TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 12 October 2016

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Ms Daniella Stutt, senior policy advisor, Property Council of Australia;

Mr Steven Smith, partner, HWL Ebsworth; and

Mr Andrew Philip, managing director, Retirement Communities Australia.

The CHAIR — I declare open the Legislative Council legal and social issues committee public hearing in relation to the inquiry into retirement housing. I would like to welcome Ms Daniella Stutt, senior policy adviser, Property Council of Australia, Mr Steven Smith, partner, HWL Ebsworth, and Mr Andrew Philip, managing director, Retirement Communities Australia, here representing the property council. Thank you to the three of you for being here this evening, particularly at this unusual hour.

Before I invite you to make some opening remarks, I will just caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. Today's evidence is being recorded. You will be provided with proof versions of the transcript in the next week, and transcripts will ultimately be made public.

I would like to thank you for your submission, which the committee members have received and digested. I invite you to make some opening remarks, and we have allowed approximately half an hour for our session this evening.

Mr PHILIP — Thank you very much. I will open, but Steve and I are both going to talk to different points. As you are aware, the property council is the peak body for property in Australia, and the Retirement Living Council represents the vast majority of retirement villages in Australia and certainly in Victoria. I will just summarise a few opening points, and Steve will also make a few points, talking to our submission as an industry. As an industry we are very busy. There is a lot going on and there is a lot of demand, but it is also very competitive. We are already housing some 43 000 residents in retirement villages in Victoria alone. Why is this so? It really is because we are offering, in many ways, affordable housing.

Retirement villages are probably in some ways a quintessential affordable housing model, and I will come to why we see that, but also villages offer terrific care services and other services for residents and provide solutions to the very sad reality of social isolation, affordable lifestyles for people generally over the age of 65 and in many ways a reduced cost of living. So if you live in a retirement village, you get the enormous benefit of bulk buying — community buying of things like electricity services, telephone services and internet services. Most residents in retirement villages get terrific value for money in their day-to-day living costs. It is just good value for money.

The majority of residents in our villages are happy. There was a McCrindle Baynes survey done a couple of years ago. They surveyed over 10 000 residents living in retirement villages, and overwhelmingly some 96 per cent to 97 per cent of those that responded said that they were happy and that they were satisfied and would make the same decision again to move into a village. That does not mean that we have everybody happy all the time — of course not. We run communities just like any other community in Victoria, and of course not everyone can be satisfied all of the time, 100 per cent. But there is good hard evidence that we are dealing with a very satisfied customer and a high degree of satisfaction.

As you are probably aware, Consumer Affairs last year logged 58 complaints from the 43 000 residents living in retirement villages. That was actually down from the year before, when there were only 71 complaints from those 43 000 residents. So by any measure it is an industry with a very high level of satisfaction and a very low level of complaints.

It is not just residents we serve. As an industry, Grant Thornton, the chartered accounting firm, estimated we provide some \$506 million of benefits to the aged-care and health care systems and \$680 million-odd of benefits to GDP.

Our business is about freeing up housing stock and enabling people to downsize and live in communities where they feel safe and secure. That is what we do. We provide affordable housing, but of course there is always room for improvement. We are certainly attuned to the desire for further reform, and we will talk in a moment about the advocate system that we are proposing, which is a bit different to the Ombudsman system that has been alluded to in the terms of reference.

Most importantly, I wanted to say to you that we think there is a terrific opportunity for the Victorian government to do something for our residents, which they can do at very little cost and very little pain, and that is to get a fairer rating system. There is no benefit in this for us as operators, but if our residents get a fairer

rating system, then we have a better business — so we do have some collateral benefits from it. Our residents are fully self-funded. They do not get any government subsidy. We are not a nursing home; we are not aged-care providers. We are independent living retirement villages that are fully funded by the residents who live in them. A lot of the funding they provide to their village provides things that councils would otherwise have to provide, and yet they get nothing, really, back in return except for garbage collection. So there is a great opportunity, I think, for the government to assist our residents in, I guess, mandating and enforcing our differential rate system.

Finally, we would also like to propose the idea of a retirement village minister to help grow this industry so that we can have a better opportunity for providing more affordable housing.

A couple of the key points that were asked to be commented on in the inquiry include fair pricing. This is probably a much-debated area. As I said, residents in retirement villages are self-funded. The pricing of retirement units is driven entirely by the property market. It is a very competitive market, and if anyone says it is not, I invite them to come down to any village you like and try and sell a unit. It is just not that easy. There are plenty of other villages up the road, around the corner. It is a very competitive market, and pricing is set by that competition.

The deferred payment model that we operate in our industry and have operated for some decades now is all about affordable housing. It is all about providing lower entry costs to residents when they move to a village. The deferred payment method that operates in our industry comprises two components to the price of the unit: you pay some when you move into the village and you pay some when you leave the village, and it is the combination of those two components that makes up the full purchase price of a unit that provides an adequate return for the developer to want to actually do this in the first place.

It has been a good method. It has been a good model that has stood the test of time over many decades, and it is all about providing affordable entry-price housing for seniors. So put simply: you pay some on the way in and some on the way out, but you get to use the facilities and services at the village all the way through.

Fair disclosure was another item that was raised for comment. Operators of retirement villages want their residents to be fully informed before they arrive in the village. There is nothing to be gained for us with residents being confused with what they are buying. Together with the government, in the last couple of years as an industry we have helped to reform some of the regulations, so there is now a very good system for being able to compare and contrast retirement villages because of the very high level of disclosure that is now required.

As you know, the things that were introduced recently were the fact sheets that must be given to every inquirer. Everyone that comes to a village gets a fact sheet. It is in a standard format. It gives you the key information on price, terms, levies — all those sorts of things that people need to know. It is set out in one simple format, and it is comparable from one village to the next to the next. And that is what people use it for. It has been very effective.

The disclosure statement that is now required is quite extensive. For example, on the matter of deferred payments it now has a worked example, so that residents, before they come anywhere close to signing a contract, they know — in fact they have had 21 days to know — what they are going to pay when they arrive and when they leave. The worked examples of what they will pay when they leave are required to be disclosed after 1 year of occupancy, 2 years of occupancy, 5 years and 10 years, so there is a really good, clear disclosure as to what the costs of moving into a village are and what they will be when you leave. And of course the monthly levy for services is also disclosed.

Management standards was another item, and I will just touch briefly on that. It is a really important part of running a village as an operator. Any of the operators will attest to this. If we do not get the management right, we have unhappy customers, and you cannot run a business with unhappy customers. So in that regard the property council has developed the Lifemark accreditation system. It has got 26 standards. Those standards are audited annually by British Standards International, which is an independent body that does this. They come to the village, they compare what the village is doing to the 26 standards, and improvements where they are needed are enforced. It has been a really terrific system for getting a good quality control measure into our villages for the operations.

Also the property council has developed the village manager diploma. This was much needed and really welcomed. It was developed about a year and a half or two years ago. It has been incredibly popular, and it is a course specifically to train village managers, because we acknowledge that the village manager, if he is well trained and professionally trained, he will run good village. It is a tough job, I can tell you. It is a very tough job being a village manager, and if we can give them some very well experienced trainers and the diploma course that the property council has developed, we think that is going to really add to the quality of the management of our villages.

The CHAIR — Mr Philip, we have taken about half of our allocated time, so if you have got some key other points you wish to make, then will have some questions, noting that we have read and digested your submission.

Mr PHILIP — All right. No, fair enough. I guess the key thing I wanted to say really is about the Ombudsman versus an advocate, and we are proposing an advocate similar to the South Australian system. I think in a nutshell it is a much more coalface-type proposal, an advocate. It is much more directly beneficial to the residents, which is what we are trying to protect here. In South Australia — I am not sure if you are aware of how the system works over there — the advocate is just that; they advocate for the residents. So if a resident has an issue that they cannot resolve through one of the other measures, be it consumer affairs, dispute resolution systems within villages or indeed VCAT, they can use the advocate. And if they do not feel they can represent themselves or they might feel intimidated about representing themselves, the advocate will do that for them. So they have someone free of charge acting on their behalf under their instruction. I will leave it there, because I acknowledge you have probably got many questions.

Mr SMITH — The only aspect I would like to talk to is the standard contracts, which I assume would be part of the questions anyway. I thought it might be useful to give you a little bit more background, because in looking at many of the submissions from the residents and residents representatives they seem to be focused I believe on the pre-July 2014 contracts. It is acknowledged that before that time there was a mix of very different forms of contracts and even some which were difficult to understand even for some lawyers. So that is acknowledged, that over time there was a wide range of contracts.

But in 2013, through consumer affairs in conjunction with the property council and a number of the resident representatives, there were a number of meetings over about a six-month period where the view or the idea of having a standard contract was discussed. There were a lot of meetings to try to work through just how far that could go. In the end basically the result was the standard form contract, which has some mandatory terms, some mandatory headings and another section where additional conditions can be put in. That has been in use for two years now and the feedback seems to be very positive.

What it allows residents and their lawyers to do is to compare contracts between villages much more easily than they used to be able to and to understand what the provisions are meant to be under the headings. We think that has been a big help, but I think on this issue of a standard contract the view of the working party was that because of the different legal structures of the various villages it was just too difficult to have one particular contract. The only other state that has actually done this is New South Wales, which has got a similar contract, but again not dissimilar to the Victorian model which is a section with covenants outside of the mandatory provisions.

The CHAIR — I think you are right on that point, that there are some who see this issue through the reforms of 13–14, but we have had evidence from others that the contractual form is still confusing and not user-friendly. Is it your position that it is done basically within the parameters of the variations that need to be accommodated in a contractual form, that it is satisfactory?

Mr SMITH — The difficulty is the industry is very old. It is 40 to 50 years. You have got some villages which are company share, you have got some which have been around for 40 or 50 years, and legally that is just the structure that they are. Then you have got the strata versus leasehold. There are just different tenures that you need to cover. The idea was to make it so you could compare, and with the headings it certainly assists. I am not suggesting it could not still continue to be improved, but certainly that has made a big difference in being able to compare and understand what was intended with the clauses. I think it has certainly gone a long way to improving. Again, as I said, the input from the various groups, including resident groups, at the time was supportive of that approach.

The CHAIR — Is there anything else you wanted to add? I just want to ask one question before I hand over to my colleagues. I know your submission talks about the need to attract private sector investment. You talked about the number of people in villages now and that is going to obviously grow quite significantly. How best to attract private sector investment?

Mr PHILIP — I will speak on my own behalf as well as for other developers on the property council. At the moment we are struggling to find appropriate land to grow the industry. If we can get appropriate land at the right price with the right sort of incentives to develop villages — planning regimes and so on — then I think we will be in a much better space to provide the services we provide. If it makes sense from a business sense, it will attract investment, and it is a substantial investment.

At the moment as an industry we house about 5 or 6 per cent of those people over the age of 65, so there is an enormous opportunity still to attract people into retirement villages. If the business model works and financially works for people, for operators, then investment will flow.

The CHAIR — So is the main impediment or the main issue the planning system?

Mr PHILIP — Land acquisition and planning are two of the key issues.

Ms SPRINGLE — Mr Philip, you mentioned the McCrindle Baynes report and around a 97 to 98 per cent satisfaction rate. But in that same report it states that there is about 39 per cent of people that were not satisfied with the deferred management fees, and also 13 per cent that said they did not really understand it. So can you kind of talk to what you consider to be a satisfaction rate, and why there are some contradictory stats in terms of how people are viewing their situation?

Mr PHILIP — The example of the deferred — I refer to it as a deferred payment, because that is what it is. The deferred payment model has been around a long time, and it started its life really like a reverse mortgage. It was a way of letting people come into a house that they could not otherwise afford and pay for part of it when they left.

So probably what has changed over the years is — that was how it started; it has continued on — in the last two years we have had these reforms in terms of disclosure. So now when someone comes to a retirement village they are given all that information in a mandatory sense, so that they are given a good work example of what the deferred management fee will be when they leave after 1 year, 2 years, 5 years, 10 years. That was not around two years ago, before the most recent reforms, so that has been a real improvement.

So whilst the question you raised may well have related to confusion for residents going back 10, 20, 30 years, the reforms that we have now had for residents moving into villages these days provide a lot more information. It is an arrangement that works well if it is done properly, and the vast majority of the operators in the industry do use the model properly and it does work well. People come to our villages because it is good value for money.

Ms PATTEN — I was looking at the accreditation scheme, which really looks like a positive idea. Can I get an idea of what percentage of the sector would have gone through this accreditation scheme?

Mr PHILIP — I cannot give you an exact answer, because it is a pretty new — Daniella might be able to add to this — —

Ms STUTT — I would have to take it on notice.

Mr PHILIP — Yes. We can take that on notice and give you an exact answer, but it is a new scheme. Prior to it the retirement village association had an accreditation scheme. It has been significantly upgraded, and it has been in operation now for two years, I would say. It is a difficult process. One of our villages took 18 months to get accredited. To get accredited — to meet the 26 standards — is not easy. It is not a simple 'get the files in place and write up a few reports'. It genuinely is a way of running a village with a quality control system. In fact at our Point Cook village the residents drove that; they actually ran the accreditation process themselves. They wanted a village, and we obviously wanted them to do it, but they said, 'Can we get involved and do this?', and they did. They actually created their own accreditation, and all power to them for doing it. They have a village with a very good quality control system across all those 26 standards.

Ms PATTEN — Yes. Can I just follow on from that? The first thing that comes to mind is: is that something that we should look at mandating — a kind of accreditation process for retirement villages going forward? Also, just following on from the Chair's question about the barriers, you mentioned planning, and I am wondering if you can give any examples of where planning could be improved to make it easier for the sector to build.

Mr PHILIP — I will just talk to the second one first. Planning at the moment — we are residential. We are just another form of housing, so we need residential zoning. So we compete directly with all the broadacre estates, which I guess is the larger part of our market, but more recently we are also competing for more inner-ring development sites for what we call vertical villages, closer in to the city, where you cannot get the acreage. So we are directly competing with every other property developer.

Ideally the panacea would be to have a zoning that was identified for retirement villages, and there are areas which suit retirement villages very well but do not necessarily suit other forms of domestic housing, and they are usually very close to shopping centres and very close to main roads, funnily enough. Main roads, in our experience, do not seem to be a major problem; in fact it can provide access to public transport along main roads. So some of the areas where in some of these larger estates if we had a planning regime that prioritised retirement villages in some logical areas — and I would be really happy to work up with the committee as to where those areas would be — I think we could get a lot more better positioned villages and therefore more successful ones, complementing other forms of housing.

Ms STUTT — I will follow on from that as well. Of course the property council would never advocate any kind of intervention per se in the market, but we have seen that also there is no mention of retirement villages in the SPPF, unlike aged care. So it actually gives aged care a leg up, but retirement villages do not seem to get the same favourable treatment when going to local councils.

The other issue that we have identified in all our submissions is that *Plan Melbourne* is completely silent on retirement villages. It talks about our ageing population, but it does not actually go that step further and identify the solutions. So we would also like to see mention of retirement villages and the industry in there as well.

Ms SYMES — Thank you for coming along tonight. I was just wanting to explore a few of the topics that are coming up in some of the submissions that are being made in relation to the pricing of accommodation and the view that it can be weighted to lock people in. I acknowledge the affordable entry and also when you leave, but I think some of the submissions we are getting through say that even if you factor in the entry cost and the exit cost, if you were someone who was wanting to relocate to another village, for example, regardless of how long you have been there, you never get anywhere near to what you put in when you want to exit. I am just curious as to whether you have a view. Do people feel as though once they are in they cannot move because of that reason? Is that something that your members tell you, and if so, what sort of numbers?

Mr PHILIP — It is not something I have had expressed to me. I cannot speak for all of my colleagues. It may have happened at some villages. If you want to sell a retirement unit now in a village, the power and authority to do that are entirely in the hands of the resident, just like it is for me and my house. I could decide to sell my house; they can decide to sell their house. I can set my reserve price; the resident sets their reserve price as well. So the regulation allows for retirement village residents to sell their unit in the normal way, and they can either nominate to appoint an agent to sell it on their behalf outside the village, or they can ask the village operator to sell it on their behalf at the price that they have set. So they really do have an enormous amount of control over the sale of their unit — the timing and the price they might like to get.

Of course the market will dictate what they actually will achieve in terms of price, and yes, when they leave the village there is the deferred payment, but I guess the thing that is often forgotten is that the full price was not paid up-front. Some people will dispute that. I have got evidence of my own in our own business that that is absolutely the case. The price of a retirement unit is generally lower than the equivalent housing in that same area outside the village, and that is the deferred payment model working. It can be forgotten down the track as to what the entry price was, but I guess the important thing, I think, is that the resident actually has complete control over how and when they sell their villa under the current regime.

Mr MULINO — Just a couple of very quick questions. Notwithstanding the reforms in 2014, people obviously face quite complicated decisions when they enter into a retirement community. I am just wondering whether you have any evidence as to what proportion of people obtain legal advice when they sign contracts.

Mr PHILIP — Operationally I can only say it anecdotally because like most operators we go as close as we can to insisting that people get both legal and financial advice, but of course we cannot force people to if they do not want to. But we do our own conveyancing in-house, and I would guess well over 75 per cent — certainly the vast majority — would get some form of legal advice. And this is my own experience; I am not speaking for other operators. So I think there is certainly a vast majority, and probably significantly more than that, who do get advice. As I said before, there is nothing to be gained for operators for residents not to understand what they are entering into. It is a hiding to nothing. We want them to understand, and we want them to understand it warts and all, because an unhappy resident is a much harder problem to deal with for 10, 20 years than is a happy resident. So we want it to be known and understood up-front.

Mr SMITH — The only thing I would add to that is that it should be treated no differently to buying or selling a house. I think if a retiree was selling a house or buying a house that they would get their lawyer or a conveyancer to actually do it for them. I have heard some statistics that a number of retirees for some reason do not get legal advice, and I do not understand that because it has the significance of buying a house or selling a house.

Mr MULINO — In New Zealand, for example, it is mandated; it is one of the options that we have got on the table. The other quick question was: you have provided some evidence in relation to satisfaction feedback. Do you have any quantitative evidence in relation to the levels of comprehension amongst retirement community residents of various aspects of their financial arrangements?

Mr SMITH — That is a really hard one. I do not, and I do not think as an industry we do. I mean, that is quite a subjective question to ask someone.

Mr MULINO — I just thought it might have been part of some of your surveys.

Mr PHILIP — Yes, look, I do not think — —

Mr SMITH — It may well be going forward, because as Andrew said, literally the last two years it has been a watershed moment of disclosure, and I think as new residents come through they are more informed of their decisions based on the disclosure statements and the spreadsheets at the back. So I think we are certainly a step in the right direction. Whether there could be more done — —

Mr MULINO — Because with the one-page development, for example, it is certainly worth testing going forward how much various reforms are adding to comprehension, I would have thought.

Mr PHILIP — Yes, I agree.

Ms FITZHERBERT — Just one question. I was interested in your submission. You addressed the issue of possible further reform in relation to dispute resolution and put the view that a retirement village advocate would best complement the current system. Some involved in the industry have expressed a preference for an ombudsman. I am just wondering if you could take us through the reason behind your preference and where you see the difference being.

Mr PHILIP — Yes. It is probably constructive just to see where we are at. I mean, we do have quite extensive complaint and dispute resolution mechanisms already. Every village must have a policy and a procedure for disputes, and they must report it to residents every year at their annual general meeting. Consumer affairs obviously have a number of avenues with conciliation. They have an arrangement with the Victorian Building Authority to deal with things like building defects, where they can get the VBA down to a village to try and arbitrate and conciliate on defects of a building nature. I think they also provide support for places like the Consumer Action Law Centre, which advocates for people such as residents of retirement villages. So there are some things there. We do have an ombudsman obviously. There is the Victorian Ombudsman.

One thought would be, from just comparing the two, ombudsmen, I think, tend to be used in very large industries and maybe in industries where there is less competition, perhaps, and where there is a real need for additional layers of protection for the customer. We are neither of those things. We are not a large industry yet; we would like to be. But we are not a banking system; we are not a banking financial services area. So in fact at the moment where, you know, 5 per cent of our market are over 65-year-olds — only 5 per cent of people live in retirement villages in that age bracket. So in some ways an ombudsman in our view would be a bit of a

sledgehammer to crack a nut, particularly because the fact is there were 58 complaints last year from 43 000 people. That is the hard evidence that I can work from.

As I said before, the ombudsman, in my view, is a bit of a blunt mechanism for what is really needed, which is coalface support and assistance for a resident who genuinely needs that help. The advocate is much more coalface, I think, in the way it responds. Probably the one thing that I would say is most successful about the South Australian one is sometimes residents do feel intimidated or may feel intimidated about representing themselves against a manager who maybe they do not get on with or an owner who they do not get on with. This gives them a professional person to act for them under their instruction. They provide an enormous amount of information, disclosure, good direction and advice. I was reading the annual report of their advocate in South Australia. They have reduced the number of VCAT-type applications from something like 106 to 6, I think, last year. And that is since they have introduced this advocate system. So that is the reason we think it is the right sort of approach if there is appetite to go another step in the area of dispute resolution and support for residents.

Ms FITZHERBERT — Thank you.

Ms SPRINGLE — Just on that, what would be your thoughts around the idea that a lot of complaints are not taken to formal arbitration, VCAT or consumer affairs because of the idea that the residents are intimidated or it is hard. It is too hard, it is a big process, so they sort of just struggle on themselves trying to advocate for themselves and not getting very far with their complaints or any sort of resolution. Because that is a lot of the testimony that we have heard from individuals so far. It might be quite low in terms of statistics of formal complaints, but the problems are very much there in a larger scale; they are just not be formally dealt with.

Mr PHILIP— Nina, I think, anecdotally, I hear that. I cannot point to any evidence of it, hard evidence of it, but I think that is exactly why an advocate system would be good. You used the word yourself. An advocate is there for the resident. It is to advocate. That is exactly the situation where a resident might feel intimidated or uncertain. It is unwieldy to take on such a thing if they have got a problem with something and to feel confident enough. Well, they have got someone that is batting for them.

Ms SPRINGLE — Do you think it should be an either/or, though, because we have also heard the idea mooted that it could be both — there could be an advocate and an ombudsman?

Mr PHILIP — Well, all of these things have to be paid for. Every time we layer another layer over, on top of consumer affairs — the systems that we run in the villages already — that has to be paid for. The harsh reality is, if the industry is required to pay for it or even respond to it, those costs go into the business and they have to be recovered some way or another. So I think we would be better to find a very rifle shot solution rather than putting more layers in and more of a scattergun-type approach. Look, more regulation and more oversight does not necessarily lead to better outcomes for residents, and it is not just in our industry; that is probably true in most areas where we have regulation.

The CHAIR — I just want to follow up a question, Mr Philip, about the differential rate. We have heard from you already and from a range of other submitters about the diversity of services provided in retirement villages, and that is reflecting the cost of the management and also the cost to buy in. How would you devise a differential rate, given that the range of services provided differs between village to village and that may impact upon the local municipal services that are drawn upon by the respective villages?

Mr PHILIP — That is a good question. There is the hard asset-type benefits or facilities that villages do provide, and they are not all the same. You are right. Some of the hard assets are common, so things like street maintenance, road maintenance, garden maintenance, parks, walking tracks — those sort of things — are pretty much common in all villages, and residents will spend time walking around villages. They are big places.

The hidden, I guess, benefit of retirement villages — and it is applicable to all villages — is, firstly, it is the best neighbourhood watch you will ever get, so the crime rates and so on for people who live in these communities is much lower. They feel secure and safe. The health benefits are common and they do not cost anything there; they do cost things to the operator. You have visiting health professionals in villages, so residents do not have to go and rely on the district nurse as much, for example, that might be provided by the local council. These are services that are pretty much in every village, because every manager that is doing his job properly is bringing care into the village or facilitating care from outsiders.

There are a lot of non-tangible asset-type things. Yes, not every village has got a swimming pool or a library or whatever, but probably most do, except for very old villages, and the council's assets are being used far less because of that. But probably the hidden benefit and the really valuable one for residents is the support, safety and security and health benefits of living in a retirement village.

The CHAIR — Thank you again for being here tonight and for your evidence. A transcript will be with you in the next week. Mr Philip, Mr Smith and Ms Stutt, thank you very much for joining us.

Witnesses withdrew.