

# TRANSCRIPT

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### Inquiry into the retirement housing sector

Melbourne — 26 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

Ms Mary Goldstein, retirement living manager, Hedley Sutton Community, Camberwell,

Ms Nicole Hornsby, senior strategic adviser/regulatory policy lead, and

Ms Kate Barber, general manager, strategy, Bapcare.

**The CHAIR** — I would now like to welcome Ms Mary Goldstein, retirement living manager at Hedley Sutton Community in Camberwell; Ms Nicole Hornsby, senior strategic adviser; and Ms Kate Barber, general manager, strategy, from Baptcare. First of all thanks for agreeing to change the much-sought-after 8.30 timeslot. It was very kind of you to accommodate us.

**Mrs PEULICH** — We serve warm milk.

**Ms BARBER** — Thank you. We will report back that members of Parliament work hard.

**The CHAIR** — Thank you. That would be much appreciated.

**Ms PATTEN** — Can you just repeat that?

**Ms BARBER** — It is on the record!

**The CHAIR** — 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. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. We have received your submission. Thank you very much for making a submission to the inquiry. I invite you to make some opening remarks, and thereafter we will have questions.

**Ms BARBER** — Thank you, Chair, and thank you to the committee for this opportunity to represent Baptcare at this important inquiry. We are happy to be another not-for-profit provider speaking with you this evening. We have only been here and heard one other group before us, but as a bit of context for those in the room, Baptcare is quite a diverse not-for-profit organisation. We have got a 70-year history of aged care and other service provision, so we really have six market segments ranging from residential aged-care and retirement living; we have in-home care, so supporting people living in their own homes still; we have family and children's services; services for disability; also housing for homelessness; an affordable housing limb as well. So it is quite a diverse organisation and large in comparison to a number of not-for-profits.

In terms of retirement living we have six retirement living communities. We like to think about the continuum of care that we offer, so regularly you will see that Baptcare has both a residential aged-care facility on the same site as a retirement living complex, and we think that allows residents the opportunity to age not quite in the same place but in the — —

**Mrs PEULICH** — Neighbourhood.

**Ms BARBER** — Very nearby — closer than just the neighbourhood, and if a partner needs to go up the hill, so to speak, it makes it much easier for the family and for the remaining partner.

In terms of our thoughts on some of the questions you asked around the inquiry, I suppose the tenor of a lot of our comments is around making sure you strike a balance between protections for residents, which are absolutely important, and Baptcare would be the first to say that residents are at the heart of everything that we do and that we go to the end of our managers' capacity to make sure that they are adequately protected. I have been informed, as part of this process, that in fact in terms of complaints that we have coming to us we have been able to resolve all our complaints, as I understand, internally without the need to approach CAV or approach VCAT. But I understand that not all organisations would be in that position. It is understanding the importance of that with the costs that come to operators if you are seeking to impose even greater legislative or other burdens on what is already — I think it was the property council that said it — one of the most regulated sectors in terms of property sectors in Australia.

We have made some submissions to you, as you are aware. We have shared with you our views around contracts and where mandatory clauses can be confusing, and whether you might consider some form of mandatory standard rather than the wording which might allow a bit more of an umbrella under which to have clearer and more concise language.

We have also thought carefully about the role of CAV, consumer affairs. We really do emphasise it to our residents coming in, but we emphasise that there should be more awareness out there in the community of the need for residents to seek their own financial and legal advice before they get into these contracts. I think again we have said here that a number of the complaints we receive are as families approach us towards the end of

someone's time with us. We cannot stress enough to them the importance of the up-front advice, but if there was more that could be done to promote that, we would be very supportive of that. You might even think about extending that to a training program for advisers so that they understand what they are advising about as well, and there I am talking about perhaps lawyers or financial advisers.

In terms of consumer affairs role, we do recognise the important role they play. I guess what we would say is that, as the sector grows, if you are seeing complaints increasing, we would encourage government to ensure that consumer affairs is adequately resourced to deal efficiently with the complaints that come across their desk. Unlike the other group before us, we do not see a place for an ombudsman at this stage. We would see that, on balance, consumer protections are there already. We are perhaps encouraged by our success in our internal dispute resolution mechanisms, but we think that the protections in place are adequate. The cost, as we said with the earlier discussion, may not be there on balance because undoubtedly, whether you are not-for-profit or for-profit, we would see that costs would be passed on to consumers if there were increased costs for operators.

We did turn our mind to the advocacy service that South Australia has and think that there could be some merit in that idea. We have also made some suggestions around the exit payment scheme, and something that we do consider deeply is this idea that you may have a different approach to rates — council rates — for retirement villages. It does seem to us to be unfair that our residents are essentially paying twice for some of the services they get. An example would be paying your council rates to have the garbage collected at the same time as paying us as the operator to undertake that service for you through a subcontractor.

That is a little summary of our submission, and we would be happy to take any questions you might have.

**The CHAIR** — Fantastic. Thank you for those introductory remarks, Ms Barber. I would just like to explore a bit further the issue of a training program that you referred to for those providing advice. Do you think there is a need for the legal profession to — through the law institute or some other organisation — provide some further training for practitioners? We have heard consistently that often even if people go and do get advice, that advice perhaps is not as good as it could be.

**Ms BARBER** — We were talking about it over dinner. Mary may share an example with you because I am not directly involved in the day-to-day interaction with the residents, but I believe we have had a family recently who sought advice and felt that their trusted adviser did not know what they were talking about essentially. Would that be fair, Mary?

**Ms GOLDSTEIN** — It would be fair to say that I have been in contact with several solicitors I have called who are not particularly au fait with the contract, in short.

**The CHAIR** — That is interesting that you have experienced that from your perspective because that is what we have heard from submissions as well.

**Ms BARBER** — So whether it is the law institute or some other body, I guess Bapcare does not have a view on how. We do not run a training course. Certainly if that was something that could be explored, we would encourage professional associations to consider it, particularly given there is likely to be a growth in this market. Their own members — and I put my hand up as a member of the LIV — they are only going to come across this more.

**Mrs PEULICH** — So on the same point, is it only legal advice or financial planning as well?

**Ms BARBER** — No, financial advisers. Yes, absolutely.

**Mrs PEULICH** — I am thinking of my mother. She does not trust financial planners, you know. What she likes to do is what she has been doing for 50 years. So there is this sort of reluctance amongst some to actually use those professional services. The other reason is they feel they cannot afford them, because they do not really know what the costs are.

**Ms BARBER** — That is also where I would say that consumer affairs can play that role as a government-funded entity, or department of the government, of promoting information about retirement villages and what to expect and what questions to ask as you are coming towards operators like us. Of course we work really hard to be open and transparent with our incoming residents, but there is always more that could be done.

**The CHAIR** — I suppose, noting your perspective that you do not support the establishment of an ombudsman, do you think there is further work that can be done over and above the 2013 and 2014 reforms to simplify and mandate extra information being provided to prospective purchasers?

**Ms BARBER** — Our position is yes. In terms of detail, would you like to share, Mary, some other details about where simplification would be helpful?

**Ms GOLDSTEIN** — I think just generally throughout the contract you would find that the contract itself is a difficult and a cumbersome document for quite a lot of people. People perhaps like your mother would look at that and find that, in the first blush, quite frankly overwhelming. So we wholeheartedly encourage simplification of the contract in the first instance. And you would see we more broadly went on to asking if we could have some mandatory standards instead of the six mandatory clauses, that we could perhaps simplify the contract. If we had a certain guideline we could follow, we could probably say it more succinctly and more simply such that it was an easier read, if you will, for the average person.

**Ms SPRINGLE** — I would like to hear a little bit more about your dispute resolution process, given you have had such success. We have heard in hearings and we have seen in the submissions that a lot of residents, I guess particularly in for-profit models, have real problems in terms of the dispute resolution process and are really strongly calling for an ombudsman. So what can they learn from you? What are you doing right that they are not doing?

**Ms BARBER** — I will throw to Mary as the expert on all of these things, but what I might just say as an introduction is that I think from Bapcare's perspective it goes to the heart of who we are as an organisation. We are a not-for-profit group, and we have a mission focus. Essential to that is that we put the resident at the heart of everything we do across all the areas of business that we operate in. I think that starting from that viewpoint helps us to come up with a system that has great outcomes for our residents. In terms of the detail, I will ask Mary to elaborate.

**Ms GOLDSTEIN** — It is a really interesting question, and I think it is somewhat predicated on that philosophy. I cannot speak for all colleagues, I can only speak obviously from our own experience, and in our own experience I think our driving force, if you will, is, 'Your interest, really, is our first priority'. So I have to suggest that that is one of the reasons that our results are so positive. Our strategy, if you will — how does it work, I think is what you are asking — is in the first instance: if you have a complaint, our guidelines are first and foremost to come and speak to the community manager in each of our properties who in turn would obviously take your complaint on board, and these things are often nuanced as you would understand, and have to come up with a creative solution throughout the community. There is no blanket answer for that. It is not something that can be legislated, if you will, because we are dealing with people who have particular and peculiar or some specific concern that just has to be resolved, and we tend to do it at the grassroots level before it escalates. I do not know if that is a comprehensive answer.

**Ms SPRINGLE** — I fully accept that that is the answer you can give, but I guess it probably does not vary that much from the answers that we have heard from other people, which is that there is a process. First you go to the village manager, and then it escalates from there. Perhaps it is more the philosophical approach.

**Ms HORNSBY** — I think it is the driving philosophy, and it is also the level of support that you provide to a resident to actually assist them in resolving their own issues, depending on who the issue is with, whether it is with another resident or whether it is with the operator ourselves, and that support that we give them and access to advocates, if required. We try to find those for them, and we support them through that process. We operate a residents committee, which they support, so they have peer support to actually work through those types of complaints as well.

**Ms SPRINGLE** — Just to elaborate on that, in terms of an overarching ethos, is there something specifically outlined that the village will take responsibility for the mistakes it makes when they make them? I kind of get a sense in some of the evidence we have heard that sometimes the village goes in with the attitude that, 'It is not our fault. Whatever is going on, it is not our fault'. Is that different in your case? Is that articulated in your case at the Bapcare villages? I know it is a bit intangible.

**Ms GOLDSTEIN** — It is intangible, but to answer your question: is it articulated? Not in a contract, if you will, obviously anywhere, but I think we are always trying to take responsibility. In fact I had a lengthy

discussion with one of the residents today regarding — we had some power outage — where was the responsibility? I think Baptcare you will find again as an organisation will always step up and say, ‘We have a responsibility to run this village.’ We would take the responsibility always in the first instance, I suppose. We are never looking to pass that back to the residents.

**Ms SPRINGLE** — One last question, just about training of your managers; what sort of training do they go through?

**Ms GOLDSTEIN** — Really good question. You will find that our managers come from a broad background ranging from hospitality to some who might have had some nursing experience themselves and been directors of nursing as well. So I would say you would find it is a broad background. As a rule my observation within the industry is that there are some who look for a more hospitality background as opposed to a more medically-based background as a rule. That is a general statement, but as a rule that has been my observation amongst my colleagues.

**Ms HORNSBY** — And in terms of ongoing professional development you have — —

**Ms GOLDSTEIN** — You will find that the property council is now offering programs to do professional education.

**Ms HORNSBY** — And certainly in-house we have had sales and customer service training, those types of training, so that the interpersonal skills between residents and staff are definitely built up through training programs.

**Ms SPRINGLE** — The training programs are within the organisation?

**Ms GOLDSTEIN** — Absolutely, yes. And to answer somewhat more perhaps fully one of your previous questions, I think throughout some of the training and some on-the-job experience, if you will, it is about asking the right questions when people are interested in moving into a retirement community in the first instance to ensure that there is in fact a good fit for what they are looking for and what you are offering, so that the satisfaction is perhaps long lived while they are there, if you will.

**Ms PATTEN** — It is unusual, I have to say, for a not-for-profit to not support the introduction of an ombudsman. I think you are probably the first not-for-profit to not do that, and I appreciate that you have got a great dispute resolution process. Consumer affairs really can only operate on a mediation process, and we have heard from numerous witnesses and had submissions that that is fine if someone is willing to go to mediation, but more often than not the case is that they cannot bring both parties to the table. Given that, I am interested to know why you do not think we need strengthened support for residents — obviously not from the one for Baptcare, but from other organisations that are not able to resolve those disputes.

**Ms BARBER** — So in terms of strength and support, Baptcare would be right behind strength and support. It is: what kind of support are you talking about? So I suppose if you think of a continuum in terms of that prevention information in the early instance, training of the advisers, our preference would be that is where the energy is focused to set expectations and have a clear understanding of what you are getting into. It is true that we have had a positive record with our residents and complaints, and so we do not have experience of where things have escalated.

In terms of having a position on anything beyond that, I suppose Baptcare would have to say we do not have direct experience to base further views on. What we do consider is the balance, and saying there is a cost to do things and there is an outcome that you are looking for, and one of our favourite sayings is, ‘We’re not for profit, but we’re also not for loss’. We operate on a commercial basis; we have a commercially minded executive team. We absolutely put the resident at the centre of everything, but we also come with a pragmatic view around where the balance may lie.

**Ms PATTEN** — That is a great segue to my second question, which is your exit entitlement. I think you might have heard us speaking to the previous people about when one party needs to go into higher care. Now, that might all be very well if they are within a structure that they, as you say, can move up the hill, but in many cases that is not the case and they will need to move to another area. So there is that one where one person is staying in the residence and one person is leaving, and if they are staying within Baptcare, I can see how you

could economically justify and work that out for yourself, but when they are both needing to move, you are suggesting that having to pay the money up-front is not equitable to the operator and that you should not have to pay within six months the entitlement payment. That also seems to be a deviation I think even from the property council on that. I do not think anyone else has really said this. Some have said it is unfair, but I do not think anyone has requested that that not be a basic entitlement for when you leave the property.

**Ms GOLDSTEIN** — No-one is suggesting that you should not be entitled to the moneys, but what we are suggesting is if you consider the commercial realities of what it would take to pay out the exit entitlements in full without the property being settled. So what we are saying is, for instance, we run a village and we have 38 apartments and six people move out simultaneously to an aged-care facility, the way it sits at the moment is that they would be within their rights to ask the operator to pay out the refund, so you could imagine the liability on the books, if you will, if six people called in at the same time.

**Ms PATTEN** — It is 30 per cent of each of their investments, effectively.

**Ms GOLDSTEIN** — No, so how it would work is you pay your ingoing contribution, and then after you sell, what you would be asking for is the return of your ingoing contribution minus the deferred management fee and in some cases some capital gains are returned to you as well, which is largely a big number.

**Ms PATTEN** — We hear it is about 25 to 30 per cent on average.

**Ms BARBER** — Do you want to explain what ours is?

**Ms GOLDSTEIN** — Right. Our deferred management fee is 6 per cent a year for each year that you are there for the first five years and then 1 per cent per year for year 6 to year 10. But say, for instance, you bought an apartment for half a million dollars and you were there for one year and you sold it for \$600 000, so 6 per cent is retained, and there is also a refurbishment fee and there are some other fees in that, but the end number is a large number, potentially.

**Ms PATTEN** — What sort of number are you talking about for someone who has been there for, on average, 10 years ?

**Ms GOLDSTEIN** — In a place like Hedley Sutton you could be certainly looking at numbers like \$600 000, \$700 000 or \$800 000, and if you had six or seven apartments for sale at the same time, you can imagine that is a huge liability on your books. So what the legislation currently is saying is, if you have six residents who move into an aged-care facility somewhere, it is completely within their rights to ask for that refund in full. Now, that could put a lot of operators to the wall, if you will.

What we are saying is potentially more fair and reasonable. They only can ask for that payment in full if they are going into an aged-care facility. Now, an aged-care facility can ask for that amount in full or they can ask for interest only, so we could satisfy what the person needs, right? Does that make sense? We could satisfy what they need — —

**Ms PATTEN** — Yes, now you say that, it has been repeated to us. We have heard it before.

**Ms GOLDSTEIN** — So that seems fairer and equitable, and nobody loses. That is what we are proposing — to pay interest only instead of the capital sum.

**Ms PATTEN** — I suppose one of the other issues that has been raised with that is that you have complete control over the sale. We have heard that real estate agents will not touch properties within retirement villages.

**Ms GOLDSTEIN** — Is that a question? Do we have — —

**Ms PATTEN** — Yes.

**Ms GOLDSTEIN** — It is within the legislation that the person who owns the apartment can choose to use a real estate agent or they could choose to use our services, so the choice is completely theirs. What we do with Baptcare is that we say that we will get an independent valuation, because we as an organisation feel that we have an obligation to the buyer and the seller. We are not a real estate agent. And should they choose our services, we will go with that price of the independent valuation, and that is what we will sell it at.

The complication in the current situation is that we have to agree on a figure in order for us to come up with the final analysis of what we are going to give you, and let us say that we agree on a figure and we cannot sell it for that and there is a loss, there is no recourse, so there is no opportunity for the owner to have some recourse. So there is a lot of liability on the owner there, and a small operator potentially could be significantly compromised, as I said, from the previous situation of several properties going on the market at the same time.

**Ms BARBER** — Mary, do we have experience of real estate agents selling our properties as well?

**Ms GOLDSTEIN** — That has not been my experience, but I have had some families consider that and then reconsider, and they have come back to us to ask to sell it.

**Ms PATTEN** — So you have 100 per cent sold all the properties in your facilities.

**Ms GOLDSTEIN** — Correct, but that opportunity is there. If they say, ‘No, we’re not happy with that. We feel we could get this’, it is certainly their right to do so.

**Ms SYMES** — Just a brief response I think, because I am probably not really asking a question. It is just something that keeps coming through in the submissions, which is residents complain of unfair contracts and the response from providers is continually, ‘Well, we’re up front and we display everything at the time before the contract is signed. We encourage people to go and get legal advice or financial advice’. Every provider says that. I am just wondering whether there is something that can be done systemically to make the perception of contracts fairer, because I get the feeling that you are not left with any contracts that do not have a perception of unfairness. It is like, just by saying that you can compare them all, what if they are all unfair from the perception of the resident? That is the response from all the providers. It is, ‘Well, we are up front; we tell everyone, and they get to choose.’. But I am just concerned about what they are being able to choose between.

**Ms HORNSBY** — As I say, I think that response, when we get that feedback, is often from families, not from the residents — so it is from the families. And that comes to our point about trying to encourage residents as they are coming in to disclose and discuss with family the contract arrangements that they are going into. To the other point, an organisation like consumer affairs actually providing more information, more detailed information, about how retirement living housing works and what the financial arrangements are so that they understand contract arrangements before they are actually faced with the contract I think would make a big difference.

**Ms GOLDSTEIN** — I will add to that because I have experienced the same thing that you are referring to — that there is often some level of dissatisfaction, in my experience with families that Nicole is speaking about as well. I think one of the difficulties — and this is just my view — across the general community is a lack of understanding about how retirement communities work. I do not think there is enough information around the fundamental premise that you buy into a retirement community at a price that is less than if you were to buy a “residential” property up the road. I think that if we had more discussion around that — that people understood first up: ‘But don’t you remember? You couldn’t get an apartment up the road for what you bought here, and you certainly wouldn’t get an apartment up the road with these facilities that you would get here, and 24-hour nursing staff’ et cetera’. People seem to forget that at some point later, down the track. Or maybe perhaps it is not again broadly understood within our community. What seems to get more play within the community — and I think somewhat unfairly — is this deferred management fee — that somehow that is what is perceived perhaps to be unfair. Because they do not understand that they have paid less going in, but in order to remain commercially viable and sustainable we have to pick it up at some point, right? So obviously we will take it at the exit.

So that I think is a lack of understanding around, or the strength of that understanding. In the beginning, even when we say, ‘Read the contracts’, that fundamental premise, if you will, I do not think is largely understood within our community enough, and certainly often, as Nicole says, not with families. That is really when we come to it — to say, ‘Oh! What is this?’. Often it was not communicated to their children and others in the early stages.

**Ms SYMES** — Again, I am not really asking a question. Would there be any benefit in people at the tail end of a retirement village actually speaking to the people who are going in? You are talking about this exit thing. It is almost like, ‘Well, if you don’t know what you don’t know until you get there, and that is when it is a problem’, is there some kind of a facilitation we could look at? You do not want people sharing their bad

experiences but sharing the experience of the exit. I guess it is hard to imagine. You just want to get in. 'I've got my pool, I've got all these things, I just want to get in'. You do not actually think about getting out. I am wondering if we could have more shared experiences of people getting out — not always bad experiences. Is that not an understanding of how to exit, of how the end part works? Is that something that would add to that understanding?

**Ms GOLDSTEIN** — Well, we try to be very, very clear. Again, as Kate pointed out, we work very hard for our transparency. We try to be very clear in the first instance — that there are many, many benefits to living in retirement communities, but financially? 'This is not a capital gains exercise' is a phrase we use quite regularly within our communications. In addition to that we also supply an Excel spreadsheet so we can clearly demonstrate the numbers so they can understand that there is an inherent value to living in this community but it is not a capital gains exercise typical of other freehold property. So I think if you have clear communication in the first instance with the particular residents — we do it regularly and, we think, with great clarity — in the hope of mitigating some of the issues we have just spoken about.

**Mr MULINO** — I just had a couple of very quick questions in relation to the advocate model. I think it is fair to say that you have supported us examining that model. One of the arguments you could put to support an advocate — and I must say from the outset it is not necessarily mutually exclusive with an ombudsman, but I think you have supported it in exclusion of that — is that it might help people who might otherwise feel intimidated to raise a complaint. Is it fair to say that that is an argument you might use in favour of it?

**Ms BARBER** — Yes. We would like to think they see their operator as someone they can trust and speak openly to, but if that is not the case, then having a trusted adviser, so to speak, who you consider is on your side — however a step removed from family or your traditional advisers — could be of value.

**Ms HORNSBY** — And certainly in our experience with working with advocates for people who sit under aged-care legislation, we strongly support them using an advocate. Particularly when we feel like there might be a strained relationship between us and a client or resident, we encourage them using an advocate, because we often find that an advocate is that independent person and can clearly explain the rights of the resident or client and the rights of the provider and point out whether they believe that the provider is being reasonable or unreasonable and then point them in the right direction and support them in exercising their rights. So we are fully supportive of that model and certainly found that it works quite well in the aged-care sector, and that is why we would support in this area as well.

**Mr MULINO** — The second question is probably something to take on notice if it is relevant. Firstly, do you operate any facilities in South Australia? No. Okay. I am just curious as to what the impact was of bringing in an advocate in South Australia.

**Ms BARBER** — Well, we have to quote the property council, not our own research, but I think we are advised that there was a significant decrease in the number of complaints going through to the tribunal stage, from memory. But maybe we could direct the committee to what we understand the property council's submission was, where it did have some statistics around the effectiveness and the outcomes once the advocate was introduced in South Australia.

**The CHAIR** — Thank you very much, Ms Hornsby, Ms Goldstein and Ms Barber for your evidence and again for being here at this hour of the evening. It is great to get your perspective as a not-for-profit organisation. The transcript will be with you in the next week or so. Thanks again.

**Witnesses withdrew.**