

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Ballarat — 19 October 2016

Members

Mr Edward O'Donohue — Chair

Ms Nina Springle — Deputy Chair

Ms Margaret Fitzherbert

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Ms Jaelyn Symes

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Witness

Mr Alan Clark.

The CHAIR — Welcome, Mr Clark. Thank you for your submission to the inquiry. We have allowed about half an hour of time today. Thank you for being with us. Before I invite you to make some opening remarks, I will just issue the caution that all evidence taken at this hearing is protected by parliamentary privilege; therefore you are protected against action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. You will be provided with a proof version of the transcript in the next week. We invite you to make some opening comments. As I said, we have received your submission and understand your main points. We look forward to any extra information you wish to provide in 5 to 10 minutes, and thereafter we will have some questions. Thank you again for being with us.

Mr CLARK — Thank you very much for the opportunity. I was really pleased to have been here in time to have been present during the closing remarks of the previous speakers because my submission relates quite specifically to an aspect of that. Towards the end of the calendar year 2012 my mother, Jean Meakin, moved from where she had spent half of her life, in Darwin, to Ballarat to move a bit closer to some supportive family. As I had moved to Ballarat, she checked out a number of retirement villages in the area and settled upon Midlands retirement village in Ballarat North. She was a resident at Midlands retirement village from late 2012 until her death in March of this year following a fall in Ballarat, where she hit her head, became unconscious, did not recover and died within a day.

I should mention at the outset that through her three and a bit years at Midlands retirement village she really enjoyed the village. The village is quite a large one. The residential relationships were very good. At the time she decided to move into Midlands retirement village the manager was John Morgan. He and I established a very close relationship, and it was pretty clear that he was looking out very strongly on behalf of the residents' interests and was very closely involved in their activities. It was a productive, warm, supportive and friendly relationship.

None of the issues I have relate to the management of the village. They relate to the corporate involvement of Stockland specifically following my mother's death in March. As you heard from the previous speaker, there is a process whereby once there is vacancy — a resident leaves the retirement village — the unit is refurbished. I was aware from the time when John Morgan was manager that that refurbishment was managed really quite locally. It was managed by the manager, and there was a policy decision that had been in effect that some discretionary parts of the refurbishment, like for example the choosing of carpets and curtains, was up to the incoming resident, and my mother was able to take advantage of that. There was a budget that was established, and if you wanted to go beyond the budget you paid beyond the budget. She had upped the specs on carpet, she had upped the specs on the curtains and so on; it was entirely at her discretion.

Once John Morgan left, Stockland took much more corporate control over these matters. I do not have an issue to do with their policy position. Their policy position was that they wanted to complete the refurbishment of the unit to a more corporate standard, a less individual standard, and then have a prospective new occupant effectively move into a completely reorganised premises that was done in a more anodyne fashion, I would expect. I do not have an issue with that corporate decision. That is probably a good corporate decision.

My issue relates to the initial works bill I was presented with by Stockland, which amounted to more than \$17 000 for what was supposed to be attention to wear and tear. Remember my mother had been in the unit for a bit more than three years. She was probably one of the people who the previous speakers would have spoken of as someone who took good care of her unit. She did manage to burn a benchtop by putting a hot pan on it, but that was probably the only thing that you could assume had been damaged and was subject to more than just ordinary wear and tear. So I was astounded when I was presented with this \$17 000 works bill. That is the document that is detailed with the green tab letter from Stockland. I have produced that for you, and I think it might be handed out. When I had a look at it I was astounded. I had assumed that there would be an appropriate works bill for wear and tear. It was beyond comprehension that that would amount to more than \$17 000.

I had initially misread an issue. I had misread that one of the items being quoted was the replacement of a tap at more than \$666 ex-GST, so I used that as the avenue of relating to Stockland to say, 'I think the bill is excessive, and here is an example of why'. Stockland then told me I had actually misunderstood the bill and that the bill for replacement of a tap was \$200. This is all from memory. But they did accept another minor issue that I mentioned, which was that they had billed the estate for the removal of some brackets, which was to support a clothes dryer. I said the clothes dryer was Stockland's. It was not an item of my mother's furniture, and so with extraordinary generosity they knocked \$15 off this \$17 000 bill. In fact that was an inclusive of GST price,

which assumed that the cost for removing these brackets was a very precise \$13.64, which would have appeared on the works program. That got me a bit angry, I have say.

I had a look at their bill, and I had seen that there was a project management cost of more than \$2000, and it was listed as belonging to an organisation called, from memory, Jrak5. I had a look at where Jrak5 was from, and they had a Kilsyth address. I am an ex-Melbourne boy, so I knew where Kilsyth was, and I knew how far away it was from Ballarat. I could not understand how it was that an organisation in Kilsyth could manage to project manage a refurbishment job in a Ballarat retirement village. I raised that with them and said, 'These were things that were managed in house before. This is an excessive charge. That should come off'. There were a few other things that I suggested should come off.

I then had a third quote which reduced it by another \$381.50, down to more than \$16 500, which again annoyed me because I had been led to believe that a few other items were to be removed, including the project management costs. At this stage I decided to involve Stockland at a corporate level. I explained the situation and said I was not going to be interested in accepting a bill that included the items that I objected to, and if it was more than \$13 200, then I was not going to respond. Only after going to that level did I get a bill that came in at \$13 200. That was a reduction of 22 per cent. I think it had reduced what was an exorbitantly outrageous account to a merely excessive one, because I think there was probably another quarter that should have come off. But if you can think of what I was managing at that stage — I was my mother's executor. She had died only a little time before, but I was trying to manage an estate as well as deal with these issues. I think I only got some of those matters attended to because I said I was aware of the parliamentary hearing on retirement villages and I was perfectly happy to put in a submission accordingly.

I think it is also likely that I obtained the response I did because I wrote to the CEO. I was fairly practised at dealing with bureaucracies. I knew a little bit about how bureaucracies worked. I am not frightened of dealing with bureaucracies. But I was extraordinarily disappointed with the lack of cooperation at officer level with Stockland's initial tendering of a bill. The only movement that Stockland made was when I went to a CEO and senior executives at corporate level, which I suspect was a step that many others in my position may not have taken or been confident enough to have taken.

The guts of my submission is that I strongly support the creation of an ombudsman to act on behalf of estate executors and family members in getting through some of these terrible blockages and unfair practices that I have experienced in relation to Midland village and Stockland.

The CHAIR — Thank you very much, Mr Clark, for that presentation. In relation to your proposal, do you have a view about an ombudsman versus an independent person — perhaps what might be described as a more low-key, but still independent, dispute resolution process?

Mr CLARK — In all cases you would have to hope that each of the villages or corporate structures that manage the villages have some sort of dispute resolution process. It was not clear to me how I would get into Stockland's. There was nothing on any of the letters that I saw from Stockland that was proposing what the works bill was and, if I had a dispute, this is who I deal with and these are the steps that I take.

I do not want to seem like I am a cranky old bugger, but I have had experience dealing with the telecommunications industry ombudsman. I was quite happy with the processes that came through that. My background is in industrial relations, so I understand the processes involved in lodging claims, arguing claims and managing dispute resolution. I am comfortable in that process. I was conscious of the fact when undergoing this how exposed and isolated someone without that sort of background may have felt and how few resources they may have had available to them, except the quite expensive resources of going to seek legal advice. So, I do not have a view about what type of assistance should be provided, but I think there should be a clear and easily accessible method of seeking that assistance.

Ms SPRINGLE — Thank you very much, and my condolences for the circumstances in which you had to deal with your mother's death. It is largely un-ideal, obviously.

You mentioned there was no indication on the paperwork that you received how you could facilitate some assistance in terms of advocacy. Do you think an ombudsman would be enough? We have heard from people who say there could be more than one avenue or more than one mechanism for dispute resolution, depending on the type of problems that people are experiencing, and that it may be like an independent advocate that does not

quite have the powers of an ombudsman or an ombudsman as well as either/or certainly consumer affairs having more enforceable powers at consumer affairs level. Do you think it needs to be a one-stop solution, or do you think there is room there for more than one mechanism, or would that be confusing for people?

Mr CLARK — That is not something especially I have turned my mind to, I have to say. My view is that the particular case that I am referring to should not have arisen in the first place, because my expectation is that a works program for an outgoing resident should relate to the repairs of damage rather than capital upgrades. There is a heavily front-loaded exit fee that applies to residents leaving an organisation. When I was thinking about these things, I thought I had remembered — when these things were being discussed at a federal government level in relation to aged-care facilities — there was a question of aged-care organisations not having the capital funds to manage capital upgrades of their establishments. At a federal level, my understanding was there was agreement that there would be a front-loaded exit fee established, if you like, which would be for the purpose of managing these capital issues.

My expectation was that the exit fee aspect that related to my mother's departure from the unit, which in her case was nearly \$30 000, would be for managing capital upgrades — managing the replacement over time of a set of wiring from one standard to another or moving the switches at ankle level to hip level. I thought those are the sorts of things that relate to capital upgrades. She was charged nearly \$30 000 for this exit fee, in addition to which they wanted to charge another \$17 000 for a refurbishment. That is a huge sum of money. That was \$45 000 for three years residence.

I think the issue would not have arisen had it been much clearer as to what should have been assigned to repainting and recarpeting to be separate from those matters that related to capital upgrades to make the place attractive in an updated manner.

Ms SPRINGLE — Can I just link that to what happened prior to your mother moving in there, which would have been that you signed a contract?

Mr CLARK — Yes.

Ms SPRINGLE — Did she get legal advice when she signed that contract?

Mr CLARK — Yes. I was quite familiar with the various fees upon entry and upon departure. I do not have a dispute with any of the categorisation of the fees; my issue relates to the quantum of the refurbishment fee.

Ms SPRINGLE — Yes. Did the contract outline what each fee entailed? Is that where it falls down? I guess that is what I am trying to get at. If it was outlined in the contract exactly what each segment of this breakdown entailed, then perhaps you would have some leverage to say, 'That's double up in some cases'.

Mr CLARK — Well, effectively that is what I did. I said that some of the issues that she was being billed for in relation to managing beyond fair wear and tear were clearly capital upgrades. The issue of the tap that I had misunderstood was one of those things. When you replace a tap that has got hot and cold water with a tap that does them both, that has got nothing to do with fair wear and tear. That has got nothing to do with the benefit that she would have had had she remained in the premises, and that is not the way it was when she left. This is getting something ready for the next person. So, that is not an impost that is reasonably to be met under a refurbishment angle; that is a capital upgrade angle.

I did not do the research that could let me answer your question in more detail, but my understanding was when the federal government was talking about these things in relation to aged-care facilities, there was a clearly defined difference between capital and painting.

Ms SPRINGLE — Yes, okay. Thank you.

Ms PATTEN — Thank you, Mr Clark. It was a very interesting submission, and I think it really highlighted that reinstatement versus refurbishment issue very clearly for me. We just heard from the previous witness that retirement villages no longer set the sale price. Did you set the sale price for your mother's — —

Mr CLARK — No. There must be some market issue to it, but it is a very small market, and it is not defined by any sort of open sale. I think Stockland sets the market. I do not have an issue with the way in which

Stockland sets the market. Another one of the fees, if you like, is that only half of that difference belongs to the estate; the other half belongs to Stockland.

Ms PATTEN — So do you get to pay for the refurbishment and then share the profit?

Mr CLARK — Effectively, yes, which was another thing that sort of narks a bit.

Ms PATTEN — Yes. What I am saying is: you did not set the price.

Mr CLARK — No, it is not an open market. There are no bids; there is no auction. It is a price presumably that Stockland — —

Ms PATTEN — Yes, Stockland writes to you and says this is the price.

Mr CLARK — Yes. The price has to be set locally. There is a Ballarat price for any form of housing, and it is relatively stable. I do not think anybody really moves into a retirement village with the hope that they are going to pick up some capital gain upon their departure. I do not think that is the issue. It is not like a residential house.

Ms PATTEN — No. Thank you.

The CHAIR — Mr Clark, thank you very much for your evidence and for sharing your personal story. The committee very much values it. As I said in the introduction, a proof of the transcript will be with you in the next week. Thank you.

Mr CLARK — Thank you.

Witness withdrew.