**Trustees’ Report to the Hellenic Community of WA (HCWA)** **of Serious Concerns with the**

**Financial State and Quality of Resident Care in the Hellenic Community Aged Care**

The following report and recommendations stem from Trustees’ concerns regarding the sharp decline in profitability of the Hellenic Community Benevolent Association (HCBA) since 2016 as evidenced by its financial statements. The concerns have been communicated, in writing, to the committee of HCWA since 2018. They were also the subject of Apollo Care’s proposal (July 2020) (“the AC proposal”). Apollo Care (AC) is a reputable operator of aged care facilities nationwide. (Link 11 February 2021: www.apollocare.com.au) . The 20 page AC proposal reported the serious challenges affecting HCAC’s future and alternative strategies to adopt.

The Trustees have also received disturbing reports of poor quality care and inadequate incident reporting and the lack of compulsory record keeping at HCAC. The Royal Commission into Aged Care Quality and Safety has since 2018 released compulsory standards for quality care (Royal Commission into Aged Care Quality and Safety, 2020), the requirements for compulsory reporting by approved providers of residential aged care services (Royal Commission into Aged Care Quality and Safety 2021, a ) and many research papers which have documented the serious nature and prevalence of problems in aged care in Australia (Royal Commission into Aged Care Quality and Safety 2021, b) The references are listed in the following bibliography.

These issues are dealt with in more detail below.

1. **Hellenic Community Aged Care (HCAC): Financial Aspects**

The HCAC commenced in 1993 and had grown to 96 beds by 2016. The financial information used were gleaned from HCBA’s annual report of 2004 (for the AGM of 23 March 2005), the AC proposal (based on HCBA data provided to May 2020 by Mr J Metaxas) and reports to the AGM on 21 November 2020 and recently updated to 30 September 2020.

**Table 1 . Earnings of the Hellenic Community Aged Care (HCAC) 2003 to 2020**

**(Sources : HCWA Annual reports 2003-04 , HCBA – J Metaxas, HCWA,2021)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **Beds** | **RADS &  bonds** | **Earnings/ net surplus** | **comments** |
| 2003 | 44 |  | $165,680 (calendar) |  |
| 2004 | 44 |  | $273,190 |  |
|  |  |  | **To 30 June** |  |
| **2016** | **96** | **$10,122,499** | **$561,476** |  |
| **2017** | **96** | **$11,708,288** | **$199,317** |  |
| **2018** | **96** | **$12,653,959** | **$55,848** |  |
| **2019** | **96** | **$12,452,693** | **($252,146)** |  |
| 2020 ( 30 June- 31 May) | 96 | $12,709,633 | ($352,547) |  |
| 2020 (to 30 Sept)  | 96 |  | $1,642 |  |

The sharp decline in earnings / net surplus from $561,476 for the year ended 31 December 2016 to $1,642 for the 9 month period ended 30 Sept 2020 (Table 1) coincided with the disbanding of the HCAC Board prior to 2016.  The AC proposal and RC’s recommendations cast doubts on the financial capability for the HCBA to recover the 2016 level of earnings for many years and will adversely affect the asset value and net earnings of the HCBA.

The immediate negative trends facing HCAC are described in page 3 of the AC proposal.

The AC proposal furthermore explained that the annual depreciation charge has not been set aside into cash reserves as is customary. Instead, the annual depreciation charge has remained as a mere paper provision. Accordingly HCAC would appear to be confronting a looming capital impost that is not funded by cash reserves or operating surpluses. HCAC has major infrastructure upgrade and renovation pressures forced by competing aged care operators and the RC’s requirements. HCAC is compelled to improve the infrastructure and services offered while at the same time having to fund operating deficiencies .

The deficits in earnings (inclusive of depreciation) are being subsidised by a failure to set aside the annual depreciation charge into cash reserves or building funds. The 2019 financial report confirms a rent of $183,804 was paid by the HCBA to the HCWA and drew on the cash reserves. The failure to set aside annual depreciation charges into a cash reserve is unsatisfactory. This matter was raised in the AGM in November 2020 and by the Trustees in May 2019 in a letter to the President of the HCWA. The high level of unsustainable payments by aged care providers and the low quality of resident care have been the subjects of investigation by the local and interstate media and by authorities (Lucas C, Schneiders B, 2020; Turner R, 2021).

The longer the trends in Table 1 and in page 3 of the AC proposal are allowed to continue the fewer and less palatable the remedial options are likely to become. The bottom line is that the market value of HCAC has diminished by millions of dollars between 2018 when Amana Living Care ( Link: <https://www.amanaliving.com.au> ) made an offer to the HCWA to purchase HCAC. The AC proposal is more attractive, in one sense, because it excludes the sale of property. Instead, HCWA would become a lessor with the operator of the business (AC) leasing the property for 50 years. As such, HCWA would continue to own the property and it would receive a secure income in the form of rent. HCWA clearly requires expert advice on the AC proposal which the Trustees advocated in 2020.

The AC proposal lists “alternatives” in page 7 on how the HCWA can safeguard its “mission and legacy” and reverse the poor financial performance and the ongoing deterioration in value of HCAC. Which of the alternatives listed are being considered by the HCWA or HCBA? What are the merits and disadvantages of each of the listed alternatives perceived by the HCBA and HCWA ? Are alternatives other than those listed being considered or investigated? If alternative 1 ( i.e. “carry on as is”) is the preferred option what immediate steps are being taken to arrest HCAC’s decline and what longer term plans are being considered to ensure the future viability of HCAC ? These are serious questions which have not been addressed by the HCBA or HCWA.

**Requests:**
1. The immediate reinstatement of a subcommittee of the HCAC which comprises financial, medical and aged care professionals to administer HCAC, assess each the above matters, and to advise the committee of the HCWA on the best alternative for them to propose to the annual general meeting in April 2021.

2. The aged care industry (as a whole) and HCAC specifically are in a precarious state of transition. In order to implement efficient action, the Trustees recommend that local expert consultants such as Ansell Strategic ( Link February 11 2021: <https://www.ansellstrategic.com.au/> ), who specialise in aged care, community care and retirement living , be engaged urgently by the HCBA to assess the AC proposal and to report generally on the financial, administrative and capital works aspects required at HCAC . This is consistent with the Trustees’ advice to the HCWA in August 2020 and an offer to pay for the evaluation of the AC proposal which was declined. It is imperative the capital requirements and the operating deficiencies of the Aged Care operations are fully understood along with asset valuation preservation and/ or maximisation.

3. The committee of the HCWA reports fully to the AGM in April 2021 on difficulties with compliance by the HCAC with Royal Commission requirements and the most financially viable alternative to adopt.

1. **Hellenic Community Aged Care : Resident Care Defects**

The trustees received disturbing reports regarding two female residents of HCAC who suffered serious injuries in 2019 and 2020 respectively**.** Both residents required emergency hospitalisation and treatment**.** These incidents are referred to as Cases 1 and 2 in Table 2.

**Table 2 . HCAC : details of two residents who suffered falls and hospitalisation.**

**(Sources : HCBA – J Metaxas, letters June 25 2020; Oct 19 2020)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Name** | **Time of incident**  | **Incident**  | **Potential liability  1** | **Potential liability  2** | **Admitted liability  3** |
| Case 1  | 1.25am, 20 August 2019 | Fall and gashed head – Sir CG Hospital | No Incident   Report  | No record of investigation |   |
| Case 2 | 3am, 19 June 2020 | Compound fracture of left elbow and fractured left hip – Royal Perth Hospital | No care plan for resident at high risk of falls | No care plan for resident sleeping in chair | No revised care plan for change in sleep pattern |

In Case 2, the resident who fell as a result of HCAC's negligence, required surgery to repair the fractures of her left elbow and fractured left hip. Mr J Metaxas sent a letter (on behalf of HCBA) to the resident’s family dated 26 June 20 in which he, in effect, admits that HCAC was negligent in not preventing the fall. The concluding sentences of the letter are “*There are* *no excuses for Hellenic Aged Care not following X’s care plan and then leaving an outdated care plan in place, once it became blatantly obvious X’s sleeping pattern had changed…. I very much regret, how all this trauma could have been avoided, had we delivered the proper standard of care*”.

The primary concerns, of course, are what caused the care regime for this resident to fail and have those deficiencies been remedied to avoid similar future incidents?

But there is a secondary consideration, which arises from the letter by Mr J Metaxas dated 26 June 2020. The letter constitutes an admission of liability by HCAC, which the resident could use against it, if she claims compensation for the injuries.

HCAC is, in these circumstances, caught in a difficult situation. On the one hand, it does not wish to appear as uncaring and heartless, but on the other it has to be careful not to prejudice its insurance cover. For this reason, sections 5AF and 5AH of the Civil Liability Act (2002) Western Australian Legislation, allow for someone responsible for another’s injuries to *apologise*, without legal consequences. The apology can express “*sorrow, regret or sympathy* “by the person responsible but it should” *not contain an acknowledgment of fault by that person*”. An apology could be construed as an admission of fault, so that is why these sections were enacted.

The letter, however, goes well beyond an apology and is an admission of liability. If an insured party (HCBA) admits liability, in such circumstances, it could afford the insurer the opportunity to decline cover for a claim made against the insured. This is because an insured party is not meant to prejudice its insurer in denying a claim or attempting to achieve a settlement of a claim on the best possible terms. If the wording or tenor of the letter was approved by the insurer, or HCBA was authorised to write the letter by the insured in some way, then this would not be a problem.

So, ordinarily, if a claim is made by the resident, HCBA would refer it to the insurer, who will take on the claim and finalise it ( at its cost). If the letter was written without the insurer’s approval, there is the risk that the insurer declines to provide cover. In such circumstances, HCBA would be liable to pay the compensation, the resident’s legal costs and its own lawyers, which in total could be substantial.

In the circumstances, the Trustees caution HCBA against making such admissions, without the prior approval of the insurer. They could have serious consequences both legally and financially.

Case 1 involves inadequate reporting and investigation of injuries suffered by the resident in August 2019. Complaints by the family revealed that no, or inadequate, notes and records were kept on the resident. Furthermore, HCAC’s staff were unaware of their responsibilities and the protocols which needed to be implemented. The family received a letter from HCBA (Mr Metaxas) dated 19 October 20 acknowledging failures in HCAC's systems. The family complains that, to this day, they have not received satisfactory assurances that the shortcomings have been rectified. Reputational damage aside, the deficiencies potentially breach the Royal Commission’s stringent standards in this regard (Royal Commission 2020, 2021 a) and the statutory and general duty of care owed by HCAC to its residents.

**Requests:**

1. the systems in place at HCAC to report, record and investigate incidents and complaints by residents and their families to the HCBA, HCWA committees and relevant authorities are deficient. These require immediate review and rectification by a subcommittee which comprises financial, medical and aged care professionals to administer HCAC

2. Ansell Strategic also be engaged to investigate the above matters and to recommend systems to be put in place to ensure that the appropriate standards of reporting safety and care are implemented as a matter of urgency.

3. The HCBA committee establish whether Mr J Metaxas received the prior approval by the insurer of his letter of 26 June 2020.

**References**:

Apollo Care. **Report on Strategic Adaptation of Hellenic Community Aged Care**. Presentation to the Hellenic Community of WA (20 pages). July 2020 (attached).

Royal Commission into Aged Care Quality and Safety, 2020. **Aged Care Quality Standards.** November 2020 Link : <https://www.agedcarequality.gov.au/providers/standards>

Royal Commission into Aged Care Quality and Safety, 2021 a. **Compulsory reporting for approved providers of residential aged care services**. . Link Feb 11 2021: <https://www.agedcarequality.gov.au/providers/compulsory-reporting-approved-providers-residential-aged-care-services/guide-reporting-reportable-assaults> .

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**The Trustees of the Hellenic Community of WA**

**19 February 2021.**