

Association of Residents of Queensland Retirement Villages

President

Les Armstrong
PO Box 1361
Buddina QLD 4575

Ph: 0424 251 646
pres.arqrv@gmail.com



www.villagers.org.au

Secretary

Barbara Irving
PO Box 1361
Buddina QLD 4575

Ph: 07 3804 6774
sec.arqrv@villagers.org.au

No. 85

NEWSLETTER

February 2013

From the President

The good news from a National viewpoint is that the Retirement Village Industry appears to be on the road to recovery in terms of market interest especially in the sales/resales area. Positive news is still coming through each week of this New Year.

In most areas of Queensland, previously troubled villages are now starting to sell and resell units; strong demand is being reported by both small and large operators, with the exception of the Sunshine Coast, where sales remain slow. On the other hand, staged development continues in many villages. For example, Palmview Village, Mackay plans to construct 34 new ILUs in the next 18 months.

In late 2012, the Association contributed to the Review of the Retirement Villages Act as discussed later in this Newsletter, and more recently, prepared a detailed submission on the Review of the Queensland Civil and Administrative Tribunal Act. The Association's submissions on these Reviews can be accessed via our Web site. Alternatively, e-mail or hard copies may be obtained on written request to our Webmaster, Stephen Irving.

Resignation

It is with great regret that we recently received the resignation of Vice President Ted Davies, who had been a member of our Committee for five years. His involvement in Committee matters during his tenure was outstanding, especially his contribution towards policy development and associated procedures. Ted's strengths include an ability to examine problems from a broad viewpoint and to propose solutions in concert with the Association's consumer protection ethos. Thank you Ted, your contribution

will be missed. You will be difficult to replace. Best wishes for the future from your Committee colleagues and for a speedy recovery from your health problems.

The ARQRV Constitution allows the Committee to fill a casual vacancy and, if appropriate, to have that appointment ratified at the next General Meeting. The Committee will be canvassing the membership to fill this casual vacancy caused by Ted Davies' resignation. Any member interested in nominating for this Committee position please contact the Secretary.

Review of Retirement Villages Act

On 2 August 2012, the State Government passed a motion requiring a Parliamentary Committee to undertake a review of the *Retirement Villages Act 1999*, and to report back to Parliament on the results of the review by 30 November 2012. The review was duly undertaken by the "Transport, Housing and Local Government Committee", who invited interested stakeholders to attend a Public Briefing on 28 August 2012, and to present any written submissions by 21 September 2012. Following the close of submissions a Public Hearing on the issues was held on 26 October 2012. Our President, Les Armstrong appeared on our behalf at both the Public Briefing and the Public Hearing and presented detailed submissions. The ARQRV presentations contained a very strong case for improving consumer protection under the Act. Conversely, Industry groups such as the Retirement Villages Association, argued that the industry ought to be trusted to self-regulate! The Committee duly reported back to Parliament in November 2012, with 37 recommendations for changes to the Act, most of which were aimed at improving consumer

protection. Significantly, the majority of the ARQRV proposals were adopted in the Committee's Report. We now await action from the Government in response to the review, and will maintain pressure for the Committee's findings to be implemented. A copy of the Report, including transcripts of the Public Hearing and the Public Briefing, and all written submissions is available from <http://www.parliament.qld.gov.au/en/work-of-committees/committees/THLGC/inquiries/past-inquiries/INQ-RVA>

Tax on Exit Fees

During the recent Review of the RV Act conducted by the Transport, Housing & Local Government Committee (TH&LGC), there was significant discussion around the calculation of Exit Fees. The ARQRV argued that they should always be based on the Original Incoming Contribution (OIC) rather than the New Incoming Contribution (NIC), so the PID can disclose the maximum exit fee as a dollar figure rather than just a percentage of an unknown future amount. During the Public Hearing, one Operator argued that the OIC could not be used on the basis that to do so would result in Operators having to pay tax on unpaid Exit Fees accruing annually because these Exit Fees would be a fixed amount. The Operator claimed that it was necessary to use the NIC when determining the Exit Fee in order to defer the tax liability until that fee was actually paid by the resident, because the fee would be an unknown amount until that time. The Operator cited Taxation Ruling "2004/D5" in support of this point, however there is no such ruling. The primary Taxation Ruling for retirement villages is "TR2002/14", which does not support the operator's argument. The Ruling prescribes at paragraphs 147 to 152 that if the Exit Fee is based on a percentage of the OIC, it is not considered as income until the Operator becomes entitled to demand payment from the Resident, even though the amount accruing each year is known. The ARQRV brought this ruling to the Committee's attention after the Public Hearing but our advice could not be formally considered because the period for submissions had ended. However, the Committee did ultimately recommend that Exit Fees be based on the OIC rather than the NIC (see Recommendation 35); although the Operator's tax argument was still included in the Committee's final report (see Section 7.3) and Recommendation 35 was made subject to consideration of any taxation implications.

Operator and ARQRV Communication and Cooperation

Recently, following a protracted Dispute between residents at Carlyle Gardens Retirement Village, Mackay and the Scheme Operator, an Application for punitive Costs of \$24,000 was raised by Lend Lease. The basis of the Cost Application was that the Residents had persisted with a Frivolous and Vexatious Complaint and thus caused considerable expense and frustration to the Operator. Despite several attempts to resolve the issue and extensive preliminary discussions between the Parties and QCAT members, the Dispute was listed for an On-the-Papers Hearing in February 2013. However, prior to this Hearing, Lend Lease advised in writing of their intention to withdraw their Costs Application. In his letter to Carlyle Gardens Residents' Committee, Richard Andrews, Lend Lease Region Operations Manager Qld. confirmed that the catalyst for this decision was a discussion with the President of the ARQRV. The thrust of the Withdrawal Advice was that Mr. Andrews enjoyed a good working relationship with the ARQRV Committee and had high regard for their counsel and opinions. He added that the ARQRV President had personally intervened on behalf of the Residents and encouraged him to withdraw the Application. A further compelling reason was a conversation between Mr. Andrews and Mr. Ken Martin, Chairman, Carlyle Gardens Residents' Committee, where agreement was reached that both parties would strive for a better working relationship and move forward on a basis of mutual trust and respect, and work together for the betterment of the residents.

The ARQRV applauds the Lend Lease approach in this matter and hopes that other Operators may adopt a similar approach of improved communication and cooperation between Operators and Residents' representatives.

Use of Village Facilities

Residents often question whether an Operator is entitled to use Village Facilities to the exclusion of residents: for example, the use of recreation and/or leisure areas for staff-related recreational functions. RV Act Section 10 4(b) prescribes that only residents have a right to use and enjoy the retirement village's communal facilities, notwithstanding that some Residence Contracts have a Clause which includes: ... *the right in common with other residents and staff*. RV Act Section 37 (4) prevails in these circumstances, thus the Contract Clause is to no effect.

However, notwithstanding the above, there are many village activities where Operator use of the facilities is desirable and indeed would be advantageous to residents. For instance, the Association encourages residents to support Operators/Staff use of the facilities in connection with Open Days and similar sales and marketing activities. Such Operator usage should be negotiated in advance with residents and, where possible, organised in such a way that residents can participate; i.e. a joint resident/Operator function.

Dispute Resolution

RV Act Section 154 prescribes that, before seeking a Mediation Hearing, the Parties to the Dispute must meet in the village and attempt to resolve the matter by Preliminary Negotiation. This meeting is usually initiated by a resident (the First Party) seeking to meet with the Scheme Operator (the Second Party). However, the Association is aware of at least one occasion where a Scheme Operator has initiated Section 154 action. (Refer June Gilbert vs Jodaway QCCTRV 2 delivered 8 August 2006.) The written request must state the issue or issues that the First Party wishes to dispute with the Second Party and must nominate a date, time and location for the meeting.

The Second Party must receive a minimum of 14 days' clear written notice, and must respond in writing to the First Party within seven days of receiving the request. On the nominated day, or another date within seven days after the nominated date (and agreed by the Parties), the Parties must meet in the village and attempt to resolve the Dispute.

Should the Second Party either not respond within seven days to this request for a Meeting or fail to attend, Preliminary Negotiation is considered to have been attempted and the First Party may then legitimately submit a Form 31 Application for Mediation Hearing under RV Act Section 157.

Note that the First Party is the convenor for the meeting and is thus an appropriate chairperson. Either Party may be accompanied by whatever representative or support element they desire and any individual at the meeting may participate in discussions on the issue as advised in the initial notice.

Any Agreement reached must be documented, signed and dated by a representative of each Party. In the event that either Party reneges on the Agreement, the matter may then proceed to the Mediation stage.

Water Subsidy Update

Our November Newsletter advised of successful lobbying to have an \$80 water subsidy paid to residents in Queensland retirement villages. Government approval to the ARQRV request was predicated on our Association providing to the Department of Energy and Water Services (DEWS) details of all eligible villages and then developing an appropriate distribution procedure for the refunds.

We are pleased to report that these processes have now been finalised and accepted by DEWS. A number of villages have recently received a bulk refund cheque and subsidies are being distributed to Units by allocation through individual GSC accounts. Interested residents should check with their Operator on the progress of the DEWS payment for their village and advise the ARQRV of any problems encountered.

Liaison Officers

The basic role of a Liaison Officer is relatively simple: i.e. to publicise, within the village, the work of the ARQRV to encourage new memberships; and to collect and bank annual membership fees. The more members the Association has, the more influence it will have in dealings with Government or Industry representatives. You have only to read the Newsletters to see the variety of important matters in which the Committee is involved that are of direct concern to all Residents, particularly Association members.

If your Village does not have a Liaison Officer, please give serious thought as to whether you could take on this role, or perhaps find another Resident in your Village who would consider doing so. Any member interested in assisting our cause and willing to accept a Liaison Officer role please contact Steve Murray (see page 8) for further information.

The ARQRV Website

Members who do not have personal access to the Internet may find that their Retirement Village provides Internet capability via a computer in their Leisure Centre. Friends, family members, and the local Public Library staff are also avenues for learning and accessing the internet.

Many members have required the assistance of the ARQRV, because a dispute has arisen with the Scheme Operator related to reinstatement works, and who meets these costs. Families of members are also eligible for ARQRV assistance or advice if they are concerned about these costs, or any matter related to the former resident's Exit Entitlements.

(See the ARQRV Position Paper on Reinstatement Works on the website – “Issues” heading.)

The first year for the updated and revamped website has had over ten thousand visits from members and visitors not only in Australia, but from overseas as well. Of special note were a number of contacts from American sources regarding Elder Abuse in Retirement Villages, a topic of special interest for them. If you are similarly concerned, consult the website – “Links” heading.

Electronic payment of General Service Fees

Electronic payments, including direct debits, direct credits and other bill payment services are a simple, easy and convenient way to transfer funds and pay bills. The payer can fix the amount to be deducted or can arrange for periodic payments of varying amounts, e.g. for utility bills.

A Direct Debit Request gives the recipient (the biller) your permission to electronically withdraw a specified amount from your chosen account, on a date requested by you, at regular intervals. In the case of your monthly General Service Charge, you need to complete the Scheme Operator’s Direct Debit Request Authority form. To change, or cancel, you need to complete another of their DDR Authority forms.

Direct credit is an instruction from you to your bank to make a specific payment to a specified recipient’s bank account, on a specified day. Note that you can vary the amount or day of payment by changing your instruction to your bank.

Another type of electronic payment is by direct transfer, or BPay, from your bank account to your specified recipient’s bank account. This requires you to remember to make that payment each time it is due, whereas with Direct Debit and Direct Credit, the payments are made automatically.

When the Scheme Operator owes money to the resident, usually they will reduce the amount deducted from your account for your General Service Fee payment if you have a Direct Debit Agreement with them. If you have a Direct Credit arrangement, you must instruct your bank to reduce the amount to be paid next month and then to revert back to the monthly amount the following month. If you pay by direct transfer, you simply pay the reduced amount.

The ARQRV is concerned that many Scheme Operators’ Direct Debit Request Authority forms do not specify the amount to be taken from your account, but state “any amount ... (the Operator) has

deemed payable by you”. It would surely be more reasonable if they stated “no more than the amount due for the monthly General Service Fee” (the ‘no more than’ would cover the instances where the Scheme Operator owes an amount to the resident).

Review of Constitution

As noted in our November issue, the Association’s Constitution is being reviewed. Although no suggestions regarding constitutional changes were received from members, the Constitution Sub-Committee, led by Ernie Hatton, has nonetheless produced an excellent first draft to provide guidance as the Association moves into a new and challenging phase. Finishing touches will be incorporated in the near future. Each Association member will then receive a copy of the Draft Constitution, which will also be published on the Association’s Website.

For administrative convenience and simplicity, particularly to avoid the need for a large number of motions addressing individual changes; members will be requested to rescind the current Constitution by Special Resolution vote and to adopt the replacement Constitution by majority vote.

Solar panels:

A number of members have queried the need to regularly clean solar panels. The ARQRV has received the following advice from several solar panel installation companies: Solar panels operate at their maximum efficiency when they are clean, free from dust, grime and bird droppings, etc.. Under normal climatic conditions, there is sufficient rainfall to clean the panels and thus allow operation at close to optimum output. An oft-cited example reinforcing this advice is that a set of solar panels installed during 1996 in a coastal, salt-water environment to provide power for channel markers continues to operate effectively without the need for programmed cleaning; i.e., sufficient rainfall and/or sea spray provides the necessary cleaning.

On the question of insurance of solar panels, we are aware that many insurance companies will include panels under householder’s Contents policy for a small increase in premium. However, other insurance companies may not, because the panels are considered to be part of the building and thus should be covered by the village insurance policy. Unfortunately, there is no standardised approach to this problem. A similar situation exists regarding the warranty conditions applicable to the solar array systems. The ARQRV is examining these insurance and warranty issues and will produce an article in the next Newsletter.

**Easyrefills.com.au Special Offer to
ARQRV Members**



**Help ARQRV
raise funds
1013**

Every time you spend over **\$50** on compatible cartridges or
DIY Inkjet Refill Kits and **use the code** above...
easyrefills will donate \$4 to ARQRV

Need more reasons to buy your printer products
from **easyrefills**?
how about our ...

- *Comprehensive range
- *Competitive prices
- *FREE shipping on orders over \$50
- *Australian Made DIY Refill Kits
- *Friendly, helpful & *good looking* staff
- *Full technical support and after sales service
- *Rewards points program to further reduce your print costs
- *Order from the comfort of your home
- *Fast delivery to your door



Committee members' contact details:

A few members are still using the old e-mail address for President, Les Armstrong. Please note the correct address is: pres.arqrv@gmail.com

Some contact details for other Committee members have changed recently. Please refer to the full list on the back page of this Newsletter.

Members' email addresses

For obvious cost savings, members are encouraged to receive the Newsletter by email. However, many email addresses in our data base are incorrect. If you were expecting to receive your Newsletter by email, but the electronic copy did not arrive, please contact Irene Ford to confirm your correct email address.

Membership Renewals

If you have not yet renewed your membership, please do so as soon as possible. Details are on the tear-off slip below.

NOTE: Some membership payments made direct to the bank account have no reference to the member's name. Please note that if we are unable to identify the member making the payment (you), that subscription will not be credited to your account and your membership will be unable to be renewed!

If you have paid direct to the bank account, and not given your name, Unit number, Village name, and your telephone number, please e-mail or write to the Treasurer or Membership Officer, with details of when you paid and how much, so the payment can be identified and your membership confirmed as having been renewed.

ARQRV Quarterly Newsletter is now available by email. To receive your copy electronically, please state your email address on the Membership Renewal form on the reverse .

Annual Membership Fees Are Now Over-Due

Please note that the membership year is 1st January to 31st December

Please complete the form on the reverse and pass it, with your subscription, to your Village Liaison Officer, or post the payment and renewal form to:

**ARQRV Membership
PO Box 1361
Buddina QLD 4575**

Alternatively, you may deposit into one of the ARQRV bank accounts listed below.

Please be sure to forward the receipt and renewal form to the Membership Officer, as above. If you do not do this, it will not be known that you have paid.

Bank of Queensland

BSB 124001
A/C 20511301

Commonwealth Bank

BSB 064162
A/C 10062890

ARQRV

Want to save thousands on a new car?

ARQRV members can now receive a fleet discount on all new Hyundai vehicles.

For more info or to register interest call

Ted Davies; Lifestyle Estates Retirement Village 3820 6505



We understand the difficulties of managing finances & having a safe, economical & reliable motor car when you are retired and we want to help! Here at Keema Hyundai Cleveland our experience in Hyundai sales ensures you as a financial member of ARQRV not only receive special pricing exclusively negotiated for you saving thousands off your new Hyundai but also caring level of customer service to ensure all your needs are understood. WE LISTEN.

Please call Kellie Foley or Robert O'Hara to make an appointment on 3479 9811

Keema Hyundai



Please pass the completed form to your ARQRV Liaison Officer or post it with your cheque to:
ARQRV Membership, PO Box 1361, Buddina QLD 4575

Annual Subscription = \$15 per Calendar Year – 1st January to 31st December –

Lifetime Membership = \$100

Please tick: Renewal New Member Newsletter by Email

Names/Names:	
Villa/Unit No:	Village/Resort Name:
Full Address:	
Postcode:	Phone No:
Email Address: (please check accuracy)	
Can you help with a donation? All donations gratefully accepted - Thank You Amount \$	
I/We apply to join / renew membership of the Association of Residents of Queensland Retirement Villages (Inc.)	
Signature:.....	Signature:.....

Check-List for Residents Departing Leasehold and Loan/Licence Villages

(A parallel article covering Freehold Villages will appear in a later Newsletter.)

1. The resident should request the Operator to provide an Estimate of Exit Entitlement which must be provided within 14 days of the request (RV Act s54).
2. Provide a Notice of Termination to Operator giving one month's written Notice. The Notice should include the name and address of the solicitor who will be acting on behalf of the outgoing resident (RV Act s52).
3. A right to reside in a unit or villa is terminated on the death of the resident (RV Act s55). However, if the lease/licence is held in joint names, the other person can continue to reside, but the lease/licence document has to be amended. A document is lodged with the Titles Office recording the change.
4. After the resident has vacated the unit and handed over all keys, the reinstatement process commences. Within 30 days after the termination date, the former Resident and the Operator are to negotiate in good faith and if possible agree in writing on the necessary reinstatement work (RV Act s58). If the former Resident and Operator cannot agree on the reinstatement work, itemised quotes are required to solve this dilemma (RV Act s58). The Operator must ensure the work is completed within 90 days of the vacation date, or another date to which both parties agree (RV Act s59).
5. Within 30 days after the termination date, the outgoing resident and the Operator are to negotiate and agree in writing on the proposed resale value of the unit (RV Act s60).
6. The Operator must advise the former resident of all sales enquiries, and steps being taken to promote a sale each month, until a sale and settlement occur (RV Act s65).
7. Residents should be aware of the differences between Reinstatement and Refurbishment. The former covers the work and costs necessary to bring the unit back to the standard which existed at the commencement of the outgoing resident's lease/licence. However, many Operators carry out improvements to lift the standard to compare with newer units available on the market. The cost differential between the agreed reinstatement cost and the cost of the proposed refurbishment must be borne by the Operator (RV Act s62).

8. Legal Representative: Should an outgoing resident not have a solicitor to act on their behalf, or only have one who is not familiar with the Retirement Village Industry, the ARQRV recommends the following solicitor for this work – David Wise, PO Box 120 Woombye Qld. 4559, mobile Phone 0412 254 080, email dtwise@gmail.com .

9. The former resident should advise the local Post Office of the change of address for mail, and terminate the telephone account and the electricity/gas accounts with their suppliers. Should they be paying their monthly service fees by a direct debit or direct credit scheme through their bank, that arrangement also needs to be terminated. Although the former resident will be wholly or partially responsible for General Service Charges for up to nine months after vacating, these ongoing unpaid fees may be accrued as a book debt and set off against the resident's Exit Entitlement as an interest-free loan subject to the Operator agreeing to this deferred payment arrangement (RV Act s104).

Costs of Sale

A significant component of the expenses incurred by a departing resident is Costs of Sale. Many Operators determine these costs by dividing their total annual Sales and Marketing budget by the number of units sold (or expected to be sold) in that financial year; for example, a Sales and Marketing budget of \$100,000 which produced five sales/resales could indicate that the cost of sale for each of these units was \$20,000. However, this calculation process is contrary to that prescribed in RV Act s68. The only Costs of Sale able to be passed on to a former resident are those specifically incurred during the marketing of that particular accommodation unit. For these Costs to be legitimately deducted from a resident's Exit Entitlement, they must be supported by documentary evidence confirming that they relate to the specific unit.

The total outlays for this marketing process are then to be shared by the former resident and the Operator in the same proportion as they share the gross (New) Incoming Contribution.

Newsletter by email - Reminder

If you did not receive your Newsletter by email, chances are we don't have your correct address. To help save costs, please contact Irene Ford confirming your correct email address.

ARQRV Committee Members' Duties and Responsibilities

President: Les Armstrong
Ph: 0424 251 646
pres.arqrv@gmail.com

Policy Development, Representation, and Dispute Management.

Vice-President:
Phil Phillips
Ph: 5476 5343
filmar@westnet.com.au

First point of Contact for all matters (other than those allocated to the President) involving Villages located on the Darling Downs and in areas of the South-Burnett, Central West Qld, Ipswich West Moreton, Sunshine Coast, Wide Bay, Mackay, and North Qld.

Vice-President:

First point of contact for all matters (other than those allocated to the President) involving Villages located in the Brisbane Metropolitan area and at the Gold Coast, Beenleigh and Beaudesert.

Secretary: Barbara Irving
Ph: 07 3804 6774
sec.arqrv@villagers.org.au

Office Administration and Secretarial support to Committee members. Preparation of Minutes. Routine enquiries and Correspondence.

Treasurer: Lyn Carden
PH: 5438 8115
lwcarden@yahoo.com.au

All Financial matters. Preparation of Audit documentation

Irene Ford
Ph: 5476 7268
renray@tadaust.org.au

Membership co-ordination. Maintenance of Data base. Newsletter distribution. All membership enquiries.

Stephen Irving
Ph: 3804 6774
web.manager@villagers.org.au

Webmaster. Newsletter articles.

Eric Stadhams
Ph: 3822 6595
eric.stadhams@bigpond.com

Visits co-ordination. Maintenance of Assets Register. Newsletter articles.

Joanne Wheeler
Ph. 5478 0443
grimsel@ozemail.com.au

Newsletter Editor. Village Listings and Operator Contacts.

Ann Murray
Ph: 5448 9217
murrayas1@bigpond.com

Data Base Enhancement. Newsletter articles.

Steve Murray
Ph: 5448 9217
murrayas1@bigpond.com

Training Development. Liaison Officer Co-ordination. Newsletter articles.

Ernie Hatton
Ph: 5412 1686
eazy@flexinet.com.au

Constitutions. Newsletter articles.

ARQRV Legal Advisor:

David Wise: Ph: 0412 254 080 dtwise@gmail.com