

**UNDER** the Weathertight Homes Resolution Services Act 2006

**IN THE MATTER** of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO.            7097: BODY CORPORATE  
337872 Grace Joel  
Retirement Village Limited**

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**ELIGIBILITY DECISION OF THE CHAIR OF THE  
WEATHERTIGHT HOMES TRIBUNAL**

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[1] Grace Joel Retirement Village Limited lodged a multi-unit claim with the Building and Housing Group of the Ministry of Business, Innovation and Employment for the units that form part of the Grace Joel Retirement Village. The assessor in completing his report accepted that the complex leaked and that the relevant building work was completed within ten years of the date the claim was lodged. The chief executive however concluded that the claim was not eligible because the complex was a rest home and therefore excluded from the definition of a dwellinghouse.

[2] The Grace Joel Retirement Village has filed an application under s 49 of the Weathertight Homes Resolution Services Act 2006 seeking to review the chief executive's decision. It says that the units included in the claim are dwellinghouses as they are private residences and are not part of a rest home. Somewhat unhelpfully the chief executive's decision is contained in one sentence within an email sent by the claims advisor and provides no reasoning or explanation as to why she concluded the complex was a rest home.

[3] The issue I therefore need to decide is whether the units included in this claim are dwellinghouses as defined by the Act. In particular I need to determine whether the units are excluded from the definition of a dwellinghouse because they are a rest home or other institution.

[4] The units that form part of this claim are individually unit titled and are occupied as private residences. Some of the units are independent apartments and

others are serviced apartments. The residents of each of the units occupy them under a license to occupy. The retirement village is adjacent to a fully equipped medical centre and a rest home. Under the Ryman Occupation Rights Agreement the owners of the residential units do not have any particular rights of access to rest home care.

[5] It is also relevant to note that the Retirement Villages Act 2003 (the RVA) distinguishes between a “retirement village” and a “rest home”. Under that RVA the areas which are used as a rest home, and the hospital facility in which rest home and hospital care are provided, are excluded from the definitions of both a “retirement village” and “residential units”. The hospital and rest home facilities are not included as part of this claim. The claim only incorporates the independent apartments which are occupied by residents who wish to retain a significant level of independence but also appreciate the companionships, security and organised recreational facilities of a retirement village.

[6] “Dwellinghouse” is defined in the WHRS Act as:

**dwellinghouse—**

- (a) means a building, or an apartment, flat, or unit within a building, that is intended to have as its principal use occupation as a private residence; and
- (b) in the case of a dwellinghouse that is a building, includes a gate, garage, shed, or other structure that is an integral part of the building; and
- (c) in the case of a dwellinghouse that is an apartment, flat, or unit within a building, includes a door, gate, garage, shed, or other structure that—
  - (i) is an integral part of the building; and
  - (ii) is intended for the exclusive use of an owner or occupier of the dwellinghouse; but
- (d) does not include a hospital, hostel, hotel, motel, rest home, or other institution

[7] I accept that the individual units that form part of this claim are apartments, flats or units that are intended to have as their principal use occupation as a private residence. Other than the fact that the units are within a retirement village, and that the right to reside in them is by virtue of a licence to occupy, there is little other difference between these units and units within other multi-unit complexes. The units within the Grace Joel Retirement Village are therefore dwellinghouses within the definition of the

Act unless they are excluded under sub-section (d) which excludes hospitals, hostels, hotels, motels, rest homes, or other institutions from the definition of a dwelling house.

[8] The WHRS Act does not define what is meant by a rest home. The RVA however defines rest home by reference to s 58(4) of the Health and Disability Services (Safety) Act 2001 as:

- (a) means premises used to provide rest home care, in accordance with section 9, but only where parts of any premises are used for that purpose, means only those parts and any other parts used for ancillary purposes; and
- (b) at any time before 1 October 2004 includes a home (from the meaning of the Old Peoples Homes Regulations 1987) used to provide rest home care under the authority and in accordance with the terms of a licence granted under those Regulations.

[9] Rest home care is further defined in s 6 as services that:

- (1)
  - (a) are residential care provided for the care or support of, or to promote the independence of, people who are frail (whether because of their age or for some other reason); and
  - (b) neither include nor are provided together with geriatric services.
- (2) In this Act, rest home care means services to which subsection (1) applies that are provided for 3 or more people unrelated by blood or marriage (or a relationship in the nature of marriage) to the person providing the services—
  - (a) in premises held out by the person providing the services as being principally a residence for people who are frail because of their age; and
  - (b) in consideration of payment (whether made or to be made, and whether by the Crown, the people for whom the services are provided, or any other person).

[10] The units that form part of this claim are independent units and do not provide rest home care as it is generally understood. The occupants of each unit are generally either a single elderly person or a couple. The units are occupied as private

residences by those with a license to occupy them and the only additional services provided are those that are provided as part of the retirement village. The fact that there is a rest home and hospital adjacent to the units does not make the retirement village units a rest home, hospital or other institution. I am therefore satisfied that the units are not part of a rest home and are therefore not excluded from the definition of a dwellinghouse by virtue in sub-section (d) of the definition of a dwellinghouse.

### **Conclusion**

[11] I have reconsidered the chief executive's decision pursuant to s 49 of the Act and for the reason set out above conclude that the units are dwellinghouses. I therefore conclude that claim 7097 meets the eligibility criteria as set out in the Weathertight Homes Resolution Services Act 2006.

**DATED** this 23<sup>rd</sup> day of May 2013

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P A McConnell  
Tribunal Chair