

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into the retirement housing sector

Melbourne — 16 November 2016

Members

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Ms Colleen Hartland

Mr Gordon Rich-Phillips

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Acting Secretary: Mr Patrick O'Brien

Witnesses

Mr Arnold Bates, Chair, Victorian Policy Advisory Group, and

Mr Graham Ellis, Member, National Seniors Australia.

Mr O'DONOHUE — I would now like to welcome from National Seniors Australia Mr Arnold Bates, the Victorian policy advisory group chair, and Mr Graham Ellis, who is a member. Thank you, gentlemen, for being here this afternoon and for your submission, no. 692, which has been read and analysed by the committee. Thank you for that.

Before I invite you to make some remarks, I will just caution that all evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any 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. We have allowed about half an hour for our time today. Thank you for being here a bit early, given the way the time is running. I invite you to make some opening remarks, and thereafter we will have questions. Thank you.

Mr BATES — Good morning and thank you. Our opening statement is that we really want retirees to have a right to live in housing that provides autonomy, security, social connectivity, amenity and affordability. It is a generic set of criteria for assessing the suitability of housing arrangements and designs. These criteria, we think, can apply to any form of housing, whether it is retirement villages, independent living units, residential parks or rented accommodation. We are working towards ageing in place in everything we do these days. It is with that in mind that we are happy to discuss our submission and any questions.

The CHAIR — Great. I will start by asking: how would you see the difference between the commissioner, which you prefer in your submission, and that of an ombudsman?

Mr BATES — We have perhaps moved along from what we said in the submission. We have been looking at the situation we find, and we are not convinced now that an ombudsman or a commissioner is the way to go. We are very encouraged by the work that Senior Rights Victoria have moved into recently, with their increased funding, not just for financial abuse of the elderly but also health abuse. We are now of the opinion that perhaps Senior Rights Victoria could be funded with a desk that specialises in this type of contractual situation to help retirement village residents who find themselves in contractual dispute — it is not too strong a word — and that Senior Rights Victoria can help them work through what their actual obligations are, and also for the retirement village owner, what their obligations are. We think that might be a better outcome than appointing an ombudsman or a commissioner. We have got this Senior Rights Victoria in place. It perhaps can be funded to extend into this space, this problem area.

The CHAIR — Just taking that proposition, do you think, similar to New Zealand, that there should be mandatory advice provided before contracts are signed so that people actually understand what they are signing up to?

Mr BATES — We would like to think that it is possible to mandate that people should employ a solicitor when they go into these retirement villages and the quite lengthy contracts that we find. The difficulty we have is solicitors who are familiar with interpreting the contracts for their clients' needs, and Graham can give you a prime example of his own parent who was in this situation.

Mr ELLIS — The situation we had — it was my mother not long after my father died. She realised that she would have to go into a retirement village, so we started looking, which was quite an exercise. The upshot was she found a place that was suitable. We got hold of the contract, and she said, 'What do I do now?', and I said, 'You go and see a solicitor'. He went through it and his advice was very clear: 'If you want an investment, it is a terrible way to spend your money. If you want a lifestyle, it is a reasonable investment based on the contract'. Now, what was in the contract and what was actually provided were not necessarily the same. In fact as time progressed, it seemed to divert further from the contract. There was virtually nothing that we could do, because we were little fry, so to speak.

One of the major problems we have seen is that unless you have financial and legal clout behind you, retirement villages are businesses. Unfortunately the people who live in them are, let us say, not necessarily well versed in how to negotiate their way around where they live. What Arnold has said about Seniors Rights Victoria would certainly be one means of addressing that, where the residents could have a voice which the owners and managers would have to take note of because they would have legal clout behind them. In other words, if it went to court, the owners could lose. That probably sounds harsh, but from the experience I have had with them, you are dealing simply with businesspeople. Some of the residents are still completely with it, but there are others whose best years have gone by, let us say, and the current legislation does not seem to make adequate allowance for the interests and welfare of the residents. It seems to be a rather unequal playing field.

Mr BATES — The situation you have put on the table, the last thing we want is for a solicitor to just be able to say that a contract is legal. That is not enough. It needs to be interpreted to the risks, especially financial, that are in the contract and the liabilities that are in that contract for the future resident. We used to run advice forums on entering a retirement village, and we found a solicitor in Rowville who, because there are a lot of retirement villages there, was very familiar with reading the contracts and interpreting them. He got moved interstate, and we never found anybody to replace him. You could ring the Law Institute of Victoria for a recommendation for a solicitor, as people do for divorce or building or whatever, but mention retirement villages and they go silent.

The CHAIR — It is interesting that you make that point, because this has been a consistent theme we have heard. Ms Springle raised this point with the last witness about the provision of legal advice. Maybe there is more work to be done to skill up part of the legal profession to provide those services, because they can be complex documents, and there is a range of factors besides the strict legal contracts themselves that I suppose practitioners need to understand in providing advice.

Mr BATES — Definitely. We have always advised members over the years that this is not an investment; you are renting a lifestyle. But not everybody listens.

The CHAIR — Could I just ask a bit more about the forums you used to run. That sounds like a very innovative idea. That is a good way to get information and for people to ask questions. Were they a success when you ran them?

Mr BATES — Packed out, especially down the eastern corridor. A lot of the members of the committee are sort of from that belt down from the eastern corridor, which are now grandma and grandad.

Ms SPRINGLE — I am just interested in your comments around preferring having a position in Seniors Rights Victoria as opposed to an ombudsman. What is the thinking behind that?

Mr BATES — This is not for people to go to prior to purchasing; it is to help them work their way through disputes.

Ms SPRINGLE — Disputes; correct. I had never heard of Seniors Rights Victoria, so I just looked them up. What would be the benefit of having them offer that service as opposed to an independent ombudsman or an advocate?

Mr BATES — As they are already in existence it is just adding another area of expertise to what they do on elder abuse.

Ms SYMES — Just in your submission you talked about the exit fees, and you have said that whilst the amendments to the act have made some improvements to understanding, it still does not adequately dispel the financial stress and uncertainty. Can we just tease that out a bit? Because we hear so much about exit fees — that they are unfair, that they basically take away people's anticipated savings and their ability to move and transition into aged care. This exit fee — —

Mr BATES — The contracts prior to the amendments in 2006–07 can be quite horrendous. It is a big surprise when you see the size of the deferred management fees and the refurbishment costs. The amendments that the Department of Justice did in 2006–07 were an improvement, and a further improvement came in 2011. What has changed since 2011 is the aged-care situation of user pays. It is even more vital now that people are well aware of their financial situation when they leave the village to go into residential aged care. Working through the My Aged Care and ACAT system is difficult enough without having to worry about, 'Where is my money, when is it coming and what is it actually going to be?'. We think there is an improvement needed to the 2011 amendment to somehow — and I am not sure whether it can be done legally — get the retirement village operator to identify immediately on exit, if a person is going into aged care, what their financial situation is. Do not keep them hanging around, they need to know quickly what money they have got to invest in aged care.

Ms SYMES — Do they not know because it is not sold yet and they do not know the value?

Mr BATES — Exactly. It is a big, stressful time. The ACAT system and user-pays aged care is difficult enough to negotiate. You add that stress — —

Ms SYMES — What is the solution to that, though?

Mr BATES — We believe that a retirement village owner knows what he is going to get for that unit or apartment. These are very good financial people. They are investment houses; they are part of their investment portfolio. They know. So why keep the person who is in need of residential aged care waiting? It is not fair. It is very stressful.

Ms SYMES — You would argue — devil's advocate — that an operator, if they were to have a six or seven in the one month, could they shoulder that?

Mr BATES — Of course. These are financial investment houses.

Ms SYMES — What about the smaller operators?

Mr BATES — Are they going to be any left in 5 years or 10 years? We are talking about legislation going forward for the future now. There is a chance to have a look at this.

Ms SYMES — Is the main issue the access?

Mr BATES — The main issue is not knowing what you have to put into the cost of aged care.

Ms SYMES — Are people regularly shocked and disappointed that they get back less than what they thought they were going to get?

Mr BATES — Absolutely.

Ms SYMES — Why is that?

Mr BATES — They have never thought about it deeply enough.

Ms SYMES — Would there be capacity for a system where every year you get a financial statement, 'This is the value of your house. We think if you were to leave at the end of the year, this is what you would get', almost like a superannuation statement?

Mr BATES — That is something we have got in the submission — that when a unit sells and the person has exited, that is posted to the rest of the residents so they know what is going on around them.

Ms SYMES — So why is there surprise and disappointment if they know what —

Mr BATES — But it is not done. We would like to see it done.

Ms SYMES — Right, I see. Yes, okay.

Mr BATES — We would like to see it done so that they are aware of what is happening to units, apartments, that have been sold around them.

Ms SYMES — Yes, which is what real estates do; they find out what a neighbour's house sold for all the time.

Ms SYMES — Absolutely. Let us do the same for retirement village units.

Mr ELLIS — It will not happen unless it is incorporated in legislation.

The CHAIR — What about the issue we have heard consistently that even for residents that are informed about what the deferred management fee will be and what the exit costs will be under their contract, often the children or relatives that are dealing with an estate have no understanding of the financial model. They assume it is a traditional property acquisition and subsequent sale. What you are suggesting would not address those issues. I do not know how you could address those issues, but do you have any suggestion in relation to that? Something we have heard consistently as a committee is that that can often be a cause of dispute.

Mr BATES — I am sure it is. You are talking about the estate of somebody who has left a retirement village?

The CHAIR — Or someone who perhaps has gone to high care and their affairs are now being managed by a relative.

Mr BATES — That particular situation goes back to what we were talking about earlier.

The CHAIR — That is true.

Mr BATES — We believe there is a case, when aged care is involved, for a rapid resolution of the exit value.

Mr ELLIS — I can give an example personally on that. In the case of my mother, my brother and I were joint executors, and we did not have any trouble on that, but what we did have trouble with was getting the village to sell the unit. Medically she had to go into care. Fortunately — that is not the way to look at it, I suppose — she was not there very long because her health deteriorated rapidly and she finished up going into a nursing home. But a deposit had to be paid. Now, she had virtually all her money tied up in a unit which was quite valuable. In order to pay part of that I had to sell down some of her assets. Now, part of that she relied on for income. There was no alternative.

We pressured the village time and again and it was like bashing one's head against a brick wall. The unit supposedly could not be sold, even though it had been refurbished in accordance with the contract — I cannot remember how much that cost. Then after a lot of pushing, finally it was suggested that maybe it needed to be upgraded, at a cost. Now, that was not in the contract at all.

Strangely enough, shortly after it was upgraded, it was sold. Now, you can take that as a sleight-of-hand approach or not, but I think it was more than coincidental. That sort of practice I regard as quite unethical. The contract is the contract, and I think the owner is obliged to stick to the terms of it. How common this is, I am not sure, but I would be surprised if among the larger owners it was not a common practice.

In the meantime, if you look at the resident who has to move for health reasons, their needs seem to be completely forgotten. Again, this is where the only thing an owner will understand is if he is hit with effective legislation and an effective residents' voice. The residents by themselves have, to put it bluntly, Buckley's hope of getting anywhere. But if, as Arnold has suggested, they are with an organisation like Seniors Rights Victoria, which has clout behind it, then again they will take notice. It might sound harsh, but I think it is realistic.

Mr BATES — Yes. Can we perhaps move on a little bit from that to where we think you can have a big influence for the future. This is the design planning of retirement villages. They should be suitable for home care. The big developers do not like the idea of promoting this because it takes away from that glamorous lifestyle of swimming pools, lawn bowls and so on, but as we age we are being moved more into what is known in Victoria as home and community care, HACC, but it will become consumer-directed home care — I think that is the federal title.

You should not have to move out of a retirement village to go into somewhere which is suitable for home care. We are talking here of building the units to universal design standards for ageing. That is, no steps, wide doorways for wheelchairs, lever door handles, electric sockets that are 70 centimetres off the floor and strengthened ceilings in the main bedroom and the bathroom for lifting gear. We think that is a big role that the state government can play for the future — making sure that any retirement villages that are built allow for this home care, ageing in place. Then you do not have to go through the trauma of exiting to find suitable accommodation for home care.

The CHAIR — Do many villages provide that sort of service now?

Mr BATES — Some;— but for the developers who are trying to sell a lifestyle, it is not something they want to put in.

Mr ELLIS — That is conspicuous. Each of the ads you look at shows healthy, fit people in maybe their late 50s or early 60s having a wonderful time. They do not show you the people who are 20 years older, whose needs are totally different, but they may still be living in the village. It is all commercial, and again it does not come down to the needs of the residents. What Arnold has said, yes, it is true. It will reach a stage where people will need to go into some form of care, but if they can live in a place they are in happy in for as long as is physically possible, then surely that should be encouraged.

Mr BATES — It is a community. They know it is where their friends are, where their services are; they should not have to exit just to get health care.

Ms SYMES — You say that it is not attractive to the developers, but would not demand start to influence? Would that not be what people want?

Mr BATES — We would think so. It would be nice if it was viewed that way. It is logical, but it does not fit the current way of promoting and selling retirement villages.

The CHAIR — No-one sees themselves in that.

Ms SPRINGLE — No-one wants to see themselves like that.

Mr BATES — That is right.

Mr ELLIS — Well, I have got news for them: they will eventually.

The CHAIR — Thank you, gentlemen, for your evidence today. Is there anything further you want to add before we conclude?

Mr BATES — Well, we did take the liberty of expanding what you are doing into rental accommodation.

The CHAIR — Yes, I noticed that.

Mr BATES — There is a brilliant research paper that has just been released by Swinburne University, their research centre, exactly on that: *Rental housing provision for lower-income older Australians*.

The CHAIR — Great.

Mr ELLIS — Have you seen that one?

Mr BATES — I think if you invite them to speak, it is to the subject, and there are a lot of statistics that point out this is a growing need. It started out with single ladies who were going into retirement with inadequate superannuation and no assets, for valid reasons, and they need secure, safe and affordable rental accommodation, but that report says the need is just as big amongst single men who have exited a relationship and do not have much money either.

The CHAIR — Thank you, gentlemen, for your evidence today; it is very much appreciated.

Witnesses withdrew.