

The Director, Courts Strategy, Department of Justice
[REDACTED]

Dear Director

This submission is made in response to The Department of Justice advice that they are conducting a review of the Civil and Administrative Tribunal Act 2013

I have specifically responded to the 6 topics you listed

1 Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?

No It should be easy by referring the matter to Fair Trading. They supposedly administer the RVA but have no influence over NCAT if NCAT decisions are contrary to the RVA.

2 Is NCAT accessible and responsive to its users' needs?

No .not on the matter of appeals.

NCAT say – “You lodged an internal appeal however on 16 January 2017 the Appeal Panel dismissed the appeal. There is no further avenue of appeal or review available at NCAT. However, section 83 of the *Civil and Administrative Tribunal Act 2013* does provide that a party to an internal appeal may appeal a decision of the Appeal Panel to the Supreme Court, with leave of the Court, on a question of law”

Whereas Reg 41 of the Act says

For the purposes of section 128 (1) (l) of the Act, the Tribunal may make an order that varies, sets aside or stays a previous order of the Tribunal that is in force under the Act”.

Reg 41 was not applied.

Fair Trading also said “appeal to the Supreme Court”

3 Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?

Yes NCAT needs a much better understanding of the Retirement Villages Act. Items such as Capital Works Fund approved in a budget by the residents must be immune from the operator using these funds to cover other expenses unless approved by the majority of residents via a special resolution.

NCAT says the individual expense line items are irrelevant and only the aggregate is significant.

4 Does NCAT resolve legal disputes - A quickly, B cheaply and C fairly?

A Quickly

No The matter was heard 3 months after the application was lodged. A further 3 months later we got the decisions. A further 3 months later the appeal was heard and a further 4 months later the appeal decision was declared. A total time lapse of over one year.

This is not quickly

B Cheaply

No NCAT then awarded costs of \$64,000 against the appellant, an 85-year-old part pensioner. Despite the fact the operator had an in-house legal team it decided to retain more costly external legal advice to go up against an 85-year-old part pensioner.

This is not cheaply.

C Fairly

The NCAT members welcomed having an RVA experienced legal practitioner present as it would help their understanding of the RVA. (What chance did we have?)

This is not fairly.

We maintain that NCAT breached the RV Act on at least 7 occasions. See attached BREACHES OF THE RETIREMENT VILLAGE ACT (Supporting documents available)

Fair Trading say there were no breaches

The appeal process is NCAT reviewing NCAT orders. How is this fair?

An extract from NCAT letter states – “XXX lodged an internal appeal however on 16 January 2017 the Appeal Panel dismissed the appeal. There is no further avenue of appeal or review available at NCAT. However, section 83 of the *Civil and Administrative Tribunal Act 2013* does provide that a party to an internal appeal may appeal a decision of the Appeal Panel to the Supreme Court, with leave of the Court, on a question of law”

So, it was not quick, cheap or fair

COMPARING CTTT WITH NCAT

In a previous CTTT mediation the multiple issues were handled in one whole day and all documents were on the table. The issues were decided at the end of the day.

NCAT is a court room setting (uncomfortable for some) and there seemed to be a 2 hours limit per day to a hearing and it felt rushed. With the appeal there were two hours hearing on each of two consecutive days. This makes for a dis-jointed presentation. On both days, members appeared to be rushing to get it finished

·5 Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?

No because in our experience NCAT does not give proper attention to the documentation originally submitted

·6 Does NCAT need additional powers to be able to enforce its decisions?

No NCAT needs professional supervision and control of its operation with powers to enforce ORDERS.

Sincerely

Ian Chesterfield

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BREACHES OF THE RETIREMENT VILLAGE ACT

1 Breach 1

The operator used the funds designated for capital works to pay other expenses but did not seek residents approval via a special resolution.

This is in breach of Reg.30 which says

“ the operator of a retirement village may use money from the capital works if residents of the village have, by special resolution, consented to the money being used for that purpose”.

2 Breach 2

The operator used residents' funds for salaries (\$ 186,874) and insurance expenses (\$ 52,811) that were not in the budget. This is a breach of S117 (4) which states the operator cannot use residents funding for such expenditures. They are not normal variations but omissions for which there is ongoing evidence.

3 Breach 3

The operator used recurrent charges, Capital Works Fund and the existing surplus to pay other expenses,

S117 of the Act gives permission to seek to amend a budget only by seeking resident permission to vary the budget. Also see 120B and C.

The budget for FY 12-13, had Expense item 697450 Provsn Bldg Refurbishment (now known as Capital Works Fund) of \$50,000. [REDACTED] Year Ending 30 June 2013, shows that this money was not transferred to the Capital Works Fund.

4 Breach 4

The operator breached the Act by not applying to the Tribunal to vary the budget or seeking the approval from all residents via a special resolution. Instead they approached the Residents Executive Committee.

The operator admitted that large additional amounts for salaries (\$ 186,874) and insurance (\$ 52,811) were not in the 2012/13 budgets. These costs were paid for by capital works fund provision.

Approval from the Residents' Committee only is illegal. Refer Office of Fair Trading Fact sheet.

5 Breach 5

The operator used money from the Capital Works Fund for other purposes examples

The operator admitted that large additional amounts for salaries (\$ 186,874) and insurance (\$ 52,811) were not in the 2012/13 budgets. These costs were paid for by capital works funds.

The Operator breached section S99 (4)(a) which says “the operator IS TO PAY into the capital works fund such portion of the recurrent charges as may be required under an approved annual budget”.

S99 (5) states “THE OPERATOR MUST NOT USE MONEY from the Capital Works Fund in this way

6 Breach 6

The operator breached Reg.33 by using residents surplus funds to pay for urgent maintenance which did not cause the deficit.

The whole deficit was not caused by maintenance deemed urgent under S.92.

What did cause the deficit Can we get the details from FY 12 13 and 14 15 audited reports

7 Breach 7

The operator breached a Consumer, Trader & Tenancy Tribunal order to the extent of \$ 62,651 by applying an unauthorised increase in Head Office charges.

This is a breach of the Oct. 2012 Consumer, Trader & Tenancy Tribunal RV 12/21154 ruling. This \$ 62,651 is residents' funds and cannot be used to cover the operator's errors or other expenses.