

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 12 October 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 Jaclyn Symes

Participating Members

Ms Colleen Hartland

Mr Gordon Rich-Phillips

Staff

Acting secretary: Mr Patrick O'Brien

Witness

Mr Geoff Reeve, managing director, Pinnacle Living.

The CHAIR — I would now like to welcome Mr Geoff Reeve, the managing director of Pinnacle Living. Thanks very much, Mr Reeve, for joining us this evening. I offer you our apologies, as we are running a little bit over time. Before I invite you to make some opening remarks, I will just caution you 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 within the next week, and transcripts will ultimately be made public and posted on the committee's website. We have allowed about half an hour for our time this evening. I would like to thank you for your submission with which the committee has been provided; it has been read and digested. I would invite you to make some opening remarks, and thereafter we will have some questions.

Mr REEVE — Thank you for the opportunity to speak to you. In contrast to the two preceding speakers, I represent a very small business. We are a minnow compared to Stockland. We have three villages of 300-odd units; we only settle about 30 or 40 units a year in terms of new residents moving into our villages. But because of that we get to know our residents very carefully and our competitive advantage compared to the other operators is the ability to know our residents and develop a relationship with our residents. Our business, before I move off that, is a family-owned business. My wife participates in it and we have got a close, small team that are very familiar with individual residents personally. I think it is very rewarding to meet people when they first inquire, to welcome them into the village and then to enjoy their retirement years with them.

The people who are moving into our village are not people necessarily that are frail and invalid, that when I talk to people about our business people immediately think of. Our people, on average, are 72 or 71 years old for males and females respectively. They come from all walks of life. They are tradesmen, they are bankers, they are lawyers, they are real estate agents and everything in between. They are self-funded, so they have worked hard all their lives and saved money. They sell their family home to move into our villages. A lot have a lot of time to make good inquiries, to the extent that they need to, to fully inform themselves of what they are getting themselves in for. In fact in the majority of instances in established villages people already know what is involved in a retirement village because they know other people who live in the village. So these are not usually people that are completely new to the proposition of a retirement village.

We try, in our retirement village, to give a high level of customer service. We try to be sure that we are accessible to our residents so that disputes do not become disputes — so that difference of opinion or expectations do not become disputes. We try to give high-quality housing so that people can buy one of our units and show off to their children about the house that they are living in. We have a diversity of stock from 70 square metres to 140 square metres; single bedroom to three bedroom, two-car garage houses. So we are very market-driven. We have to provide the product to the residents that they need or else we fail. That is our whole value and reason for existing, to provide good housing that we would be happy with for our parents as they retire, just as much as we are for people that are new to us.

I have said in my submission that there are many areas for improvement in the retirement village industry. We have got all sorts of regulations and acts that we have got to comply with, some of which are contradictory, and the consumer affairs review looking at owners corporation villages compared to leasehold villages is a good example of that. I happen to have both, so I can see the advantages and disadvantages of one or the other. I actually like a strata titled village where the resident owns the home but there are legislative or regulatory barriers that prevent you doing that. For example, when you subdivide land, council puts their hand in your pocket and asks you to pay them 5 per cent of the value of the land as a charge to their discretion. They end up not providing those public facilities to the retirement village community that it is levied for, but they might go and build a footy club pavilion — or a darts facility, for all I know. It is just completely detached from the cause and the effect.

I also gave some commentary around the Duties Act and how the State Revenue Office takes every opportunity to put their hands in their pocket even when they are blatantly wrong. We had an example where we had to object on the level of duty that the commissioner for tax levied on the sale of a leasehold retirement village that took two and a half years to settle, despite objection and being under the threat of penalty interest on the level of duty. Sure enough, their 10 times order of magnitude request for money turned out to be wrong, as it always was, as it plainly was. So we are up against it all the time in terms of regulatory compliance.

I am trying not to repeat what has already been said before us. But we talk about planning legislation. When you develop a leasehold village, you are not subdividing property. The main provisions of the planning scheme that one must comply with when you design the form of the village arise in section 52 of the planning schemes, and sure enough they are for subdivisions. So the width of roads, the depth of nature strips, the physical form of the village is not applicable. The poor planning officer has to somehow imagine whether your application is compliant with the planning scheme, which is effectively silent on what the form of your village must be.

That is aside from the fact that there are no particular requirements on many elements like rubbish collection and other public facilities one should provide in retirement villages from a planning perspective, that is left to the imagination and with that comes great variability in the product and the outcome as well, hence the risks go up.

It seems as well that retirement villages are treated just like a lot of other forms of property development in terms of the treatment of authorities. When the opportunity arises they will go hard for as much as they can get to suit their other demands and pressures that are upon them. Just like council with local government rates, there does not seem to be any preparedness to understand what it is that we are trying to create. For example, we have spoken about council rates, and we will come to that, but when you talk about new customer contributions that one must pay water authorities, the water authorities are required to have both a uniform charging regime for the extra load that the people who are going to build the retirement village will put on their system as well as a negotiated framework. When you say to the water authority, 'Yes, but we've got less people in our retirement village, therefore the load should not be as determined by a standard charge for every ordinary house. It should be reflective of half the level of population therefore half the level of load on your infrastructure, Mr Water Authority. How about you negotiate a reasonable charge?', they flat out refuse to, obviously because they can see that there is less revenue in it for them. But nonetheless these are the things that we have to contend with that make the provision of affordable housing for retirees very difficult. In fact they add to the cost of it. There is just no dancing around the issue.

The same level of equitable principle of charging retirement village residents is obviously lost on councils as well, as we have discussed with discretionary rates. I would only reiterate what the gentleman from Stockland and Andrew Philip said in terms of the equitable principles that I think section 3 of the Local Government Act requires council to apply to rating but that they choose to ignore each time they do not apply a discretionary rate.

We have spoken a little bit about standard form agreements. I had a look before, and in 1991, when the first of our villages was first started, the agreements were seven pages long. Before the 2014 amendments for a strata retirement village, the main service provision agreement that the regulations subsequently meddled with was 11 pages long. Now they are 17 pages long, and yet no different term around any different service or product or cost has been changed, just the form of the agreement has blown out. There is 15 pages of disclosure statement. It is the case that the disclosure statements are longer than the agreement itself. I love the fact that people can compare fact sheets amongst retirement villages. I think that has been an absolutely welcome and tremendous initiative on the part of the legislature. But when your disclosure statements are longer than the form of agreement, you have got to think to yourself, 'What are we repeating here?'. It is a barrier to people understanding what they are reading if they care to read the agreement because then they have got to compare the voluminous disclosure statements to the actual agreement.

Our agreements had evolved over time with a lot of feedback and necessary changes from residents who had to read the agreement, and more particularly their lawyers. Their lawyers had given feedback and our agreements had flowed, and they were a fine piece of work because they were smooth, there were no ambiguities, they were in plain English and they were a way for us to compete better compared to others that were lazier with their agreements. Someone could read clearly and obtain easily an understand of what was required of them — what fees were paid in the future.

Unfortunately I think the standard form of contract, whilst it allows there to be some consistency across the industry, which has merit to it, has repetition in it. The same things are stated three times over, and there is no continuity in terms of the flow of reading a document to get a sense of: what happens at the start, what do I do when I pay my money, what happens to the money when it gets paid and what services do I get? It is all chopped up, and to me it is difficult to read. Whilst I appreciate the need to have it standardised, it actually is more difficult. I would bemoan the fact if you took the view that the contracts had to be standardised further. It

might be easier for bigger organisations to pump out a standard form of document, but it stops me being better than them and it stops me putting in terms that I think are better for residents particularly, like what we do with the service fees and what happens to the proceeds if there is a surplus of service fees. You meddle with it at your peril because you actually remove some of the things that allow us to participate in the same space, in my opinion.

Protections for residents, though, need to be codified and they need to be reflected in law as well as in our resident agreements. A lot of lawyers you speak to do not understand the fact that the retirement village is a very strong piece of consumer protection legislation. So I am not trying to advocate for the diminution of residents' rights. I think that they are paramount, and we have got to stop people exploiting others, like our resident group. They need to be codified. That is different, though, from saying that you have got to have the same form of agreement when you deal with each other in terms of buying products and services. Our product is not a commodity. We are not buying water or electricity. You are providing an intimate, personal service with your residents, and the way we do it, I hope, is able to be measured and judged and every day is better than what our competition does. That is how we survive.

Avoidance of disputes — we have a dispute procedure. We have got to have a dispute procedure. We have had two disputes in 12 years. I try to avoid disputes by understanding what is going on in our retirement village community. It is just the best way to run a better village, and it avoids the disputes. One of the two disputes was where the resident was on the wrong track altogether and was trying to actually ask us to do something that would offend the agreements. So in a lot of disputes it is all about education. You have got to say, 'Right, why are we having a dispute? Are we wrong?' And if we are wrong, we change it. If the resident is not quite appreciating what they are aggrieved about, maybe we need to educate people better.

We got a very flat organisation, as you might imagine. If they are not happy with the village manager, they can speak to me, and my objective is to try and run a better village, to have happier residents. So it is a philosophy that I think fits very well with the retirement village industry because we are providing a people business. We are in the service sector. We are not in the property sector; we are providing services. So in my mind there is a lot of attention on disputation. While I understand that there is a lot from the submissions that you have received, I think it is entirely avoidable, if I put it that way.

That is about all I wanted to say as a sort of summary across my submission.

The CHAIR — Excellent. Thanks, Mr Reeve, and I think some of the points you have made from your perspective as a smaller operator are well made. It has been interesting opening remarks, thank you. I note your comments in your submission and also today about the legislation being complex and overlapping. Have you got an idea about how that could be improved or simplified?

Mr REEVE — Well, I love what the property council is advocating, which is a minister with carriage of the responsibility to carefully and methodically look at the interaction of retirement villages with the other legislative instruments. Until we get that, you will never get this harmonisation between different legislative instruments. Whilst we have got consumer affairs that are toiling away doing what they are doing, they have got no regard actually to the welfare of the industry. Their regard, rightly, is to protect the residents. But you cannot get the interaction between the planning from consumer affairs, for example, that we yearn for; we cannot get the interaction with local government, unless there is a champion for our industry. So I think practically the only way you are going to get it is to have someone with that responsibility to look at each of these things: look at the Duties Act, look at the planning act, look at the Local Government Act, look at the Owners Corporations Act. How does the Owners Corporations Act work with the Retirement Villages Act? Now consumer affairs are doing it from a consumer protection perspective but not from how do you practically run a village under both instruments and comply with the law? So that is my recommendation and clear view as to what should happen.

Ms PATTEN — Just following on from the Chair's question, I mean, that is kind of the role of this inquiry. It is to probably not appoint a minister but certainly look at how we can possibly simplify what seems to be an incredibly complex industry that has evolved obviously over the years, as your business has. So I am just wondering if we can reflect again, if we cannot appoint a minister, are there any simple instructions that you think that we should recommend? Maybe looking at the difference between the strata title act and the Retirement Villages Act, for example, if there is anything that comes straight to mind. You list 12 acts here that all interact with your business, which is complicated.

Mr REEVE — So strata title are at a disadvantage straight up, because of the conventional property mechanisms that get applied to them. I have mentioned subdivision. When you subdivide you have got to pay a financial penalty to council. When people buy a house in a strata title village you have got to pay GST on that first sale, whereas in a leasehold village you do not. When you transfer the title in strata title, you have got to pay duty on the transfer as well. So there are all these authority impediments to that structure, yet it is by far the best legal protection — humbly — that a resident can have to own the title. Although I would say there is no imperfection with the charge under the Retirement Villages Act either, but it is something that residents are very comfortable and familiar with them when they receive the title to the document.

But you cannot give it to them, because they are going to have to pay more for the same house when they pay their exit fees in the future. The first exit fee also attracts GST, whereas in a leasehold village it does not. Now I know that that is a federal tax, but these are the impediments to having an owners corporation or a strata title retirement village, which I think is a structure that should not be dismissed.

Ms PATTEN — Is that why we are seeing a number of villages moving away from the strata title?

Mr REEVE — Yes. It is simple economics.

Ms PATTEN — Okay. So I guess around that — I mean, I think I am almost making it more complicated — within the strata titles act you would like some recognition of retirement villages?

Mr REEVE — Well, tax authorities know that they can do it in a different way and avoid the revenue but still persist with the structure on a different basis and collect the revenue. So it just seems a legal regime has been set up that cannot possibly flourish because of that. Now that is where you need the champion to try to understand the subtleties and the implications of the structures and drive the change. I am developing leasehold villages. I would be crazy not to, but all things being equal you would wonder why.

So the issues are detailed and complex, and I think it would be an ambitious undertaking on your part to tackle them. But it is simply recognising that retirement villages have a value and a benefit, particularly as you go into the ageing population that we now accommodate. The average ages are around the 82, 83-year-olds, and low-care residential aged-care is less and less and less available because government is not funding it so much anymore, so how are we going to move into that space?

But there is another area of anti-competitive regimes that we have got to try to overcome. It used to be that government funding was directed to those with a health accreditation, particularly a nursing accreditation. Whereas it does not take a nurse to give home care, for example. It does not take a nurse to take someone shopping, which might assist them living in your retirement village for a lot longer, using facilities that we already have. So there are barriers to entry in the nursing side of things that I think can easily be overcome that is not only federal domain but state domain-type law. That is why I think it is a bigger job, and it is interwoven into the fabric of our legal system. So to unscramble the egg is a big job.

Ms SYMES — I was just curious about exploring the standard contract a little bit, in that you commented that you thought it might prevent smaller operators from competing. I just wanted to tease that out, because when I think of a standard contract I think of a real estate standard contract for sale of real estate, and it is not a mandatory standard contract. It is just what most people use, most people are comfortable with. It has been tested. My old lecturer, who wrote it, would argue that you do not need to add anything else, but people can. I am just wondering what your view of a standard contract is. Do you think that it is not possible to have a standard contract that you can add to but that still has the basics for everyone; or are you of the view that a standard contract would be mandatory? I am just teasing that out a bit.

Mr REEVE — I think if you look at, for example, a standard contract for the sale of land, you have got one page of standard terms and you end up with a dozen pages of special conditions. So it is often a bit of a veneer where the things that are commodities that are not contentious. Like the fact that you have got to attend settlement or in the case of default one person needs to pay the other. They can be provided for as a standard, but the contracts we deal with are somewhat more customised than that because the services and the products that we offer vary from village to village.

Take a bus service, for example. Now we might have a minibus and it might be a suitable use of service fees from residents to pay for the bus, but other operators might say, 'No. We've got to lease a bus, and it's not a

suitable capital cost', for example. There are so many different ways that you can set up your village operations, if I can rephrase it, that standardising the contracts in fact will — —

Ms SYMES — And they are all entwined, are they, in terms of — —

Mr REEVE — Yes, absolutely. That will suffocate the ability to do things a bit more laterally when the need arises. NBN is coming, for example. How is a village going to respond to NBN, and are we all going to have the same response to NBN when it comes into retirement villages? Are we going to start becoming a telephony provider, or are we going to keep away from it? Whereas if it is standardised, how do you contemplate some of those issues, just as an example? We are providing services, and the services are particular to each village, and I would say that we all do it differently to the next person and to the next person. Sure, you can have your boilerplate stuff at the front in terms that talk about how you have to pay a price to come, to stay and to leave, but ultimately they are not the things that really add value to the consideration of buying a village.

Ms SYMES — Part of a standardised contract for services that are provided.

Mr REEVE — Yes.

Ms SYMES — I understand. Thank you.

Mr MULINO — Thanks for your evidence. You have cited the fact that you have had two disputes over 12 years, and Stockland cited the fact that they have had a very small number relative to their number of residents, and there was another provider that gave evidence a couple of weeks ago that had a similar experience. As you say, it is in the long-term interests of the provider to provide a good service and deal with disputes well and so forth, yet on the other hand we have seen through submissions to this inquiry that there is a lot of disquiet and there are many instances of things happening that are unsatisfactory that are probably in many cases below the surface and only came out when people felt they had a safe forum. Like a lot of areas of regulation, we face the challenge where we are going to have to consider some regulatory mechanisms that apply across the whole sector, but what you are really trying to do is to target some poor providers or providers with the wrong attitude.

I guess my question for you is: do you think there are any ways that we could, in addition to thinking about those overarching regulatory mechanisms, think about ways to, for example, share best practice, maybe through a peak body or some other mechanism? Operators that are doing really well could share what works well with operators that maybe are not trying to do the wrong thing but just are not operating well, or alternatively maybe naming and shaming some providers where there are some systemic problems that have been identified.

Mr REEVE — I think it is difficult. We heard from Andrew Philip how it took 18 months to accredit a village in management standards. I have been working on the same thing for about a year, and it is a big undertaking to implement an accreditation. I have got some scale; there are operators with fewer homes and interests than me that would struggle to actually give effect to that accreditation. I think, though, the industry standards that have been set out under the Lifemark scheme are good provisions to have in place in terms of your management structures.

To name and shame, I think your resident body are really good at communicating amongst each other, and they can tell you pretty quickly which are good villages and which are not so good villages. They have got great social networks, generally speaking, and in the community that your village is in you will be known very quickly for having a good village or a not so good village, so I think it is already happening but through informal interaction.

Mr MULINO — Do you think it is informally kind of known around the traps which ones are not working well?

Mr REEVE — Without doubt, absolutely, without any shadow of hesitation. I know which are the good ones and the bad ones, and I am not even doing the rounds to the different villages. So it is already happening, and reputation is everything. You are asking someone to trust you to run a good village for the next 15 years. If you have got a poor reputation, you will not get their interest, in my view. So I think the market is self-censuring to some extent. I think the Lifemark scheme, though, is a good set of principles that you should

be able to apply to your business. As to whether it is mandatory or not, I think the smaller end of town will find it very difficult to comply with. So that is the dilemma, isn't it?

Ms FITZHERBERT — Given the observations you made about the Estate Agents Act and how it applies differently in your industry, do you have any suggestions as to how it might be changed?

Mr REEVE — Yes. I think that selling a retirement village property is least about property and more about services and lifestyle. The real estate agents act is focused on property transactions. I saw that as an insurmountable barrier for us to achieve if we are to sell our own units, whereas the reality is every person buying a retirement village home will inquire in the village about what is available. So whether we like it or not, we are telling people about what property is available, which really is the subject of the real estate agents act.

I see it as perfectly feasible that there can be some level of protection that the real estate agents act aspires to provide vendors particularly, or residents, that a retirement village operator can achieve, should they choose to. So I would see that a category of licence as a real estate agent limited to retirement villages would be a perfectly viable way to ensure that we can offer the products and the services with our own disclosures that we have got to give that real estate agents would absolutely be oblivious to and that we can protect the vendor, protect the customer and look after their money — all the key things that apply to our particular exposure, if you like, to the property conveyancing that a real estate agent needs to worry about.

We could pick up those things and have that accreditation that a real estate agent has but not all the other stuff, like conducting an auction. We cannot conduct auctions, and therefore the experience that an agent needs to have to become an agent in conducting an auction is completely irrelevant. Same with collecting of rent roll, for example — completely irrelevant. So I see a subset of the real estate agent's licence as applicable to retirement villages would be a perfectly elegant way to deal with that dilemma that most operators have.

The CHAIR — Mr Reeve, thanks so much for, again, your submission and for your time this evening and for your preparedness to answer our questions. As I said, the transcript will be with you in the next week or so. Thank you.

Mr REEVE — Thank you.

Witness withdrew.