

# 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

Mr Tony Randello, head of mergers and acquisitions, and

Ms Wai See Chung, head of legal and company secretary, retirement living, Lendlease.

**The CHAIR** — I declare open the legal and social issues committee public hearing. I would like to welcome Mr Tony Randello and Ms Wai See Chung from Lendlease. Thank you both for being with us this evening, especially at this 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, 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 so protected. We have received your submission, and thank you very much for that. We have allowed about half an hour for our time tonight, so I invite you to make some opening remarks, and thereafter the committee will have questions. Thank you very much for being with us.

**Mr RANDELLO** — I will kick off. Firstly, thank you for giving us the opportunity to be here. We are both passionate about the industry and believe that a public policy debate in the sector is important. I have been in the sector for 12 years now working in the same business, and Wai See has been in the sector for 14 years. We are one of the largest operators in Australia. We have 71 villages across Australia, and of that, 26 are in Victoria. Collectively 16 000 older Australians call a Lendlease community their home, and in Victoria that is 5000 people.

In terms of the legislation, we believe the amendments to the retirement village legislation in 2014 has significantly improved consumer protection across the sector. The two-tiered disclosure regime provided to potential residents provides clear and consistent precommitment access to information and allows easy comparison between different villages and operators. This is something that, as you may be aware, has been introduced recently, and I think that, from my perspective, there is probably still confusion in our communities as to what may have been disclosed to them pre and post. Some of the submissions that are coming through pick up that there is some more disclosure that has been made available to them in coming into the villages, which is most likely in the last two years. Prior to that there may have been a bit more inconsistency across the sector.

The standard form contract with mandatory terms and prescribed provisions further simplifies conditions of entry, exit and accommodation in the village and sets out clearly the rights and obligations of the residents and operators. I might refer to, for example, in the current disclosures and fact sheets there are examples of how much a resident pays when they move in and the exit payments when they move out across 2, 5 and 10 years, which is something that was not made available to residents shopping around prior to that. In our opinion the existing retirement villages legislation provides a fair balance between consumer protection and maintaining a viable industry and does not require any further reform.

We are, as I said, a large operator, and Lendlease has rigorous management standards across its businesses. We believe that, from our perspective, we have a high standard with collectively 60 years of experience in our senior leadership team in the sector. We consult extensively with resident communities and ensure that we understand the needs of our residents and address their concerns — well, at least we do our best to do that. Like many operators, we conduct annual surveys and obtain feedback, and we strive for improvement year on year.

We believe that the current Lifemark accreditation — again, this is a new standard in the industry — provides potential residents a good benchmark for comparison of villages across different standards, including lifestyle, support, staff, safety, regulations and village policy. I think you are aware that there are 26 standards in the Lifemark accreditation process. In our opinion the industry will self-regulate by competitive forces to maintain management standards, and we do not believe that any further regulations or reform are required to address management standards in retirement villages.

Lendlease strongly believes in the current dispute resolution options. They are sufficient from our perspective for resident grievances to be addressed. An ombudsman would increase the cost of operations and ultimately impose a further cost burden on residents. It is not a viable solution for the size of the problem. Disputes by consumers in the industry are not sufficiently widespread to warrant the implementation of an ombudsman process. As we have submitted, an advocate similar to the retirement village advocate in South Australia will most effectively address the issues that we believe have been presented and provide an appropriate level of representation for residents. On that note I will hand back to you for questions, and we will use the time to address the questions.

**The CHAIR** — Thanks, Mr Randello. I really appreciate that. I note your endorsement of the reforms in 2013 and 2014. Is there anything you can do for people who purchased before that time? I mean, they have entered into contractual arrangements, so they are fixed and binding, but many of the submissions we have received have been from people who had purchased —

**Mr RANDELLO** — Prior.

**The CHAIR** — in various villages before that time.

**Mr RANDELLO** — What I will say is that Lendlease has run a process for a number of years which we have called contract standardisation. So we came up with our own standard contract — I think it was some five years ago — and then approached, in leased villages, all the residents to re-sign contracts. For that process we funded them to go and get legal advice. The result was that over 90 per cent of the residents in our communities have re-signed their contracts. What that means is that in most of our communities in Victoria residents are now on post-2006 contracts. There are some communities for which we have not done that. In the strata villages it is a little bit harder to achieve that process, so we have not attempted it in the strata villages but mainly in the leased villages. We are still going through that process; there are still villages that we are approaching.

There are benefits that you get with the legislative changes over the years. Most of our residents now are under the latest legislation whereas, as you can imagine, some of the submissions would be from residents that had agreements that related to prior to the 2006 legislative changes.

**The CHAIR** — Does your standard contract from that time basically address the issues that were contained in the 2013 and 2014 legislation in Victoria?

**Mr RANDELLO** — In terms of disclosure?

**The CHAIR** — Yes.

**Mr RANDELLO** — When we re-presented the residents with contracts, we had to provide them with other supporting material — so frequently asked questions and financial calculations. So I think that in terms of providing more visibility, transparency and understanding of what it was that they entered into at the time that they moved in, we revisited that, and we armed them with legal advice. So we supported them by saying, ‘Look, we will pay for legal advice independently’. We also engaged with the resident committees at the time and supported the resident committees in collectively getting some legal advice before we went to the broader community.

**Ms CHUNG** — In the villages where we have undertaken this process post-2014 — post the changes — we have actually used this new standard format. We have given them a full set of disclosure documents, as is required. There are some that we did before these changes, but the ones that have happened post do comply with the requirements.

**The CHAIR** — I think the committee would be interested in having a look at your standard-form contract if you are happy to share that.

**Mr RANDELLO** — Yes, you are more than welcome to, but we have since had to change that. We did all that hard work, and then in 2014 we had to change what was at the time our best standard-form contract. We have had to amend it slightly for the standards that were implemented in 2014.

**Ms SPRINGLE** — Could you outline briefly what the main differences would be pre and post the 2014 changes in terms of the contract?

**Mr RANDELLO** — I will leave that maybe to Wai See to answer.

**Ms CHUNG** — I think it sets out quite clearly in terms of the contract the different stages. From 2014 there are prescribed terms so there are certain terms that you have to have exactly in the form that is prescribed in the legislation. In the next section are matters that have to be included, so there is a list of matters that you have to include. Every village would have to have those matters included.

**Ms SPRINGLE** — Sure, I am more getting at: how is that different from most people had before practically?

**Ms CHUNG** — Practically, I think to the extent that you have not covered any of those provisions in the form that are required, you would have to do that now. But I think from our perspective there were not a lot of

changes that we had to make because our pre-2014 contracts pretty much covered all the points that are in the new standard form requirements.

**Mr RANDELLO** — It is more the flow of the agreement that has changed pre-2014 in terms of our standard that we created and post-2014.

**Ms SPRINGLE** — So there will not be a lot of direct impact on how people are living in their village?

**Ms CHUNG** — No.

**Mr RANDELLO** — No, not when you are comparing our standard form agreement that we went through with contract standardisation to post-2014. The point that I was making earlier was prior to us having that standard, there were lots of differences in contracts across communities. That is what we attempted to overcome prior to 2014.

**Ms SPRINGLE** — And just another question, if I may. You have mentioned that you are not for the introduction of an ombudsman. Can you talk a little bit more about that? You also talked about it contributing to the costs for residents. How do you think that would impact on residents?

**Mr RANDELLO** — The reason why we are not for it is because without understanding how it would be implemented we are assuming that the cost would be funded by the industry, in which case it would be an additional cost to residents. When we, from our perspective, look at the disputes that are coming and getting to consumer affairs — albeit that we appreciate that some that should maybe get to consumer affairs are not because of the concerns that have been raised — a lot of that comes down to whether the residents feel comfortable or not in raising their concerns. So an advocate is probably a lighter touch based on the problems that we have learnt to understand. An ombudsman is, from my understanding, more an approach you would take in a lot larger industry where disputes and concerns are a lot bigger problem.

**Ms SPRINGLE** — Because what we are hearing from some of the people who have already given testimony is that they are a really big problem but they are just not being formally addressed because people do not feel comfortable bringing them forward for all sorts of reasons. It appears from the outside to be a much bigger problem than it is on paper, and therefore I would be interested how you think an advocate would be able to solve some of that underlying tension that appears to exist in the industry.

**Mr RANDELLO** — We are really just basing that on our experience with the disputes. We are a large organisation, so there are mechanisms within our organisation to escalate concerns. We have dispute resolution policies within our villages, so I think when you get to a larger organisation residents will, if they feel comfortable enough, write to our chairman. So there is that process. You can go to the village manager, you can go to the state manager, you can go to the national manager, you can go to the managing director. By the time it gets to our managing director we are able to deal with it. If it is a larger concern, we are able to deal with it internally. We are not seeing, based on our experience, that there is a huge need for an ombudsman and that potentially an advocate would be a third party that someone could talk to and resolve the issue with.

**Mr MULINO** — I have just a couple of very quick questions on disputes. How many disputes do you have across your system each year at the very lowest level, and how is that trending over time?

**Mr RANDELLO** — In terms of disputes at the lowest level, the lowest level could be as informal as a discussion with a village manager. To be honest we do not capture all of that information. At any one time — and I might have to take that on notice, to be honest — I would be guessing that we would have no more than 10 disputes at any one time, and that is across 16 000 residents.

**Mrs PEULICH** — Is that per year?

**Mr RANDELLO** — At any one time. If I were to go to the record — every dispute is opened and closed in our system, so it is rolling — at any one time we would have approximately no more than 10.

**Mr MULINO** — It would be useful to get as much information as you are able to give us in relation to how many per year and how it is trending.

**Mr RANDELLO** — Yes.

**Mr MULINO** — The other thing that I would be interested in is how you might characterise those, so what types of disputes make up that overall total.

**Mr RANDELLO** — Okay.

**Mr MULINO** — I guess this is really following up on a point that was just raised, but I would just be interested in your thoughts on it. We have received very large number of submissions — hundreds of submissions — where people have raised concerns, and in a sense one might imagine there are even more out there because not everybody is aware that these hearings are occurring. Many people have done that on the basis that they can do it confidentially. We have also heard evidence from a number of larger providers who have given us similarly low numbers about the number of disputes that, even at a low level, are raised to any kind of formal status. There is something that needs to be reconciled there, do you not think, in relation to the fact that there seem to be quite a number of disputes out there that are not being raised for any number of reasons?

**Mr RANDELLO** — Sure, and people's sentiment changes from year to year as well. What I can say, based on the experience and my involvement in communities is that well over 90 per cent people are really happy to be there. We do that and we record that through our annual surveys. Now, that is not to say that within the 90 per cent they do not have their concerns. It might be concerns about health. It might be financial concerns. We do not get to hear about all their concerns. My parents have concerns as well financially, and they do not live in a retirement village. I think we sometimes need to also balance out whether it is a general concern of the demographic, because with pensions being challenged and the age pension being tested, those concerns are coming through the correspondence now more so than before. The maintenance fees and service fees are becoming even more of a problem, because things are getting a lot more expensive than they are used to seeing in the past. Based on our experience, like I said, more than 90 per cent of our residents are living in their communities very happily.

**Ms PATTEN** — Thank you both for coming this evening. You manage and own a variety of villages. From what I understand, some are strata title and some are under a lease system. What percentage are you currently at with strata versus lease?

**Mr RANDELLO** — Across the country it would be something like 70 per cent lease and 30 per cent strata.

**Ms PATTEN** — We have heard from a number of other witnesses that they are moving their strata villages into a lease arrangement because they say that is more equitable and provides a better outcome for the resident.

**Mr RANDELLO** — Strata villages have an additional level of complexity is probably the easiest way to explain it, so when you are a larger organisation and you are trying to navigate through complexity, we have found that the easier way to navigate through that is to have lease villages where we can at least control or achieve some consistency across them. In strata villages it is a little bit harder.

**Ms PATTEN** — When you are moving from strata to lease, effectively you will be buying. I am assuming when a resident departs you are then purchasing that strata title and then turning it into a lease.

**Mr RANDELLO** — We have not actively converted a strata village into a lease village. I think the point I should probably make clear is that as we are growing our portfolio we have chosen to, in newer villages or villages that we acquire, aim for leasehold villages. We are not looking to add more strata villages to our portfolio, and at this stage we have not attempted to convert a strata village to a lease village.

**Ms PATTEN** — But when a resident leaves a strata property, would you maintain that as a strata property?

**Mr RANDELLO** — Yes.

**Ms PATTEN** — Right. You are not buying those strata properties and then turning them into lease?

**Mr RANDELLO** — Not at this stage, no.

**Mrs PEULICH** — I have a couple of questions if I may. Do you construct or just own?

**Mr RANDELLO** — We do not construct, so we are not a builder. Lendlease is a builder, but not in our retirement village communities. We are more of a developer, and we manage.

**Mrs PEULICH** — What is the average length of a lease over the lifetime of a client?

**Mr RANDELLO** — The average?

**Mrs PEULICH** — Length of a lease.

**Mr RANDELLO** — Length that they are there or the average length of a lease?

**Mrs PEULICH** — That they are there.

**Mr RANDELLO** — That they are there — I would say on average somewhere around 12 years.

**Mrs PEULICH** — Are there any complaints that are not able to be resolved? You have alluded to financial pressure, which obviously people who are no longer in the prime years of their earnings have additional financial pressures.

**Mr RANDELLO** — I have not been involved in disputes that have not been resolved.

**Mrs PEULICH** — You argued against change saying that competitive pressures will self-regulate the industry largely. Who are the major competitors or players in the field, and where are those competitive pressures coming from?

**Mr RANDELLO** — When I talk about competitors, I am only talking about retirement living competitors. It is Stockland and Aveo that are the obvious ones because they are big. But we do not compete as an industry. We more compete locally. When we have got, for example, a retirement village in an area, we compete locally within a 5 kilometre radius. In each geography, our competitors change.

**The CHAIR** — Mr Randello, I want to ask about future supply in the marketplace. We have heard some of the other larger players in the marketplace talk about the supply coming into the market and the challenges to increase supply to accommodate the growth that is going to need to come to accommodate the ageing of the population. What does Victoria do well? What could Victoria do better? What is the best practice as far as the jurisdictions that you deal with when it comes to facilitating additional stock coming into the marketplace?

**Mr RANDELLO** — What I will say is that in the last three years Lendlease has not acquired a development site for retirement living in Victoria. I will start by saying that. That is not to say that we have chosen to do that. We have competed in processes, we have bid and we have lost. The biggest issue is that most of the time we are competing with residential developers, we are not competing with just retirement developers. So highest and best use of land in Victoria right now is not retirement, it is residential. For that reason, without having any retirement-specific zone, it is going to be very hard for us to meet the demand if we are assuming the same demand that we have had in the past. If we assume a 5 per cent or 6 per cent penetration rate of 65-year-old Australians, we need to produce something like 5000 or 6000 units a year. We are not coming close to that. As I indicated, we have as a business — and we are a large business — not successfully acquired a site, and that is coming down to the commercial pressures.

**Mrs PEULICH** — Is that in Victoria?

**Mr RANDELLO** — It is in Victoria.

**The CHAIR** — Does any state have a retirement village zone or something akin to that that facilitates — —

**Mr RANDELLO** — New South Wales has SEPP (Seniors Living), which makes it a little bit easier. Do not ask me too many questions about that, because I am not a developer myself. But it does make it a little bit easier.

**Mrs PEULICH** — Sorry, just on the same point, aged care is not a prohibited use in the green wedge, is that right, but retirement villages are. Is that right?

**Mr RANDELLO** — Correct.

**The CHAIR** — So are you growing your business in other states because of different market conditions or a more favourable planning environment, where you are not in Victoria?

**Mr RANDELLO** — Yes. We have grown more successfully in other states in our development pipeline than we have in Victoria.

**The CHAIR** — Does that get back to the marketplace, or does it get back to regulation?

**Mr RANDELLO** — It is not regulation, so I think from a regulatory perspective we are okay. I think it is the marketplace and it is the planning.

**The CHAIR** — What would you want to see happen in Victoria to see the industry bring that supply to market?

**Mr RANDELLO** — The silver bullet would be a specific retirement living zone in our planning scheme.

**Mrs PEULICH** — Sorry, just on the same point, how long does it take from the point of view of purchase of land to then getting all the permits in place for construction? What is that entire process?

**Mr RANDELLO** — That process can take up to two years.

**Mrs PEULICH** — And what sort of cost does that add to the end product?

**Mr RANDELLO** — Again, we have not had a lot of experience in that area in recent years. We have not actually been through the process in Victoria in the last three years. The quicker we can buy, the quicker we can develop and the quicker we can sell. That will really come down to the feasibility stacking up. So speed is of the essence in development, and at the minute it is a number of things. So it is planning, but it is not just the speed and the constraints around the planning; it is just getting access to the land.

**Ms PATTEN** — I noted that you mentioned your management standards, that you are pleased with them. I just wondered why you thought that was okay, because I know that a number of submissions and witnesses that we have heard do mark management as one of the issues for a lot of the villages that they have mentioned. Do all your managers go through the Lifemark accreditation?

**Mr RANDELLO** — Yes. So all of our villages go through the Lifemark accreditation system. On top of that Lendlease has its own personal development or employee development programs. So we have a lot of online development programs that our managers learn from — from dispute resolution to handling a difficult conversation to commercial, you know. We do internally have a lot of training.

**Ms PATTEN** — So every one of your villages is independent, is individually accredited under Lifemark on top of the Lendlease training?

**Mr RANDELLO** — Correct.

**The CHAIR** — Just a follow-up question to Ms Patten's question: do you think there is a need for better training of managers? Whilst you provide training to your people, we have heard mixed reports as a committee about the level of management of some.

**Mr RANDELLO** — Yes. Look, I think it is a known issue. For that reason the property council introduced the village manager diploma, so that was in response to hearing some noises around people not being qualified or not having enough experience. Again that is another new initiative — the village manager diploma — so for the operators that do not have access to some of the Lendlease management tools, the village diploma would be a great tool for them to use.

**Mrs PEULICH** — So in terms of your stock — your retirement stock — what is the spread in terms of single-bedroom accommodation, two-bedroom accommodation and three-bedroom accommodation? In what proportion are you building them?

**Mr RANDELLO** — I would say, in terms of single-bedroom, very, very small.

**Mrs PEULICH** — Is that because of their capital growth?

**Mr RANDELLO** — Yes. So most of it, 70 per cent, is in two-bedroom, and then 30 per cent is in three-bedroom — maybe 80 per cent-20 per cent. Again it is community driven. So it sort of depends on where it is. We do our market research. Everyone wants the third bedroom, but no-one needs it. But we do our market research, and it really depends on affordability and the catchment.

**Mrs PEULICH** — So for a person who might have a million-dollar home, it is a very attractive proposition, because they might be able to buy something — not necessarily enormous given that they are moving towards more of the leasing stuff — with 65 per cent of the revenue that they can derive and then have some money to splash around and enjoy, you know, the last few years of their lives, a decade, 20 years or whatever.

**Mr RANDELLO** — Yes, absolutely.

**Mrs PEULICH** — But for those who are actually after affordable housing, where do they fit into the equation — the lower income retirees?

**Mr RANDELLO** — Yes, so retirement villages have become nicer over time. So they have more bells and whistles now than what they used to.

**Mrs PEULICH** — Pools and gyms.

**Mr RANDELLO** — Pools and gyms, and that is what the market likes. So whilst we do achieve affordability through in some ways deferring the financial incoming amounts to the end — we call that a deferred fee; I am sure you know all about it — I think the market could achieve a better outcome for affordability. That will come down to access to land. So if we can get access to land, then given the commercial constraints that we currently have competing with residential developers, with smarter building methods we could achieve a better outcome for affordability.

**Mrs PEULICH** — It seems to me there is a need for single-bedroom and even bedsitter accommodation. Not everyone is in a position to get a two-bedroom place. Is there anyone providing that sort of market?

**Mr RANDELLO** — I would not say bedsitters. I think most operators will, if they are honest, tell you that if you have had bedsitter, they are really hard to sell. The reason is that it is not from an affordability perspective, but people are moving still out of a home and then they walk into a bedsitter, which is no larger than any hotel room.

**Mrs PEULICH** — I understand that.

**Mr RANDELLO** — The reaction is, you know, ‘Is this what my life’s come to?’.

**Mrs PEULICH** — I am thinking more of people who might be living in rooming houses. So where do they fit into the equation?

**Mr RANDELLO** — So it is not something that Lendlease is targeting at this stage, but I understand that question.

**The CHAIR** — Ms Chung and Mr Randello, thank you both very much for being here, particularly at this hour of the evening. I understand you have a family commitment, so thanks very much for making yourself available.

**Witnesses withdrew.**