

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 28 September 2016

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Witness

Ms Rosemary Southgate, Russell Kennedy Lawyers.

The CHAIR — I would like to welcome Ms Rosemary Southgate from Russell Kennedy Lawyers. Thank you very much for joining us this afternoon. 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 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 within the next week. Transcripts will ultimately be made public and posted on the committee's website. Thank you very much for your submission to this inquiry, which the committee has received and digested. I invite you to make some opening remarks, and thereafter we will have questions. Thanks again.

Ms SOUTHGATE — Thank you. I will be brief in terms of opening remarks. There were a few things that I particularly wanted to highlight from our submission. The first thing was in relation to diversity of retirement housing types. The things that I particularly wanted to raise are, firstly, issues around what we see from the work we do in the industry with a significant change in people who are wanting to continue to have care in their own homes, whether that is care in rented accommodation or a retirement village or residential park.

As a result of some significant reforms at the commonwealth level around providing home care services we have seen a significant increase in people wanting additional care in their own home, and we think that it is important that as part of this review, flexibility to allow home care in retirement accommodation to continue is very important. So generally people want to stay in their own home for as long as they can. If they are in a residential park or retirement accommodation, they generally want to stay there for as long as they can before they need to move on to a higher level of care, so that is something that we see as important and that needs to be taken into account.

The second thing is around the mix of different tenure types. This is particularly in retirement villages. We see, particularly in the not-for-profit sector, there are a number of villages — and I think this is happening more and more as the not-for-profit space tries to provide a mix of affordable rental-type accommodation as well as accommodation for people who want to pay an investment and lump sum contribution — that at the moment are all caught by the Retirement Villages Act, which is not necessarily appropriate for someone who is renting their own home. That, I think, is cumbersome for the operator, but I think is also confusing for residents in those facilities because there is a lot of material that they are getting that they really do not need to be worried about in terms of disclosure material, detailed contracts, a lot of which is not relevant for them. However, due to restrictions under the legislation it has to be provided to them. So that is something that I think would also be important to have a look at more flexibility around this.

The third thing is around affordable housing and particularly the availability of rent assistance. We see it as critical that there is rental assistance available more affordable housing is to be developed, which I think everyone agrees is very important, particularly for the retired sector. At the moment I realise rent assistance is really regulated at the commonwealth level, but there are discrepancies between availability of rent assistance depending on what type of accommodation you have. I think that is a barrier for people moving, particularly to the traditional retirement village, as opposed to residential park accommodation, so that is something else that we see as important.

Moving on to the issues around consumer protection, I think there are a lot of very good measures in the retirement villages legislation, the residential tenancies and the residential parks legislation around consumer protection. I just heard some comments earlier about complexities with contracts. I think that is correct, that there are many, many different types of contracts, particularly in retirement villages, but two years ago that was reformed, so there are now mandated retirement contracts which must be used. That is only for anyone who has moved in after July 2014, so it does not necessarily solve the issue of a lot of contracts in existing villages, but it has meant that there is a much greater degree of comparative material available for consumers in terms of comparing one contract to another because they are in a standard template form.

I think there are also very good obligations now on operators around disclosure, so again things that were not very clear historically, particularly around deferred payments and exit contributions, are now clearly set out in a template form of disclosure statement. There are security of tenure arrangements. Those types of things I think are well protected, particularly in the retirement villages legislation. In residential parks they are probably not quite as well protected. I think that is a growing area, so it is something that is still, I expect, being gradually

reviewed as and when those developments increase. I think in that area there could probably be a greater level of disclosure; more simple summary information could be made available for prospective residents.

I also think some of the ways to increase fees could probably be better regulated so there is more certainty for both the operator and the consumer in terms of those recurrent fees that they pay at the residential park living there. That is something I think that the Retirement Villages Act does do well because there is a CPI cap on increasing any charges, so there is some certainty for residents when they are living in a village around those recurrent fees.

On dispute resolution, I have heard the submissions from the law institute. The way we see is that internally in retirement villages there are quite good procedures, but a lot of issues arise when there are issues particularly between residents. So there might be concerns about bullying conduct which can be very difficult to try and manage within a retirement village. At the moment there is not really any external provider of assistance to residents or operators in those situations because that is something that Consumer Affairs Victoria does not get involved in. So we find there are often some difficulties for operators trying to help residents who are in those positions or residents themselves seeking that assistance.

Something we do think should be considered is providing an easier opportunity for residents to seek external assistance from a free service, so that there is more ability to do that. Again, comments were made earlier that there is genuine concern from residents to make complaints in retirement villages, and I think that is completely understandable. You are living in a community of people, so people are very concerned about being confidential when they make complaints, and I think there are still some issues around that and how that could be better managed in terms of residents feeling empowered to go and get some assistance outside of the village if necessary. That is really all I wanted to say in terms of my opening comments.

The CHAIR — Thank you very much. Let me start with the final point you made. I note that is an issue that is hard to address: when you have conflict between different residents. How would you see that being resolved? We heard this morning from a New Zealand operator that they have an independent person who can act for each village between different residents or between management and a resident. Are you aware of that model, or is that a model you think we could consider here in Victoria?

Ms SOUTHGATE — I have very limited knowledge of the model. I am aware that there is something along those lines. I think it could be through something like consumer affairs, but if they were probably better resourced to be able to deal with those issues as well. We have dealt with Consumer Affairs a little bit in terms of complaints about operators, and what we see is that it looks like they are not terribly well resourced in terms of being able to really get involved in assisting in some of those disputes. Where they have been able to, it has certainly assisted, I think, both parties. So our view would be if it was either consumer affairs or someone similar to that in that organisation who had that role and that residents felt that they could easily access them and get assistance, that would be useful to do. I am not sure how it would operate in terms of having an independent person for every village in terms of how that would be funded, for example. You would not want to create a greater burden on either operators or residents in terms of how they fund that dispute, but having someone independent I do think would be useful.

The CHAIR — Just to go to the changes that came into effect in 2014, during the day we have heard different views on whether those changes have addressed the issue of contract complexity and purchasers having an understanding of their legal obligations they are signing up to before they do so. You did mention that just in passing. What impact have those changes made, and do you think there is need for further reform to have, as the law institute said, standard form contracts that are simplified for different types of arrangements, or do you think we have reached a point, following those changes, where things are simplified enough?

Ms SOUTHGATE — There were two parts to those reforms that were significant. The first one was about precontract disclosure, and I think that has universally increased the level of information that is provided to consumers before they enter into contracts. I think it is a very simple format and provides quite a bit of detail, particularly around the financial obligations and services that are available. The feedback we get from our clients, particularly who are at the sales side of signing people up, is that it has led to a lot better informed consumers who are asking a lot more questions and discussing a lot of the financial implications before they sign up. There is often a lot more negotiation around things like the deferred management fee and how that might suit a particular resident's financial circumstances. That is a fairly significant change we have seen, which I think is a direct impact from that disclosure.

In terms of the contracts I think it has probably been less successful than the disclosure. There are parts of the new form of contract that are very easy to follow and make it easy to compare villages, one from the other, but I think there is probably a simpler layout that you could have in terms of those contracts. It certainly improved on the situation previously, when there was no requirement as to how you set out terms in a contract, but I think there could probably be further consideration about how they are set out.

But having said that, it is similar to a sale of land contract, where there is a standard form of contract but then many vendors will have 20 pages of their own special conditions. So while there are some contracts that are very simple for selling land, there are others that are quite complex. I think similarly with retirement villages there are some which will have fairly simple terms and others which will be more complex just because of the nature of the development that people are buying into. There are not any standard contracts, though, for the residential parks model, but they have just developed to be fairly standard, I think, in the market, rather than it being prescribed by regulation.

Mr MULINO — I just have a couple of questions on dispute resolution. You would have undoubtedly seen in some of the written submissions and also in some of the testimony today that some people have noted that VCAT is seen by some people as a somewhat formal and adversarial forum in which to resolve disputes. Without wanting to get into the merits of a particular form of alternative structure, whether it be an ombudsman or not, do you think greater access to mediation would be worthwhile given, for example, the number of people that have made submissions to this inquiry? It seems as though there is quite a demand for some other kind of dispute resolution process.

Ms SOUTHGATE — I think that if there was a step between consumer affairs and actually having a hearing in VCAT, yes. If there was a way in which disputes could be somehow referred through to VCAT to be in more of an informal mediation process, yes, I definitely see a benefit in that. I think the difficulty with going to VCAT is that generally it is expensive to even get into VCAT. Usually it might get to mediation, but it is an expense to even get that far. So if there was a way things could be referred to some sort of informal mediation before it got that far, I definitely think that would assist, yes.

Mr MULINO — We have heard from a few of the people that have given evidence today that it is a complex legislative landscape that we see in this area and that arguably there are some gaps here and there between different bodies and what their jurisdictions are. One might argue again that a more informal dispute resolution process might to some degree have the capacity to fill some gaps there. So, for example, the CAV this morning talked about some areas that it does not have the jurisdiction to look at. It might be possible to have a less formal dispute resolution process that can be a bit broader than any individual organisation.

Ms SOUTHGATE — Yes, if there is a way you could do that, I think it would be very helpful. I think part of the difficulty is that there are so many different regulatory frameworks which cover this area at both the state and commonwealth levels, and that unfortunately means that people at the moment have to go in different directions according to what type of accommodation they have. So if there were a way that there could be a simpler process, that people have access to similar alternative dispute resolution through mediation and a low-cost way of doing it, yes, then I think that would be very helpful to operators and residents.

Ms HARTLAND — If I can follow up, you were just talking about how complex the legislation is. There are a number of acts that cover this. So I am a little bit surprised by the statement in your submission where you talk about legislative interference. Can you talk more about why you think if there was an act to bring everything under the same heading, and it would be retirement housing, it would be legislative interference?

Ms SOUTHGATE — It was not the intention to say that if there were a new act, that would be legislative interference. It is more that I think the different types of legislation that have developed over the years have been in response to different types of accommodation options and to try and bring that all under one completely different act would be a significant challenge. If it was regulated to the same extent that it is at the moment, then I would not see that as legislative interference.

Ms HARTLAND — Would you not agree that to actually have uniform legislation that covers all retirement housing would make it much easier for both residents and the proprietors?

Ms SOUTHGATE — Yes, it would be definitely easier.

Ms HARTLAND — I am sorry; I am a bit confused then about your statement that you think it is legislative interference — on page 5.

Ms SOUTHGATE — Which paragraph is that?

Ms HARTLAND — Page 5, I think it is in the middle. I am sorry, I do not have it in front of me. I have a summary.

Ms SOUTHGATE — So the statement I made is that:

... the ... legislation has been implemented over time in order to address different types of accommodation options for senior Victorians which the sector has developed in response to the need for diverse offerings of accommodation types and financial offerings. The ability for the sector to continue to provide diverse offerings should be retained without legislative interference.

So the point I am making there is that as part of any reform it should be taken into account that there should still be an ability for diverse offerings of accommodation to be provided.

Ms HARTLAND — There is clearly a problem with dispute resolution, and we have heard evidence today from a community legal centre and from the law institute that it is a very complex issue and people are often intimidated by the process. So, again, I need to understand why you would not think that we need something — it may not be a housing ombudsman — that is central, gives good advice and is easy to use for both residents and the operators.

Ms SOUTHGATE — So our submission is that there is a role there definitely and that we think an organisation like consumer affairs, which already has oversight of the retirement villages legislation would be the appropriate organisation to do that. Our submission is that it is not at the level required for an ombudsman to have that oversight because we see it more as a way of complaint handling and dispute resolution between operators and residents and between residents and other residents, which we see is not really the role for an ombudsman. So that is the ombudsman issue, but we still see there is a role for someone outside of, for example, retirement villages or residential parks to be assisting in complaint handling and resolving disputes.

Ms HARTLAND — So an internal industry organisation?

Ms SOUTHGATE — No, something like consumer affairs.

Ms HARTLAND — Right. We are hearing a lot, and it is really clear in the submissions too, that people do not feel that consumer affairs is actually taking up their cases adequately. We heard evidence from them this morning that while they had 600 inquiries there were only 40 actual investigations. What has been expressed to me is that people do not feel as if consumer affairs actually takes their complaints seriously especially around bullying from managers and especially in terms of issues around contracts and also around often really basic access issues for residents.

Ms SOUTHGATE — I cannot comment on individual residents' experiences with consumer affairs I am afraid. I have not been involved in that. I have seen it from the operators' side on a couple of occasions. So from our point of view when we have dealt with them they have been helpful in terms of getting parties together to try and resolve matters.

Ms HARTLAND — In terms of residential park residents and in relation to security of tenure, precontract disclosure and fee increases, as I understand it, there is not a uniform way of dealing with this across the park. Can you talk to us about that and whether you think that there does need to be a uniform way of dealing with it?

Ms SOUTHGATE — In terms of disclosure, there is some precontract disclosure that is required, but our suggestion would be that something similar to what is called a fact sheet under the retirement villages legislation, which is a very simple, I think, four or five-page document which summarises details for the village, would be quite a useful additional document for residential parks. There is some precontract disclosure, but there is not anything that is like a simple summary about that particular development. That is one thing that I think would be useful.

The other thing is that at the moment for residential parks if there is an increase in fees — 'if fees are seen to be harsh' I think are the words — there is a right for residents to apply to VCAT in relation to that. Our view is that that creates uncertainty for both residents and the operator in terms of fee increases, and what we see works

fairly well in the retirement space is that those increases are capped to CPI unless the residents all approve. I think that gives certainty to both residents and operators. That is another thing that I think might be something that could be taken into consideration in residential parks.

Ms HARTLAND — Are you aware of examples where people have agreed to pay over CPI because, you know, they have been bullied into it?

Ms SOUTHGATE — I am not aware of bullying allegations as such. I am aware of some situations where they have approved fees over CPI, but that can only be done when it is at a meeting and a majority of the residents approve it. It does not happen very often at all from what we see, but it has happened, yes.

Ms HARTLAND — Yes, because certainly the information that I have had from residents is that it does happen and it happens regularly. You may not be able to answer this, but what kinds of standards would you want to see the industry have for managers of these parks, because if you work in childcare or in aged care, you have to have police checks and you have to have a certain qualification, and I am not sure whether managers of these facilities have to have any kind of qualification.

Ms SOUTHGATE — I am not sure, I am afraid. I could not answer that.

The CHAIR — Ms Southgate, thank you so much for your submission and also for your preparedness to be here today and to answer our questions. As I said in the introduction, a draft transcript will be with you in the next few days. Thank you again.

Ms SOUTHGATE — Thank you very much. Thank you for the opportunity.

Witness withdrew.