

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

Witnesses

Mr Stephen Bull, chief executive officer, and

Mr Clayton Severino, senior legal counsel, Stockland.

The CHAIR — Our next witnesses this evening are Mr Stephen Bull and Mr Clayton Severino from Stockland. Thank you, gentlemen, very much for being with us this evening. 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 actions 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. We have allowed about half an hour for our time tonight, so I would invite you to make some opening remarks, and thereafter the committee will have questions. Thanks again for being here at this unusual hour.

Mr BULL — It is a pleasure; thank you for having us. Firstly, can I just say we welcome the opportunity to be here. We think this is a really important industry and an important sector, so any public policy debate around it we think is critical, so we are really happy to be part of that discussion.

I will keep my opening comments pretty short because Andrew obviously went into a fair bit of detail in his opening comments, and a lot of what I was going to cover will just be repetition of what Andrew has said. So I will talk a little bit about the Stockland group just so you know who we are and touch on a few issues around the sector that I think are important, but then really leave most of the time for the questions that you might have. I am also the deputy chair of the Retirement Living Council under the PCA, the national body, but I am here tonight certainly representing Stockland in that capacity.

We are Australia's largest diversified real estate group, and we operate in pretty much every sector of property in the country: shopping centres, logistics and business parks, residential communities and retirement villages. I have been in the retirement living sector now since about 2007, so about nine years. I took over the business about three years ago, so I have been running the Stockland retirement business for that period of time.

In Victoria alone we have 28 retirement villages. We have 65 villages nationally, with over 11 000 older Australians calling one of our villages home every day. We take that responsibility very seriously; it is a very important part of what we do. We see the ageing of the population in Australia as a critical commercial issue but also a critical public policy issue that we are all looking to address.

Within three of the last four years we have been voted as the most sustainable property company in the world by the Dow Jones sustainability index. Again, that is a responsibility we take very, very seriously. When we think about that in terms of our retirement villages we think of sustainability in every sense of the word — we think of it from environmental sustainability to social sustainability to economic sustainability — and they are all parts of how we think about building and managing our existing villages.

As Andrew alluded to, we also conduct our own survey every year of our residents. We send surveys out to all 11 000 residents. Unsurprisingly we get a very good response rate; they like to respond. We get a 60-plus per cent response rate, so we have a fairly good representation of how they feel about a whole range of things. For the last four years we have maintained an average 8½ out of 10 overall satisfaction score from our residents, with 90 per cent of them scoring their satisfaction as 7 out of 10 or higher, and a third of them scoring a perfect 10 out of 10. That said, there are always issues, and we look to address those issues as and when they arise as much as we can.

We have devised a range of policies that we use when we run our villages, some of which include things like about two years ago instigating a six-month money back guarantee, so any resident can move into one of our villages and, if at any time within that first six months they have had second thoughts and decided they do not like the village and they do not understand what they have got themselves into, they can walk away from the village and receive all moneys paid back to them, because we think that is important. We also know that our residents by and large are incredibly happy, so we saw that as a fairly low-risk thing to do. We do about 1000 settlements a year across the country — it varies, but about 1000 new settlements a year — and in the first 18 months of that policy we had about 22 residents take up that guarantee, so a fairly low percentage.

I think it has been alluded to tonight that this is a really important sector. Only 5.5 per cent of Australians over the age of 65 live in a retirement village. If you look at the projected growth rates in the over-65 population over the next 20 years and you assume that 5.5 per cent penetration rate does not increase — you only maintain that — we need about another 100 000 independent units over the next 20 years, or 5000 new units a year on average, to meet that demand. We would be the largest developer in the country, and we are delivering about

300, so you can already see there is a massive shortfall nationally in terms of our ability to meet the demand for retirement villages. So certainly we see planning and the interface between retirement living legislation and planning as a really critical part to enable us to grow.

One of the challenges we think facing the sector is the fact that many villages are ageing, so there is a real need to reinvest in those villages to upgrade the facilities, upgrade the homes, because there is only so much you can do to a 40-year-old home before it is no longer desirable or attractive to the new wave of retirees coming through. So that is an area we are focused on, both in terms of reinvesting capital into the villages but also looking at ways to redevelop villages when they have really reached the end of their natural life. That is challenging, and there is a lot of work, I think, that can be done in the planning space to facilitate that.

But as I said, we think it is a really, really important sector. It is an interesting and challenging sector for a lot of reasons. It is a very diverse array of operators. Clearly we are a very large company — a very big corporate — but the sector is filled with a diverse range. You have not-for-profit groups, you have religious groups, you have private owners and operators who have small numbers of villages, all the way up to the likes of large listed groups like us. So it is an industry that is really trying to find its place, I think, and really trying to improve its operations, improve transparency, both to residents and customers but also to investors. So we welcome anything that improves and increases that transparency for everyone involved.

The CHAIR — Thanks very much for those opening remarks. Given you do operate on a national basis and that is, you say, quite rare in what is quite a fragmented industry, what is your overview of what things are done well in Victoria and what we could learn from other jurisdictions that do things differently or better than what we currently do here?

Mr BULL — I think there are a couple of things, and Clayton might want to comment on some specific legislative and contract issues. We are supporters of a standard form contract. We think the easier you make the contract for customers and residents to understand, the better that is for everyone. While we do not support, obviously, mandating commercial terms in a contract, for a contract to be easily readable and for customers to understand, I think the moves Victoria has made to try and standardise contracts over recent years has been a good one. I would say New South Wales has done a similar thing over recent years. I would say their contract goes further to provide more information to residents, so I think the Victorians could have a look at that, and South Australia are going through a review of their legislation at the moment.

From a planning perspective I think in most of the states the whole planning environment gets lost a bit when it comes to retirement living. It is interesting, when we look at the different states the retirement living sector sits under different portfolios across the states. In Queensland, for example, it sits under housing, but in most other states it sits under a fair trading or consumer affairs type of portfolio, so one of the challenges we have when we are talking to the states is to really try and — —

There is a really important consumer protection piece here. We get that; we think that is important. But somehow to link that into planning and housing and ensuring states and local governments have thought about housing for an ageing population — and it is not just retirement villages; it is broader than that — we think is important. We think that with it sitting under housing in Queensland makes it easier for us sometimes to have the conversations about planning and planning for the future growth of the sector.

Mr SEVERINO — I should just say I am a senior lawyer with Stockland. I have worked in the retirement living business for eight years, and I am a committee member on the PCA in Victoria, the RLC. In terms of the observations around contracts and the landscape in Victoria, I think it is fair to say from a legal perspective that there is less regulation in Victoria than many of the other states. I think there is a place for minimum protections in legislation, and an example of that in Victoria is the increase in maintenance charges — that that needs resident approval if it is increased above CPI.

I think Victoria has done a pretty good job at the level of regulation and having those minimum requirements without overdoing it. We have seen in other states, say in New South Wales, where there is quite a lot of regulation. I do not think it actually leads to less disputes, and it is quite invasive in terms of how you set up your commercial models and operate your business.

The other thing around the contract is — and I was part of the consultation process and the committee process for the New South Wales contract — it is a lot more comprehensive, there was more time invested in it and it

goes further. There are just some challenges legally in creating a standard contract across all models, but what I would say is that the Victorian model is more a format and it is really basic, whereas the New South Wales contract is a lot more comprehensive. That is probably the key difference.

The other thing to note is that when people talk about confusion around contracts, I think it is more around those key terms. I think where Victoria has done a good job is in the disclosure statements in really pulling out the main aspects of the financial aspects and the other aspects of living in a village and making sure people are clear about that. In some ways whilst the contract format is not as ideal as perhaps in New South Wales, the actual disclosure instruments that are being mandated are very good, and I think that does a lot of the heavy lifting. When people talk about confusion in the contracts, I think what is being talked about is being clear about what are the key aspects — financial and otherwise — of coming into a village. Even though they have not done that on the contract side, I think Victoria has done very well in terms of its disclosure requirements.

The CHAIR — I just want to ask one further question, Mr Bull. You talked about 5.5 per cent of people aged over 65 living in a retirement village and you gather the numbers for that have stayed the same. Do you see that number increasing? Where do you think the market will go in this space?

Mr BULL — I think it has to reduce mathematically if we cannot provide the supply to maintain it. To maintain the 5.5 per cent, you need to be delivering 5000 units a year, and the industry is not doing that. I think the demand will increase but I do not think the supply can keep up with it, so I think the mathematics will show that unless we can meet supply — unless we can find a way to provide more sites, to redevelop existing villages or buy more land to develop new villages — it cannot go up because the increase in numbers of over 65s is outstripping the supply of the homes.

The CHAIR — I suppose I should have phrased the question a bit differently. Leaving aside those critical factors, what is the sort of percentage of that age group that want to live in a retirement village?

Mr BULL — That is a difficult question to answer, and I will only be answering anecdotally as I have no evidence to support this. Certainly in other countries that percentage is higher, up towards 10 per cent in some western countries. I think what you will see is that there is an increased demand to move in. When we talk to people, part of the changes to the aged-care and home-care system has meant that there is a real drive for people to stay in their homes longer. We understand that. For people to stay in their homes longer they need services brought into their homes. Retirement villages are a perfect opportunity to efficiently provide that kind of care if you get it right.

The sector does not have it right yet, but if you are providing home care to people in their homes and you have got 200 people in a community environment where you can come in and provide that care efficiently, that is a much better model than that one care worker driving around to 200 different homes across the suburbs to provide that care. The aged-care operators are all moving down the high-care path, the acute-care path, and the old days of low-care aged care seem to be disappearing, so people are staying in their homes.

The other thing that providing care services to people in their homes does not address is isolation. The great benefit of a retirement community is the sense of community itself. Our residents, by and large, are very happy. I can sit here and say that is because we do an excellent job — and I think we do a pretty good job — but a lot of that happiness comes from the fact that they are just living with people who are like minded in a community environment.

Ms SPRINGLE — Just on the issue of contracts, just so I have it clear: are you suggesting that the New South Wales model is superior to Victoria, as in they have a standardised contract? What we have, as you are describing to me, sounds like more of a template.

Mr SEVERINO — It is more a format. It is more a very basic format for a contract.

Ms SPRINGLE — And are you saying — —

Mr SEVERINO — It has got some terms on it, some mandatory terms, but they are pretty minimal. If you look at an operator and the terms of their contract and the mandated part in their actual contract, 90 per cent of the contract will be content that they have added. It is a very basic attempt, probably acknowledging that it is

very difficult to try and standardise that. New South Wales invested more time, and it is more comprehensive in what it discloses and what it covers.

Ms SPRINGLE — And it is standardised?

Mr SEVERINO — Yes, it is a standardised contract.

Ms SPRINGLE — Do you think that is a preferable model?

Mr SEVERINO — I think in terms of content it does a better job of doing that. As I said, I think the disclosure reforms that Victoria went through do a lot of the heavy lifting around providing people with clarity about their arrangements when they enter a village, when they exit and the ongoing arrangements.

Mr BULL — Our view would be that the more standard the contracts are, the easier it is for residents to understand them and to compare different options — to compare village versus village versus village. The more different they are, the more difficult that is, and we do not think that is good for the industry.

Ms SPRINGLE — Some feedback that we have heard is that they should be in plain English. Is that what your experience of the New South Wales standardised contract is?

Mr SEVERINO — Yes, I think there is always a complexity to a legal agreement, but I think any standard contract should use simple language. Certainly we advocate that. There is a certain format of a contract that flows nicely around entering a village, the ongoing arrangements and the exit. There is a way to structure a contract so that it is better understood. Not every layperson is going to be able to read a contract cover to cover and understand it fully, but the more you can allow for that and for it to be better understood, that is certainly the aim, and that is certainly what we would advocate.

Mr BULL — To that point, that is why we strongly advocate for our residents looking to come in to get legal advice. We encourage them in writing very strongly and as part of our sales process very strongly. We had a quick look last week at our Victorian settlements just to get a sense of what proportion of people in Victoria are seeking legal advice, and our numbers are showing in our portfolio, in our business, that just over 90 per cent of people coming in are seeking independent legal advice. One of the challenges with that, I think, is that it is a complex sector, and the level of understanding, even among legal practitioners, is varied.

Ms SPRINGLE — I do have one last quick question. There are also some reports of some of these contracts running up to 50 and 60 pages. Would that be your understanding of how long a potential contract could be?

Mr SEVERINO — Yes, they are fairly comprehensive. In order to deal with entry requirements — some of the legislation almost drives that in a way, because it deals with your cooling off or settling in in some jurisdictions, so it is very difficult to get a contract down in a concise form. So, yes, that would be correct. They are fairly voluminous because they are dealing with entry, ongoing and exit.

Ms SPRINGLE — Would there be any way we could get an example contract to have a look at at some stage?

Mr BULL — We are happy to share that. We have a standard contract — I use the word ‘standard’ very loosely — that we have been using for the last five years or so. Clearly it is not standard, because it has to comply with the different legislation in each state. We are certainly happy to provide that.

Mr SEVERINO — The structure of our villages varies as well, but we are happy to provide a copy of that, absolutely.

Ms SPRINGLE — Thank you.

Ms PATTEN — Particularly in the newer villages we have heard from witnesses that they go around the village and, like buying a new home, they look at the house, they love the aspect, they love the way it looks and they love the way it is built. It is once they have said, ‘Yes, this is where we want to live’, that they realise that in actual fact they were not aware that there were limits on what they could plant in their front yard and that there are various issues that they were not aware of. Some of them find that very stifling. That seems to raise a

lot of disputes and concerns. When they are buying a house, it is one thing that they can fix things up because they own it, but in these circumstances it is not the same.

I noticed that South Australia is putting up the notion of a disclosure statement. It seems that that would clarify a lot more of that. Do you think that has some merit? I understand the contract of sale, the payment you pay when you are going in and the payment you pay when you are going out. It seems that the in-between is where the disputes come up most frequently.

Mr SEVERINO — We do not really see that as a huge issue. We obviously try to deal with that sensibly around people making changes to their units and the agreement they need to obtain from us as the landlord. I would not see it as a particularly key issue, but having said that, if there was enough of that coming out in the feedback and that could be worked into the disclosure statement to concisely and clearly specify the arrangements around that, then — —

Mr BULL — We are advocates of giving as much information as possible, and that includes things like that each village has its own set of village rules about whether pets are allowed and a whole range of things. We make sure that residents get that kind of information before they move in. It is always a fine line. When people are looking to move into a village, it is a very big and personal decision. It is that fine line between giving them all the information and not overwhelming them so much that they just say, ‘Oh, it’s too hard’. Certainly we would advocate on the side of giving them as much information as possible, as long as it does not become 80 pages that they have got to trawl through and it kind of overwhelms them.

Mr SEVERINO — I guess the disclosure statement is a number of pages already. I think it is more than 10, but I guess you have got to get that balance right. You really need to deal with the key issues, I think; otherwise people sort of zone out if they have got to read a very voluminous document.

Ms PATTEN — Presumably, if it is something that is somewhat mandated within legislation, then at least the potential buyers can be comparing apples and apples. I would imagine that currently, while you might have a very open and straightforward disclosure statement, it may be more difficult for them to compare that with another developer.

Mr BULL — I am also conscious that because the nature of the sector is so disparate in terms of the owners and operators, what is easy for us to do, given our size and scale, may not be easy for a smaller operator to do. The cost and the administrative requirements resulting from some pieces of legislation are things that we can do because of our scale but others cannot. I am also conscious that you do not want to eliminate the smaller operators and make it too hard for them to run their businesses as well. It is a fine balance.

Mr MULINO — I have just a very quick one on internal dispute resolution. We have heard a lot about the ways in which going to VCAT can be very confronting and whether we should have an ombudsman or an advocate. I am just wondering, do you have a standardised or largely standardised internal resolution process across your various villages?

Mr BULL — We do have a dispute resolution policy for residents to use. Is that what you are talking about here?

Mr MULINO — Yes.

Mr BULL — Clearly their first point of call is their village manager, but to the extent that their complaint involves the village manager or other staff, that is problematic. So we also have a step process where they can raise issues with their area or state manager, who they get to see regularly because they visit the villages. We also have a head office customer service line where they can bypass all staff and go straight to our customer service line. There are a whole range of steps they can follow.

Mr MULINO — It is a staged process.

Mr SEVERINO — There is a clearly defined policy, and that is communicated to residents.

Mr MULINO — You have cited some statistics coming out of surveys that people are generally happy — 90 per cent and above, 7 out of 10 and so forth. Could you provide us with a rough indication as to how many internal disputes are activated across your system?

Mr BULL — I cannot give you an exact number, but it would be minor. We would have less than 10 disputes running at the moment across our business.

Mr MULINO — Could you say roughly how many would be activated per year?

Mr BULL — In terms of formal disputes? The disputes are from different levels, right? There are things raised about, you know, ‘Some resident said this to me’, and, ‘I can’t take my dog for a walk’ and it gets resolved. I do not call that a dispute if it gets resolved. But to the extent of things like genuine disputes about exit entitlements or genuine disputes about works in yards and villages, I could come back with numbers, but it would be very, very low. If it is at 20-or-so a year, I would be surprised.

Mr MULINO — Anything that you could provide on that would be interesting, because obviously there are probably more disputes that are raised at the internal level than would be raised with CAV.

Mr BULL — Sure.

Mr MULINO — And less still would get to VCAT. It would just be interesting to get a sense as to what numbers are roughly occurring at each layer.

Ms FITZHERBERT — I was interested in what you put in your submission about incentives for councils to rate retirement villages differently. Do you want to provide a bit of detail on your thoughts in this regard?

Mr BULL — Again, it is very similar to what Andrew said, I think. Certainly when we talk to our residents one of the main areas of focus for them are their weekly and monthly levies; that is what they pay for. It is a cost-recovery model, as you know; the operator does not make any money out of those.

The cost of living is really important to them at that stage of their life. They are living in an environment where there is a lot of work already done by the operator on all the areas that Andrew spoke to, like roads. For example, in most of our villages all the rubbish bins would be put in a centralised location so the rubbish truck can come and pick it all up in 5 minutes rather than drive around to 200 different homes. There are a whole range of things where it is actually beneficial to council to have a retirement village there as compared to the general community, and they get no preferential rating system anyway across the country. So I think there is a real argument to say there are actually cost savings to council from these villages; they are very efficient, they are very self-contained. How is it, then, that the residents in those villages pay the same rates as people external who get the benefit of much more services?

Ms FITZHERBERT — So you are not aware of any differential treatment anywhere?

Mr SEVERINO — There is some differential treatment. I cannot talk to it specifically, but I am sure the PCA can identify those local councils that do it.

The CHAIR — There are some councils in Victoria, but do you know of any interstate? Are there other jurisdictions where differential rates are applied, do you know?

Mr SEVERINO — There are. I know of some differential rating in Queensland, but again I would need to take that on notice and come back with a bit more detail.

Mr BULL — One of the interesting challenges for us is where, for example, the levies are going up by more than CPI — as you know, you need a residents vote to support that — where a big chunk of those levies are to cover council rates or water rates, and they have gone up by 20 or 25 per cent in any given year. If you take that to the residents, arguably they can say no, so it creates a real challenge.

Ms PATTEN — I just have one quick question. I am thinking about the planning of retirement villages. When you are developing a retirement village as opposed to a general residential development, are there differences in the parking requirements, street size requirements and block size requirements? Do councils recognise the differences in the build there?

Mr BULL — They do not really recognise the difference. In fact it is interesting. In New South Wales there is a SEPP that governs — —

Mr SEVERINO — The state environmental planning policy.

Mr BULL — Which does give certain requirements around age-appropriate housing. In those situations, for example, because we are designing homes for people to age in place, often they are having things like larger doorways, larger hallways which are easier access. So when you are looking to buy land and you are competing against a standard medium density or apartment developer who is not putting in a community facility, who is not bringing those design requirements in the home, you become uncompetitive potentially. That is why we think there is a real opportunity for the planning policy to say, ‘We know we need X per cent in our local area of age-appropriate housing over the next 10 years; we should allow for that planning’.

Mr SEVERINO — That is probably largely product driven in Victoria rather than payment driven.

The CHAIR — I just want to ask one final question in relation to the innovative policy you have got of six months and you can walk away.

Mr BULL — In some states you can do that anyway.

Mr SEVERINO — It is not quite six months. It is three months. I think South Australia is an example of that.

The CHAIR — Okay. Noting there are very small numbers — in the low 20s; I think you said 24 or something — was there anything consistent in why?

Mr BULL — Why?

The CHAIR — Yes.

Mr BULL — Not really. Some of them were genuine health reasons. Their health position changed, and they needed to move out. For some they just decided that community lifestyle was not for them. They did not like having everyone around; it was not quite what they thought it would be. Our view on that is if that does not work for them, then it is good that they should not live there. There was not any one real thing.

The CHAIR — Mr Bull and Mr Severino, thank you so much for your time this evening. It has been most informative. As I said earlier, you will have a copy of the transcript in the next week or so. Thanks again for being with us.

Witnesses withdrew.