



Draft Retirement Villages Regulations 2009 - RVRA, RVA, ACS Joint Submission

The three primary industry retirement village associations in NSW – RVRA (Retirement Village Residents Association), RVA (Retirement Village Association) and ACS (Aged and Community Services Association NSW & ACT) are pleased to present a joint submission to NSW Fair Trading on the draft Retirement Villages Regulations 2009.

Representatives from the associations met together to decide in what areas there is agreement to changes to the draft Regulations. Discussions and recommendations from those meetings are set out below. RVA and ACS have agreed to the recommendations. RVRA indicated that agreement could only be given after consultation with its constituents. The RVRA final position is given for each item.

In particular the RVRA response to the proposition that we had agreed to items was:

The previous sentence does not adequately reflect the attitude of the RVRA! It was clearly stated at the commencement of the meeting, that its representatives would not have the authority to accede to suggestions put forward by the RVA and ACS. We represent residents from all kinds of villages covered by the RV Act, and as such are very mindful of problems that occur in a variety of their villages. As a consequence, we have indicated two concessions, for which we have obtained majority approval, but cannot give acceptance for all the remaining recommendations contained in this document.

1. Contingencies (draft clause 20)

Discussion

Budget allocations for contingencies should be limited to zero, or perhaps a nominal amount such as \$100, but that this should not apply to increases in statutory charges, such as council rates, utilities and certain other 'pass throughs' where prices generally increase annually, but the amount of the increase is usually not known until after the budget has been determined. It was suggested that the QLD legislation could provide some guidance. Section 107 of the QLD Act allows for residents to pay for increases in rates, taxes and statutory charges, award wages and insurance premiums.

Recommendation

Limit the amount a proposed annual budget may allocate for contingencies to \$100.

RVRA position

The RVRA agrees to the recommendation limiting contingencies to \$100.

2. Making good of deficit (regulation for new section 120C(3))

Recommendation

Enable a deficit to be funded from recurrent charges to the extent that it is comprised solely of increases in statutory charges including council rates, utilities costs including electricity, water and gas costs, award wages, public liability and workers compensation insurance premiums, and the maintenance component of urgent works during the year as stipulated in Section 92(2) of the Act. Prescribe a regulation under the new section 120C(3) to enable a deficit that results from the specified cost increases to be able to be funded from recurrent charges.

RVRA position

The RVRA agrees to the deficit being funded by abnormal increases to council charges, utilities costs being electricity, water, gas, and workers compensation and public liability insurance and award wage increases to employees paid on that basis but not urgent works nor any other cost item!

RVA and ACS response

If the Minister accepts only a limited number of concessions then there must be a higher level of contingency in clause 20.

3. Definition of capital maintenance (clause 4)

Discussion

There was a general agreement that the definition in the draft Regulation should be redrafted. It was agreed the definition should not list matters as being included in or excluded from the definition and should not refer to percentages. There was also general agreement that a preferred definition could provide a conceptual description of what is intended by the term 'capital maintenance' and that the definition should provide as much certainty as possible. Suggestions were made about whether approaches taken in the Occupational Health and Safety Regulation 2001 (NSW) or Tax Ruling 97/23 could be used as a basis for the definition.

Recommendation

Replace clause 4 with:

4. Capital maintenance

For purposes of the definition of capital maintenance in section 4(1) of the Act:

- (a) the following are prescribed as being capital maintenance:
 - (i) work done to remedy or make good defects in, damage to, or deterioration of or to prevent damage to, or deterioration of an item of capital and which contemplates the continued existence of an item of capital, or
 - (ii) replacement of:
 - (A) non-fixed items of capital, or

(B) a component of an item of capital which is necessary for the proper operation of an item of capital, and

(b) the following are prescribed as not being capital maintenance:

- (i) work done to substantially improve an item of capital beyond its original condition, or
- (ii) subject to clause 4(a)(ii), work done to maintain or repair an item of capital where it would be more cost effective to replace the item of capital.

RVRA position

The RVRA is also opposed to the use of percentages and agrees to the need for a better definition of Capital Maintenance, but cannot agree with the blanket recommendation.

4. Matters not to be financed by way of recurrent charges (clause 26) and included in budget (clause 17)

Discussion

Management/administration fees and head office costs could be combined and be able to be funded from recurrent charges as far as they relate to the operation of the village, and that the budget include a breakdown of the goods and services to which they relate.

Note that clause 17 contradicts clause 26. Clause 17 (2) was viewed as important as it promotes transparency from operators to residents.

Recommendation

- Remove the words “actual” and “and the cost of each of those goods or services” in clause 17(2);
- Combine clauses 26(e) and 26(f) by removing clause 26(f) and removing two occurrences of the word “directly” in clause 26(e).

RVRA position

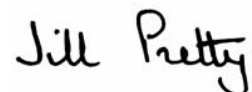
Our RVRA Committee will not agree to this recommendation.

*authorised but electronic
signature not available*

Malcolm McKenzie
President, RVRA



Tom Galletta
Committee Member, RVA



Jill Pretty
CEO, ACS

Dated: 4 November 2009