

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 28 September 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

Witness

Ms Debbie McClure, Group Sales Manager, Ryman Healthcare.

The CHAIR — I would now like to welcome Ms Debbie McClure, the group sales manager from Ryman Healthcare. Thanks very much, Ms McClure, for joining us today. Before I ask 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 proof versions of the transcript within the next week, and transcripts will ultimately be made public and placed on the committee's website. We have allowed 45 minutes for our time today. We have received your submission. Thank you very much for that. I invite you to make some opening remarks, and thereafter the committee will have some questions. Thanks again for being with us.

Ms McCLURE — Thank you. I do not intend to make a large opening statement. I have been in the industry for 26 years, so I have a greater advantage than you as to what the industry is about. As background I would probably like to explain a little bit about where Ryman started and where we are at now. I think it is important to know why the company started back in 1984 to get a sense of the values that the company has for retirement living.

The company was started in 1984 by two gentlemen, John Ryder and Kevin Hickman. Kevin was a detective; John was his accountant. In investigating a fire in a rest home — which is like a low-care facility, with it being a New Zealand-based company, rest home care — Kevin was mortified to see an elderly lady being wheeled down the corridor with a nightie up around her waist, having no dignity as she was being taken to have a shower. He had no idea that that was how elderly people were living. He went to his accountant and said that he did not want his parents to ever have to live in that kind of way and felt that they could do something better. So that has always been the heart of the company — is it good enough for Mum? — and that is where the company started.

The company listed in 1999 on the New Zealand stock exchange. We have 30 retirement villages in New Zealand. The main difference probably between the retirement villages here in Australia and Victoria is that we have always committed to having a full continuum of care in retirement living, so our villages start with having independent living in one, two and three-bedroom apartments. We have one-bedroom serviced apartments, and then we have the care centre, which in New Zealand is rest home, hospital and dementia care, and of course here in Australia it is low care, high care and dementia care. They are the main differences — that we actually cater for everything all the way through.

The other difference is that because of us having that aged-care facility people who come to live with us naturally preselect that they want to be in that environment with the care centre on site, so we do attract residents of a more mature age than some of the lifestyle villages. On the average age of our residents, we accept applications for residents 70 years and over, but naturally just by preselecting our villages, the residents are on average 79 and over in independent living, and our residents are 85 years and over in our serviced apartments, just on average.

Since 1984 we have looked after 30 000 residents. We have 4500 staff. But as I said in my submission, at the centre of everything we do we think, 'Is this fair and best for the staff, for the residents?', and therefore also, being publicly listed, we have responsibility to our investors. That is what we are looking at: is it fair and best? I appreciate the complexity of what you have got to consider. It is a very diverse industry when you are taking into consideration the caravan parks and the retirement villages and everything else. It is not an easy situation to make decisions. Not only is it diverse with the caravan parks; even within the retirement village industry it is very diverse.

As you will see in the submission that I put in, the one thing that we find we would be very keen to see considered would be that every person who is entering into an agreement for independent living or serviced apartments does have compulsory legal representation. The reason we feel that is very important is, I can tell you in 26 years in dealing with people in the industry, that the first inquirer in independent living is generally the person that is going to be living there themselves and for serviced apartments it is usually their family member that would inquire first.

But for independent living, with the resident having inquired first and us having had an application and entered into an agreement with that resident, it is many years later — thankfully, because they have a very happy and long life with us — that they are exiting the retirement village unit, either going through to our care centre or

because, sadly, they have passed away. Then it is us dealing with their families, and if they have not had legal representation, as we experience here in Victoria with it not being compulsory, as it is in New Zealand, families are often quite upset thinking about the terms that their parents have entered into, and they question whether their parents really understood what they were entering into.

I was interested earlier when you asked if the gentleman from consumer affairs had stats on the number of people that get legal representation. So I did not do phone a friend, but I did text a friend down the back there to our finance team in New Zealand to ask them what the statistics are for us and our experience here in Australia. We just have one retirement village here now. We have committed to having five open by 2020 in Victoria, and we have bought the land to do that. But in our first village, where we have 200 independent apartments and 52 serviced apartments, we have just had 60 to 70 per cent of those applications where the resident has had legal representation.

Now, I would suggest to you that that is a higher number than would be common here in Victoria, and I would suggest that is because I have very much encouraged my sales advisers in our village to encourage the residents to actually get the legal representation. So I would suggest that is higher than normal. In New Zealand, of course, it is 100 per cent legal representation because it is part of the Retirement Villages Act.

I have got other notes down there, but I thought probably there are questions that you would like to ask me and the time could be better used in that way.

The CHAIR — Thank you very much; that is really useful information. I will ask a couple of questions to start with. First of all, following on from the discussion with Consumer Affairs Victoria as well, do you see the industry consolidating around Australasia as it grows and matures? We had that discussion with CAV, led by Mr Mulino, about industry standards and sometimes them being led by the private sector, by the operators themselves. Do you see that happening across the sector — that the larger operators are growing as a share of the market as we move forward?

Ms McClure — So that they are growing together in what they are offering people? Just to clarify.

The CHAIR — Is their percentage of the market that they operate — that is, the larger scale operators — growing from your observations?

Ms McClure — Look, I think it needs to grow everywhere, doesn't it? You were talking earlier about the bed situation. I was glad that you raised that, because it does not take a rocket scientist to work out with the ageing population that we need more aged-care beds. With the larger operators, I am part of the committee for the Retirement Living Council in Victoria, which I have been invited to be a part of, but that is not something that is being discussed. But certainly from the point of view of our own company, we have 30 retirement villages in New Zealand, and there are more retired people in Victoria, so from our own experience we see a need to be making great numbers of retirement villages here in Victoria before we even looked at other states in Australia.

The CHAIR — You highlighted a significant difference where legal representation is mandatory in New Zealand. Are there are other regulatory differences you can identify that are better in New Zealand or in other parts of Australia?

Ms McClure — I think having an inquiry does not necessarily mean that everything is bad about what is in place. I think there are a lot of great things in place here, and I also think, being part of the Retirement Living Council here in Victoria, there is not one person that is on that committee — and it is represented by all the larger players here in Australia — who is not passionate or looking at the best interests for the people that live in the villages. I think sometimes a lot of things get lost in translation and communication. I think communication can be better. When I heard you talking about complaints earlier, I think there are a lots of things there sometimes where communication is the key — that perhaps residents do not feel well communicated with. Then that causes misconceptions and things.

I think the fact sheet is really a great thing here. We do not have a fact sheet in New Zealand, and I think that is a fantastic thing to have here because without it, by the time a person in New Zealand gets to having an agreement and the disclosure statements and things like that, they have already visited the village several times, they have become emotionally attached probably to the person they have met at the village that is helping them

through the process and they have got their heart set on the apartment they have looked at, so they are already there. With the fact sheet coming first they have got all those facts before them before they actually get too emotionally attached to the apartment and the village they are moving to.

I was really interested to hear your question earlier about the wording in agreements. Look, I think it is really hard to have a standard contract when you have got such diverse things. For example, we do not have capital gain in our retirement village units, but our terms and conditions are considered to be very, very fair. When the New Zealand government were considering the Retirement Villages Act resident groups suggested to the government that they look at our terms and conditions to see what we offer, and our terms and conditions are in a number of areas better than what the act has actually introduced. But I also appreciate that the operators here in Australia, in Victoria, cannot all adopt the terms and things that we have, because it would not be financially viable for everybody to offer what we do, because there are some very small operators. We have got a big company and a good financial background to be able to offer very attractive terms to people. For example, we have fixed weekly fees. That is probably not something that everybody could do.

But I think in the application forms in the legal documents — really, do we still need to have Latin in them? When we came to Australia I discussed it with our team, and we wrote a new agreement in plain English. What fascinated me when we started selling our Weary Dunlop village here in Wheelers Hill was the number of questions I then got, and my sales team got, from our potential residents and their families. Do you know what? It was because they could understand the agreement. It was in plain English, and everybody could read it. There are so many agreements that still have Victorian language that nobody has a hope of understanding. We were really surprised by the number of questions we got from residents when we started selling our village over here.

Mr MULINO — Thanks very much for the presentation. Clearly one of the advantages of having comprehensive legal advice is that people will be provided with expert advice on a lot of the detail, which might fill in some gaps that a disclosure regime in and of itself may not be able to fix. But one of the disadvantages, I suppose, of that kind of regime is that it does add some costs for people. I think in your submission you referred to costs of around \$700 to \$1000. Have those costs come down since that requirement was brought in, to your knowledge?

Ms McCLURE — No, they have not come down as far as I am aware. I think also when you consider that most people, with us as an example, are paying between \$500 000 and just over \$1 million in our village here, and in New Zealand, depending on the part of New Zealand, they will be paying between \$300 000 — I am talking about serviced apartments and things too — through to \$1.3 million, \$700 to \$1000 is, in my opinion, not a large outlay for the peace of mind and the certainty of knowing what they are entering into and the security they are going to get for that and, from my experience, that peace of mind for their families to know that when their parent entered into that agreement many years ago it was understood by them.

Mr MULINO — No, I think that totally makes sense. If it is protecting people against disadvantageous clauses, in context, it certainly could make sense.

Another issue in relation to more comprehensive provision of legal advice is that you can imagine that it would benefit individuals but that it might also have an impact on the system as a whole in that it might have an impact on the kinds of contracts that are being offered to people. Often there is devil in the detail and certain clauses get included that might have a sting in the tail. Across the sector as a whole in New Zealand has there been any impact on the kinds of contracts that are offered because of the requirement for comprehensive legal advice, and is it your sense that certain clauses that might have been offered in the past have now been removed from contracts because providers of contracts know that everybody is getting legal advice?

Ms McCLURE — Look, I do not know that for certain, but I would expect that that would be the case. I think the good thing about the terms and conditions in the legal thing is that competition is a really healthy thing. People have to adhere to the things that are in the act, but in some cases people are going beyond that for competitive reasons too. Even here, since we have been here, I know that some other companies have started looking to similarly adopt our fixed fees and things like that, so it is a win-win situation, isn't it?

Mr MULINO — One of the issues that has been raised through the submissions, and it has also been discussed a bit today, is the way in which disputes are resolved. We have had a number of observations about how many disputes there are, how many have been notified to certain government agencies and so on and so forth. But I suppose one aspect that I would be interested in your thoughts on is the way in which particular

retirement villages or providers manage disputes internally and what you think best practice is. I am just interested in how you handle disputes as they arise within your system.

Ms McCLURE — Sure, and of course I would say that I feel that ours are best practice. I do sincerely believe that, because we pride ourselves on really good communication with our residents. I think that is the key to everything. If you have good communication, then you have fewer complaints. I guess we are seen as a little bit unusual in that even when we were signing agreements in the first year and our lawyers here would say to me that a person's lawyer had a concern about something or wanted to find out something, they were a bit surprised when I wanted to ring the lawyer and talk it through because you can get a lot more solved by having direct conversations. That is the way that we do things and that is the way we handle things with our residents as well.

Our dispute process is to start with what we have as an independent village advocate. It is an independent person, but we do pay for that. I think that is a little bit complex in that people may be naturally suspicious that if you are paying for a village advocate, they are going to be agreeing with everything that the company says. I can tell you that is not the case. We did not need to have a village advocate here in Victoria. We were not needing to as part of the legislation, but we chose to anyway. What is really fascinating for me is that our village opened early in 2014 here and that village advocate has not had one phone call, one email or one letter from any of our residents who live in our village here. I would put that down to the way we handle the complaints and concerns in our village.

We would encourage the residents in the first instance to speak to a senior member of staff in the village and the village manager. It is also very transparent to them as to who in our regional office here are people that they can speak to should there be a personality conflict between a resident and a village manager, because that can happen. Then we have the process when a complaint is lodged that it has to be within 72 hours that the person has had communication back that their complaint has been received and the time frame of that being processed. Then within seven days there has to be a meeting with the person who has made the complaint with the village manager and identified what action is going to take place to resolve it and then formal letters and all that as well.

We identify that if something is a low risk it would not have as much priority. If it is a high risk, it is obviously resolved much faster. I think as well as that we have other processes in place. We have a dedicated residents relations team in our main office, so every resident who moves into one of our villages, whether it be independent apartments or serviced apartments, actually receives a phone call from that residents relations team to ensure that they are happy with their move, that they are happy with their apartment and that they have received what they were told they would receive with their apartment. That is done after they have moved in. They are also given that team's contact details so they can approach them at any time should that not be the case.

So I think we have got good processes in place. There are really good different streams of communication for people to approach our company. It can be a bit intimidating for a resident We would love everybody to want to feel really free to go and talk to the village manager, but some people can feel that if they do that they might be seen as a troublemaker or a complainer or something. While that would not be the case, you need to have other avenues for people to be able to feel confident in making complaints.

Mr MULINO — Ms Hartland asked a question earlier about the fact that it is important that managers have certain skills and that it is a very complex environment. It sounds like you would agree that in order to manage disputes, even in a very well-functioning retirement village, it is important that they have the skills necessary to manage those kinds of disputes?

Ms McCLURE — Yes. We have a really strong induction program for our village managers, and again that is easier for us when we have got 30 retirement villages and a great strength in our office. When I started with the company 26 years ago at our first Christmas party there were six of us, including the two directors, and I think there are about 150 in there now. We have got a big strong company background and we can do that. But when you are considering these things for the industry, you need to also be considering that there are some very small operators that do not have that advantage of being able to use a strength that we have. I mean, we have leadership programs for our team and mentoring programs. With the size of the company comes the advantage of being able to do those things.

Mr MULINO — One of the challenges in this area, I think, is it is very difficult to get a sense of the number of disputes that are out there, partly because obviously a lot of people come to MPs, but not everybody realises that they can go to MPs or not everybody would feel confident doing that. Some people are making complaints to government agencies, but it is not necessarily obvious where to make the complaints. I imagine that a lot of complaints that are not necessarily extremely serious get raised within villages and hopefully get resolved within them. Within that broader observation that it is difficult to have accurate numbers, I am just wondering do you have any numbers that you can disclose on the types of complaints or disputes that get raised within your own processes and how they get resolved.

Ms McCLURE — Within our own organisation. I do not have that with me. I can certainly get you some information if you would like it, but I think also — —

Mr MULINO — I am acknowledging that yours is not necessarily going to be representative of the system as a whole.

Ms McCLURE — No, and I think, to be fair, I do hear within the industry complaints and things that are raised, and some were touched on this morning like exit fees, deferred management fees, weekly fee increases and refurbishments. You see, we do not get any of those because the terms are such that we do not get those complaints. For example, our deferred management fee includes the refurbishment of the units, so we do not ever have to get into a discussion with people about how much we are going to spend on refurbishment of a unit because it is already included in the deferred management fee and then we are setting the price of the resale of the unit, so it is not something we have to discuss with people. Within the industry and talking with my colleagues in the industry, there are a lot of things that I hear that they have as complaints that we simply never hear about.

Ms HARTLAND — I have got a couple of questions. I am really interested in the New Zealand model around the legal practitioner, and I know you have touched on it. Is it possible for you to be able to supply the committee with — —

Ms McCLURE — Some light bedtime reading!

Ms HARTLAND — Excellent. You have read our minds. Thank you; that is fantastic.

Ms McCLURE — I could get it for you electronically, if you want it, but this is good bedtime reading.

The CHAIR — Yes, that would be great.

Ms HARTLAND — Yes, that would be really good. In terms of your contract — and you may not want it to be public — —

Ms McCLURE — It is here.

Ms HARTLAND — Everything is there?

Ms McCLURE — Yes.

Ms HARTLAND — Great. Can you give us a bit more detail about the retirement committee that you were talking about?

Ms McCLURE — As part of the property council, the retirement living council committee?

Ms HARTLAND — Right.

Ms McCLURE — I was invited to be part of that committee, so looking at advocacy for the industry, and that looks after everybody within the retirement village industry, the providers, whether it is a small operator or a large one.

Ms HARTLAND — What are the things you think this committee should be looking at to improve the lives of people who live in villages?

Ms McCLURE — Well, I do not know how much experience you all have in the retirement village industry, so to just start with I would be suggesting that you all come out and have a cup of tea or a drink at the happy hour with the residents in our village. I think it is one thing to read on paper about things, but I think it is a really good thing to actually go into a village and speak to the people, so I would be recommending that.

The CHAIR — We will be doing that at multiple locations.

Ms McCLURE — Great. You are very welcome to come and see us.

The CHAIR — Thank you.

Ms McCLURE — I was interested, because you asked Consumer Affairs Victoria about going into villages and auditing villages. For me, I do keep coming back to communication. I think it is the transparency with people and having really good communication and the things that as a whole we look at from our experience in New Zealand and then look at here. There are many things that I feel are as good or better. For example, as I said, the fact sheet is better here. But I do see that the lack of compulsory legal representation is a big hole, in my opinion.

The CHAIR — Just to follow up on that, if I may, does the independent advocate have any statutory power, or is that a conciliation process?

Ms McCLURE — Here in Victoria we have appointed a village advocate and they do not have any powers. In New Zealand we have to have a statutory supervisor, and where that comes into play, importantly, is if a person is buying one of our independent village units and the security that they are entitled to for the actual unit has not been finalised when it is time for them to move in, then their moneys are held by the statutory supervisor so that their money is protected until we are able to give them their security. So they do have some powers. In fact it is all in here. I did actually have a re-read through that last night in case you asked me that. But the powers of the statutory supervisor are in there. They have powers around things like, you know, if they feel that even advertisements and things could be misleading or anything; they have powers around that as well. But it is all in there.

The CHAIR — Okay. So it brings the dispute resolution to a much more localised level, doesn't it?

Ms McCLURE — Yes. So we actually have, as I talked about, communication. We are very big on communication, so every second month we have resident meetings in our villages and twice a year that advocate or statutory supervisor attends those meetings. They must, as part of the retirement village act, come to the one for the annual general meeting, but we have them come to additional ones as well. Look, a lot of the time it is fantastic feedback for us that everything is going very well and that the residents are very happy; and sometimes it can be an early warning system for us perhaps about a village manager's relationship or other things, so I think that is a really healthy practice too.

The CHAIR — Yes. Excellent. Is there anything else, Ms McClure, that you would like to tell us before we conclude?

Ms McCLURE — I will have a little look through my notebook. That is pretty much all that I was going to cover. Will you arrange for Patrick or someone to tell me the way to get you copies of all this documentation electronically?

The CHAIR — Yes, absolutely; the secretary will be in touch. Thank you so much for your perspective.

Ms McCLURE — You are very welcome.

The CHAIR — The transcript will be with you in the next few days. Thanks again for being here.

Ms McCLURE — Thank you.

Witness withdrew.