

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 28 September 2016

Members

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Mr Gordon Rich-Phillips

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Witnesses

Ms Deborah Glass, Victorian Ombudsman, and

Mr Andrew Adams, Executive Officer, Victorian Ombudsman.

The CHAIR — I would now like to welcome the Victorian Ombudsman, Ms Deborah Glass. Thank you very much, Ms Glass, for making yourself available today; it is much appreciated. I also welcome Mr Andrew Adams, who is joining you from your office. 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 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 and you will be provided with proof versions of the transcript in the next week. Transcripts will ultimately be made public and posted on the committee's website.

I invite you to make some opening remarks and thereafter the committee will have questions. I appreciate your submission to the inquiry and the reference to other submissions that you have made to government-led inquiries in recent times and the Commonwealth Productivity Commission report *Access to Justice Arrangements*. Thank you for that information and I invite you to make some comments.

Ms GLASS — Thank you for the opportunity to give evidence to this inquiry. It is a hugely important subject, and from the number of submissions I saw on your website the public clearly agrees. I think the most useful contribution I can make is around dispute resolution processes and your consideration of a retirement housing ombudsman. I first looked at the aged-care sector when I carried out an investigation that I tabled in Parliament last year about the department of health's oversight of Mentone Gardens, a supported residential service. During that investigation I looked at oversight arrangements in the sector, which can best be characterised as complicated and confusing. There are both state and commonwealth regulatory regimes, there are gaps between them and there is no single agency with overall responsibility.

The picture becomes even more complicated and confusing when we bring in the subject of this inquiry, the retirement housing sector. I asked my Executive Officer, who has accompanied me here today, if he could do some research on the processes for complaints and dispute resolution across the various accommodation types. I am happy to share his work with you. It certainly illustrates the complexity of the current arrangements and the need for this inquiry, as it is hard enough for the young and fit to navigate the landscape and figure out where to go when things go wrong. If the committee would like to see this, I am very happy to pass up copies.

The CHAIR — Thank you; that would be terrific.

Ms GLASS — So my overall point therefore is that any solution should focus on making the system easier to access and easier to navigate when things go wrong, and that is, of course, much easier said than done especially as some of the confusion relates to state and commonwealth responsibilities that will be outside the scope of your inquiry.

The practicalities of the various options will be for others, but if I can make a few points of principle. First, in setting up something called an ombudsman it must comply with the core ombudsman principles of independence, fairness, accountability and so on. I refer the committee to the Australian and New Zealand Ombudsman Association's six essential criteria for being an ombudsman, which I am very happy to provide the committee with if you do not have them. I make this point because as ANZOA, that group, has stated, public respect for the independence, integrity and impartiality of ombudsman offices is at risk if bodies do not conform to the accepted model and are inappropriately described as ombudsmen. It should not, for example, be used to describe a body that is subject to the direction of a government minister or industry body.

Second, in addition to the essential criteria there are some fundamental differences between different types of ombudsmen and complaints handling bodies, including their funding, their governance and whether their decisions are binding. So, for example, my jurisdiction is the public sector, which is obviously publicly funded as is my office. I have no power to enforce my recommendations, but I do have many other powers, including the power to table reports in Parliament, and at the moment the take-up rate of my recommendations is tracking at 100 per cent.

Industry ombudsmen, on the other hand, are funded by the industry, set up with arms-length governance arrangements and can make binding decisions on scheme members. Then there is a plethora of other complaint-handling bodies, some of them regulatory bodies in relation to professions such as doctors and lawyers and some are specialist bodies such as those dealing with health, disability and so on. These bodies carry out very important functions, including conciliation and other forms of dispute resolution. They are not

ombudsmen, and if they are Victorian government agencies, as many of them are, you can complain about them to me.

Finally, there is Consumer Affairs Victoria, which covers just about everything else, and which provides conciliation services and an avenue to VCAT. It is also a publicly funded agency within my jurisdiction, and I understand you heard from its director this morning.

The CHAIR — Yes.

Ms GLASS — In looking at the options, the choice of option will carry certain consequences. For example, if it is to be industry funded, you need to be able to bind all of the providers in the sector. This model works best when it involves a small number of large providers delivering essential services. Otherwise you are looking at more of a government-funded consumer protection model like Consumer Affairs Victoria. In any event, I would encourage you to see this issue within the broader context of access to justice, which I am aware is also currently under review.

Finally, while I cannot make the overall landscape less complicated, I am hoping, if I obtain the funding, to develop a single complaints portal for the public sector, which would improve access and help the public by directing complaints to the right place. That proposal has the support of your fellow parliamentary committee, the Accountability and Oversight Committee, to which I report, as well as the many agencies I have discussed it with. I hope that is helpful, and I am very happy to answer any questions.

The CHAIR — Ms Glass, thank you very much for that comprehensive presentation, and I thank you and Mr Adams for this diagram, which does describe very clearly the complexity of the arrangements. You may not wish to give an opinion about this, but noting the complexity that you have identified and that the submissions that we have received clearly reflect, do you believe there is a need for a retirement housing ombudsman?

Ms GLASS — As I hope I set out, there is clearly a need for some form of dispute resolution service in the sector. It is very clear from the submissions you have had on the subject and the existence of this inquiry that there is a gap. It seems to be fundamentally a regulation and consumer protection issue. I am not sure that ‘ombudsman’ is the right word to use, and the reason I caution the use of the word is that it would have to meet those essential criteria if you are going to set one up. The question then arises of who is going to fund it. If it is to be set up on the industry ombudsman model, which is what I understand many submissions to your inquiry are suggesting, then there are some real practicalities — and I think it is not for me to say — as to whether it is possible to bind all of the providers of what seems to be a sizeable sector.

The CHAIR — I think that is a very good point because, yes, as you say, we have received evidence today and also in submissions that advance the proposition that an industry-funded model is best but, as you say, it is a diverse industry with large, small and new entrants to the marketplace all the time, which will make that industry funding arrangement difficult to implement. I think that is a fair point.

Mr MULINO — Thanks very much for your evidence. I think it has given us a very rigorous intellectual framework within which to think about this. I think in some ways before we get onto labels, as you alluded to, it is probably best that we think about what the outcomes are that we are trying to get at.

Ms GLASS — Yes.

Mr MULINO — It strikes me that given the nature of some of the disputes we are talking about, the nature of the dispute resolution process, the one that is going to be best suited to this environment is probably going to be not adversarial, given the nature of a lot of the complaints but also the people that are involved, who are often in a vulnerable situation. I think you have alluded to the fact that it should be low cost if possible. As we have heard, there is an access to justice review underway.

Another issue that I think is possibly worth bearing in mind in this context — and I would be interested in your thoughts on this — is when we look at dispute resolution in some other contexts, for example, in relation to telecommunications products or financial products, people have a dispute, it is resolved and then they move on and they can get a new mobile phone contract or a new insurance provider or whatever it may be. One of the complexities here, I think, is that we are often talking about people who have to go back into living in an

environment from which the dispute arose. I imagine that is going to require a very particular kind of dispute resolution. I would be interested in your thoughts on that.

Ms GLASS — Well, that is not a unique problem, and that would be true in disability services, for example, as well. Complaints about disability service providers would have a similar set of issues. I think the core principles around dispute resolution are probably equally applicable regardless of their nature. There should be the ability to have different mechanisms for resolving a dispute as appropriate: whether conciliation or mediation for the issues to be appropriately aired and ultimately resolved wherever possible. There are many, many mechanisms in place. We have the dispute resolution settlement centre. There are the models used by Consumer Affairs Victoria. I do not claim to be an expert in all of those, but this is fundamentally a consumer protection issue. It seems to me there is a need for a greater level of consumer protection. There may well be a need for greater level of regulation — again that is not an issue for me — but whether you characterise that within a framework of an ombudsman, I think, is a separate question.

Mr MULINO — One thing that struck me through this — and I do not claim to have a great familiarity with this area — is that there is a consumer protection aspect to it, which is protecting people from not signing up to contracts that have dubious clauses in them. That is a very important element of the regulatory arrangements, but even if contracts are improved and even if we get rid of clauses that are inappropriate, we are likely to have an important ongoing dispute resolution side to this. It is possibly going to be a more complex regulatory challenge than for quite a lot of other products.

Ms GLASS — I appreciate that.

Mr MULINO — That has been very useful. Thanks for setting out that framework.

Ms HARTLAND — I think the chart is fantastic; that is really helpful. From the evidence that we heard this morning from Consumer Affairs Victoria and from the department of health, and because there are at least two acts that oversee this area, it seems that it is actually quite difficult for people to get resolution of their complaints. You would know all of this. They tend to be older, they do not necessarily have a lot of money — it is very difficult. I thought the idea of having an ombudsman would be that it would hopefully speed up the process and it would be a really easy process for people to use. Can you talk a little bit about the portal you are about to have for complaints and whether you think that would help?

Ms GLASS — We are hoping to have, and the subtext of that is that we have an incredibly complicated and confusing complaints landscape across Victoria. This chart is just the spaghetti junction in the retirement sector. I mean, if I tried to characterise it across all sectors, it would be impossible to fit onto a page. I cannot make that system less complicated. I only have jurisdiction over public sector agencies. But a lot of people, for example, approach my office about things we cannot help them with. They will complain to me about their phone bills, they will complain to me about the police — a matter for IBAC — or the telecommunications ombudsman. So rather than having to send them off in another direction and really make their complaint journey worse because they have come to the wrong place — and for all I know I may be the third or fourth person they have come to — what I would like to be able to do is set up at least initially on a web basis a single complaints portal that would direct people to the right place. That would have a number of potential layers to it. Initially it would allow people to not have to think about where to go. They would just come into, you know, complaints.vic essentially and put in what they are complaining about and it would bring them to the right place. There are many variations on that that I hope we could develop that would make it more helpful to people, including more standardised complaints forms and more standardised procedures that sit behind that, but those are developments that I would like to look at down the track.

Ms HARTLAND — We heard evidence this morning about the New Zealand model where there is actually an advocate and people are required to get legal advice before they sign the contract. What are the things that you think we might be able to do to streamline it and actually make it both easier and safe for older people?

Ms GLASS — I thought you probably would be asking me the question, when looking at this chart, is it possible to streamline it? Really what it shows you is that there are so many pieces of legislation in there. You have got the Retirement Villages Act, you have got the Residential Tenancies Act, you have got the commonwealth legislation, you have got various different bodies, including strata title and owners corporation provisions, depending on the nature of the facility.

Looking at that I cannot see an obvious way of streamlining it. It would be nice to think it were possible, but practically speaking I think that is very, very tricky. One possibility would be actually to beef up the role of Consumer Affairs Victoria, because they have the role there already. It seems to me that the simplest process would be to expand or somehow beef up their dispute resolution jurisdiction in this particular landscape to give them perhaps a bit more teeth, if necessary, or a bit more ability to deal with the particular problems that inevitably arise rather than create a separate body that would then confuse the jurisdiction yet further.

Ms HARTLAND — That is certainly an issue that has been raised by residents — that they really need Consumer Affairs Victoria to actually step up and act on their behalf and not just send them off somewhere else. So you are saying with the portal you do not know whether you have got the funding?

Ms GLASS — Well, I do not have it at the moment — that is the situation — but of course I look to Parliament to assist me in these matters, and I will be putting in a bid next year.

Ms HARTLAND — I am just thinking, as someone who gets a lot of people through my office who are making complaints, if I had just one place to go it would make my life so much easier. How much time do you think this could save community groups if they had somewhere to go?

Ms GLASS — I think it would save a massive amount of time. In fact nobody I have spoken to about this thinks it is a bad idea; everybody is very enthusiastic. So it really is just a matter of, I would hope, a modest amount of political will from the appropriate players to provide that.

Ms HARTLAND — Have you got a sense of how much it would cost?

Ms GLASS — We want to do this on a trial basis. Clearly it is not something that you would want to start big. I mean, anything involving technology and in any venture you would want to do — —

Ms HARTLAND — Do it every year and see how it works?

Ms GLASS — Well, bring in a relatively small number of players initially, make sure you have got the lines of communication working between the different bodies, make sure you can streamline as far as you can within those areas, and then expand it appropriately as you are confident that it is working.

The CHAIR — Ms Glass, you referred before to the different complaints that you receive and people believing that you are the ombudsman for everything. Do you receive many complaints from this sector?

Ms GLASS — I do not have those numbers with me. I do not think we would get a large number, but I am very happy to take a look in our office about whether we do. More likely they would be complaints about Consumer Affairs Victoria's handling of the matter, because I do have jurisdiction of course over Consumer Affairs Victoria. But whether we receive complaints that we cannot deal with directly about the retirement housing sector is something that I am happy to look up and advise the committee following this hearing.

The CHAIR — That would be much appreciated, and if you could also look at that issue of complaints about Consumer Affairs Victoria, that would also be instructive.

Ms GLASS — I will consult our new data analytics and see whether we can assist you in that.

The CHAIR — Thank you.

Ms HARTLAND — I really think that would be incredibly helpful because that is where people go as their first port of call. I am being repeatedly told it is just not working, and the evidence we received this morning was that they had done 40 investigations but they had had 600 complaints, and people who live in the villages do not feel that Consumer Affairs Victoria goes hard enough. 'Does not use their existing power' is what is being expressed to me.

The CHAIR — Ms Glass and Mr Adams, thank you so much for your time and for the work of your office and the information you have provided. It is most instructive, and your evidence is greatly appreciated.

Ms GLASS — Our pleasure. Thank you.

Witnesses withdrew.