

Topic: Operator insisting on payment from solar rebate

Village: Elernore Glen Retirement Village

Operator : Vivre Pty Ltd

Advocates: Residents involved in the Operator's application (Barrister's Opinion provided by TARS).

Dispute: Over 100 residents applied for, and were granted, government subsidies for the installation of solar panels. Despite making no financial contribution to the project, the operator insisted that the residents agree, as a condition of approval to install the fixtures, to pay him 50% of the input tariffs benefits to participating energy consumers. The income was estimated at the time to be about \$30,000 to \$40,000 per year.

The Operator took three residents to the tribunal alleging breach of "agreement" for refusing to pay this levy. One resident cross-petitioned on the ground the condition was unreasonable and in breach of Sec 41A of RV Act. There were also claims by the residents of intimidation by the Operator.

Case History: Both Tribunal Applications were lodged in April 2011. As the issues were inter-related, the matters were dealt with concurrently. The matter regarding Operator behaviour was withdrawn following a public, unreserved apology to all residents.

After five Directions Hearings, judgements were made on June 5, 2012.

Results: The Operator's applications were dismissed on jurisdictional grounds. The other matter was decided in favour of the resident applicant, and the condition was ruled unreasonable in terms of the RV Act.

What has been learned?

Residents should take care in accepting at face value, documents issued by Operators involving payments to them. In this case many (elderly) residents accepted the demands and the "authority" of the operator to make them. They didn't want to get into trouble.