



Discussion Forum

The comments and opinions expressed herein do not necessarily reflect those of the Retirement Village Residents Association (RVRA) or its Members.

Are Residents being had ???

Posted: Monday, 18 January 2010 1:37pm - By **John Cooper**

Is the Government discriminating against Residents in retirement villages in favour of owner operators when making legislation?

The Retirement Villages Act 1999 commenced 1 July 2000. Prior to this legislation coming into being, there was a mandatory Code of Practice prescribed under the Fair Trading Act 1987.

A review of the Act was conducted by the Office of Fair Trading, in accordance with the statutory requirement for a review under section 208 of the Retirement Villages Act 1999. The review was originally scheduled to be conducted during 2005, but was brought forward by the Government as part of a package of amendments to the Act made in March 2004.

1. In the Findings and Recommendations the review found "that the current method of apportioning liability between residents, as a group, and operators depending on whether work required is maintenance or replacement is inefficient, inequitable and may encourage cost-shifting or waste of funds. Necessary work may be delayed, or never carried out at all, while the parties try to reach some agreement over who should be responsible for the costs involved."

2. The Retirement Villages Amendment Act 2008 was introduced into Parliament in July 2008.

In it the following Section is:-

Section 97 Funding of certain capital maintenance or replacement,

(3) This section does not authorise the funding of any of the following from the capital works fund or recurrent charges:

(f) maintenance or replacement of roads or footpaths within a retirement village,

When the Bill was finally dealt with in the early hours of 4th December 2008 the above was removed by the Government in one of the many amendments introduced into their own Bill.

3. Under the Retirement Villages Act 1999 (amended 2008), residents are responsible for Capital Maintenance (including repairs) costs. Clause 4 Capital Maintenance, in the draft Regulation released for public comment in September 2009, prescribed a number of items as being capital maintenance and a number as not being capital maintenance. The latter included "painting of external surfaces," which, by definition, became the responsibility of operators.

The Retirement Village Residents Association(RVRA) made a detailed submission to the Minister for Fair Trading on the 2nd November 2009, and participated in meetings of stakeholders with Office of Fair Trading (OFT) staff, and two meetings at which the Minister for Fair Trading presided. At none of these meetings was the item “painting of external surfaces” discussed nor was there any indication from either the Minister or the OFT staff that any change was contemplated.

When the Regulation appeared in the NSW Government Gazette not only had this item been deleted but the entire Clause had undergone significant change. For example a new item was added to the being capital maintenance list: 4 (1) (a) (i) work done to prevent or repair defects in, damage to, or deterioration of, an item of capital.

Removal of the “painting of external surfaces” item alone from the not capital maintenance list will now cost residents more than \$70 million dollars each year. (In a letter to members of the Retirement Villages Association (RVA), the peak body for village owners/operators, the Chief Executive Officer estimated this as the amount members stood to save as a result of this one change.) The additional costs the other changes will impose on residents will become evident only in the coming years.

These costs are in addition to the other financial costs borne by residents such as ALL operational costs of the village, to which is often added 'hidden' head office expenses. Then there are departure and exit fees, as well as sale costs when a Resident or their Estate wishes to dispose of the property.

For the 'privilege' of living in a retirement village which entails meeting the operational costs by way of recurrent charges, the Resident has paid to the operator a substantial sum of money as an ingoing charge, such amount usually equates to the price one would have to pay for a comparable freehold or strata property outside the village.

In addition, operators can avail themselves of business expenses and depreciation deductions under the Tax Law, claims for replacement and repairs, under certain conditions, on Insurance policies paid for by the residents. Residents cannot access these benefits.

As can be seen, there are some unique set of financial conditions attaching to residence in a retirement village which if applied to tenants in the wider community would cause an outcry. Rather than endeavouring to achieve a balance between the legitimate right of commercial interests to make profits and the consumer rights of residents, the Regulation, or parts thereof, the Government legislation has actually tilted the balance further in favour of operators.

The Regulation, after a long delay, was gazetted on 18th December 2009, just before the Xmas holidays, which meant there was little media or public attention to these obvious inequalities. Nor has the Minister allowed sufficient time for Parliamentarians to scrutinize the Regulation. The Regulation comes into force on 1 March 2010, allowing only 3 sitting days in February for any intervention they may wish to make whereas the deadline for such intervention expires only on the 10th of May 2010.

As can be seen in points 1, 2 and 3 above there can be no doubt that each time the NSW Labor Government deals with legislation relating to Retirement Villages the financial advantage is tilted in favour of the owner operator, with little regard for the elderly residents who reside in retirement villages in this State.

Am I alone in my interpretation of these matters, or are there any others who are of the same or similar opinion?

John Cooper

Queens Lake Village, Laurieton.

Re: Are Residents being had ???

Posted: Monday, 18 January 2010 4:01pm - By **neil**

Are we residents being had you ask?

You bet we are. All residents in all villages. I'll tell you why.

I saw an article in our local paper last Friday about how the Minister for OFT had made all these you-beaut new Regulations. Well this is the reply I just sent to that paper. Will they publish it? We'll see. Remember it's people-power that will make a difference.

Here's what I wrote:

"As a fast learning resident in a retirement village I'm finding out how the bureaucratic legislation 'system' works (or doesn't work!). As a result I would have preferred the "a" was dropped out of the heading "Breathing a little choice into village life" (Advocate 14 Jan).

That's right . "Breathing 'little choice' into village life" would be a more explicit title following the Office of Fair Trading Minister Virginia Judge's mention of so called "reforms" in the new Regulation supporting the amended Retirement Villages Act 1999. Many Clauses in that new Regulation are not as resident-friendly as Ms Judge has made out in that article. It seems to me the usual Government "smoke and mirror" tricks are again being played!

For instance, guess who'll be paying for the encouragingly mentioned "annual safety inspections" which will be quite comprehensive and will involve regular checking and on going repairing of the operator's equipment? The residents of course even though residents don't own anything, including all the fire equipment and systems located throughout the villages, villages in which residents only lease homes and don't own them. Sure, safety is paramount but this should be an operator's cost responsibility if they are operating a village.

Residents give the operators more than enough reward by way of paying them substantial Deferred Management Fees and by lending them without any security at all, large amounts of money without receiving any interest on their loan, so that the operators can use that money can to make profits by investing residents' loan money. Isn't all that reward enough for the operator? Must the operator still keep digging into the purses and pockets of residents and encouraging the Government to bring in laws to enforce their intent?

It's hardly seems fair that residents still have to pay all the village repair costs which operators should rightfully be paying under the amended Act and Regulation. Residents will now also be paying for repairs to roofs and gutters, roads and drains too, even for all the painting of a village they don't even own! And the new NSW Government's legislation condones this. So much for your consumer laws Minister!

Here's another misleading statement. In the article Ms Judge says "The new regulation is the result of a thorough review process ." Well, if that's the case Ms Judge, would you please write again to the Advocate to explain why are you ignoring the official "finding" contained in the Office of Fair Trading's March 2005 Review (which formed the foundation of the amendments to the Retirement Villages Act 2009 and its Regulation)?

I remind you Minister that the 2005 Review, carried out under Section 208 of the Act, officially stated this: "Maintenance, replacement, or improvement of capital items within a village, other than within premises owned by a resident, should be the responsibility of operators. This is in line with the laws applying to landlords of other premises."

I rest my case, hoping for more public comment on these matters."

neil

Re: Are Residents being had ???

Posted: Friday, 29 January 2010 9:22am - By **Brandnew**

Residents of Retirement Villages are being "HAD" by being made responsible to pay for both the internal and the external painting of Villas and Residents will now also be paying for repairs to roofs and gutters, roads and drains too. And the new NSW Government's legislation condones this.

Operators get upwards of \$100,000.00 when a Resident exits a Village to paint and refurbish villas to as new condition - but if Operators play their cards right - they will actually be able to get financially and physically disabled old pensioners to pay for ALL of the painting for them. The situation is not only totally unfair - it is obscene.

The question is WHAT are we going to do about it? Are we going to just lay down and die and cop the injustice OR do we have the courage to stand up and fight for JUSTICE for ALL Residents of Retirement Villages?

I would like to see every person who reads this article come up with an idea for how we can best stand up for our rights and get a fair and equitable outcome for Retirement Village Residents. We get the rules, the regulations and the governments that we deserve. If we simply do nothing - then we get what we deserve - and that is "nothing".

Brandnew
