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Via email - stevens.justin@abc.net.au

Dear Mr Stevens,

ABC stories on retirement sector cross the reporting line to activist journalism

ABC Chair Kim Williams recently declared that activism has no place at the public broadcaster, stating that “not only is it to be discouraged, it is to be ardently opposed”.¹

As you might be aware, Adele Ferguson and her colleagues Ben Butler and Chris Gillett have in recent weeks been running a series of stories – on 7.30, online and on ABC radio – regarding the retirement living sector.

The ABC’s campaign against the retirement living sector – detailed below – is clearly in breach of the ABC’s Editorial Policies, Principles and Standards, particularly in relation to impartiality and the requirement to provide a diversity of perspectives.

We respect the right of the ABC to scrutinise our sector and, as the peak industry body, we have fully cooperated with Ms Ferguson and her colleagues, including by agreeing to fly to Sydney for a 40-minute sit-down interview and by answering all questions put to us. Retirement village operators have also cooperated when approached on matters relating to their businesses.

As I acknowledged in my interview with Ms Ferguson, there is always room for improvement and we support measures such as the appointment of an industry ombudsman – a point that has not been captured in coverage to date.

However, it has become abundantly clear that this series has escalated into an activist campaign that has abandoned the ABC’s obligations to impartiality and perspective. As a result, we no longer have confidence in the ABC’s ability to present a fair and accurate picture of the retirement living sector as it continues to pursue a one-sided campaign.

In your journalists’ own words, the ABC itself is now “calling for” “profound changes” and is encouraging its audience to write to members of parliament as part of a “concerted push” to increase regulation in the retirement living sector.²

Below is a transcript from 7.30 on the night of Wednesday 9 October (my emphasis):

*Sarah Ferguson: So, what do you do if you're in that vulnerable position, and particularly if you don't have family to make the arguments for you, if someone's watching or they know of someone in this situation before, **those profound changes that you're calling for**, what can they do?*

Adele Ferguson: Not a lot. Not a lot.



Sarah Ferguson: So, and then finally, then coming back to where you started, if there are people who've seen your programs or are listening to you tonight, what should they do? Just not in terms of fixing their situation, but can they bring their stories, more stories to you?

*Adele Ferguson: They can bring more stories to us and **they really should be writing to their state parliamentarians and also to Stephen Jones to get them to do something. Rebekha Sharkie has been banging the drum for quite a long time and she's been really getting, she was saying that she's been getting hundreds of emails and going to see constituents as well. But there needs to be a concerted push.***

Sarah Ferguson: Adele Ferguson, every time you come in here, you're battling for people who need it. Thank you for everything that you do.

This is not journalism; this is activism of the kind that Mr Williams warned must be “ardently opposed” at the ABC. That it is encouraged by two of your most senior and respected journalists is deeply concerning.

The ABC’s coverage in the past fortnight has solely focused on a handful of residents who have had poor experiences – in some cases unacceptable experiences – in retirement villages to paint a picture of “systemic issues”.³

Edited extracts from Ms Ferguson’s interview with me have been included as ‘balance’ but the coverage has not included a single one of the 250,000 Australians who have chosen to live in retirement villages and are happy with their experiences. We know of several who have reached out directly to the ABC to share their experiences and frustrations with the reporting to date.

In preparation for my sit-down interview, the RLC provided the ABC with a background document which included the contact details of state-based resident associations whose views are more representative of the broader experience of residents across the country, rather than just those who have been encouraged by the ABC to contact the broadcaster with frustrations about the sector.⁴

The language used to describe retirement living has been increasingly generalised and hyperbolic – especially for the ABC. For example: “huge exit fees”⁵, “gigantic fees”⁶, “exorbitant exit fees”,⁷ “eye watering ... exit fee”⁸, “mammoth costs to refurbish and renovate”⁹, “draconian”,¹⁰ “shocking stories”¹¹, “fee gouging, bullying and misleading marketing promises”¹², “a financial prison, a disaster and ethically bankrupt”¹³, “exit fees dictated by complex contracts ... ripping hundreds of thousands of dollars out of the pockets of residents and their families”.¹⁴

Again, these descriptions of the industry are based on the experiences of a handful of the 250,000 Australians who have chosen to live in retirement villages.

The ABC’s editorial standards require it to “gather and present news and information with due impartiality” and to “present a diversity of perspectives within a reasonable timeframe, aiming to reach a similar audience, so that no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented”. Those standards say the ABC must “not unduly favour one perspective over another”.

On the basis of the coverage to date, it has failed to meet these standards. There is no evidence that the ABC is prepared to address this lack of impartiality and balance in its coverage given its continuing refusal to countenance any perspectives that do not accord with its negative

campaign, coupled with its ongoing calls for only those with poor experiences to come forward, as repeated on 7.30 last week.

Let me address three of the central claims made in the ABC's coverage.

Retirement living is a bad "investment"

Buying a home in a retirement village is not a financial investment designed to make money; it is an investment in a lifestyle, as outlined in Consumer Affairs Victoria's *Guide to Choosing and Living in a Retirement Village*.¹⁵ This is the choice that residents make when entering a retirement village and is a concept not fairly portrayed throughout the ABC's coverage. Instead of capital gain, residents are choosing a lower upfront cost than traditional property, with their 'fee' for living in a retirement village enabling them to enjoy its community and amenities, deferred until they exit.

In her reporting, Ms Ferguson claims that "on the way in, absolutely they [the Retirement Living Council] estimate is 43 per cent cheaper, but what they're not looking at is what it costs on the way out and in just about every case, people go backwards financially and in property markets that have been increasing over the years. It's just a really bad investment".¹⁶

Further, she declares "in many cases, people actually go backwards financially when they come to sell",¹⁷ "it would have to be one of the only property investments where you go back after you invest in it"¹⁸ and "you don't want to lose money when you're living somewhere and you can live somewhere else and you can actually make money".¹⁹

While this can often be true, this ignores the existence of the exit fee as a well-established part of the retirement living model for the past 30 years. While some contracts allow residents to share in capital gains, most contracts contain a deferred management fee agreed with the resident at the outset that will result in a lower return. That is clearly explained to incoming residents and reinforces the point that a home in a retirement village is not a financial investment.

In addition, it is crucial to note that the service fees paid by residents are merely a cost recovery mechanism by the operator for the day-to-day running costs of the community. By law, operators are prohibited from making a profit on these fees.

The extract below is from my interview with Ms Ferguson on 25 September – which also appeared in the 30 September 7.30 story – and one of the four occasions we directly discussed the differences between a home in the traditional real estate market and retirement villages.

Ms Ferguson: Do you think people are aware, are they told crystal clear that when they go into a retirement village, they're going to be worse off when they come out?

*Mr Gannon: Look, **a home in a retirement village is not an investment property. It's not a vehicle to build personal wealth. It's a very different model.***

*Ms Ferguson: **We both agree with that.***

Given "we both agree" with the clear differences between homes in the traditional real estate market and those offered in retirement villages, Ms Ferguson's repeated comparisons about capital growth in the traditional real estate market suggests otherwise.

Ms Ferguson's agreement with my statement in the interview – "A home in a retirement village is not an investment property. It's not a vehicle to build personal wealth. It's a very different model" –

does not accord with her subsequent public reporting, such as “it would have to be one of the only property investments where you go back after you invest in it”.²⁰

The industry is “loosely regulated”

This is simply not correct. The industry is heavily regulated, and appropriately so. It is covered by dedicated, separate pieces of state and territory-based legislation (Retirement Villages Acts) that regulate the sector, with jurisdictional regulations that govern deferred management fees and service fees.

There are, in fact, at least 31 pieces of state, territory and federal legislation that govern all accommodation types available to older Australians, including dedicated retirement village legislative frameworks.²¹ The principal objects of these legislative frameworks is to provide consumer protection and do so by, among other things, imposing rigorous pre-contractual disclosure regimes, many of which use approved forms of disclosure documents issued by the regulators themselves that require a retirement community to disclose all its fees and charges in significant detail. In most states, this includes detailed calculations of the funds a prospective resident can expect to receive when they leave the retirement community.

When it comes to these dedicated Retirement Villages Acts, there are 1,456 collective pages of legislation and associated regulations covering all jurisdictions. This is not insignificant. Ultimately, it is the role of regulators, operators and residents, not journalists, to determine whether these frameworks are fair and balanced.

When asked by her ABC colleague Michael Rowland on 3 October what the government is saying about her stories and claims, Ms Ferguson said: “Unfortunately, they’re not saying anything. They have turned a blind eye to this industry for years, they’ve made tiny little reforms, and in this case, we’re just hearing crickets despite putting in calls, emails ... absolute crickets. It’s really disappointing.”²²

Throughout the course of the ABC’s “concerted” campaign, Ms Ferguson has also declared that governments “are asleep at the wheel”²³, “[this sector] has been neglected by the government”²⁴ with “very light legislation”²⁵, and that it “has largely been neglected over the years ... it slips through the gaps”.²⁶

As outlined in our correspondence ahead of my interview with Ms Ferguson, there has been significant legislative reform in the sector over the last seven years. Tasmania updated its Act in late 2023, with South Australia, Western Australia and Victoria currently in the advanced stages of legislative review. Queensland has already been significantly reformed with regulatory amendments still ongoing. The 2017 Greiner Report Review also led to significant changes benefitting consumers in NSW.

Key reforms to legislation across the country in recent years have aimed to increase resident and investor confidence, raise industry standards, and pursue better regulation. We publicly support harmonisation of legislation and additional measures to protect residents, such as a national ombudsman or similar body.

Ms Ferguson’s repeated claims that legislative protections are “loose” and “light” are simply not supported by evidence or research.

There are “systemic” issues in the retirement living sector

Based on her highly selective case studies, Ms Ferguson explicitly claims there are issues in the industry that are “absolutely systemic, and the regulation is incredibly weak”.²⁷ There is no evidence to support this repeated claim by Ms Ferguson – one she uses to call for further regulatory changes.

Since 2017, when Ms Ferguson last investigated the retirement living sector in depth, we have made significant progress as an industry, in particular through the introduction of a Code of Conduct to impose clear standards on the level of services, the transparency of contracts and the handling of complaints.

Today, the industry-wide Net Promoter Score (NPS) is a very high +44,²⁸ a level at which promoters greatly outnumber detractors, and total complaints across the industry is low with only 27 recorded complaints from code-compliant villages lodged with the Code since 1 January 2020.

Of the 66,000 people living in a retirement village across NSW, for example, there were only 55 complaints lodged with the NSW Civil and Administrative Tribunal in 2023, some of which might have been lodged by operators against residents.²⁹ That represents 0.08 per cent of all residents.

While there are certainly examples of residents who have suffered poor experiences – and each one is unacceptable – the evidence shows that the experience of residents living in retirement villages is overwhelmingly positive.

Going forward

These are just three perspectives that have not been represented fairly in the coverage to date, confirming the one-sided nature of the “concerted” campaign now being run by the ABC against the retirement living sector.

To reiterate, while we will continue to cooperate with the ABC to the best of our ability, we implore the ABC to fulfill its own obligations to deliver fair and impartial coverage free from the kind of activism that has become evident in its pursuit of this series of stories.

As Mr Williams declared, this type of activism is to be ardently opposed.



Daniel Gannon

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CC: Jo Puccini, Head of Investigations and Current Affairs
Joel Tozer, Executive Producer, 7.30

Sources:

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- ² "Interview with Adele Ferguson", 7.30, 9 October 2024
- ³ "How retirement villages are gouging older Australians", 7.30, 30 September 2024
- ⁴ RLC-supplied background document prepared for the ABC, 23 September 2024
- ⁵ 7.30, 9 October 2024
- ⁶ "Queensland authorities seeking 'further information' as it looks into retirement villa sales", ABC News, 4 October 2024, <https://www.abc.net.au/news/2024-10-04/queensland-authorities-launch-probe-on-retirement-villages/104422888>.
- ⁷ ABC Breakfast TV, 3 October 2024
- ⁸ "How retirement villages are gouging older Australians", 7.30, 30 September 2024
- ⁹ "Retirement Villages Put on Notice After Being Accused of Gouging", ABC News, 7 October 2024, <https://www.abc.net.au/news/2024-10-07/retirement-villages-put-on-notice-after-being-accused-of-gouging/104434494>.
- ¹⁰ ABC Radio National, 30 September 2024
- ¹¹ "Retirement village operator Pinnacle Living accused of 'reckless harassment' of elderly resident", ABC News, 3 October 2024, <https://www.abc.net.au/news/2024-10-03/retirement-village-pinnacle-living-accused-of-harassing-resident/104421886>.
- ¹² "Retirement village operator Pinnacle Living accused of 'reckless harassment' of elderly resident", ABC News, 3 October 2024, <https://www.abc.net.au/news/2024-10-03/retirement-village-pinnacle-living-accused-of-harassing-resident/104421886>.
- ¹³ "Retirement villages accused of gouging older Australians in 'corporatised elder abuse'", ABC News, 30 September 2024, <https://www.abc.net.au/news/2024-09-30/retirement-villages-accused-of-gouging-older-australians/104407150>.
- ¹⁴ "Retirement village contracts should carry 'financial health warning', former village resident's daughter says", ABC News, 9 October 2024, <https://www.abc.net.au/news/2024-10-09/call-for-retirement-village-contracts-to-carry-warnings/104448644>.
- ¹⁵ Consumer Affairs Victoria. *Retirement Villages: Guide to Choosing and Living in a Retirement Village*. Last modified March 2020, page 8 <https://www.consumer.vic.gov.au/library/publications/housing-and-accommodation/retirement-villages/retirement-villages-guide-to-choosing-and-living-in-a-retirement-village.pdf>
- ¹⁶ ABC Radio National, 30 September 2024
- ¹⁷ ABC TV News Mornings, 30 September 2024
- ¹⁸ ABC Radio Sydney, 30 September 2024
- ¹⁹ ABC Radio Sydney, 30 September 2024
- ²⁰ ABC Radio Sydney, 30 September 2024
- ²¹ Retirement Living Code Administration, *Retirement Living Code of Conduct*, January 2020, <https://www.propertycouncil.com.au/wp-content/uploads/2023/03/Retirement-Living-Code-of-Conduct-January-2020.pdf>, pp 28-29
- ²² "ABC Breakfast TV, 3 October 2024
- ²³ ABC TV News, 3 October 2024
- ²⁴ ABC Breakfast TV, 30 September 2024
- ²⁵ ABC Radio Sydney, 30 September 2024
- ²⁶ ABC Radio National, 30 September 2024
- ²⁷ ABC Breakfast TV, 3 October 2024
- ²⁸ PwC and Property Council of Australia, *2023 PwC/Property Council Retirement Census Snapshot Report* Property Council of Australia, July 2024, page 2
- ²⁹ New South Wales Civil and Administrative Tribunal, *Annual Report 2022-2023* <https://ncat.nsw.gov.au/documents/reports/ncat-annual-report-2022-2023.pdf>.