



SOUTHERN CROSS CARE BROKEN HILL

'Caring for the Aged'

7th July 2016

The Secretary
Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

MAJOR INQUIRY INTO THE RETIREMENT HOUSING SECTOR

I wish to convey Southern Cross Care (Broken Hill) Ltd's (SCC) strongest recommendation that the Committee, investigating the Retirement Housing Sector, give active consideration to including a Local Government land rate exemption for not-for-profit aged care retirement villages in Victoria. SCC considers the current situation fails to recognise the impact land rates have on the lives of the elderly residents who reside within retirement villages and the organisations supporting them.

SCC is a recognised charitable organisation based in Broken Hill, New South Wales. While SCC owns and operates the following facilities, this submission is on behalf of the residents in The Vines Retirement Village in San Mateo Ave, Mildura.

- (a) 121 bed St Anne's Nursing Home in Piper Street, Broken Hill.
- (b) 40 bed Harold Williams Home in Eyre Street, Broken Hill.
- (c) 58 bed Aruma Lodge Hostel in Beryl Street, Broken Hill.
- (d) 40 unit Con Crowley Retirement Village in Blende Street, Broken Hill.
- (e) 26 unit War Vets Retirement Village in Thomas Street, Broken Hill.
- (f) *119 unit Vines Retirement Village in San Mateo Avenue Mildura*
- (g) 42 bed Oasis Aged Care in Karadoc Ave Irymple.
- (h) 739-753 Etiwanda Avenue-3.646 ha vacant land (future nursing home)

Broken Hill City Council does not levy land rates on SCC property used for charitable purposes including the two Retirement Villages. Alternatively, on three occasions Mildura Rural City Council has refused to grant any rate relief to the residents of The Vines Retirement Village.

The charitable nature of the community services provided is reflected in the following exemptions:

- (a) Payroll Tax exemption granted by the Office of State Revenue, NSW Treasury.
- (b) Payroll Tax exemption granted by the State Revenue Office, Victoria.
- (c) Exemption approval relating to stamp duty on motor vehicles and duty on insurance granted by the Office of State Revenue, NSW Treasury.
- (d) Exemption from Duty – The Vines Retirement Village – State Revenue Office Victoria
- (e) Exemption from Duty – 739 Etiwanda Ave – Legal Advice re State Revenue Office Victoria
- (f) Exemption from Duty (land tax) Vines Retirement Village – State Revenue Office Victoria.
- (g) Notification of endorsement as an income tax exempt charity granted by the Australian Taxation Office
- (h) Endorsement as a deductible gift recipient granted by the Australian Taxation Office.
- (i) Land Tax Assessment Notice relating to properties owned by SCCBH confirming a \$0 assessment summary from the Office of State Revenue, NSW Government.

As you are no doubt aware, the meaning of 'charitable purpose' has been judicially considered on numerous occasions. The courts have traditionally referred to the Preamble of the Imperial Statute of Charitable Uses 1601 to determine whether a purpose is charitable in law. The Preamble states that the 'relief of aged' is a charitable purpose.

Even though operating an independent living facility is different to that of a nursing home it is still performed for the benefit of the community by a charitable organisation. Your attention is drawn to the Federal Government's response to the Charities Definition enquiry where it states that "Charities and other not for profit organisations are pivotal members of our society. In order for them to be able to continue to contribute fully, they need to be able to participate in a wide range of activities including, at times, commercial activities". The enquiry recommended that commercial purposes should not deny charitable status where such purposes further, or are in aid of, the dominant charitable purposes or where they are incidental or ancillary to the dominant charitable purposes.

Reference is also made to the decision in United Church Homes (Inc) and City of Sterling (2005) WASAT 191. In this case, the Court held that the independent living units were exempt from the requirements to pay rates on the basis that they were

used exclusively for 'charitable purposes'. The court found that 'charitable' in this context has a legal meaning, not a popular meaning. Accommodation of aged persons was 'relief of the aged'. The residents in occupation of the independent living units, who had an average age in their 80's, were aged. Uniting Church Homes (Inc) operated their facilities on a not-for-profit basis. The fact that residents were generally required to purchase the right to occupy their units, in some cases at market value, and pay maintenance fees, did not alter the 'charitable' characterisation of the use, as a matter of law.

The present situation also fails to recognise the valuable contribution not-for-profit organisations make to the community. SCC services are provided to all socio economic groups, with financial arrangements structured to meet individual financial capacity, and to provide a variety of care options based on individual need.

Importantly, it is the benefits enjoyed under SCC's not-for-profit status that have led to the development of interdependent services that would otherwise would not be economically viable. The status also assists when the wider aged care industry is facing difficult financial times which directly threaten SCC services to the vulnerable ie It is recognised changes to the funding model for residential aged care would decrease annual funding per resident by an average of \$6,655 or 11 percent.

The change to the funding model in residential care directly threatens the viability across the range all SCC services provided to the community.

In summary:

- SCC strongly recommends the Committee includes a Local Government land rate exemption for not-for-profit aged care retirement villages in the LGA
- SCC is a not-for-profit aged-care provider endorsed as charitable organisations by both State and Federal Government.
- Services provided by SCC to the elderly is dependent upon the not-for-profit status and changes to government funding models threatens service viability across the board,
- Precedence is established by other Councils upholding the provisions of their Local Government Act's and **not** charging the land rates.
- Legal precedence from other Australian jurisdictions where the matter has also been considered has found in favour of the retirement village operators.

SCC looks forward to hearing the outcomes of Committee deliberations on this very important matter concerning the elderly citizens in our care.

Yours sincerely



Allan Carter
Chief Executive Officer