



Brian Herd

# RV - Alert

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## The Court Decides

In the case of *Jomal Pty Ltd v Commercial & Consumer Tribunal & Ors*, the Supreme Court has brought an end to controversy over whether an operator can make residents responsible for the cost of repairs to their units. The news for operators now is – they can.

## The Tribunal

As is increasingly the case, the Tribunal adopted the view that the consumer protection objects of the Retirement Villages Act prevent operators from entering into contracts with residents in which the resident agrees to take on the cost of repairs of their unit.

The Tribunal also relied on the provisions of the Act relating to the Capital Replacement Fund and Maintenance Reserve Fund to support an amended definition of the term “*Capital Items*” in the Act’s dictionary.

The Tribunal’s decision called into question the validity of terms commonly found in residence contracts throughout Queensland. It also had the potential to put the financial obligations for one resident’s failure to maintain their unit on all residents through the Maintenance Reserve Fund.

## Supreme Court Decision

The operator’s application for a Judicial Review by the Supreme Court was successful and on 6 February 2009, the Court quashed the decision of the Tribunal.

The Court found that there was no basis for the definition of “*Capital Items*” to be altered in the way suggested by the Tribunal meaning that it excludes items which the residents agree in their residence contract to maintain and repair. In addition, the Act cannot be read to prevent the operator and resident from agreeing that the resident will pay the costs of maintaining, repairing and replacing certain capital items

## Caution

It is important to note that some Jomal residents had contracts which were inconsistent with their PID’s and the more favourable conditions in the PID’s prevailed as required by the Act. So, for those of you with older villages, don’t forget to check your documents before asking residents to pay for repairs. Please feel free to contact us about this important decision.

Regards

BRIAN HERD