

Commercial Property Client Alert

28 January 2009

PROPOSED RETIREMENT VILLAGES (CONTRACTUAL ARRANGEMENTS) AMENDMENT (FORMULA) REGULATIONS 2008

The *Retirement Villages Regulations 1998* ("**Old Regulations**") which provide for only CPI increases to maintenance charges, will sunset on 25 May 2009. The State Government's proposal is to replace the Old Regulations with the *Retirement Villages (Contractual Arrangements (Amendment) (Formula) Regulations 2008* ("**New Regulations**"), and the draft New Regulations and the Regulatory Impact Statement were recently released to the public for comment.

Although not yet passed, the effect of the New Regulations is as follows:

1. Maintenance charges at all retirement villages can only be increased once in every financial year of the village;
2. Unless the approval of the village residents can be obtained, the maintenance charges can only be increased by the percentage increase between the CPI (Melbourne) for 4 consecutive quarters for the financial year in which the maintenance charge is sought to be increased, and the CPI for the 4 consecutive quarters for the previous financial year;
3. Although the new CPI formula seems fair and reasonable, it should be borne in mind that because the formula calls for the annual CPI for the year in which the maintenance charge is to be increased, to be compared against the annual CPI for the preceding year, there is a possibility that when applying this new formula, the maintenance charge could fall.
4. In determining the amount of the maintenance charge for any year, if higher than CPI increases in the maintenance charges had previously been imposed, the amount of the increase which is over and above that calculated by reference to the CPI is to be disregarded. In other words, even though the village residents had previously agreed to a higher than CPI increase (whether due to higher than CPI costs, or as a result of additional services being provided), the village operator must nevertheless seek the residents' approval again each year even if only CPI increases are to be imposed in later years. As many village operators are aware, the Old Regulations have this effect as well.

Another issue with the New Regulations is in relation to determining the "*adjusted maintenance charge*" for the first time after the New Regulations come into effect ("**Base**"). In other words, if a retirement village previously had higher than CPI increases to its maintenance charge, can that actual maintenance charge be used as its Base for the purpose of calculating the first increase (after 25 May 2009) based on the new CPI formula? Or must that retirement village ignore the higher than CPI increases, and use as its Base, a notional maintenance charge as if the maintenance charge at the village only ever had CPI increases?

On first reading, the New Regulations seem to provide that the Base should be the actual maintenance charge applicable at the village at the time the New Regulations come into effect.

However, the New Regulations include some explanatory notes which seem to say otherwise. Russell Kennedy have submitted comments to Consumer Affairs Victoria to highlight this inconsistency, and hopefully this issue can be satisfactorily resolved by Consumer Affairs shortly.

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