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# Local Government Update

A review of Local Government Law in Western Australia

## CHARITABLE EXEMPTIONS AND RETIREMENT VILLAGES

There has been considerable interest in the recent proceedings before the State Administrative Tribunal in *Retirees WA(Inc) v City of Belmont* [2010] WASAT 56. The proceedings were in relation to an application for review of a decision by the City of Belmont not to grant Retirees WA a charitable exemption from rates for residential units set up by Retirees WA as a retirement village scheme. In a decision handed down on 22 April 2010, the Tribunal dismissed the application by Retirees WA and upheld the City's decision not to grant the rates exemption.

### Background

The case has been of particular interest in light of the decision in *Uniting Church Homes (Inc) and City of Stirling* [2005] WASAT 191 (UCH decision) where the Tribunal held that the use of land for independent living units in a retirement village scheme run by a charitable body constituted use of land for a charitable purpose.

With a rapidly ageing population and an increasing number of largely healthy and active older people choosing retirement village living as an attractive lifestyle option, most local governments quite rightly see the UCH decision as representing a growing drain on rate revenue. The fact that the decision is limited to schemes run by charitable bodies is not of particular comfort when charitable bodies such as Uniting Church Homes, Anglican Homes and Churches of Christ Homes are rapidly developing parcels of land with large and, in many cases, quite luxurious unit complexes for the retirement village market. Some of these bodies openly acknowledge that they are using the sale of lifetime occupancy rights in such complexes as a lucrative means of raising money to fund other activities.

The reality is that it is not the charitable bodies that benefit from the rate exemptions for independent living units but the residents of the units. Many of these units are developed to attract buyers at the upper end of the market. In addition to paying market prices comparable to the price of a freehold title to a unit, residents are charged a weekly or monthly 'rental' to cover all maintenance and other operating costs for the complex. Being able to offer units at a significantly lower ongoing 'rental' payment as a result of rate exemptions gives the charitable body operators a

market advantage over private operators which is likely to encourage charitable bodies to increase their investment in such accommodation.

The end result is that a growing number of quite wealthy older people are able to obtain lifetime rights to properties with high market values which make use of the full range of community facilities provided by their local government without having to pay rates.

### **The Retirees WA case**

The Retirees WA case took the issue a step further than the UCH decision because Retirees WA is a self-help 'member' organisation. Acceptance of a scheme of this nature as being use of land for a charitable purpose raises the possibility that any group of people 55 years or over who form an incorporated association with charitable objects based on assisting each other with the ageing process could buy or construct a unit complex and be able to claim a rate exemption on the basis that the land is being used for a charitable purpose.

### **Outcome**

Retirees WA was challenged in the Tribunal on more grounds than the member organisation issue, including that a residential complex with no services or facilities was not a 'scheme of relief for the aged' of the kind described in the UCH decision. Unfortunately, the Tribunal concluded that the grouping together of people of similar age, without any services or facilities beyond the unit accommodation, was sufficient to meet the 'relief of the aged' criteria. The Tribunal's justification for this is the mutual help and support that such an arrangement can provide. This is disappointing and means that local government is going to have to lobby very hard for legislative change on this issue. Nevertheless, the fact that the Tribunal was not prepared to find that 'relief of the aged' provided by a member organisation for its own members is a charitable use of land has placed a very significant boundary on how far this issue can be taken.

Please contact Elizabeth Stevenson on 9424 6224 or [estevenson@mcleods.com.au](mailto:estevenson@mcleods.com.au) if you have any queries regarding the issues raised in this article.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case

