

Commercial Property Client Alert

15 May 2009

PROPOSED RETIREMENT VILLAGES (CONTRACTUAL ARRANGEMENTS) AMENDMENT (FORMULA) REGULATIONS 2009

As Russell Kennedy highlighted in our Client Alert dated 28 January 2009, the *Retirement Villages Regulations 1998* ("**Old Regulations**") which provide for CPI increases to maintenance charges, will sunset on 25 May 2009. The State Government's proposal then was to replace the Old Regulations with the *Retirement Villages (Contractual Arrangements) Amendment (Formula) Regulations 2009* ("**New Regulations**"). This proposal has now been confirmed by the Minister for Consumer Affairs by a Notice of Decision published in Victoria Government Gazette no. S133 dated 15 May 2009 ("**Notice of Decision**").

Although the final form of the New Regulations has yet to be released, it is expected that the New Regulations will not differ greatly from the draft regulations which were released earlier this year, and that they will still provide 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 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.

As we pointed out in January 2009, the New Regulations were unclear in one important respect – what is to be the "*adjusted maintenance charge*" for the first time after the New Regulations come into effect ("**Base**")? 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 based on the new CPI formula contained in the New Regulations?

In his Notice of Decision, the Minister effectively confirmed that the Base is to be the notional maintenance charge as if the maintenance charge at the village had only ever had CPI increases. As such, all retirement villages which have had higher than CPI increases since the commencement of the Old Regulations (on 26 May 1998) will have to continue to seek the village residents' approval to all future increases to the maintenance charge, even if such increase is strictly in accordance with the new CPI formula in the New Regulations.

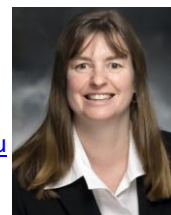
The final form of the New Regulations will be released shortly, and Russell Kennedy will issue further Client Alerts after the New Regulations have been released. In the meantime, if you have any queries, please contact:



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