

Retirement Villages Alert

9 December 2009

NATIONAL APPROACH TO RETIREMENT VILLAGES? Government Response to Parliamentary Report on "Older People and the Law"

On 26 November 2009, the Australian Government released its response to the House of Representatives Standing Committee Report "Older People and the Law".

The Response is of broad application to the elderly and the law. Among other matters, the Response foreshadows developments that may affect the retirement village industry. This bulletin focuses specifically on those aspects of the Response.

The Government's proposed course of action in respect of each of the Report's relevant recommendations is outlined below.

Working party to examine retirement village contracts

Recommendation

The Committee recommended *"that the Australian Competition and Consumer Commission, together with state and territory fair trading offices or their equivalents, form a working party to examine the nature of retirement village contracts, with a view to improving consumer protection provisions"*.

Response

The response endorsed an examination of the nature of retirement village contracts. However, it suggested that the examination should be led by the federal, state and territory governments, rather than the Australian Competition and Consumer Commission (ACCC). The Government cited the absence of a national regulatory framework as the reason for this qualification. The Response commented that the new Australian Consumer Law will create a unified consumer protection regime and stated that the Report's recommendation will be raised with the Standing Committee of Officials of Consumer Affairs.

Review of fees associated with retirement village contracts

Recommendation

The Committee recommended that the review proposed in the previous recommendation should *"also review all aspects of 'exit' and other fees associated with [retirement village] contracts, including whether they should be abolished."*

Response

The Response was the same as the response to the previous recommendation, that is, it endorsed an examination of retirement village contracts by the federal state and territory governments.

Statutory supervisor

Recommendation

The Committee stated that it *"supports the concept of a statutory supervisor and recommends that the Ministerial Council on Consumer Affairs examine the New Zealand model to determine its applicability to retirement villages in Australia."*

Response

The Government accepted this recommendation.

Harmonisation of legislation

Recommendation

The Committee recommended that *"the Standing Committee of Attorneys-General examine ways in which greater harmonisation of legislation regarding retirement villages could be pursued."*

Response

The Government accepted this “in principle”, but stated that the matter would be referred to the Ministerial Council on Consumer Affairs who could more appropriately deal with the matter. It also noted current reviews of legislation by NSW, WA and the ACT.

Russell Kennedy commentary

Many in the industry will be particularly interested in any examination of the nature of retirement village contracts by the federal state and territory governments. This task is to be facilitated by the Standing Committee of Officials of Consumer Affairs. No doubt the industry will be consulted by this Standing Committee but obviously details of the terms of reference for the Committee’s involvement in this important area will be of great interest to the industry.

The New Zealand statutory supervisor concept requires every retirement village to have an independent individual or company to oversee the financial management of the village, unless the village is exempt in accordance with the legislation. The statutory supervisor must be chosen from the Registrar’s list of approved statutory supervisors. Its functions are determined according to the legislation and a ‘Deed of Supervision’.

Finally, in relation to harmonisation, many of our clients’ activities have been impacted because of the different state and territory legislation applying the their retirement villages across Australia. Although much of the legislation is similar, there are significant enough differences which make the management and operation of retirement villages nationally more difficult than it needs to be. We believe that many in the industry would welcome a national harmonised law regulating retirement villages, but the difficulty with this task is not to be underestimated. It may be an opportunity for the industry to be proactive and to work with the Ministerial Council on Consumer Affairs rather than wait for the Council to produce draft legislation which may be adverse to the industry’s interests.

If you have any queries or require any further information in relation to this alert, please do not hesitate in contacting John Corcoran or any other member of our retirement village team.



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