**IN THE MATTER** of a dispute under the

 Retirement Villages Act 2003

**BETWEEN** T W and other residents

Applicants

 **AND** W V

Respondent

For Applicants: T W

For Respondent: S W

**DECISION ON COSTS**

Disputes Panel: Dr Susan Robson

1. The Respondent Retirement Village Operator seeks an order for costs from the Applicant residents of $9927.79 following a Disputes Panel hearing that found against the Applicants. The amount sought covers the costs of the Statutory Supervisor investigation and report, the Dispute Panel fee and the cost of representation.

2. The Respondent Village has 17 units and 23 residents. The Applicants were represented at the hearing by Messrs W, C, G and K. They advise that they represent all other residents. At issue was the calculation of the rates component of the weekly fee (payable monthly). Prior to the Statutory Supervisor report it was calculated before the rates were struck and was, therefore, an estimate. Following the Supervisor’s recommendation the weekly fee is calculated following notification of the actual annual rates for the property.

3. The Applicants sought orders for repayment of the difference between the estimated rates and the actual rates for the financial year prior to the involvement of the statutory supervisor but they were unable to surmount the challenge of the relevant provisions of their Occupation Rights Agreements that reserve the power to set the weekly fee (that encompasses a range of costs) to the Operator.

4. The Statutory Supervisors report recognised that the basis of the claim concerned the Applicants’ beliefs about requirements to consult. The report went into some detail about the concepts of consultation and negotiation, emphasising that the residents did not have the power to negotiate elements of the weekly fee, as they believed. It became clear, during the panel hearing, that these explanations were not accepted, although repeated attempts to have the Applicants articulate why have been unsuccessful.

5. The Applicants submit that the costs of the dispute should be shared with the Operator. The Respondent submits that a great deal of time, effort and expense has been put into explanations of the issue that were subsequently echoed by both the Statutory Supervisor and the Disputes Panel, and for that reason the Applicants should shoulder the cost of serial refusals to accept those explanations.

6. The Statutory Supervisors report included the recommendation, accepted and implemented by the Operator, to align the weekly fee calculation process with the receipt of the struck rates. As this was the first independent assessment of the dispute it is appropriate that its cost is shared. The Applicants succeeded in having the rates component of the weekly fee based on the actual rates struck instead of an estimate. It should, therefore, have resolved the matter. The subsequent Panel hearing drew the same conclusions. For that reason the cost of the Disputes Panel hearing should be borne by the unsuccessful Applicants.

7. The cost payable by the Applicants to the Respondent (half the Supervisors Report and the Dispute Panel costs) is $9237.79.

Dated this 27th day of November 2024

S C Robson