

ADDRESS BY COMMISSIONER FOR FAIR TRADING, MR ROD STOWE

At the outset I would like to extend apologies from Anthony Roberts, the Minister for Fair Trading. Today is a parliamentary sitting day and, as a Minister of the State, Mr Roberts' presence is required at Parliament House.

However, I am delighted to have this opportunity to address members of the Retirement Villages Residents Association for the first time in my new role as Commissioner for Fair Trading.

For those who don't know me, I have spent most of my public service career working in consumer protection.

Over the last two decades I have been responsible for NSW Fair Trading's Customer Services and Policy Divisions. Most recently I have been working on National Reforms that impact on Fair Trading. I am very familiar with the retirement village sector and the legislation.

Some of you may recall that there was a time when there was no legal framework specifically for retirement villages in New South Wales. The RVRA was involved with the development of retirement village laws even before the *Retirement Villages Act 1999* came into force.

Since then the Association has increased in importance to become one of the peak stakeholder groups that the government consults about the views of residents on retirement village matters.

The Association effectively communicated the concerns of its members and played a significant and influential role in the outcome of the most recent review of the Retirement Villages Act and Regulation.

That review led to important changes to the retirement village laws which came into effect in March 2010.

It is worth recalling that the new measures for retirement village residents in that reform package included:

- reduced recurrent charges after residents vacate a village;
- reduced contract preparation costs;
- a settling-in period for new residents;
- annual management meetings; and
- stronger village safety requirements.

The democratic principles of the Act were reinforced by ensuring that residents have rights to access information and ask questions of the village operator.

Other changes aimed at reducing residents' costs were equally important, given that affordability is often a key concern for residents.

The Association has raised members' concerns on various aspects of the reforms.

I know that the Minister is taking a keen interest in the issues the Association has

raised and, in fact, met with several of your representatives this week.

There is interest in the progress of the retirement village register. Hundreds of villages have already provided their details, and Fair Trading is following up with villages that have not registered. We are also putting the legal arrangements in place to enable Land and Property Information to provide us with the registered information. I anticipate this will be finalised by the end of this year.

Your Association's commitment to providing the Government with the views and concerns of members is commendable and provides valuable information about what is happening in retirement villages.

The importance of your Association is reflected in the recent appointment of three of your members to the Minister's Retirement Villages Advisory Council.

The Council will work on three priority areas during the rest of this year. These are:

- reviewing the educational resources available to residents and residents committees;
- researching how the dispute resolution process could be made easier for residents; and
- providing advice on how the 2010 changes to the law are working in practice.

These are challenging areas and the Council will be working hard to develop some incisive advice for the Minister.

The experience and expertise of your Association is further demonstrated by the appointment of Malcolm McKenzie to the Minister's new retirement village expert committee. The expert committee is separate from the advisory council, and will be responsible for developing standard terms for retirement village contracts.

Developing standard contracts was a commitment made by the Government in the lead up to the State election earlier this year.

I attended the first meeting of the expert committee in July and I was impressed by the talent and commitment shown by the committee members. There was genuine enthusiasm at this meeting and a definite impetus to get things moving.

Much of the detail governing the relationship between residents and operators is dealt with in village contracts, including financial arrangements that can have a significant long-term impact on residents. It is critical that contracts be written in plain English so that residents can be clear on their rights and obligations before they sign.

It is also important that residents should continue to have a range of choices for their retirement lifestyle. The retirement village sector has traditionally offered a variety of living arrangements to choose from including strata or community title villages, leasehold villages or villages with loan or licence arrangements.

Standard contract terms will not change this variety of living arrangements or try to force a single business model across the whole retirement village industry. However, having standard contract terms will make it easier for prospective residents to compare and understand the costs and conditions of different villages and make

the most appropriate choice.

I am looking forward to overseeing the progress of these projects and I know that the stakeholders are keenly anticipating the outcomes.

I thought at this point I might give a bit of a plug for some of our more general services which are relevant to this audience.

Fair Trading publishes the *Seniors Guide* which covers a range of consumer protection topics. The Guide helps seniors to be able to effectively assert their rights in relation to refunds, repairs and remedies for substandard goods and services.

I encourage you to contact Fair Trading if you have any questions or concerns about broader consumer rights. Even if you think it is just a minor matter, Fair Trading is there to help and advise you. You can visit our Fair Trading Centre, call us on our general enquiry line 13 32 20, or go to the web site.

Don't forget about Fair Trading's Specialist Support Unit that deals specifically with retirement village matters. It is like a retirement village brains trust that can provide detailed advice on more complex matters.

Getting the right advice at the right time can save confusion and unnecessary worry further down the track. So, if you are ever in need of advice or information, please take advantage of our services.

You may have heard about the restructure of the NSW public sector. Fair Trading now sits within the Department of Finance and Services but still reports to the Minister for Fair Trading. The restructure included restoring the position of Fair Trading Commissioner, with responsibility for all of Fair Trading's functions. This means that the policy and operational areas have now been re-united.

Administration of the retirement villages legislation is, of course, only one of the areas for which Fair Trading has responsibility. We administer some 40 pieces of legislation and each year we receive more than 8 million requests for services, have 4.5 million visits to our website and deal with nearly 40,000 written complaints. We do this in an environment of ever shrinking budgets and competing demands.

I proffer this information just to put into context the level of our engagement with the retirement village sector and the finite nature of our resources. There is certainly no lack of desire in wanting to deal with sector-specific issues on our part, but there are limits to what we can do at any one time.

At this point, and with those riders, I thought I might turn to some of the specific questions the Association has asked me to address.

1. When will a review of the Retirement Villages Act and Regulations be undertaken?

The last review of the Retirement Villages Act and Regulations was completed in 2009 and a package of reforms commenced on 1 March 2010.

At this stage, no decision has been made regarding the next review.

2. The standardisation of leases will not affect the current residents, but the move will be welcome.

Is there a timetable for this new initiative?

The expert committee has been established and has met three times. Malcolm McKenzie is a member.

It is anticipated that a consultation draft of standard contract terms will be prepared by late 2011. Consultation will be carried out into early 2012 and it is anticipated the contract terms will come into effect in mid 2012.

3. Will the section on capital maintenance and replacement, which was deleted after the regulation was brought to the upper house in February 2010, be replaced?

Capital maintenance is broadly defined in the Act as "works carried out for the purpose of repairing or maintaining an item of capital". Clause 5(1) (a) in the Regulation would have expanded on that definition to give additional guidance on the meaning of the term, but was repealed following a disallowance motion.

The definition of capital maintenance in the Regulation would not have altered the cost splitting arrangements between residents and operators. The absence of the clause is not impacting on the operation of the Retirement Villages Act and Regulation and I have been given no direction by the Minister, at this stage, to propose changes.

It remains up to residents and operators to discuss and agree on whether proposed work is 'maintenance' or 'replacement' and how it should be paid for.

4. Will it be possible to achieve better resident representation on the Retirement Villages Advisory Council?

I should point out that the Council's purpose is to advise the Minister, and members are appointed on the basis of their expertise. They are not appointed to represent any specific stakeholder group, but as a consumer or industry representative.

The Minister has recently reappointed the Council members.

Four of the appointees represent consumers and three of those are members of the RVRA.

5. Retirement villages were to be registered by June 1st 2010. Will a list of registered villages be published? If so when? Will there be any action about retirement villages who do not register?

- The registered information will be used to create a publicly accessible list of retirement villages in NSW.
- The Act allows the information that is collected to be used for this purpose. Fair Trading is currently undertaking a compliance campaign in relation to villages that have not registered.

6. What is the role of the Compliance section of NSW Fair Trading?

The Compliance and Enforcement Group:

- collects and evaluates marketplace intelligence from internal and external sources

- in order to identify 'at risk' trading practices and marketplace sectors;
- conducts investigations into individual businesses and market practices;
 - administers legislation in relation to product safety, consumer electrical and gas appliances and trade measurement;
 - contributes to state and national initiatives (including joint investigations) in order to improve marketplace performance.

7. We have great concerns about the way the Consumer, Trader and Tenancy Tribunal operates. Would it be possible to have Fair Trading look into ways to:

- **Have a mediation service available for village matters before the Tribunal comes into play with a formal application?**

Before applying to the Tribunal, residents can contact Fair Trading's Specialist Support Unit for expert advice that can help prevent matters from developing into disputes.

The Tribunal encourages settlement of disputes by conciliation before a matter proceeds to a formal hearing.

Tribunal Conciliators are available to assist the parties.

Fair Trading also funds The Aged-care Rights Service to advise and advocate for residents.

As previously mentioned, dispute resolution is one of the three priority areas that the Retirement Villages Advisory Council will be working on this year.

- **Have a special section of Tribunal for retirement village matters so the Members hearing cases are conversant with the retirement village legislation?**

The Tribunal already has a separate division for retirement village applications.

For the 2009 / 2010 financial year, retirement village applications made up 0.1% of all applications received by the Tribunal.

- **Speed up the process so villages are not waiting for twelve months for decisions?**

The Tribunal strives to finalise applications within 16 weeks.

Of all retirement village applications, approximately 67% are resolved at or before the first hearing.

More complex cases may take more time to resolve, particularly if parties seek an extension of time or adjournments.

It would be exceptional for a matter to take twelve months to finalise.

(There have been around 4 cases over the past 12-18 months that were complex and took longer than usual. The Chairperson has discussed these separately with the Commissioner).

8. Who has the responsibility for payment of recurrent charges on vacant units in villages?

Village operators are responsible for recurrent charges on new units that have never been occupied.

The operator may become responsible for recurrent charges after a resident has vacated, in certain circumstances. These are:

- if a non-registered interest holder vacates – the operator becomes responsible after 42 days if the unit has not been re-occupied;
- if a registered interest holder vacates – if the unit remains unoccupied after 42 days, the operator becomes responsible for a share of the recurrent charges in the same proportion as they are to share in the capital gains with the resident;
- in either case, if the contract provides for the operator to become responsible earlier, the contract term overrides the Act.

9. There is confusion and misunderstandings about the terms relating to charges on vacating units with residents who are classified as registered interest holders as compared to non-registered interest holders. Many registered interest holders feel they are discriminated against in the new legislation.

Before the retirement village law reforms commenced on 1 March 2010, registered interest holders were known as 'owners' and non-registered interest holders were known as 'non-owners'.

Owners and non-owners have always had different rights and obligations, and this remains the case following the amendments.

Registered interest holders/owners have a registered ownership interest in the land, including entitlement to some or all of the capital gains and, like other home owners, would usually be responsible for the costs associated with the upkeep of their home until it is sold.

A resident's income has no effect on their rights under the Retirement Villages Act.

10. Residents needing to move to higher care still have all their funds tied up in a village and have to pay ongoing costs, sometime for many years in the case of a registered interest holder.

It is not possible to get a reverse mortgage on a retirement unit as most are leasehold, and it is often difficult to set your own price lower to achieve a sale, as can be done with a home outside a retirement village.

Non-registered interest holders are able to have their money returned within six months which gives them the chance to still be accepted into care and pay a bond, and have six months interest to pay when they complete their full payment.

This is not the case with registered interest holders.

As the question notes, registered interest holders and non-registered interest holders have different legal statuses and have different rights in regard to the timing of their refund.

Because of their ownership rights, registered interest holders generally do not obtain their refund or sale proceeds until the unit is sold or re-occupied. The time taken to sell a unit can be dependent on the demand for units in the village.

A registered interest holder has the right to set the sale price for the unit and appoint a selling agent of their choice. Non-registered interest holders do not have this right.

Fair Trading plays no role in determining who is eligible to obtain a reverse mortgage from a financial institution.

That brings to an end the specific matters the Association has raised.

In closing, please be assured that we look forward to maintaining and strengthening the constructive relationship that has been established between your Association and Fair Trading over the years to come.

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