

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Mornington — 5 October 2016

Members

Mr Edward O'Donohue — Chair

Mr Daniel Mulino

Ms Nina Springle — Deputy Chair

Participating Members

Ms Colleen Hartland

Mr Gordon Rich-Phillips

Staff

Acting secretary: Mr Patrick O'Brien

Witnesses

Mr Bob Dalmau

Ms Carol Aitken

Mr Peter Brown,

Ms Marj Barrand, and

Ms Nancy Taylor.

The DEPUTY CHAIR — I would now like to throw it open to the floor. We have three people that have nominated themselves as wanting to contribute. We will give each person a couple of minutes. The first one I have on the list is Bob Dalmou. I just want to remind you that the same conditions apply to the open mic session as did to the other sessions previously. You are under parliamentary privilege here, but outside this room you are not. Each person has 2 minutes.

Mr DALMAU — I have Carol Aitken here with me. She is also from the Mornington caravan park. My point today that was touched on by council is the transport to and from these areas. As you can see by looking behind me, our age group is very nearly the 70 to 80 group, and we are going to at some stage find it very, very hard not to drive cars. At the moment there is a bus that comes down Bungower Road and turns right into Robertson Drive to go through the estate there. Nothing comes up this way. You have got the caravan park, you have got the school, you have got these two retirement villages here and you also have a new subdivision going in just over the road. There is probably a couple of thousand people that live in all these, and there is a lot of elderly people and they have nowhere to go to get on a bus. The bus is probably from here about 1.5 kilometres, 2 kilometres away. If you have got a walker or something like that, it is very, very hard, especially if you are going shopping or things like that, or the doctors. We do have in the park a bus that comes every Wednesday; it is run by the council. But if you have got an appointment on a Tuesday or Thursday, bad luck. You have got to find the time to get a taxi or something like that.

With the advent of the freeway opening up, 99 per cent of the traffic that is coming to into Mornington comes along Bungower Road, which makes it hellish and hard to get out of or into the caravan park. There are already four bus bays that have been put in about five years ago, but they are not being used. So we are asking you as a committee if it would be possible to put the pressure on the right people to get that bus to come from just a kilometre up the roundabout here — a kilometre and a half — so that people from all these places could be able to use it. Have you got anything to say, Carol?

Ms AITKEN — Apparently the bus for Bungower comes under the shire. The big road is the Mornington-Tyabb, but that is a state road. Bungower Road is apparently governed by the shire. As Bob said, all the bus bays are in place, but no bus will come up further than down Robertson Drive. They all want us to give up our cars at some stage, but I do not know what we are all going to do.

Ms PATTEN — Yes, that is right.

Ms AITKEN — I can walk, but there is a lot of people that cannot.

The other issue I wanted to bring up is I live in a park. There was a gentleman from Pakenham who was saying that when he has approached different people he feels intimidation, and this is the sort of thing when it comes to owners and managers. I suppose we are lucky. Our manager is one of the nice guys. But we cannot tell him who his manager is going to be. I think it was you, Daniel, who used the term mobile home. Do you mean relocatable or mobile, as in you drive it yourself?

Mr MULINO — More relocatable.

Ms AITKEN — Relocatable.

Mr MULINO — Yes.

Ms AITKEN — In these parks where there are relocatables, there are tourists, there are campers, there is bit of everything, and for me, I bought my own home but I pay rent on the land. Like Angela was saying before, there is no inspection of any of these parks. The shire's hands are tied. They are not allowed to come in and just have a look around to see if everybody is complying with whatever they should be. The shire is not allowed to do that. I did suggest, and it was a joke, 'Well, there are dog rangers on the shire. Why don't we have rangers that have got power to just go in and just have a look?'. But there is none of that. Like Angela said, there is nowhere to go. Where do you go? Where should we go? And the intimidation and like the 'If you're a naughty girl, you can get kicked out'.

The DEPUTY CHAIR — Thank you very much for your contribution today. Thank you.

Mr DALMAU — Can I just say one more word — one more quick word. Thank you for giving us the opportunity to be here. We really appreciate it, and we have learnt a lot today. Thank you very, very much.

The DEPUTY CHAIR — Thank you for having us here. Peter Brown is on my list. Would you like to come forward?

Mr BROWN — Thank you, Chair, for the opportunity to be here today. I am a resident not at Pakenham but just over the road, 100 meters away at Beleura Village. I have been there for two years with my wife and our dog, and the three of us are very happy here. We want that to continue. On the matter of payments, we pay \$1000 in rates and we pay \$1000 in management fees to the local management. To me that is double dipping. We noticed in the Local Government Act the council must, in highlighted printing, give consideration to differential rates for retirement villages. Now, we are not aware of the council giving any serious consideration as they are required to under the Local Government Act. The only comment I saw about it in the council papers was that, ‘Oh, well, these people, if they are not satisfied, don’t have to use the council’s facilities’. But I think that is not the point. The point is really that the opportunity is there for a differential rate for people who live in a retirement village and who also pay council rates.

On the matter of differential rates, there are differential rates already offered by the shire for farming properties and for heritage properties. On the last one, I had some involvement with that as a heritage planner at the time. We were the first to offer a heritage flat rate for heritage properties. I cannot see why the shire does not follow that up and offer a rate for people, as it is required to do, and give serious consideration to the retirement villages.

So my suggestion is, really — and not too much tongue-in-cheek — that the committee might ask the shire, ‘What is the basis of the serious consideration it has given to this matter, as it is required to do under the Local Government Act?’. That has not happened. I mentioned the only argument was that we had access to both facilities in-house and off-site, so therefore we pay twice without any discount. So we are looking for that to be recognised clearly by the council in differential rates.

The DEPUTY CHAIR — Thank you very much. The last on my list is Marj Woolard.

Ms BARRAND — I am Marj Barrand. I am Marj Woolard’s daughter. My mum is sitting up the back, I am speaking on her behalf.

The DEPUTY CHAIR — Okay. Welcome.

Ms BARRAND — My mum’s story is that she is an 89-year-old pensioner at Dromana Holiday & Lifestyle Village. The village has approximately 220 lots, a residential park, an indoor pool, an outdoor pool and a barbecue. It is comfortable. Mum and dad purchased their site in the village in 2007 on a 99-year lease, with a 99-year option. They built a two-bedroom demountable home on the lot. When they were first there in 2007 the site fees were \$2180 a year, or \$41.92 a week. In the following years there were small increases up until 2013. Mum was advised that the fees would be increased to \$4280 a year, or \$82.31 a week, for the 2013–14 financial year. This was an increase of 63 per cent, or \$40.39 a week, for a lot that she virtually owned and a house that she owns. So she is only paying for the amenities upkeep.

Now, in 2016, we have been advised of a 7.9 per cent increase, taking it up to \$88.92 a week. No additional services have been provided that could justify these increases, more lots were added to the park and the residents were led to believe that their liability would decrease as more site holders would share the burden. Instead the freehold owner was being unconscionable and charging for expenses not incurred in the landlord’s total cost of ownership, which is in the lease. Many of the older residents, and some of the not-so-older residents, approached the landlord with regard to the increase and other issues, only to have a tirade of abuse directed at them, so any interaction with the landlord has been difficult.

In June 2014, after as a family discussing what we could do to remedy the situation, we contacted Peninsula Community Legal Centre in the hope of some advice. The lease is not covered by the Residential Tenancies Act. They directed us to Consumer Action. Thank goodness for that, because we were starting to despair as to what we could do.

In June 2015 an application was filed at VCAT by Consumer Action on behalf of mum, and the points were the annual fees — or the landlord’s total cost of ownership — was unreasonable and not properly incurred; the landlord failed to make determination of the landlord’s total cost of ownership; and it was alleged that he had

engaged in misleading, deceptive and unconscionable conduct. We asked that VCAT vary the terms of the lease to make them fairer and more transparent.

To get to this stage has taken one year and many hours of work by the Consumer Action team as it was a very complex case. On 30 May this year the VCAT application was heard over a three-day trial. On 9 September we received the orders from VCAT that we had won the case, and that was a huge relief, although this may not be the end of it. This process has taken two years and three months to get to VCAT. My mum is not the only person in the park that has tried to seek justice; however, others have found it too stressful and have had to discontinue for the sake of their health. Mum herself has found it hard to cope with at times and has wondered if it was worth the stresses that she had put on her and the time that it has taken from her quiet enjoyment of life. At 89 years old being cross-examined in a court by the landlords and senior barristers is not something most people half her age have had to endure, and I am really proud of her for doing it.

We are dismayed that the process has taken so long, with obstacles put in the way at every turn by the landlord and his legal team — interlocutory disputes, hearings re: the discovery of documents, applications for leave to file counterclaims, applications for adjournments till later trial dates et cetera. The cost of seeking justice would have been prohibitive had it not been for Consumer Action and the hours of the dedicated team that they have put into this case. It has been amazing, and we cannot thank them enough. There is no way mum could have afforded to pay for all the hours of the solicitors, senior barristers, a QC and an expert accounting witness. His report alone took 110 hours to compile, and that was done pro bono. We feel fortunate to have such a dedicated and caring team on our side. However, there are so many other cases that need to be heard. A retirement housing ombudsman would enable other older residents to access justice at a forum that is more consumer friendly than VCAT. In my own personal experience VCAT is difficult to navigate. I have had some experience there. Mum, or anyone near her age, would not be able to have gone it alone. Can we not make the pathway to justice at their time of life a bit more easy to traverse?

The DEPUTY CHAIR — Thank you so much. Thank you for sharing your story.

I would like to thank everyone for their attendance today and all the contributors. It has been a really rewarding experience for us. We appreciate getting out to the community. It makes our job a lot easier actually to see things firsthand and to hear people giving stories within their own environment. So thank you very much for hosting us today and, as I said, please feel free to get in contact with us if you have any further questions or input. The transcripts will be up within the next two to three weeks on the parliamentary website, so thank you very much.

Ms TAYLOR — I would like to ask a question.

The DEPUTY CHAIR — Come on up.

Ms TAYLOR — My name is Nancy Taylor, and I am the president of the residents committee from Village Glen in Rosebud. We are a happy village. I have heard lots of testimony today, and I am quite gobsmacked. Our committee represents 900 residents in a village of over 600 villas and apartments. Our village is 35 years old. It is well maintained and well managed. Our submission to you concerns points (4) and (5), but today my question is really about point (5).

We acknowledge that the shire council provides amenities to residents, but residents of retirement villages pay twice for some services — through their rates and then through the service fee to managers who actually provide many of the services they pay council for. A previous inquiry in April 2013 deemed this an unfair practice and recommended councils to provide differential rates to retirement villages. This is in line with other groups within the shire who already receive differential rates, such as farmers, golf clubs et cetera. Many shires implemented this recommendation.

How can the Mornington Peninsula Shire Council justify their stand not to implement the recommendations of the previous inquiry? The shire collects more rates from the more densely populated retirement villages than they would normally from a street development. By not following the lead of other shires and cities like our neighbouring Frankston council, Mornington Peninsula shire has created an even more unfair situation by heaping another layer of discrimination on retirees, many of whom are on fixed incomes and are one of the most vulnerable groups financially in our society.

Council has stated that there are facilities in the villages that are for residents only. But in actual fact we make our facilities available to community groups such as U3A, which run a number of programs within our village. Also our golf club, bowls club and croquet club et cetera run competitions, and community groups enter into our village and use our facilities. Various Probus groups use our facilities for meetings and dinner and lunch gatherings. It has been said that it is looking like a user-pays model, but rather what we are asking for is a resolution for retirees who pay twice for the same one service.

In our mind council have not substantiated their position. What they have done is blatantly unfair. It is our hope that this inquiry realises that a recommendation is not a strong enough incentive for councils to do the right thing by their residents and directs the government to legislate to bring about compulsory differential rates for retirement villages where it benefits residents.

The DEPUTY CHAIR — Thanks, Nancy; thank you very much.

Ms TAYLOR — Can I add one really quick point?

The DEPUTY CHAIR — Very quickly.

Ms TAYLOR — It was raised earlier. In our contract we have the first 12 months to make up our mind if we like living in our village, and if we decide to leave that village, there is no impost on our cost. We only have to pay the rent for the length of time we stayed in the village.

Ms PATTEN — That is a good idea.

The DEPUTY CHAIR — Thank you for contributing that. I think we are going to have to wind it up there. Thank you very much for everyone's contribution. Again, please feel free to write to us if you have some added information. Thank you very much.

Committee adjourned.