

Dealing with rebates for Elderly Citizen's Homes

In recent times there has been a number of requests made to councils for ECH Incorporated ("ECH") to be provided with rate relief in the form of a mandatory rate rebate.

Most applications received from ECH have requested a 75% mandatory rebate under section 161 of the *Local Government Act 1999* ("the Act"). In assessing such a request it is important to distinguish between land that is used as independent living unit accommodation for the aged and that which is used for supported accommodation.

Whether ECH meet the requirements of section 161 of the Act will depend upon the information contained within their application for a rebate, the information contained on the ECH website and whether the information meets the eligibility criteria for entitlement to a mandatory rebate under section 161 of the Act.

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Supported Accommodation

For ECH to be eligible for a mandatory rebate under section 161 of the Act the land must be used for service delivery or administration (or both) by a *community service organisation*. This means ECH must meet the criteria to be described as a community service organisation. That is:

1. It is incorporated on a not-for-profit basis for the benefit of the public; and
2. It provides community services (my emphasis) which are without charge or for a charge that is below the cost to the body of providing them (i.e. they are subsidised); and
3. It does not restrict its services to persons who are members of the body.

The above criteria is further qualified and applied on the following basis:

1. There is a presumption that a body does not meet the not-for-profit requirement where it satisfies the criteria set out at subsection (4)(a); and
2. Provided the body has not been excluded by operation of subsection (4)(a) there is a presumption of subsidised services where the body receives State or Commonwealth government funding; and
3. Relevant to the requirement of 2 above (as underlined) the body must be providing one or more of the defined community services (as set out at subsection (4)(c)).

The applications I have seen and, information generally, on ECH's website, identifies it as a *community service organisation*. This is because it is incorporated on a not-for-profit basis for the benefit of the public, provides community services for a charge that is below the cost to it of providing the service and it does not restrict its services to just persons who are members.

It is also relevant to note that ECH, being incorporated on a not-for-profit basis, does not secure any financial profit from members, indeed, it does not have members, it does not engage in trade or commerce and its rules of incorporation do

not provide that surplus assets on a winding up are to be distributed to another body that does not have identical or similar aims or objects.

However, whilst ECH satisfies the definition of *community service organisation*, for it to be entitled to receive the benefit of the mandatory rebate, it is also necessary for it to provide one or more of the community services identified at section 161(4)(c). Of relevance to the community services identified by ECH is *supported accommodation*.

"Supported Accommodation" is defined at section 4 of the Act. It is a three part definition. The relevant part of the definition is "(b) accommodation for persons with mental health difficulties, intellectual or physical difficulties, or other difficulties, who require support in order to live an independent life." The objects and powers of the rules of incorporation also confirm that its services are provided to enable people to adequately care for themselves, to support or enhance their lifestyle and to provide accommodation and services to assist older people to live independently.

However, it is my opinion that it cannot be said that simply by being elderly, a person is deemed to have difficulties that require support to live an independent life. So, whilst ECH may make such a statement in its application, without more information, it is difficult to understand the precise nature of ECH's operations at any given land holding sufficient to identify the service that ECH actually provides to render it *supported accommodation* as defined in the Act.

To date, given the absence of any relevant information that confirms that ECH provides supported accommodation, my advice has consistently been that it fails to satisfy the qualifying criteria for the 75% mandatory rebate under section 161(1) of the Act. Whilst this has been the case, each application must still be considered on its merits with regard given to the particular property and the services provided.

"Where ECH...does not provide at least one of the defined community services, it will not be eligible for a mandatory rebate under section 161 of the Act."

Independent Living Units

Alternatively, it is open to a council to consider the grant of a discretionary rebate under section 166(1)(h) or (j) of the Act. This is because information contained on the ECH website suggests that the accommodation provided by ECH is in the form of retirement living. This is supported by the fact that a number of land holdings held by ECH are noted on the relevant certificate of title as land used as a retirement village under the *Retirement Villages Act 1987*.

In relation to such properties, given the use of the land as a retirement village, my advice is that consideration may be given to the grant of a discretionary rebate of up to 100%:

- Under section 166(1)(h) of the Act upon the basis that the land is being used to provide accommodation for the aged; or
- Under section 166(1)(j) of the Act if the council is of the opinion that ECH is providing a benefit or service to the local community.

In either of these circumstances, the council is obliged to have regard to the requirements of section 161(1)(a) of the Act and should also have regard to any other relevant policy considerations.

If you have any questions please contact Natasha Jones on 8113 7102, 0419 864 531 or njones@kellyjones.com.au