

Association of Residents of Queensland Retirement Villages

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NEWSLETTER

May 2013

Editorial

The Committee has introduced new procedures for production of our Newsletters where, rather than the President writing the articles, this task, and the co-ordination of articles, has been designated to the Editor, who will rely on contributions from other Committee members, so it will indeed be a combined effort.

There have been some changes to Committee portfolios, and the addition of two new (co-opted) members. Eric Stadhams now fills the vacant Vice-Presidency post arising following the resignation of Ted Davies. Also, we warmly welcome Owen Williams and Bryan Milner who have volunteered to help share the Committee workload.

Property Council

The Retirement Villages Association (RVA) was developed many years ago as an organization to further the aims of Retirement Village Owners and to ensure the continued viability of the Industry. Initially, within that organization there was little, if any, consideration for Consumer Protection and, not surprisingly, the RVA often adopted a different stance on major issues from that favoured by our Association. However, in more recent years, following a conscious effort by both parties to achieve a more harmonious and beneficial relationship between Operators and Residents' organizations, there was a noticeable improvement in the relationship between our Association and the RVA, leading to the mutual understanding that enhanced Consumer Protection would automatically flow on and thus generate a viable Industry environment.

The RVA has now been subsumed by the Property Council of Australia (PCA). Although this merger

will hopefully lead to a more unified stance amongst Operators, this union may not necessarily generate better Consumer Protection or even a more viable Retirement Village Industry. Note that the PCA ethos is: *the provision of housing for aged Australians is just another specialised real estate transaction*. Effectively, this attitude may move the Industry farther from the concept of retirement villages providing a harmonious, happy and fulfilling lifestyle for aged Australians, and nearer to being just another branch of the 'property industry'.

That point was confirmed by an article in a March issue of the *Courier Mail* authored by the Deputy Executive Director of the PCA Qld. Branch. (Refer our STOP PRESS in Newsletter No.85.) The *Courier Mail* text was critical of the RV Act Review Committee and the related Submission by the ARQRV; labelling the Committee's Recommendations and the ARQRV presentation, respectively, as "emotive reviews where evidence is trumped by hyperbole" and suggesting that the Review "gave credence to the unsubstantiated claims of a noisy minority". Additionally, the Government did not escape chastisement; being accused of reforming retirement village legislation solely from the point of view of Consumer Protection. (Conversely, the ARQRV considers that this style of reform is exactly what is needed, to ensure the viability of the Industry, notwithstanding the opposite stance adopted by the PCA.) Moreover, reforms of this nature have not solely arisen as conclusions emanating from reviews; they are generally a result of relentless pressure from our Association seeking the implementation of appropriate changes. The article also suggested that incorporating regulatory change merely to improve conditions for residents is nothing more than *red tape*, and subsequently imposes a cost upon the

Operators. On the contrary, it is this absence of regulatory guidance that allows the imposition of such costs upon residents.

Other major points in the *Courier Mail* article were that the retirement village sector of the housing industry can provide Government with solutions to major housing and social problems, and that the increased regulatory control is unnecessary in a self-regulatory Industry. Although these claims may prove valid in the future under Property Council guidance; to date the Industry has spectacularly failed on all counts, and continues to demonstrate an inability to conduct that self-regulation that the ARQRV considers to be absolutely essential for a viable Industry.

Given the above, readers could conclude that the PCA needs to embark on a major learning process aimed at developing a better understanding of the ethos of retirement village living and the requirements and aspirations of Residents.

Response to the STOP PRESS Article in February Newsletter

A special thank you to the more than 1,000 members who wrote personally to the Minister for Housing and Public Works expressing their concern at his decision to subject most of the RV Act Review Committee's Recommendations to further investigation and consultation; and at the emotive, inflammatory and inaccurate content of the *Courier Mail* article.

Retirement Villages Act – Review of the Review

Of the 37 recommendations by the Review Committee, the Minister for Housing and Public Works supported only 12. Another six were supported in their intent, but require further consideration of the means of implementation. The remaining 19 require further investigation and consultation with stakeholders, together with the completion of appropriate Regulatory Impact Statement assessments. A Working Party comprising key stakeholders has been established to conduct this Review. The first meetings of the Working Party were held on 25th March and 16th April, with a further two expected in May and June.

Review of the Queensland Civil and Administrative Tribunal Act 2009 (QCAT)

The ARQRV Submission to the QCAT Act Review stressed the need to improve access to the Dispute process for retirement village residents. Other issues

included the need: to limit Operators having legal representation; to reduce the possibility of adverse costs awards facing Applicants; to limit the extent to which parties can seek costs (in the same way as that right is limited for 'minor civil disputes'); to allow an Applicant to withdraw a dispute without fear of a costs penalty; to prevent an Operator passing legal costs on to the resident body; and to prevent the Operator from publishing information to the resident body that pre-judges a dispute, or is critical of the Applicant/s.

The ARQRV Submission to the Review of the QCAT Act can be accessed by following the link on the ARQRV web site.

Solar Panels – Insurance, Warranties, Cleaning

As advised in our February 2013 issue, Newsletter 85, an article was to be prepared on the insurance and warranty issues relevant to solar panels. Read on!

Insurance: Insurers usually have an individual approach to the type and extent of coverage provided for solar systems. The major consideration is whether coverage for the solar array is to be provided under the Resident's Contents policy or under the Village insurance prescribed under RV Act ss.109 and 110. If the Operator has assumed ownership of the arrays, the systems are thus considered to be Capital Items, i.e. a major component of the accommodation unit; coverage would be provided under RV Act s.110 for the risks listed in RV Act s.109. On the other hand, if the Resident assumes ownership (usually because a government subsidy has been received for the installation), then the Resident should include the system as a major item in the Contents Policy listing. This Policy should include risk coverage similar to that prescribed in RV Act ss.109 and 110 and may attract an increase in premium. However, any additional premium necessary to add cover for a solar system is unlikely to be significant; often costing as little as \$15 annually.

Notwithstanding this, a strong case can be made not to include a solar system in the Resident's Contents Policy. Solar arrays are unlikely to be subject to theft, and have proven to be virtually immune to significant damage during adverse weather conditions. Admittedly, extraordinarily heavy hail or falling debris could impact on panels, but instances of such damage are extremely rare and, on the few occasions reported, more significant damage has occurred to the house and roof structure, resulting in claims being processed under the Village insurance policy.

Warranty considerations: DCM Solar/DCM Green, the major installers of solar arrays in Queensland, provided with each solar array a package that included the warranty documents. As indicated in this package, solar arrays usually attract the separate warranty provisions listed below:

Panels have a 20-year warranty which requires that the array will produce power for 20 years at a prescribed percentage level (normally 90%) of the original installation output. In Queensland, the majority of solar panels were supplied by Conergy. Warranty claims for Panels can be initiated by telephone to 1300 266 374.

Inverters have a five-year warranty. The majority of inverters installed in Queensland were fitted by SMA Inverters. Warranty claims for Inverters can be initiated by telephone to 1800 762 287.

The remainder of the array installation attracted a 12-month labour and parts warranty, which will have since expired. However, the warranty pack includes contact details of the installer who will undertake any necessary remedial work at the resident's expense. Similarly, any licensed solar installer would be qualified to conduct can do repairs.

Cleaning: Notwithstanding that a number of Operators/Managers continue to promote the need for solar arrays to be cleaned regularly, cleaning is not necessary. The weather performs this task adequately! However, if you particularly want to clean your array, merely hose the system down, from the ground, every six months or so. Dust and dried bird droppings are all you should attempt to dislodge. Obviously, for safety reasons, you should avoid climbing onto the roof. A wet roof and your safety will be mutually exclusive if you do.

Does your Village have a Residents' Committee?

A number of retirement villages do not have a Residents' Committee. The ARQRV strongly urges residents in such villages to establish such a Committee. Notwithstanding that residents may be content to accept whatever they are told by their managers, such as "*you don't need to worry ... we are doing everything correctly*", or that residents prefer to avoid any hassle, and remain uninvolved, it is important for Residents to have an avenue for formal communication with Operators. An official Committee provides that avenue, whereby Residents collectively are able to question any decision made

by the Operator, including those related to Budgetary matters, the setting of the monthly General Services Charge, or any other financial concerns, plus other matters that directly affect Residents. Note that RV Act ss.131 and 132 prescribe that the only entities entitled to convene a meeting of Residents are either a Scheme Operator and a Residents' Committee; therefore, unless you have a Residents' Committee, you have no entitlement to convene a meeting of residents.

Establishment of a Residents' Committee

RV Act s.127 prescribes that "The residents of a retirement village may establish, by election conducted among themselves, a residents committee". Notwithstanding that there could be a certain ambiguity in this statement, i.e. although use of the word "residents" clearly indicates more than one person, some may interpret that as requiring "a majority of residents". However, RV Act s.128 *Residents constitution* provides an example of when a majority is intended rather than a plurality, by prescribing "... a majority vote of the residents at a residents meeting ...". Consequently, to ensure conformity to the legislation, in the circumstances where more than one resident wishes to establish a Residents' Committee, the minimum requirement necessary to convene a legal meeting for that purpose is that written notice of the intention to call a meeting for this purpose must be given to all residents, by those residents wishing to establish a Committee. An appropriate text for this Notice of Meeting would include: *The undersigned residents consider that the formation of a Residents' Committee would be of considerable benefit to the operation of the Village and improve the Resident/Operator communications and intend to hold a meeting on (date and time) at (location) to elect a Residents' Committee. Interested residents are invited to attend and should note that the meeting has not been convened to determine whether or not such a Committee will be established, but rather, that the attendees will elect an official Committee from nominations received at that meeting.*

This rather controversial matter was addressed in detail by the Commercial and Consumer Tribunal in Case No. QCCTRV 2 (8 August 2006) which determined that a Residents' Committee can be established at the initiative of only a small number of residents.

Note that Management has no entitlement, under the Act, to be involved in the establishment or election of the Residents' Committee. Nevertheless, it is

very much in the interests of Residents and Operators that a good working relationship exists between these elected representatives and Village Management, and that the prescription of RV Act s.129 is applied.

Residents' Committees and their Responsibilities

RV Act s.129 prescribes that *“The function of the residents' committee is to deal with the scheme operator on behalf of residents about the day-to-day running of the village and any complaints or proposals raised by the residents”*.

A Residents' Committee must be accountable to residents and has the responsibility to keep residents informed about what it is doing on their behalf. Most villages have periodic meetings of residents; monthly, bi-monthly or quarterly, at which the committee reports to the attendees. Moreover, any sub-committee formed under RV Act s.127 (3)(b) may also report to the attendees at those meetings. In villages where many residents have difficulty attending meetings, for whatever reason, then residents can be informed by means of a periodic Committee newsletter. While this does not allow for questions to be asked and answered, it does have the advantage of reaching every resident, where the meeting arrangement only informs those who attend.

Some constitutions allow residents to attend Committee Meetings, as observers, and, if the Committee agrees, to participate in the discussion.

In many villages, residents have an elected “Social Committee”. Most residents see such a committee as highly desirable: they usually do a very good job, but a Social Committee is not the Residents' Committee and there are no statutory rules by which a Social Committee must abide; nor is it covered under the Act, which recognizes only a Residents' Committee. This applies to any Committees that are not Sub-committees of the Residents' Committee. To overcome this dichotomy, the provision of RV Act s.127 (3)(b) can be applied whereby any group with specific interests can receive official recognition and legislative protection, having been formed as a “Sub-committee”. The Residents' Committee may delegate to its sub-committees whatever responsibilities it wishes to delegate, allowing them to operate virtually independently.

All monies raised by residents are residents' funds. It is the responsibility of the Residents' Committee to ensure that these are safeguarded and expended according to the wishes of all residents. The

Residents' Committee may delegate the handling of such funds to a sub-committee, always with the proviso that the Residents' Committee still remains accountable.

Budget Time: Is your Budget Compliant with the RV Act?

Has your Operator produced a General Service Charges Budget for the forthcoming financial year that complies with the relevant provisions of the RV Act? Obviously, before determining your response to this question, the following Sections of the Act need to be considered.

RV Act s.102A prescribes the timing for a Draft copy of the Budget being requested and made available to the Residents' Committee, and requirements for the handling of any surplus or deficit.

RV Act s.106 prescribes that the Operator must not increase the total of general services charges by more than the CPI, and defines the CPI and *Total of General Services Charges*.

RV Act s.107 prescribes that increases in certain charges are not limited by the CPI, and defines these charges.

RV Act s.129B prescribes the timing for the Residents' Committee to ask the Operator to attend a Committee meeting, before the start of the financial year, to discuss the Draft Budget for the General Services Charges (as well as those for the Maintenance Reserve Fund and the Capital Replacement Fund).

See why it is so important to have a Residents' Committee?

In our newsletter No.81, of December 2011, we gave a detailed description of the “Total of General Services Charges” (toFGSC), a concept introduced by amendments, in March 2006, to Sections 106, 107 of the RV Act and the introduction of S.102A. It is budget time again so we thought it might be useful to draw attention to its provisions again; not at great length but to remind ourselves of its implications for budgets. The draft budget presented to Residents' Committees must be in a format which enables residents to understand what is proposed to be spent on each item separately, not on just groups of items. Budgets, S.112 quarterly statements and S.113 ‘end of year’ financial statements must all be in the same detailed format

The first to be noted is S.102A. It requires that the Scheme Operator must adopt a budget for the

forthcoming financial year and allow for raising a “reasonable amount to provide the general services for the financial year”. Some of that amount should be raised by charges levied under S.104 on former residents still liable for General Services Charges, and some levied on the Scheme Operator under S.105 in respect of Units for which there is no residence contract currently in force. Then, of course, there are the remaining charges, payable by current residents.

Section 106 actually defines the tofGSC and provides at 106(1) that any increase in the total of them must not exceed the increase in the Consumer Price Index (CPI). However, taking the budget as set out in accordance with S.102A, we can set aside any charge that has been increased beyond the CPI increase but which has been approved by residents by Special Resolution. We can also set aside any charge allowable under S.107. What we are left with is the “tofGSC”, which is not to exceed the CPI increase. If it does, then the item or items which cause the excessive increase must be examined on a line by line basis and, if acceptable to residents, approved by Special Resolution. If residents do not approve, the increase in those line items must be reduced to the CPI increase.

Which brings us to the increase; what is the increase and over what? It is the increase in the proposed draft budget over the previous year’s budget, ie over what was charged to residents last year – which is not necessarily what was spent. That brings us back to S.102A’s ‘reasonable amount’. Even if there has been no increase in a line item between last year’s budget and that for the year in prospect, if the actual expenditure in the previous year was significantly less than was budgeted, that must influence the budget for the following year. Simply to put the same figure in the following year’s budget is not ‘allowing a reasonable amount’ and should be resisted by residents. What has also to be resisted is any attempt by a scheme operator to justify an excessive increase in one line item by setting it off against a decrease in another; each must be treated on its merits. Incidentally, this also applies when it comes to the S.131 statements.

Lastly, although S.107 items are not subject to the CPI cap, they are not immune from questioning, increases still need watching. Salaries cannot be increased automatically beyond the appropriate award; they need residents’ agreement. Given the 10-year (or more) forecast, increases in the MRF still need to be justified. And then there is S.107A – is there a more cost effective alternative to an expensive general service?

Water Subsidy Update

As announced in our November 2012 Newsletter, following extensive lobbying by the ARQRV, the State Government decided to pay a one-off subsidy to residents in retirement villages within the ten Council Regions in South-East Queensland. The February Newsletter advised that government approval to the ARQRV request was predicated on the 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.

In following up the implementation of this subsidy, a few concerns arose with regard to the list of villages being used by DEWS, which omitted a number that were on the ARQRV list. Fortunately, these queries have been resolved and a further 15% of the total number of villages have now been contacted by DEWS.

The payment to individual residents early in the year 2013 was to be made, usually by either a Credit Note or a reduction in General Service Fee payable in the month following receipt by the Operator of the total rebate for that Village. It appears that one Operator, having received the subsidy for their residents, has not yet passed it on to those residents; intending to hold it over and show it in the forthcoming budget! They maintain that the residents’ committees in each of their nine villages have agreed to this. This is of no consequence. It is not something to which Residents’ Committees are empowered to agree or disagree; it is not even something for their principals, the residents as a whole, to determine. This is NOT what was intended by the Government: the rebate was to be paid direct to residents, with no delay. After all, it is a refund of something already paid, not a provision against future expenditure. DEWS are looking further into this matter.

Concerned residents who have not yet received the rebate of \$80 should check with their Operator, or their Residents’ Committee and advise the ARQRV of any problems encountered.

Email requests for advice or assistance

If you email a request for advice or assistance, please give a contact telephone number – it is usually far more satisfactory to be able to discuss the matter rather than try to type a reply.

Review of Constitution

The rewrite of the ARQRV Constitution is in final Draft form, ready for presentation to members at the AGM in September 2013.

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 and to adopt the replacement Constitution, in its entirety, by Majority vote.

The Draft New Constitution will be sent to every member for whom we have an email address, in the near future, and it will also be placed on the ARQRV web site. If we do not have your email address and you would like to receive this Draft, please provide your email address to Ernie Hatton (see back page). Alternatively, if you are unable to access the web site, a hard copy may be obtained by contacting Ernie Hatton.

Electronic Payment of General Service Fees – the Opposite end of the Spectrum

An article in the February Newsletter explained in detail electronic payments of General Service Fees. For most residents nowadays, this is the preferred “way to go”, although the ARQRV has some concerns about the wording of some Operators’ Direct Debit Request Authority forms.

Other residents, however, are still unhappy about this sort of arrangement: for some, technological change is not easy to cope with, while for others, being pressured into using that technology, rather than being given the option, only causes distress. Cash and cheques are still legal tender.

We are advised that one Operator has informed its residents that, from 1st July 2013, no cash or cheques will be accepted at the Village Office and all residents’ fees will need to be paid electronically. The ARQRV Legal Advisor’s advice on this question is as follows:

1. Any legal tender can be used to satisfy a debt, unless the terms of any agreement between the involved parties specify to the contrary.
2. Any limitation on the accepted payment methods would need to have been agreed in advance as a term of the transaction, so that the customer was proceeding with knowledge of the restriction. In the context of a retirement village, the agreement to pay the levies was struck at the time the resident entered the village, and signed the Residence Contract.

3. So an Operator can only limit payment methods if the Residence Contract allows them to do so (either specifically or via a general power to make binding rules affecting the Village).

It would appear, from the above, that a resident who has offered to pay the General Service Charge by any form of legal tender can not be considered in arrears if the Operator has refused to accept their method of payment without having a right to limit payment methods under the Residence Contract.

We have pointed out to the one incipient transgressor of which we are aware, that any form of compulsion or coercion is unacceptable and that the ARQRV would follow up any such cases.

Village By-Laws

Many villages have what are variously called ‘Village Rules’, ‘Village Regulations’ or, more commonly, ‘Village By-laws’, which is a matter dealt with at Section 130 of the Retirement Villages Act. Especially significant for residents, perhaps, is sub-section (4) of the Act, which makes it clear that no rule or by-law, however it is called, can take precedence over a provision of a residence contract; if there is a conflict between a by-law and a provision of a residence contract, the contract provision prevails. And, of course, if a by-law conflicts with the Act in any way it is of no effect.

By-laws can be contested and altered or revoked by residents at a residents’ meeting and although the scheme operator’s consent should be obtained, that consent must not be unreasonably withheld. It is wise to be aware of all this because it is possible that your village may have a by-law or rule, whether or not it is enforced, that is incompatible with residence contracts or the Act.

Membership Renewals – Last Call

If you have not yet renewed your membership, please do so as soon as possible. Details are on the tear-off slip in the February Newsletter, pages 5 and 6. If you do not renew now, this will be the last Newsletter you will receive.

Remember, if you pay direct to the bank account, you must give your name, unit and Village in the reference (abbreviated if necessary). Without that information, we are unable to identify who has made the payment, and your membership will be unable to be renewed! It may be a good idea, to also e-mail or write to the Treasurer or Membership co-ordinator, with the payment details.

Check-List for Residents Departing Freehold Villages

1. The residence contract applicable to Residents who hold freehold title in registered retirement villages will vary considerably from the residence contract applicable to leasehold or loan/licence villages.
2. When a freehold villa is to be vacated, the resident and the village owner must agree on a sale price. Should no satisfactory decision be reached within 14 days after the decision to vacate, the amount is determined by an independent valuer, whose appointment is agreeable to both parties – (similar rules contained in the RV Act s60.) Generally, resident contracts grant the operator up to six months for exclusive rights of selling, before an unrelated party can be engaged.
3. Exit fees are generally included in the resident's contract and are payable to the operator when a sale is concluded. Some contracts may grant all or part of the Capital Gain arrived from the sale to the Operator. Other contracts provide for all of the capital gain to go to the resident.
4. Similar to a leasehold contract, the outgoing resident pays for all reinstatement costs (RV Act s61). But in a freehold village, the outgoing resident is responsible for any additions or improvements that he cares to make.
5. Body Corporate fees and other monthly expenses usually paid by the resident must continue to be paid until a sales contract is finalised, unless there is some other arrangement contained in the residence contract.
6. 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.
7. In both leasehold and freehold villages, 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 (RV Act s104).

The ARQRV Website - www.villagers.org.au

Every ARQRV member should:

- Ensure that their family members are aware of the ARQRV website, and its host of valuable articles in addition to informative papers, some of which could save considerable amounts of money when the unit is being sold.
- Be aware that their family members are also entitled to support and help from the ARQRV if a potential dispute should arise from the sale of the unit – for example, relating to the valuation of their unit, reinstatement versus refurbishment, the level of legal charges and other costs.

The **LINKS** page has been expanded with links to a variety of **HEALTH** and **LEGAL websites**.

The legal websites can provide access to free legal advice for problems which are **outside** the ARQRV's remit under the Retirement Villages Act 1999 (Qld).

The health websites are varied with information on treatments, diseases, patient's experiences and the role of the carer in particular situations. These health websites can provide the impetus to motivate one's self to make the necessary changes in diet, exercise, mental attitude etc. in order to combat the debilitating effect of many medical conditions.

The Federal Govt. has proposed some changes to the Aged Care Act which will, amongst other provisions, facilitate access to care in the home for those who need it, following the 'Aging in Place' philosophy; this might well be of benefit for retirement village residents. Details of this and the whole range of proposed changes can be viewed at www.livinglongerlivingbetter@gov.au: there is a link to that site on our ARQRV website.

In only three months the website has reached nearly 5,000 visits, and at this rate will easily surpass last year's total. If you have not explored it yet, make this month the month you check it out. If necessary, get a friend or relative to help you.

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

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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.

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