

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Melbourne — 29 November 2016

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Witnesses

Ms Gwyneth Jones, and

Mr Alan Kohn.

The CHAIR — Good afternoon. I would like to welcome now Ms Gwyneth Jones and Mr Alan Kohn. 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.

Thank you very much for your submission 198, Mr Kohn. The committee notes the previous comments you have made in the comments from the floor section. I understand you wish to make some further remarks about dispute resolution processes in relation to Consumer Affairs Victoria and VCAT. We have allowed about 20 minutes for our time today. Thank you both very much for being here, and I look forward to what you have to say.

Ms JONES — My name is Gwyneth Jones, and I have been a resident at Aveo The George retirement village since September 2003. That is a period now of 13 years. What I have in front of me is what I call my personal story of what I as a resident of this particular Aveo village have experienced over the 13 years, and I am still experiencing some pretty horrendous events that are going on. It is better that I just read the letter, and you can ask me questions later.

Over the 13 years, over that period of time, frequent hostile and incredibly disturbing attempts have been made by Aveo to have me forcibly evicted from my home — where to and at what cost only God knows. I would have to break all contacts with my friends, my essential carers — as you can see, I am disabled, and one of the reasons I am disabled is because of an accident I had at Aveo — and my essential medical practitioners who look after me.

I have been overcharged close to \$5000 for mistakes made in my telephone bills, mistakes which for years were flatly denied by Aveo management. I have the documents to prove these details. Aveo have also overcharged me over \$400 for my electricity use, and it is due to the efforts of my advocate, Mr Alan Kohn, that that money was returned to me. I thank him sincerely for his assistance.

I have been a victim of 20 counts of theft and burglary by a so-called trusted Aveo member of staff, which took place over a period of 17 months. This deceitful, corrupt and treacherous Aveo staff member was sentenced to a high number of unpaid community hours, instructed to pay back the hundreds of dollars she stole from me and given a criminal conviction against her name in the Moorabbin Magistrates Court in September 2011.

The reason these thefts occurred was that every staff member is given a master key, so this particular staff member knew when I was out. But because of my background as a criminologist, I cottoned on very quickly to what was going on and established a pattern of the time and the date and what was happening in my unit. I will just mention before I go on that before I retired I was a criminologist. I did postgraduate studies in criminology at Melbourne University. Anyway, I was never able to report these thefts to Aveo management because they wrongly believed I suffered from both dementia and an intellectual illness and I would therefore be telling lies, making up stories and deliberately causing trouble. So I set up a hidden camera in my unit which photographed her criminal behaviour.

One evening I asked this same Aveo staff member for some pain relief tablets. The next morning she fraudulently reported to Aveo management that when she entered my apartment I sexually assaulted her. This incident resulted that same morning in a swift, hostile and unannounced visit by a team of psychiatric nurses from the Kingston Centre situated in Cheltenham which left me disturbed, distressed and mentally shattered. I had to undergo many sessions of psychological counselling in order to come to terms with these incidents.

I have been a victim of trespassing in my own home by Aveo staff members. On several occasions they entered my home without my knowledge or permission while I was out — as I said, using the master key to gain access — during which time my property was rifled and my documents and files interfered with.

As an Aveo resident I have been the victim of a male lewd, obscene and filthy sexual act. It took three court appearances before this sexual predator finally got the message not ever to come near me again or to communicate with me in any way whatsoever. He is an example of some of the kinds of individuals who are permitted to reside in Aveo retirement villages amongst elderly, trusting, vulnerable and often cognitively impaired Aveo retirees.

Background checks on prospective residents have never been thought about by management, much less carried out. They accept anybody and everybody, so long as they pay the high monthly fees. In February 2010 I was accused of plotting to murder a resident.

The CHAIR — Ms Jones, the basis upon which it was suggested that you wished to make a submission today was to discuss dispute resolution processes in relation to Consumer Affairs Victoria and VCAT, and I would ask you to address those two issues.

Ms JONES — I am sorry; I just thought you wanted my personal story.

The CHAIR — My understanding was that the discussions with Mr Kohn and the secretariat were very clear: they were the two issues you wished to address, and that is the basis on which you would speak.

Ms JONES — What questions would you like to ask?

Mr KOHN — Maybe address the issues.

Ms JONES — I will just go to the end of the letter. This all documents what has happened to me and the appalling — —

The CHAIR — We are happy to receive that, thank you.

Ms JONES — I will talk about the enormous deferred management fees plus the expense of having my unit completely refurbished whether it needs it or not, which I would be required to pay for should I choose to leave the Aveo village in order to live somewhere else. That would not leave me enough money to live anywhere except in a tent.

The residents are too frightened to complain to Aveo management and/or staff because of the genuine fear of nasty, unpleasant and painful repercussions and abuses that could in many instances occur to themselves or their families. I have never, ever been provided with a duty of care for the entire 13 years that I have been there, and I am still not being provided with a duty of care.

I am now being stalked by a resident, and nothing is being done. So my life in this retirement village for the past 13 years has been absolute misery.

The CHAIR — I am very sorry to hear that. I note you referred to some criminal proceedings that have taken place. If you have allegations of criminal behaviour, I would encourage you to contact Victoria Police.

Ms JONES — No, I am not saying it is. We have already been in touch with the police.

The CHAIR — Okay.

Mr KOHN — I would like to thank the committee for this opportunity to present my experiences while assisting Ms Jones with the retirement village that she lives in. I will just give a summary of the experience that I encountered with Ms Jones. Basically it is the fear of retribution when making complaints at the retirement village — not being believed, not being listened to. They were labelled as troublemakers. I was also labelled as a troublemaker for trying to assist Ms Jones with her issues. There were also occasions when they were intimidating and bullying Ms Jones, which I also witnessed myself, and they were trying to do that with me as well. Also the complaints process: the retirement village is not taking the complaints process seriously. Really to understand what the complaints process means is to sit down — you know, things can go wrong — and to address the issues to try and make that right.

The other issue I have is that I have taken up a few of the issues with Consumer Affairs Victoria because they have jurisdiction over the Retirement Villages Act, the Australian Consumer Law and Fair Trading Act and also the Owners Corporations Act. One of the issues was the complaints process. The other issues were also with the Owners Corporations Act in the sense of running the meetings correctly and providing the right information to the residents. They split the meetings up between leaseholders and freeholders. They give different information to the two, but the two never come to the same meeting.

I have brought all this to the attention of Consumer Affairs Victoria, especially the electricity overcharging and the telephone overcharging, and they basically told me to go to the telecommunications industry ombudsman. But because it is an embedded telephone system — the TIO only deals with Telstra, Optus or the telecommunications service providers — what I believe and what I saw on CAV's website is that that comes under the Australian Consumer Law because they are paying for a service and they are not receiving that service.

It is also the same with the embedded electrical networks. There is a council in order or order in council — one of those terms — that if you provide an embedded electrical network service, then you come under the same auspices as an electrical supplier and you need to meet the same requirements. Consumer Affairs Victoria basically said that I was incorrect in that space, but then I spoke to other Victorian government departments and they explained to me that I was correct and provided me the information. I have a pack there for you with a lot of correspondence with Consumer Affairs and — —

The CHAIR — Yes, we have received your two folders of material. Thank you very much.

Mr KOHN — That is all in there so you can see the correspondence. We are still addressing Consumer Affairs Victoria because today, after six years, the complaints process is still not correct. They have changed the procedure many times, but they are still not following the procedure that they should in accordance with the Retirement Villages Act. I have written to the director of CAV detailing my dissatisfaction, and I have also raised the matter with the Victorian Ombudsman to investigate. The Victorian Ombudsman has taken that on board, and we are having a meeting with consumer affairs in a couple of weeks time — not with the director but just below him — so that is a positive move there.

Basically the key thing in the Retirement Villages Act 1986 is that the purpose of the act is to clarify and protect the rights of the persons who live or wish to live in the village. Again, if the act is not enforced, then I believe it is what is called shelfware — it just sits there and collects dust. We can change the act, make changes, but we need to enforce the act. The regulator, being Consumer Affairs Victoria, I believe has the jurisdiction to enforce that act, which I have not seen to date. I keep on being told, 'Well, we can't tell you what we are doing or not doing'; however, you can see it in the newspaper. For example, you probably would have seen with the real estate agents where Consumer Affairs Victoria took one of the real — —

Ms HARTLAND — Yes.

Mr KOHN — I have not seen that with the retirement villages. That is the only way the members of the public can see that, or in their annual general report.

CAV have no jurisdiction in binding orders. I believe there could be a bit of a conflict as well with CAV being the regulator and also providing guidance and support to retirement village operators, because what I have found is they explained to me that they were assisting them with the complaints process and the letter that I received from the retirement village management says, 'We're following the complaints process that they've told us to do. Now, if there's anything else we need to do, let us know', so I think there may be a bit of a conflict in their roles as well.

Clearly what I have seen with Ms Jones and another lady who I have been supporting is that both ladies acknowledge that they have purchased into a so-called retirement lifestyle; however, they are currently not able to enjoy their retirement in a safe, secure and friendly environment which they have purchased. Basically that is where I believe the Australian Consumer Law comes into play, because it is not fit for purpose, basically. That is again something I am bringing up with Consumer Affairs Victoria in that sense.

Again, there is no option for Ms Jones, as she mentioned before, to leave the retirement village because if she is not happy there, she cannot just walk out. Someone mentioned that before: if you buy a telephone, you go to the TIO and complain, and you can go from Optus to Telstra. Here these people are locked in. They cannot move without losing a lot of money.

There was another aspect that there were questions on before. I looked up the Aveo website. Because they are a publicly listed company they have got their strategic plan on the website. Basically they work on the basis that the average person is 85 years of age, they churn 10 per cent to 12 per cent of the residents per year, and the average stay is about four years per resident. That is where they make their money on the deferred management

fee being around about 40 per cent over the four years. Ms Jones was paying 20 per cent of deferred, but she was there 13 or 14 years ago, but now it has increased to 40 per cent.

There is another interesting aspect that is coming out now: this particular retirement village is looking into aged care, home care services, which come under the federal aged care act. So they are using part of the home care to provide the service. So it is a fee for service, but also if you are eligible for an ACAS assessment, then that money will go to that particular provider. So we are now looking at a federal government act, and you have then got the aged commissioner and all of those sorts of things.

Ms HARTLAND — ACAS — can you just give the — —

Mr KOHN — An ACAS assessment is where they are assessed to see what their needs are — —

Ms HARTLAND — Could you just give us the full name for Hansard?

Mr KOHN — I do not know what — —

Ms HARTLAND — ACAS is aged-care assessment team.

Mr KOHN — Yes, something like that. So that is a new development happening, and the act is changing next year, in February 2017, where the funding goes with the person and then they can choose to leave or go other places. Basically they are advertising that you can stay here until you go out in a cardboard box, but when I spoke to the village operator, I said, ‘Well, what happens if someone is aggressive with dementia?’. They said, ‘Well, they won’t be able to stay here; they’ll need to move out’. So there are a lot of things that they say that they do not advertise. They actually advertise some things that are not 100 per cent correct.

Just basically from my experiences in audit and disability services and also having had the pleasure of being a volunteer with the Office of the Public Advocate and supported residential services — and the retirement villages were supported residential services as well — I strongly believe an ombudsman or a similar appointment who has the jurisdiction to make binding orders should be put in place. This will provide residents easy access to free, fair and effective external dispute resolution. That is the same as the telecommunications industry ombudsman, the Financial Ombudsman Service et cetera. I have used those services, and they work well.

An advocacy organisation should be established, similar to the Office of the Public Advocate, so that volunteer advocates can go and visit retirement housing, retirement villages on a periodic basis, unannounced, in order to independently ensure that residents are being fairly treated and respected and are safe from abuse. They could also possibly assist with submissions to the ombudsman, so helping the residents look at whether there is a real issue here and presenting. At the end of the day, also just going to an ombudsman, again, you are still living in that village, so there is still fear of retribution and you need that extra support.

Also, on the retirement villages contracts, I have looked at a few of those. Again, they are ambiguous. It depends which way you read it when you are actually challenging the contract. You can read it one way or the other way. They are also confusing, and again they should just be in simple English, like, for example, insurance policies and things like that, so everyone can understand them, read them and make sense of them. You should not have to go to a lawyer, I do not believe, to be able to understand what you are buying.

The last thing is that CAV should enforce the Retirement Villages Act on behalf of the minister for CAV in accordance with the provisions of the act and regulations.

The CHAIR — Thank you very much, Ms Jones and Mr Kohn, for your contributions.

Ms HARTLAND — I have just one question, and this has come up a few times. Why do people not just leave if they do not like it? Do you have any even rough figures on what it would cost you to leave and re-establish yourself in other accommodation?

Ms JONES — I do not have any figures, but I know that I would not have enough money to go anywhere, so I have no choice except to stay. I could not afford it; as I said, I could buy a tent. That is about it. I could not afford to go anywhere else, and why would I want to go to another retirement village that is just as bad as Aveo? I have left a folder there for you with all the information.

Ms HARTLAND — The other question, Alan, is about us having had a lot of evidence about the need for an independent body. How long has it taken you to get this meeting with consumer affairs?

Mr KOHN — Basically it has been since 2010. We only ever had one meeting with them initially, in 2010. A few issues came up again last year with another lady in another retirement village as well. I just keep on sending emails. They respond and say, ‘We’re looking into it’. Then they give me misleading information on, for example, the complaints process. As you will be able to see in the folder, I have clearly spelt out the issues and what the act says and what they have basically come back to me with. You will also see in there that with the embedded electrical network service I have got a few letters from CAV to say that they cannot do anything — ‘You can go to VCAT’ — but then, as I said, I corrected them and they came back to me to say, ‘Yes, you’re correct and they need to address that’. If I did not pursue it and I did not know what the requirements were, then I would have just said, ‘Well, we can’t do anything’.

Ms JONES — Could I just finish by saying that the management of the Aveo village where I live took me to VCAT to try and evict me from my home. They attempted to have a guardian appointed who would buy me somewhere to go. Who knows where. The reason I was taken to VCAT was that I am different; I am not the same as the elderly, vulnerable, easily pliable, non-complaining, obedient resident. For that reason I was discriminated against, bullied and humiliated — and because I am what I am, Gwyneth had to go. That is how I ended up at VCAT. Alan was the only person who was there to support me. Had I not paid a very large sum of money for a lawyer, I do not know where I would be living.

Ms HARTLAND — What was the outcome of that case?

Ms JONES — They threw it out of court.

Mr KOHN — Gwyneth had psychologists — —

Ms JONES — I had medical reports to say how the abuse, humiliation and intimidation that had been going on had affected me mentally and physically. These medical people were prepared to support me — that I did not have dementia, nor did I have an intellectual disability, and that what they were doing was immoral and unethical, to try and throw me out because I am different. When I moved into the retirement village I was only 63, and the current manager thought, ‘Oh, she’s too young. I want someone old so they can be controlled and they can be made to be obedient and non-complaining’. That is not me. I am highly educated. I was a criminologist, so I know what I am dealing with. The effect of having to appear before VCAT simply because I am different has left me traumatised for the rest of my life.

The CHAIR — Thank you very much for all the material you have given the secretariat, which we will analyse, and for your evidence today, Ms Jones and Mr Kohn.

Witnesses withdrew.