

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 28 September 2016

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Ms Shanny Gordon, Housing for the Aged Action Group.

The CHAIR — I would now like to welcome Ms Shanny Gordon from the Housing for the Aged Action Group. Thanks so much for being here today. Before I invite you to make some opening remarks or an opening presentation, I will just caution that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but any comments made outside the hearing are not afforded such privilege. Today's evidence is being recorded. You will be provided with a proof version of the transcript in 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 today. I understand you were scheduled to make a joint presentation with the Consumer Action Law Centre, Justice Connect and Residents of Retirement Villages Victoria, but you may be unavailable at a later time. Thank you for being here today.

For the information of the gallery, after this presentation we will have 10 minutes for comments from the floor. If you wish to make a comment from the floor, please speak to the committee secretariat at the table, provide your name and you will be provided 1 minute to make a statement which will be recorded by Hansard. The same caution I provided to all witnesses will apply as well. Thank you, Ms Gordon. I invite you to make your presentation.

Ms GORDON — Thank you very much for having me. What I wanted to start off by doing is just providing you with a bit of a visual presentation of the different forms of housing that people have been talking about today. Just to make it clear, Housing for the Aged Action Group works over a number of different retirement housing types, mostly independent living units and not-for-profit retirement villages. We do not do a lot of work in the for-profit retirement village space — a little bit, but the majority is in the not-for-profit. We cover caravan parks, residential parks and rental villages.

I thought it would be good to show you the visuals of the different types of housing because I think sometimes residents themselves can be confused about the type of housing they live in, and also when you are talking about complexities in the sector, it can be a really good idea to get a sense of what they actually look like and whether the regulation actually fits with the visual basically.

Visual presentation.

Ms GORDON — To start off with, the photos you are going to see are independent living units or not-for-profit retirement villages, so they can be covered either by the Residential Tenancies Act or by the Retirement Villages Act. You can see they are really basic small units, specifically for older people. Most of them are much older because this sector started back in the 1950s, so the majority were built between the 1950s and 1980s. You can see that they really look quite residential. There are some not-for-profit retirement villages that might have a sign at the front indicating that it is older persons' housing. There are some slightly larger villages that might be gated, but generally if you were to walk past them, most of them look like a residential set of units or apartments, and they are quite small. Generally most of them are one-bedroom units; sometimes you get two-bedroom ones, but that is very rare.

If you move on then to the self-funded or for-profit retirement villages you start to see the difference between the not-for-profit and the for-profit space. This shows a really basic for-profit retirement village. You are looking at units within between \$200 000 and \$300 000 ingoing, but as you progress you can see that they start to become quite fancy. I think these units are somewhere around \$700 000; you have got others around \$900 000; and then you have got some over \$1 million ingoing. So it just shows the difference between the two, but the fact is that the not-for-profit retirement villages are covered by the same regulation as the for-profit space. So when you are thinking about what that means for residents it is really important to consider the differences.

The other point to make is that often the for-profit retirement villages will have a number of communal facilities, so common rooms, bowling greens and those types of things; the not-for-profit retirement villages are lucky if they have a common room. Generally there might be an outdoor common area, but that is about it. Then you enter the parks sector. You have got a unit like this. That is somebody who might be renting permanently in a caravan park, so it is really simple. It is a unit provided by the park. You can also have people renting out caravans, although that is much, much more rare to see these days.

This is an example of somebody who lives permanently in a caravan park but is living in a caravan; so it is a mobile home, they can drive it off the site at any time. The flipside of that is this: somebody who owns this van and lives there permanently but there are no longer wheels on it, so they cannot remove it.

Then the evolution of that, as people started to become more permanent way back in the day, you can see the van that has had the annexe attached to it. And then you see things like little decks being built. So on the permanency of the structures, you might think it is really transitional and people can move whenever they please, but it is not really the case. That, believe it or not, is a caravan with an annexe inside, but they have built this amazing structure around it, so they have really made it home, basically. Then there is the evolution of that.

We have been talking a lot today about residential parks. This is a more basic residential park at the back of a caravan park. Then you can start to see some of the ways it has evolved. These are purpose-built residential parks now. All of those are movable dwellings. So are they. Just to show you the dwellings themselves, this is the more simplistic one. When the sector first began you had the more simplistic movable dwelling. That evolved over time to include even double-storey movable dwellings, which seems insane, but apparently that is the case.

That is just an example of the reason that they are considered movable. It is the way they are built; it is built on the foundations basically. This is a slightly older dwelling. And this is the way the newer dwellings are being built. The last one that you saw of the residential park as a whole was with the rendered homes. This is how they are built now; they are built on site, straight onto the concrete slab, but they are not actually fixed to the site. Does that make sense? So they are on the slab, but the slab does not belong to the site tenant.

These are an example of rental villages. Again, they are really small one-bedroom units. This is a form of assisted living, so people receive meals and laundry services, so it is not self-contained. There is no full kitchen in there; they have got a little kitchenette. But you can see the villages are very small and usually catering to people in their 80s and 90s when they still want to live independently but with a little bit of support in place.

That is it. I just wanted to give you a bit of a visual of the sector basically, because I think it starts to kind of give you a better idea of what we are talking about when we speak of the different housing types.

Ms HARTLAND — Just before you move on, the thing I really noticed with the caravans or the permanent dwellings, or whatever you want to call them, is disability access is really poor.

Ms GORDON — Yes.

Ms HARTLAND — Most of them have got a step or two to get in and when you are considering the age group of people, you would have thought that that would have been a selling point or that it should have been something that needed to be complied with.

Ms GORDON — The general standard movable dwelling is not built with the target group in mind. Residential parks are generally targeted at people over the age of 55, but they are not designed necessarily to consider that somebody who moves in at the age of 55 might have very different needs at the age of 75 or 80. So, yes, they have stairs as access. They have also got doorways that are much too small to fit ambulance stretchers, wheelchairs and walkers. Even the way the house is designed on the inside is often not accessible, so bathrooms — you know, showers with a lip, the way the doors open and that type of thing. Often because people own their homes they will modify as they need to on the inside. The difficulty is modifying on the outside, because often that has to be done with consent by the operator because it depends on the aesthetic of the village and whether they are happy to have ramps, or whether you can even fit a ramp. Because of the way they are designed, if you noticed in the photos before, they are quite close together.

Ms HARTLAND — Whether there is enough space, yes.

Ms GORDON — To build a ramp to standard out the front is usually really difficult, so if they have got a back door or a side door they might be able to do it, but sometimes that does not work either, so yes, it can be difficult. I recognise that because we cover so many different housing types and there are so many unique characteristics to each one that require unique considerations, I was going to be sitting here for more than half an hour if I went into that, so what I want to just cover off really briefly are the key aspects for older residents

and tenants that actually cover all housing types, so the key issues and concerns that residents and tenants have no matter what the housing and I guess some of the recommendations that we have got around those.

Just keep in mind HAAG is a member-based organisation. All of our members are older residents and tenants that live in these forms of housing, and that is where we get our information from — directly from them. I represent them here today, basically.

The CHAIR — I should say too, without interrupting you, that we have received your submission as well, so we are aware of some of the issues you are — —

Ms GORDON — That is right. Yes, so I did not have to get into that in detail, but just the key things, I guess. One of the key aspects for older residents and tenants is security — so security of tenure, of course. Yes, that can be fixed by perhaps providing people with a long-term lease, but security actually includes so much more than that. It also incorporates things like affordability and accessibility, which is just what we were talking about.

In order for housing to be sustainable long term, it has to be affordable long term. For an older person who might be relying solely on the pension as their income, we have to make sure that rents, fees and all other related housing charges are actually capped and considered at the level of the cost of living, because that is the thing that will make it sustainable for older people. So something like creating rent and fee increase formulas around the CPI, we think, benefits both residents and tenants but also operators, because it still stays in line with the cost-of-living increases that they will get as well.

Accessibility, like we were just talking about, is really important, as is adaptability in order for somebody to be able remain in their home for as long as they need to. Remembering that security is also about having a quality of life, is about being able to exercise your rights and is about being able to stay in your home for as long as you want to. Homes either need to be built according to universal design so that they are accessible to all or at least built to accommodate modifications down the track — so, for example, making sure the bathroom walls are properly reinforced so that grab rails can be installed at a later date if they need it. At the moment, if you look at, say, the moveable dwellings, that is not the case; they are not built like that. So it takes a lot of work to make a modification at the moment.

Accessibility, we believe, also relates to things like access to justice. There has been a lot of talk about dispute resolution today. Generally what we see is that older residents and tenants are very fearful about exercising their rights, and they find some of the processes like VCAT very intimidating and daunting as well. So literally 100 per cent of our members, when we spoke to them, were supportive of something like an ombudsman because it is free, it is confidential, it is non-confrontational and it provides somebody with expertise who can actually provide them with support and hopefully resolution.

Access to information is really important, so understanding what your rights are in relation to whatever type of housing you are choosing to move into is really important. It has to be clear; it has to be easy to find and simple. Access to strong consumer protections as well — so, good regulation and legislation that supports you in your housing — is really important.

I know that there has been a lot of talk about people seeking legal advice — you know, ‘Do they seek legal advice when they enter retirement housing?’. I have found through my work and speaking to residents and tenants that generally, no. There actually was a report done by AHURI about downsizing that actually asked older people who they go to first basically if they are seeking support and information on making a choice about downsizing. Family and friends was the top category, and legal and financial advice was way, way down the bottom of the list of other categories, which is really interesting.

Even when I have spoken to people who have sought legal advice, the issue is that there is not enough knowledge and expertise out there about the various retirement housing types. So they might have gone to their general solicitor, and he or she has looked at the contract and said, ‘That looks fine. Nothing to be worried about’. But without understanding the actual regulation and legislation that covers that type of housing, they have not been able to go into the detail of what all of that means to the resident and the impact that it might have down the track. That is the key issue that we have found.

I do a lot of work speaking to people about their housing options, and one of the key things I always try and explain to them is what their rights are and what their contracts might mean for them. I am always just encouraging them to be as informed as possible before they make a decision, but it can be hard to find that information currently. Older residents and tenants also need appropriate standards. So we have spoken about management standards. That is a huge area that our members constantly say there needs to be improvement in, but also in design standards as well, which I have spoken about already.

We also just need to make sure that the sector caters to all asset and income levels. On the older persons housing spectrum, we have quite a number of housing models that are available for people that might have a little bit more in the way of asset and income or if they have sold a home, but when you start to look at older people on the lower income end of the spectrum, the options are really few and far between.

The more reduction we have in some of those housing options which we are seeing, like the independent living unit sector, the more stress that puts on the rest of the spectrum, and then it just kind of creates a cycle of crisis which does not do anybody any good. We do believe that government have a role that they can play in that because the ILU sector actually came about with government support initially, so there are things that we feel could be done to improve that portion of the sector.

Ultimately the thing that I hear the most from our members is that they really just want to be considered and consulted. Overall in their housing they want to be involved in decision-making, and they want to know that they are being treated with respect and dignity and that they are being heard. Sometimes in my initial conversation with residents and tenants when they call me with an issue, it might last for an hour because, really, it is probably the first time they have thoroughly been heard in relation to the issue that they are having. Just that process alone improves their sense of wellbeing — just from the fact that somebody has actually taken the time to listen.

I think there were a couple of speakers that mentioned communication, and that is such a key aspect of the relationship between operators and managers and residents and tenants that we could be doing a lot more to support, which would probably create a lot of improvement through the sector.

The CHAIR — Thank you very much for first of all the visuals, which really help us understand the different types of housing options that we are considering and talking about, and also for your presentation and your obvious passion for these issues. I am interested in the point about — and we have heard this again today — legal advisers sometimes not being across the detail. Is that a case for upskilling lawyers or is it a case for legislative change to simplify the legislative regime and the regulatory regime?

Ms GORDON — Maybe a bit of both. We really do not have a lot of legal experts in this space, and where we do often they are acting in the interests of the operator. So for residents who have issues, it might be really difficult to access. But you have also got residents that cannot afford to pay legal fees, so they cannot go and access say a private solicitor. I think there is a need for having some kind of specialist service or utilising the services that we have currently got and upskilling them to make sure that there is some expertise, but I also think it is about improving the regulation and the legislation but making sure that that information is available in a simplistic way so that people can understand what their rights are from the get-go.

I think some of the issues are that people get into a dispute and they just do not understand whether they have a right to exercise or not, and sometimes they do not. So for instance the Retirement Villages Act we believe is really quite lacking and needs to be reviewed to provide more robust protections for retirement village residents. Often a retirement village resident will come and have an issue, but there is nothing we can do because there is not anything in the act or their contract that guides us with a resolution.

Mr MULINO — Thank you very much for the presentation. We will go and visit some retirement villages throughout the course of this inquiry, but it has been very interesting to see the fine line between what we might consider to be a fixed dwelling and a mobile dwelling, and some of those enhancements in some cases seem to be people building upon a residence over time and making it more permanent. But I imagine, based on what the law institute said, in some instances it might even be that some people go through contrivances to try to fall under various different legislative regimes. But that has definitely been very useful.

We have had a very interesting discussion today about legal advice. I am also interested in your thoughts on financial advice, because a lot of the decisions we are talking about involve consequences for people that even a

fully versed lawyer would not be on top of. What is your experience of people's trust in financial advisers and access to them?

Ms GORDON — It is interesting. I do not speak to a lot of people that have said that they have been to a financial adviser when they are making a decision to move into retirement housing. Again, I think it is in the same vein that generally people will not access a service for information and advice; they will go to trusted people in their life, family and friends. I know that there are financial services available for people to utilise, but I do not hear that it happens a lot. Whether or not doing that would impact on the decision that they made, I am not sure.

I have spoken to a lot of people that have looked at the finances themselves and have a fairly good idea of what the supposed impact will be on them. I am speaking now probably about the higher end of the spectrum, the slightly more expensive end where people have options, that they can exercise choice. When people are making a choice to move into retirement housing, it is often made at a time in people's lives where there are other things that might be happening. That is what I have observed. Whether it is a relationship breakdown or health changes so they are considering downsizing, or they want a bit more security — whatever the case may be. So even though they might think that they understand the impact over time that the financials will have on them, when it actually comes to the other end it is like they did not really understand how it would impact on them 10 years down the track. Does that make sense?

Mr MULINO — Yes.

Ms GORDON — It is sort of like at the time it sounds okay, but 10 years down the track when other things have come up that they need to consider their financials for they may not have taken that into account. And you cannot take everything into account. So, yes, it is kind of interesting that you can have the information sometimes but still not really understand how it is going to practically impact on you.

Mr MULINO — I have a quick question on dispute resolution. We have heard a lot about the fact that a lot of people would find it worthwhile to have additional options, whether it be through an ombudsman or whatever you want to call it — less formal, less adversarial — before you get to something like VCAT. And even before that step, one might imagine that in a well-functioning system there would be some dispute resolution processes within villages, and we have talked to one operator today who talked about some of the mechanisms they have in place. I am just wondering, from your experience, do some retirement villages manage disputes well internally before they get to more formal processes?

Ms GORDON — Unfortunately when people come to me that is when it is not working. So generally I hear of the ones that are not working. It is very rare that I hear a really good story about a well-functioning internal dispute resolution process. Part of the issue — and this is what older residents and tenants say — is that often the dispute is with, say, the manager, and the internal dispute resolution calls for them to deal with the dispute with the person they are in dispute with. So it does not work, because you have already got that tension. So to try to come to some sort of resolution where everybody is trying to keep cool and calm is really, really difficult. That is why many people feel that having an independent somebody outside of that to deal with the issue is much better.

The other thing is sometimes you might be able to go to, say, a person at head office, depending on how big the organisation or company is, but even then you have got to hope that they are going to be looking at both sides equally, as opposed to siding with the manager that they employ. So there is a great tension there, and the thing you have got to remember is that in all of these forms of housing there is an inherent imbalance. You have got an older resident or tenant that sees the place as their home, and that is what they are trying to do: they are trying to create a sense of home. Then you might have an operator that is running a private business that wants to make a profit, so how do you balance a sense of home with the need to make a profit and make sure that everybody's needs are looked after? The need to have an independent someone that residents can go to for dispute resolution is really important, because it starts to bring it back into balance — not totally, but somewhat.

Ms HARTLAND — Can we talk a bit more about dispute resolution, because that seems to be something that just is not happening very well. What would you see as a solution for dispute resolution?

Ms GORDON — Like I said, our members are 100 per cent behind the idea of having an ombudsman because of the ease of access and because it is non-confrontational and it makes it very easy to exercise a right.

That being said, I know there has been a lot of talk today about Consumer Affairs Victoria not necessarily living up to their powers, and residents and tenants have also said that Consumer Affairs Victoria should be resourced better and should be able to enforce their powers more, and whether that means that we need to increase some of their powers, because it sounded like, from what they were saying, they feel limited sometimes in what they can undertake, but I think it is really important that they are acting.

Just an example to give you is that I had a person call me who on that very day was having a warrant of possession executed, so what that meant was that he was going to be evicted. It turns out that he lived in a not-for-profit retirement village but the process was undertaken under the Residential Tenancies Act, which means it was unlawful and technically he still held a residency right, but because the decision had been made at VCAT the only way to appeal it was to go to the Supreme Court, which is ridiculous because of the cost and the time, basically. I wished that he had come to me earlier, but he did not. For me in that sense I wanted to contact Consumer Affairs Victoria and let them know that there was an operator that was obviously not understanding how they were meant to be functioning and under what regulatory framework. Even just to try and work out who to speak to and how to get something done was difficult, and it should not be. If something like that happens, there should be a really clear process that Consumer Affairs Victoria has that means that they can then act and ensure that the operator is complying with the regulation that they are meant to be complying with.

Ms HARTLAND — So if you are having trouble figuring out who to speak to, what is happening to an older person who has never had to deal with those issues before?

Ms GORDON — And that is the thing. They are calling the advice line maybe, but they do not get a lot of time on that line, so the question is are they getting their information across enough? Is the person asking the right questions? At the end of that phone call you just do not know if the message has been relayed properly. Therefore I think sometimes it gets lost and the person does not get any resolution, and that is a concern.

Ms HARTLAND — So when someone rings how much time do they get on the phone?

Ms GORDON — For Consumer Affairs Victoria?

Ms HARTLAND — Yes.

Ms GORDON — My understanding is that that initial phone call is very brief. It is really just a quick sort of, ‘Okay, what’s the issue?’, and trying to determine where to put —

Ms HARTLAND — Where to send it.

Ms GORDON — Yes. Then my understanding is if they can establish that it is something that can be dealt with, it goes to frontline resolution, which basically means Consumer Affairs Victoria try and deal with it over the phone with the two parties talking to them, which they say they have a very high success rate in doing, but there is no follow-up, so it is not actually binding. I mean, parties could agree to something and then go away and not do it, and nobody is following up to see if anything is being done. So there are a few steps that are failing in that process.

Ms HARTLAND — What would you want to see come out of this inquiry? What do you think is the way to have good dispute resolution to protect people in all forms of retirement housing?

Ms GORDON — Improved regulation and legislation. I know that there are a couple of reviews that are occurring, and hopefully they will support some of those improvements — the Residential Tenancies Act and the access to justice review — but one area that has been overlooked in that is the Retirement Villages Act. There is not a specific review at the moment around that. We definitely think that that needs to be looked at as well, because then potentially you have got the whole spectrum being reviewed, and hopefully that would bring up some of the standards.

Improving Consumer Affairs Victoria’s powers would be great, but also resourcing some of the agencies and organisations that they fund better to be able to provide more support for older residents and tenants. We are a key organisation — we only work with people over the age of 50 — but there are lots of other advocate services that could be doing more in that space if they were resourced better to do it. Then also having an independent someone — so an ombudsman or something like that — that is available for residents and tenants to access as well.

Ms HARTLAND — I have one more question. While people have been talking, and especially around those issues of people needing to get legal advice, I thought the New Zealand model was really interesting, and we will clearly follow that up, but rather than setting up a whole new body perhaps we actually need to place more resources in the organisations that are actually already working in the sector — lawyers who do understand these kinds of contracts, because several people have said to me that they are not too sure that their lawyer actually did look through the whole contract, and because they are complex. So rather than create another agency, is it that we need to look for more resources for existing agencies?

Ms GORDON — I think either would work. You either have, say, a specialist service that solely provides advice and information on retirement housing — and somebody did mention the Queensland parks and villages legal service, so something like that — or you resource those agencies that already provide some kind of support but that cannot do it to the extent that they might like, like WEstjustice. They do general tenancy so their proportion of, say, residential parks matters is probably very low because it is a priority-basis thing, but if they were resourced to specifically provide some of that support, then why not do that? Because they are located around the state, you would have regional services, and you have got to remember a lot of these forms of housing are in regional Victoria as well, and they are not necessarily being well serviced out there.

Ms HARTLAND — That was really good; thank you.

The CHAIR — Ms Gordon, thanks so much for your presentation today and your perspective on things.

Ms GORDON — A pleasure.

The CHAIR — If you could provide a copy of those slides, that would be really useful.

Ms GORDON — It is on the computer there, so you can keep that.

The CHAIR — Great. Thank you so much for your time.

Ms HARTLAND — And good luck with the impending arrival.

The CHAIR — Yes.

Ms GORDON — Thank you.

Witness withdrew.