

# TRANSCRIPT

## STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

### Inquiry into the retirement housing sector

Mornington — 5 October 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

Mr Graeme Taylor, resident, Cardinia Waters Village, Pakenham.

**The CHAIR** — The committee will now reconvene. Anyone who wants to sit and listen could rejoin us, that would be much appreciated. I would particularly like to thank, which I was remiss in doing in the introduction, Mr Richard Brooks for assisting with the set-up of today. It is very much appreciated. I would now like to welcome Mr Graeme Taylor. Before I invite Mr Taylor to make some opening remarks, I will issue the usual 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, and transcripts will ultimately be made public and posted on the committee's website.

Mr Taylor, we have allowed about half an hour for your time today. I thank you for coming across from Pakenham. I invite you to make some opening remarks and thereafter the committee will have questions. Thank you too for your submission.

**Mr TAYLOR** — Thank you, Chair, and thanks to the committee members for allowing me the opportunity to speak to you. My name is Graeme Taylor. I am a resident of Cardinia Waters Village in Pakenham. I have been resident there with my wife for seven years. In the early days I acted as the secretary for a residents committee. I will elaborate on that. Subsequently I have not been on any committee, other than dealing with the committee of management and the owner and the constructor in relation to a number of issues that we have in the village. I do speak for a number of other residents who put in submissions very similar to my wife's and mine.

The points I wish to raise are first of all the complexity of resident contracts, the issue of construction defects and maintenance issues, and in particular owner-determined defect periods. I will come back to that. Further to that there is the issue that we have recently had of unit/villa refurbishment costs being extended to not refurbishment of fair wear and tear, but in fact upgrading in some areas at resident cost. The final part of this is for residents, myself included, to be referred to VCAT by consumer affairs on what I would consider and other residents consider to be major issues in relation to construction defects, and this leads into what several of us believe to be intimidation and a form of bullying that comes out of management and the owner.

Our village is a loan-lease arrangement. The owner at the time we entered the village was AMP Capital and then through a subsidiary of that body, SPP No. 1 Pakenham. It sounded pretty good — AMP had a strong reputation, Australian Mutual Provident, which was part of our reason for going in particular into Cardinia Waters. The contractual arrangements — this has been a common thread — are quite simply that local solicitors or lawyers have very little knowledge and understanding of the complexity that is embedded into a resident contract. We have signed a contract with SPP No. 1 Pakenham/AMP. It sounded pretty good.

The peculiar part, or the bizarre part, of our contract is that the owner has given the rights of an owner to their agent, which at the time was RCA — Retirement Communities Australia. As part of the residents deed, there was also an unusual arrangement whereby there was an incorporated body, Cardinia Waters Village Services Association, formed by the owner through their agent, through consumer affairs. That provides for 10 members to be on the committee of management. Three of them are appointed by the owner and seven are elected by the residents, but embedded in that — and I will say 'embedded' because there are peculiarities in this — the original five people who were the directors of RCA were the five persons who established the incorporated body. The incorporated body, as we presume, would be all the members or a member-based organisation. The initial problem that we incurred when we entered into the village was that the first annual meeting was not — sorry, we have gone dead.

I will start again. In the first year that we were at the village — we came in July 2009, so not long after that there was an annual general meeting at which we had a number of other residents. The presentation of the annual report was not in accord with the contract. There were a number of maintenance issues that we were made aware of from other residents, as you find in a village, and subsequent to that AGM a number of residents gathered together to start to question that the reporting was not appropriate or in depth. The number of problems that were there with construction defects had to be dealt with, so we subsequently formed a residents committee under the Retirement Villages Act.

The bizarre management arrangement we had was that the manager was appointed by the owner's agent — that was RCA. RCA had the same rights as the owner; that is again embedded in the deed. The constructor was a

subsidiary of RCA — RCA Constructions Pty Ltd. The registered builder was also the director of RCA. So it was a rather incestuous arrangement. You would make a complaint with the manager, who was appointed. The committee of management at that point consisted of only the appointees. There was a five-year transition period that we had to put up with, so we had no resident input whatsoever at that point — this was 2009 and early 2010 — into the management of the village, who avoided the question.

The appointees were the managing director of RCA and two staff members. So we had a committee of management comprised of the owner's agent, who had the power of the owner. So if you made a complaint, they were going to look at the service. This was to do with the construction defects. The residents committee — it was made very clear to us by the owner's agent — would only be an advisory group. We accepted that. So we went through the process and formed a residents committee. Once that was established, a number of residents were coming to the committee with construction complaints. A lot of them related to concrete technology and the failure of that around roads and other items around paths and so on. We took that on board as a committee, and we started to question it. Eventually, unfortunately, we had to go beyond the owner's agent, and we wrote directly to AMP Capital, asking them to have a look at the way things were going.

We had a letter, a very short letter, come back to us that AMP Capital were aware of defects within the village and they would do their utmost with RCA to repair and so on. Not long after that — I think it was at the end of 2012 — we received a letter from the owner stating that there was an absolute construction defect in that one of the walls that we had within the village was built very close together. It is commonly called a firewall. The letter stated that there was a minor problem in relation to construction of the units — a minor problem. However, our committee inquired about this and we found out that there were about 150 or somewhere close to 180 units that were affected and that they were not constructed in accordance with the national building code.

This was quite extraordinary. We raised a complaint with consumer affairs at the request of a number of residents. We had about 40 or so residents who were prepared to put their name to a petition, which we forwarded, together with photographs of some of the problems. The problem was that the firewall did not comply with the regulations. That wall had to be re-skinned with further cladding.

That was quite okay. We were very comfortable with that until the cladding started to crack and fall apart. That has continued on with a number of repairs over the last three years. It is four years now. We lodged a complaint with consumer affairs as a committee on behalf of the residents with photographic evidence of the cracking that was there. I will try and keep this a little bit short but the response was simply that 'You will have to go to VCAT'. The investigation that we thought would occur did not occur.

The first question is: how can you have so many units not comply with building regulations? How did the building surveyor sign off on the fact that they were constructed and that there was a certificate of occupancy issued? It was a bizarre situation as far as we were concerned. The response for us to go to VCAT was unfortunately coinciding with the changeover from the five-year transition period into the establishment of a committee of management which would allegedly manage the village. This was under the three appointed and seven elected members.

It is difficult to understand how we could have an incorporated body established, allegedly member-based, where permanent members appoint people to a committee and the permanent members under the incorporated body maintain permanent membership of a member-based organisation, approved through consumer affairs, and holding 30 per cent of the voting rights, and also having to be present at any meeting, or a special general meeting, for us to have a quorum. That is an inordinate amount of power invested in the owner's agent and those persons.

**The CHAIR** — I do not want to cut you short, Mr Taylor, but I am just conscious that we are more than halfway through our allotted time, so if I could get you to come to the issue of what you would like us to do.

**Mr TAYLOR** — As we see it, the primary role of a government fund such as consumer affairs is to look after the constituents. That is us, the village residents, consumers. Under the current set-up it has failed. We have been referred time and again to VCAT. Recently, in the last week as a matter of fact, the option I have is to go to VCAT or go the Victorian Building Authority. That is okay. I have pursued with the owner repairs to my unit. It has been repainted. I had to write the scope of works for that. It has been repainted. Render cracking has been repaired. Repairs have been made to the firewall. My opinion and the opinion of some other residents who have children who work in the building and construction industry — and they were qualified — is that the latest

round of repairs does not comply with the building code. We have gone from cladding put on to a 20 millimetre right-angle edging which keeps coming away. That was increased to a 50 millimetre edging. We now have a 15 centimetre edging applied to the ends of the firewall, simply because there is no timber to screw it into, so it had to go to 15 centimetres.

We have been told time and again that we need to go to VCAT. It is time consuming. Our residents, myself included, are elderly. We tend to run out of energy. We do not have the financial resources to do battle against an organisation such as AMP Capital. A lot of people simply opt out and say, 'Well, we'll just cop it'. The bottom line is we, the committee, and in my situation, had no responses from the owner to correspondence. My family actually wrote to the director of AMP, the executive director of AMP Capital. No responses. Now, in our view, and in my family's view, that was also a form of intimidation and bullying.

We are expected to present in writing to the committee of management issues. I think the previous speaker spoke about this. In the correspondence — and I was very clear about it — I said there was a breach of contract in that the repairs to our unit were not in accord with the deed or the contract. It is very clear that there was very little interest in attending to the major construction defect which was originally reported. It is still being reported. I have neighbours and other residents in the village who have complained about further cracking. This has been going on for three years or a bit more than three years now.

Elderly village residents cannot be expected — I have mentioned it — to have the financial resources and the knowledge and the energy to initiate and deal with the complexity of raising complaints with other government departments: you know, going through VCAT, going through the Victorian Building Authority. It is not fair. To quote another previous speaker, we expect no more and no less than what we pay our fees for.

We have an 8 per cent levy to go into the long-term maintenance fund, and over the last five years that levy has increased to 11 per cent. This is on a budget on average of over \$1 million over those five years, which would represent 10 per cent per annum over five years of \$1 million; that is about \$500 000 or more plus interest accrued that should be in the long-term maintenance fund. There was not that amount of money in that fund some months ago. The owner, back in 2012 through his agent, established what they call the communications equipment replacement fund. We have 333 units in our village. It is a significant communications hub, as you may realise. Overcharging for the use of the internet and other areas of that communications hub resulted in on average somewhere between \$40 000 and \$50 000 per annum surplus.

We have an electricity fund which has been generating around about, again, \$40 000 to \$50 000 per annum as the village increased in size. Later came two other sources of revenue — other than the 8 or the now 11 per cent that we pay of our levy into the long-term maintenance fund. The long-term maintenance fund is very clear; it is for items of unusual and infrequent nature. The village is eight years old. In the previous 12 months a resident retired CPA and another gentleman who has been in business who were on the committee for only a couple of months this year determined that there was an expenditure of almost a quarter of a million dollars out of the long-term maintenance fund into what we believe is the normal, routine maintenance.

The reporting procedures I will not say are nil; they go up on the noticeboard. The issue that we have had is that the units that still have problems with the construction defect in the firewall, AMP has submitted there were 55 reported. Those 55, they are assuring us, will be repaired, and 39 have been repaired so far. It begs the question that there has been no investigation into how it was signed off in the first place. There has been no review of the other builders, of the other hundred-and-something builders out of our 333, that still may have a defect problem.

So in requesting the assistance through consumer affairs and referring this to VCAT, it is not an adequate mechanism for elderly residents to go through that process. In my instance, my unit has substantially been attended to because I have badgered the owner with considerable correspondence, as my family did. We did have one response, but it is not for myself. The point is me and our previous residents committee members and a number of others, we are very conscious of other residents in the village who will no doubt require assistance to have repairs made. They will certainly not have the energy nor the financial resources — there are a lot of single ladies in our village on the pension — so they just opt out of all this.

The importance of having access to a retirement village ombudsman in our view, in my view and that of a number of other residents — I think you have had submissions come in on that — would very quickly determine where the responsibility lay for the initial investigation and repair and the requirement of the owner to

chase the builder to repair that defect. Embedded in our contract is that we are required to maintain, repair and replace all the infrastructure within the village. That is an unfair or an unconscionable clause to be within the contract. I will touch upon the — —

**The CHAIR** — Mr Taylor, we are just about out of time, so if you want to make some concluding remarks, we will have a couple of questions.

**Mr TAYLOR** — I will just stress that on the experiences that we have had in our village from a number of residents — some residents are okay — the appointment of or access to a retirement village ombudsman or similar four years ago would have very quickly determined the responsibilities. This is ongoing. It has been going on for four years. So I stress on behalf of the residents of our village that that would very quickly sort out some of the issues that we have within the village in relation to construction defects, in relation to inquiries on financials and so on. So strong support for that approach from the committee or a recommendation from the committee that that be pursued so that there is a very easy mechanism for residents to get their issues sorted out.

**The CHAIR** — Thank you very much, Mr Taylor. You made your point very clearly on the ombudsman, and I appreciate that. In relation to the building management fund and those sorts of things, do you have any suggestions about, in a broader sense than just Cardinia Waters, how that regulation or the way those funds are managed could be improved?

**Mr TAYLOR** — I think it is very simple. We have a contract — that has been brought home to us on a number of occasions. The contract very simply states that we have the long-term maintenance fund levy, which is now 11 per cent of the income. That only applies if there are any surplus funds derived from electricity services or communications funds, and they are services which the residents have been charged or overcharged for. Those funds do not belong to the owner; they should be returned back to the residents in keeping the levy down. I do not know whether I have answered your question, but there was only one item that we are required to do, and that is to provide the long-term maintenance funding for the future.

**Ms SPRINGLE** — I just have a quick question. You have spoken a lot about I guess the ineffectiveness or inappropriateness of VCAT being an avenue for dispute resolution. Are you able to tell me if anyone has actually got to VCAT and how successful they have been? Does anyone actually — —

**Mr TAYLOR** — No. From the village, to my knowledge, no, because keeping in mind the age grouping, even though we — —

**Ms SPRINGLE** — Absolutely, I have taken that on board.

**Mr TAYLOR** — That is the issue that arises. If you have got the temerity to question the management or the owner and their agent, it becomes very difficult to get responses. The point that I have made is that we had no responses or, sorry, we only had one or two responses to our correspondence over the last two years.

**Ms SPRINGLE** — From management?

**Mr TAYLOR** — Yes, an unsatisfactory situation.

**Ms SPRINGLE** — So I guess what I am trying to ascertain is whether there have been any cases taken to VCAT and whether they have been successful at all.

**Mr TAYLOR** — To my knowledge in our village, no.

**Mrs PEULICH** — Mr Taylor, thank you very much for presentation. Just one question for clarification: so you are suggesting that the additional internet charges, and there was one other service — —

**Mr TAYLOR** — An electricity service.

**Mrs PEULICH** — Did you say that it should go into the long-term maintenance fund or that it should be returned to — —

**Mr TAYLOR** — No, that has happened earlier, some months back. There was the long-term maintenance fund that had that money transferred into it. The point I make is that it should be taken into account in

determining a resident levy in the following year, not money being simply put aside into a fund for the benefit of the owner at some future point.

**Mrs PEULICH** — I am just trying to understand the two. So you are suggesting that the additional charges for internet services and the like should be used to offset next year's rates.

**Mr TAYLOR** — They are not additional charges. We are being overcharged. In 2013 the cost of the internet connection was about \$13 000. The revenue derived from that internet connection was around about the \$60 000 from my memory. I would have to look at my previous notes. That is a very significant overcharge to the residents, and not every resident is on the internet. So that was a very significant overcharge which was placed into this fund, ostensibly for the future development of the owners' capital cost for replacement and refurbishment of that communications hub. The argument that we have put, and I believe, is that is the responsibility of the owner and not of the residents in the future.

**Mrs PEULICH** — So what level of overcharging would individual occupants have been subject to?

**Mr TAYLOR** — Individually, it would have been probably in the vicinity of about \$3 a week.

**Mrs PEULICH** — Three dollars a week over a year.

**Mr TAYLOR** — Per year. With 333 units, you could take 60 000 and you divide that over the year, you will soon come to a couple of conclusions. Then you take that over the previous four or five years, it is significant money going into that fund, but it can also be a significant cost to individual residents, particularly if they are on a pension.

**Mrs PEULICH** — So has anyone asked them why that money was not returned to those who were overcharged directly?

**Mr TAYLOR** — A couple of the recently outgoing members have tried. We have had two gentlemen there who were appointed in March who were chasing that. AMP have currently employed forensic accountants to check the books in relation to the controls of the finances over the last couple of years. That is a separate issue to the submission that I put in.

**Mrs PEULICH** — An interesting point nonetheless. Thank you.

**The CHAIR** — Thank you very much, Mr Taylor, for your submission and for your evidence today. As I said in the introduction, a draft transcript will be with you in the next week or so. Again, thanks for coming across from Pakenham. We greatly appreciate it.

**Mr TAYLOR** — Thank you for the opportunity.

**Witness withdrew.**