

Implementation Options Paper November 2018 – noted that: “*further consultation will ensure that stakeholders and other interested parties can contribute to the decision-making process*”

Submission made on 27 November 2018 to:

Better Business Reforms Implementation
Regulatory Policy, BRD
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From:

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Extracts from the Implementations Options Paper:

1.3 How will the Better Business Reforms change the law?

The amending legislation gives guidance as to the types of terms that are to be considered to substantially prejudice the interests of a consumer. The legislation lists these as the following:

- (a) a term that excludes the liability of the supplier
- (d) a term that requires the consumer to pay an exit fee, a balloon payment or other similar payment.

1.6 What needs to be done before this reform can commence?

Traders who currently do not disclose key terms to consumers in an upfront and explicit manner will need to make any necessary changes to their websites, consumer contracts, other documentation and/or businesses processes.

I comment on the points underlined within the aspects quoted above and request that legislation be introduced to eliminate the present irregularities as described below:

In many lease contracts for premises in NSW retirement villages, payment of a lease departure fee [LDF] is based on a % of the 'ingoining contribution' either the amount on entry or else the amount to be paid at exit time. This % is specified in both the disclosure statement and also in the contract.

Capital gain [i.e. the difference between the amount a lessee paid when entering the village and the money the next lessee pays when the first lessee terminates] is generally allowed to the outgoing lessee, and the outgoing lessee's share is expressed also as a % of the difference in amounts.

A deceptive practice carried out by certain village operators is to state in their disclosures and also in their lease contracts that 100% of capital gain will be paid to the outgoing lessee.

However, when only when the outgoing lessee is receiving a final settlement payment can it be fully evidenced that any promised 100% of capital gain has not been paid at all because the amount representing 100% of capital gain has been reduced by the same percentage as the LDF. If say the LDF was 25% then the capital gain would have been reduced down to only 75%.

Such deceptive conduct needs to be eliminated by changes to either the Retirement Villages Amendment Bill 2018 or under these Better Business Reforms.

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Extracts from the Implementations Options Paper:

2. Disclosure of commissions and referral fees

2.1 What is the current law?

There are also a few NSW laws which have specific requirements for traders regulated by these laws to disclose conflicts of interest when providing consumer advice or recommendations.

.... there are clear regulatory gaps in the current legislative framework and the general law.

The problems posed by the current regime for commissions and referral fees include:

- Financial incentives to sell products can bias, or at least appear to bias, the advice, information or recommendations provided to consumers
- The issue of product/service advice, information or recommendations appearing to be biased because the provider of the advice is financially incentivised to recommend certain products.

I comment on the points underlined within the aspects quoted above and request that legislation be introduced to eliminate the present irregularities as described below:

Retirement villages’ managers are employed by operators but are paid out of resident-contributed Recurrent Charges which becomes the villages’ income. Village Managers then make the decisions about expenditure of village money.

Tribunal evidence is on record to prove that some Village Managers use those residents’ Recurrent Charges money to pay for expenses such as refurbishing or replacing operators’ assets [which the operator should rightly pay for]. Managers justify such decisions by dishonestly classifying that the payment was for “maintenance” [which is often the residents’ responsibility to pay] when the expenditure has been evidenced to have been a refurbishing or a replacement.

Seeing that Village Managers answer solely to the operator they clearly have a ‘conflict of interest’ in such instances. Motivation for such dishonesties is not easily proven but any possibility allowing hidden bonuses to be paid by the operator as some sort of reward incentive for the manager to save the operator money by making such biased decisions should now be outlawed in either the Retirement Villages Amendment Bill 2018 or under these Better Business Reforms.

2.2 Who is affected by the current law?

All traders, those engaged in trade or commerce or other business activities, and members of the community that transact with them.

The community is affected by the regulatory gaps in the current legislative framework and general law.

This situation commonly occurs with aggregate product/service comparison websites or other traders or licensees who, in providing their service, also recommend or refer the consumer to other service providers.

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2.3 How will the Better Business Reforms change the law?

The amendments will require traders to disclose the existence of financial incentives for providing or referring goods or services. The new laws will require traders to take reasonable steps to ensure the consumer is aware of the existence of these fees and commissions before the consumer engages with the trader.

Financial incentives have been defined to include commissions, referral fees or another kind of payment prescribed by the regulations.

The reforms are designed to ensure the consumer is alerted to the fact the trader has a financial relationship with the third party so that they can make informed choices.

I comment on the points underlined within the aspects quoted above and request that legislation be introduced to eliminate the present irregularities as described below:

Presently a retirement village manager has the sole power to contract to, and/or employ as staff, any service provider or person of their choice and set any terms of performance.

Evidence is available of selections having being made due solely to some personal association between the person or entity and the manager and/or, if nepotism is not involved, then still the possibility remains of a secret 'kick-back' being remitted to the manager who made the arrangement.

Such possibly deceptive conduct needs to be eliminated by changes to either the Retirement Villages Amendment Bill 2018 or under these Better Business Reforms.

I present these observations in good faith and offer myself for questioning if necessary in support of any assertions I have made.

Neil Smith.