we arrived at calling it an ombudsman — what we did is we asked our residents what they wanted of a dispute resolution service, and you will find them listed. There are about eight things listed in one of our submissions that you have on your files. Essentially they do not want an adversarial system. They want to be able to get a binding determination quickly and cheaply, essentially free —

**Mrs PEULICH** — But it is never free.

**Mr ROBERTSON** — Yes, that is an interesting point. I come back to my opening remarks and my comment about complacency. I am seeing that an ombudsman would in part deal with that complacency. In other words, by dealing with disputes that currently are either suppressed or just not dealt with at all, that ombudsman would in part deal with that complacency — ginger up the operators to be more efficient. So number one is an ombudsman because our residents, our members, understand how an ombudsman works. They trust an ombudsman. It is a darn good brand. That is why we want it — because it is going to help the introduction of a new dispute resolution system. If you can do something that people already understand, that is going to be taken and taken on more enthusiastically than something that they do not understand.

I hear a lot of questions from the panel here about the South Australian — —

**Mrs PEULICH** — Committee — it is not *Q&A*.

**Mr ROBERTSON** — I am sorry. My apologies. I hear a lot of questions about the South Australian system. It is all very well to have an advocate, and if somebody offered us a free advocate, we are not going to say no to a free advocate, but merely tacking a free advocate onto the existing system is not going to meet the needs of residents. It is still an adversarial system, and to get a binding determination you still have to go to VCAT or perhaps to the Magistrates Court. We want to get determinations before that.

I will give an example of just one resident — —

**Mrs PEULICH** — Mr Robertson, do you know how many complaints to the ombudsman are not resolved to the satisfaction of the complainant?

**Mr ROBERTSON** — To what ombudsman, I am sorry?

**Mrs PEULICH** — Any ombudsman. Have you actually had a look at some of the annual reports? Just because you have an ombudsman does not necessarily mean you are going to have all of those complaints resolved to the satisfaction of the complainant. Many of them are dismissed.

**Mr ROBERTSON** — Yes, and so they should be.

**Mrs PEULICH** — Okay, as long as you know. It is not going to be the golden goose that is going to solve all of your issues.

**Mr ROBERTSON** — I do not think perfection is of this world, but getting better is a good goal, and I think we are talking about a system that is going to be better. I really think you started with a proposition — did I understand it was a business? We very much understand it is a business.

**Mrs PEULICH** — So you have given me one — Ombudsman. Two?

**Mr ROBERTSON** — Ombudsman is one; rates, two.

**Mrs PEULICH** — Council rates?

**Mr ROBERTSON** — Yes.

**Mrs PEULICH** — So in terms of that principle, how does that principle then work, say, with specially developed estates that are not for the retired who also have fees that they pay? For example, in my neck of the woods it is Waterways, a fairly affluent community who themselves are making a claim to reduce council rates for similar arguments except just not age specific? Where would that leave our councils? I mean, I know we all pay rates that are too high; I agree with you.

**Mr ROBERTSON** — It would leave the councils having to rebalance the rates. They do not necessarily have to do with lower revenue, but they have to rebalance the rates. I drive past the Waterways, but I do not know much about it. But I know that in the area that I live there are gated communities that look like retirement villages to anybody who drives in and walks around. I do not see why they should be different.

**Mrs PEULICH** — I am sure the MAV would hold a different view, but give me your third reform.

**Mr ROBERTSON** — Probably — well the third one on the list, basically. It is very hard, as you get down the list, to talk about which ones are next or that, but certainly maintenance is a very hot issue with residents. It is, again, our money often inefficiently spent, and the service that we thought we were going to get when we went into the retirement village we do not always get. Again, one of the fundamental problems is efficiency. There is no incentive on the operator to do a good job.

**Mrs PEULICH** — I understand, and I sympathise. There is nothing like shoddy or incomplete maintenance work. Just the other day I had an electrician come in to do a bit of work, and he left an almighty mess but charged me like a wounded bull. So I agree that the problem of shoddy work and maintenance is a problem across the sector, and I note that there are certainly lots of complaints in the retirement villages.

**Mr ROBERTSON** — By asking me and forcing me into three, of course I have left out the next two, and one of them is particularly important. The reason it is not high on our list is that we acknowledge that if we want new legislation, we are not going to get it quickly — the complex interweaving of the various acts — because you would clog up Parliament just dealing with that alone. So we are conscious that that is something that will come with time.

**Mrs PEULICH** — And it may not deliver the solutions you are looking for anyway.

**Mr ROBERTSON** — But, if I might, I am agreeing with consumer action. In the meantime we would like to see a code of conduct — well, two codes actually: a code of residents' rights and a code of operator conduct. If they want to have a code of residents' conduct too, we will do that as well, but they are essentially two different codes of conduct. Consumer action presented them as a final solution. Our thinking is — and we are not lawyers, so we are likely to bow to them if they know more about how this is going to work — yes, for a more immediate result we would be looking to codes of conduct.

**Ms SYMES** — Thank you so much for your presentation and your very thorough submission. There are a lot of little, small, ideas in here that look pretty simple to implement. Are there some people that are doing okay? Like annual meetings requiring budgets to be approved by committees of residents and things like that — is no-one doing that?

**Mr ROBERTSON** — Yes, they do. Each village does it a different way. The act is not particularly clear about the conduct of those meetings. Obviously the drafters thought it was clear, but with time various things have cropped up wanting changes, like a simple change to the act. At the moment it only allows you to hold all of the items under section 34 at one meeting. Most operators prefer to deal with the budget before the end of the financial year and the annual reports after the end of the financial year. The act does not allow that. So there are a whole lot of little changes which I think could be reasonably effectively plugged in. You are right, there are hundreds of those sorts of things on our list — minor changes that would make a big difference.

**The DEPUTY CHAIR** — I would like to thank you for your contribution this afternoon and remind you that you will receive a copy of the transcript in a few weeks for proofreading. Thank you for your time this afternoon.

**Mr ROBERTSON** — Thank you very much.

**Witness withdrew.**