

Association of Residents of Queensland Retirement Villages

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No. 87

NEWSLETTER

August 2013

Editorial

A Giant Leap For Mankind! (read ARQRV)

To quote Vice President Phil Phillips, "We are taking to the airways! You may have become aware of what is called 'Cloud Storage', touted by providers of Information Technology and Data Protection Suites: and increasingly used as a back-up to what we have on our computers. But it has wider capabilities than that and we have been getting professional advice so that we can use the Cloud as an integral part of our administrative functions and data and accounting systems. We are expecting the new system to make it easier for members and village Liaison Officers, with Internet access, to reach our data bases. All very exciting and we look forward eagerly to your support."

This technology will help us streamline many of the functions performed by committee members, thus allowing them time for other tasks. Some of the many benefits include: a more efficient process for membership renewals, better support for our Liaison Officers, and improved access for Committee members to the Association's knowledge base. Read more on this page.

Review of the Constitution

The Draft Constitution has progressed to the stage where it will be submitted to members for approval at the AGM in September. See article on page 3.

Resignation

It is with regret that we recently accepted the resignation of Secretary, Barbara Irving, who has worked tirelessly for the Committee and the Association over several years. We thank Barbara for her contribution and wish her well. In the interim, Steve Murray is Acting Secretary.

New Membership Database and Enhanced Web-site

During the past year it became obvious to the Committee that the current method of storing members' information was difficult to maintain and time-intensive for the Committee members to operate effectively.

The Committee investigated a number of ways to improve the system and finally accepted a quote from BlueDog Web Designs that will move the existing database of members held on one personal computer to a central storage area, thus enabling nominated members to regularly update the database. This restructuring will mean that, in the near future, the system will provide more information, in written and visual modes, that is searchable and usable by Association members.

The new system will also expedite the membership renewal process (always an onerous task for the Treasurer and the Database Co-ordinator); and allow input by Liaison Officers.

Additionally, the Association will be moving to a corporate style of email address that will be identifiable with the ARQRV, and allow for identification of members by portfolio. For example the Secretary's email address will be secarqrv@gmail.com, and a Vice President will be vp1arqrv@gmail.com. Thus, this new system will allow continuity of contact when Committee members change; the corporate email addresses remaining the same.

More information will be provided as the change progresses, but if you are interested and would like to know more then please email Steve Murray, on comm10arqrv@gmail.com.

Water Rebate – Further Update. The Good, the Bad and the Ugly

The good news is that virtually all eligible retirement village residents in the ten South-East Queensland Council Regions where the rebate was due have now received their \$80 payment.

Within the ten Shires eligible for the rebate, there are nine Leasehold/Licence Villages operated/managed by Lend Lease and a further 171 Leasehold/Licence villages operated/managed by other Entities in the Industry.

The bad news is that Lend Lease is the only operator to have adopted a refund process at variance to that proposed by the Government; a procedure which has resulted in a significant disadvantage to eligible residents in these Lend Lease villages. The Department of Energy and Water Supply (DEWS) Rebate proposal, developed in conjunction with the ARQRV, was that Operators would advise DEWS of the number of eligible residents in each village, a single payment from DEWS for each village would then be received by that Operator and then be passed on to eligible residents within the next fourteen days, in the form of a single reduction to the next periodic General Services Charge (GSC) payment.

However, Lend Lease has held the funds over to incorporate into the next year's GSC Budget for each village, having received in some villages concurrence from the residents' committee to this approach. Residents' committees, having no authority to make such a decision, should not have been consulted on this matter. Each rebate belongs to an eligible resident and could not in any way be considered as a legitimate bulk income stream for a GSC Budget; and certainly not a contribution able to be authorised by a residents' committee.

The ARQRV's challenge to Lend Lease on this approach has been rejected, with the advice that the funds have been incorporated into the income stream for FY 2013/14 GSC Budget and that *all residents* in these villages will thus receive monthly reductions to their Levy.

The ugly element is that, under the Lend Lease process, former eligible residents, having now departed the village, will not receive that rebate, but recent arrivals (who may have already received a rebate in their former home) will benefit.

A major consideration in the Lend Lease approach is that, to do otherwise would be an administratively cumbersome process. Surprisingly, however, no other Operator considered this to be a problem.

A large number of affected residents have requested that the ARQRV prepare a Class or Group Action against Lend Lease. The basis of such a case would be:

- The funds were owned by the eligible households when they were paid to Lend Lease, and therefore Lend Lease held the funds subject to an implied trust in favour of the eligible households.
- By failing to pay these funds to the eligible households, Lend Lease may have breached its obligations as trustee.
- Lend Lease was in a position of power over the eligible households, and therefore had breached their fiduciary obligations to those households.

Clearly, such action would have a major impact within the Industry and could damage the reputation of Lend Lease. Your Association is reluctant to pursue this option, having recently established harmonious and co-operative relations with Lend Lease. Therefore, before proceeding further, we will seek legal advice.

Notwithstanding the above, Lend Lease has advised that any eligible resident who wishes to receive the Rebate directly, can do so simply by written request to the Operator seeking a cheque for \$80. Residents who wish to pursue this option should copy the request to secarqrv@gmail.com, 5448 9217.

Members' thoughts and comments on this issue would be welcome and should be advised to Vice President Phil Phillips, vp1arqrv@gmail.com, 5476 5343 as soon as possible.

Carry-forward of Budget Surpluses and Deficits

RVAct Section 102A (6) prescribes that:

*If, at the end of a financial year for which a general services charges budget is adopted, there is a surplus or deficit for the charges, the surplus or deficit must be carried forward and taken into account in adopting the general services charges budget **for the next financial year.** (Emphasis added)*

Clearly, this prescription does not allow for the carry-forward of any surplus or deficit beyond the next financial year. Residents' Committees should be aware of this requirement and take particular note of any intention by Operators to apply an incorrect carry-forward procedure.

Rewrite of Constitution

After some last-minute amendments, the rewrite of the ARQRV Constitution is in final Draft, ready for presentation to members at the AGM on 23rd 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 has been emailed to approximately 1,300 members and is now posted on the ARQRV web site. Hard copies may be requested from Ernie Hatton via comm8arqrv@gmail.com or on 5412 1686.

Retirement Villages Act – Review of the Review

As advised in May Newsletter No. 86, the Recommendations arising from the Review of the Retirement Villages Act by the Parliamentary Committee, were subjected to further considerations by a Working Party commissioned by the Department of Housing and Public Works. The Working Party's considerations are expected to be published in late-August 2013. Without attempting to pre-empt this Report, the Association is not expecting an outcome favourable to residents, given that the Working Party's emphasis was on supporting issues aligned to increasing the viability of the Industry rather than enhancing consumer protection. The major disappointment evidenced during the Review of the Review was that the Operator representatives on the Working Party were unable to accept that enhanced consumer protection automatically generates a more viable industry. We await the Working Party's Report, and will advise members accordingly.

Guidelines for Special Resolution Meetings

Many Operators have recently adopted the Guidelines for Special Resolution Meetings issued by Focus RV, a noted Industry authority. Those Guidelines are very descriptive, but are perhaps unnecessarily complicated and certainly go beyond the requirements of the RVAct. For example, those procedures recommend that external agencies be involved in the Special Resolution voting process and also introduce unnecessary checks and balances which will inevitably lead to protracted and lengthy meetings.

However, the ARQRV accepts that there is often confusion as to how and when a Special Resolution Meeting is called, and the procedures to be followed at that meeting. Consequently, the following guidelines have been prepared in response to requests from Residents and Scheme Operators.

The sections of the RVAct listed below prescribe the requirement/entitlement for Special Resolution voting.

References: Retirement Villages Act 1999 (Qld)

- Section **90B** Capital Improvements requested by Residents
- Section **106 (2)** Increases above CPI may be approved by Residents
- Section **108** New service to be approved by Residents.
- Section **110** Increase in Insurance premium excesses.
- Section **127 (2)(b)** Removal of a member of Residents' Committee
- Section **130 (1)** Residents may make, change or revoke By-laws.
- Section **133 (1)** Change of Voting Entitlement.

Refer now to Schedule Dictionary – Definition of a Special Resolution and RVAct Section 133.

- Every Resident must receive written notice of the Resolution, proposed as a Special Resolution, at least 21 days before the meeting date.
- The text of the Resolution must be clearly stated on the notice.
- The resolution must be passed by at least 75% of the persons entitled to vote and who vote:
 - a. personally; or
 - b. by proxy at the meeting; or
 - c. by postal vote; or
 - d. by Power of Attorney.
- Any person, other than the Scheme Operator, may be appointed by signed notice to vote by proxy on behalf of a resident who is entitled to vote.
- A person may hold no more than two (2) proxy votes for the meeting.
- The scheme operator must provide a secure locked container for postal votes in the common area at least 24 hours before the time the meeting is to be held.
- The container must not be opened before it is delivered to the chairperson of the meeting.
- The Scheme Operator must deliver the container to the meeting chairperson immediately prior to the chairperson opening the meeting.

Liquor Licences

It has always been a bit contentious and certainly laughable that we oldies have to be prevented from drinking too much and thus becoming drunk and disorderly! The Licensing Branch didn't really want to know about us but were stuck with the Liquor Act 1992 (Qld.). So (and the ARQRV may have had something to do with this), that Act was suitably amended in 2009. However, there are still a few village managers and even some Residents' Committee members who are unaware of the changes to that Act which make it unnecessary for there to be any sort of bar licence in retirement villages. We even had cause to remonstrate with one firm of liquidators who insisted that they now held the licence and that residents could not take their own drinks into the Community Hall! They subsequently relented and tacitly acknowledged the error of their belief:

"It is now time for the Bar to be handed back to the Residents Committee to run; this will then be in line with all other Retirement Villages." was their reluctant concession.

Incidentally, taking your own alcoholic drink into the Community Hall would never have aroused the ire of the licensing branch!

Those who may be interested in the source of all this can find it at Section 12 of the Liquor Act, 1992, which lists all manner of exemptions from the Act. Scroll down to subsection (k) and you will find retirement villages listed. The prohibition of carrying of liquor for sale does not apply to retirement villages. However, there is a proviso, so be warned: You may not have more than two standard drinks in a day! So, beware of all those nasty licensing branch inspectors lurking outside your community hall observing your consumption!

For those unfortunate enough to be holding a bar licence for a retirement village, scroll down further to Section 215, which deals with the possible refund of licence fees paid.

Peculiarly, there are still some village managers and/or committees who seem, for some reason, to prefer to have a bar licence. Perhaps they have a lot of inveterate boozers! It does seem wrong, however, that all residents should have to contribute to the cost of a bar licence to accommodate the thirsty few.

Disputes Summaries

The Association is currently involved in eleven Disputes within the Queensland Civil and Administrative Tribunal (QCAT) as prescribed in

RVAct Part 9, and three Appeals Five summaries follow.

OCL 104-12 Sakrzewski vs Grand Pacific Operations (Receivers and Managers appointed).

This Dispute concerns the use of Village facilities by the Scheme Operator for commercial purposes not related to the operation of the Village. Grand Pacific RV is in receivership and the appointed Managers, acting as the Scheme Operator, held seminars and related functions in the Village community areas aimed at promoting their business activities, rather than promoting the Village as a saleable commodity. The setting-up and subsequent clean-up of the Village facilities for these purposes was conducted by Village staff. Moreover, there was no formal financial management procedure to account for the entrance fee paid by attendees, nor was there a contribution by the function organizers for use of the facility and Village staff. The Respondent's defence was that the Residence Contract allowed the Operator to have full and free use of the Village facilities in common with residents. Additionally, the Respondent claimed that all of the functions were aimed at generating community interest in the Village and would thus improve the likelihood of unit sales and perhaps, in the big picture, attract a buyer for the Village. A surprising claim, considering that the function which initiated the Dispute was a training course for Registered Nurses.

After protracted Preliminary Negotiations and a Mediation Hearing, the Dispute was settled amicably by the Operator agreeing to limit his use of the communal facilities to activities related solely to the sales and marketing process.

OCL 105-12 Sakrzewski vs Grand Pacific Operations (Receivers and Managers appointed).

RVAct Section 112 allows a resident to request quarterly financial statements. In this Dispute, despite repeated written requests by the Residents' Committee, the Operator refused to provide the statements, claiming that production of reports for these periods was the responsibility of the previous Operator, an entity that was now in receivership. Consequently, the statements could not be provided.

The Applicant's case, which ultimately prevailed, was that the Receivers and Managers, having been appointed, were therefore the legal Scheme Operators and thus were required to operate the Village in accordance with the Legislation.

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Annual General Meeting

Time for our annual get-together. Well, for those of us who can make it. This year it is again in Maroochydore, at the Community Centre in Millwell Road, very handily placed next to the Sunshine Plaza car park and there is also parking opposite the Centre. There will be a brief General Meeting immediately before the AGM.

To announce these meetings more formally:

ARQRV General and Annual General Meetings

Monday 23rd September 2013

Venue available 9.00 am – Refreshments from 9.30.

General Meeting commences at 10:00 am.

Annual General Meeting immediately afterwards

As has been mentioned in our Newsletters (and see page 3) the Association's Constitution has been extensively revised, following last year's AGM. Significant changes are: 1) formalization of Financial Life Membership, as compared to Honorary Life Membership; and 2) the number of members on the Committee; last year's AGM approved an increase from 10 to 12; however, such is the expansion of work we have undertaken recently that the Draft new Constitution increases that further, to 13.

Members are invited to agree, by Special Resolution (at least 75% in favour), to rescind the existing Constitution in order to subsequently approve, also by Special Resolution, its replacement with the new Constitution that has been circulated to all interested members.

The Special Resolution Motions are:

- 1) That the Association's existing Constitution be rescinded and
- 2) That the Association adopt the new Constitution, as published on the ARQRV web site or as has been issued to members by email or by hard copy on request.

Nominations for Committee portfolios are called for each year, as per the nomination form below. You can nominate anyone who is a member of the ARQRV, including yourself. Attendance at monthly Committee meetings is of course expected of committee members and if elected, you will be required to take on some tasks.

If you are unable to attend the AGM, you could give your proxy to another member who will be attending. A Proxy form is on the reverse of the Nomination form.

Newsletter by email - Reminder

If the Newsletter you anticipated by email has not arrived, chances are we don't have your correct email address. To ensure delivery and to help save costs, please contact Irene Ford, Membership Co-ordinator on 5478 7268, or comm5arqrv@gmail.com confirming your correct email address.

The ARQRV Website - www.villagers.org.au

No recent changes to our Web site because of redesign work (see article on page 1). Two comments from our Web Manager: Learn Internet skills from a public library if you do not have family or friends who can help: 'Surfing the net' is more exciting than doing crosswords!



NOMINATION FORM

Complete and return this nomination form by the 9th September 2013 to

The ARQRV Secretary – PO Box 1361 BUDDINA Qld. 4575

I, _____ of _____ Village

Nominate _____ of _____ Village

To be: President / Vice-President / Secretary / Treasurer/ Committee Member (circle one)

Signed _____ (nominator) _____ (seconder)

Accepted by: _____ (nominee)

Payment by Direct Debit

More and more, some scheme operators, and not just the big impersonal corporations, are seeing retirement village residents simply as factors in their entrepreneurial schemes. We residents are ceasing to be seen for what we are - elderly people, often with limited mobility, wishing simply to have a pleasant hassle-free retirement lifestyle. Increasingly however, even the simple business of paying our recurrent general services charges is being made more difficult. Payment in cash or by cheque, even in villages where it has long been the custom, is being phased out in favour of direct debit, but not as gently as phasing out may sound. Rather, some scheme operators are simply telling their residents that they must henceforth pay by direct debit.

Residents in many villages have previously paid at the office/reception and the village managers have been accepting and receipting such payments. However, some Operators have identified various passages or clauses in the PIDs which they claim give them the authority to change the method of payment at will. It appears now that acceptable practice, over years, may not prevail over technical wording in the PID, however unintended that aberrant interpretation may seem to be an authority for rejection of cash or cheque payments.

There are many residents who do not operate a cheque account, nor do they have the ability to pay by Eftpos. They are often offered the alternative of paying into the Operator's account, but for a resident with mobility problems, this requirement generates further difficulties. Why should any resident be put to such inconvenience merely to avoid the village manager or staff providing what has become an expected service?

Mail Boxes/Letter-Box Drops

Those of us who are fortunate enough to have somewhere to live will undoubtedly have a mail box, or letter box, in the front door or down the driveway. Despite all the new ways in which we can communicate with each other, the old 'snail mail' is still widely used. And our mail boxes are not exclusively for use by Australia Post, to which the mountains of advertising 'junk mail' will attest! And there is no reason why, as persons, we cannot slip a letter or note in our neighbour's letter box - saves postage!

This is no less true in a retirement village than elsewhere, even if we do not own our accommodation. Lines of communication cannot be restricted just because we live in a retirement village, any more than they can in any rented or leased accommodation. Unfortunately, there are some retirement village scheme operators, who regard mail boxes as village property and thus consider that they may control the use of that box. However, this is most certainly not the case. Committees may wish to put material in mail boxes, such as meeting agendas, minutes of meetings etc. Similarly, a group of residents or indeed a sole resident may occasionally need to put material in mail boxes, especially if there is something a bit controversial in progress, just to air a point of view. The ARQRV, via its liaison officer, may also have something to put in mail boxes from time to time. This is all quite legitimate and not to be restricted.

Notwithstanding that some Residence Contracts may include a clause purporting to restrict this freedom of expression entitlement, the ARQRV position is that any such prohibition is an unconscionable clause. If any such restriction is attempted in your village, let us know. It will probably mean off to the Tribunal.



APPOINTMENT OF PROXY

Complete and return to The ARQRV Secretary by 16th September 2013

I, _____ of _____ Village

Appoint _____ of _____ Village

To be my proxy at the 2013 Annual General Meeting.

Signed _____ (Member giving proxy)

Continued from page 4 ...

After protracted Preliminary Negotiations and a Mediation Hearing, the Dispute was settled amicably by the Operator agreeing to issue statements for the four quarters in question. Editor's note: subsequent to drafting of this Newsletter, advice has been received from the Grand Pacific Residents' Committee that the statements issued by the Operator do not provide the information requested, and that a Form 31 Application for Tribunal Hearing will be issued as prescribed in RvAct s167 (d).

OCL 106-12 Armstrong vs Kawana Island RV

In FY 2011/12 the Operator presented a non-compliant Budget to Residents and sought Special Resolution voting for a number of s.106 line items which had exceeded cpi. Although proposed increases totalling \$76,000 were rejected, and the Budget was re-cast to remove some of this non-approved expenditure, there was no commensurate reduction in the General Services Charge passed on to Residents.

Expressed simply, this Dispute seeks the following interpretation:

Do RvAct Sections 106 and 107 allow an above-cpi increase in a charge for a general service to be retained in the budget where that increase has failed to be approved by special resolution, if sufficient other individual "above-cpi" increases have been approved so as to bring the increase in the "total of general services charges" within the cpi cap?

A secondary Issue is: in the event that the Tribunal orders a re-casting of the Budget and a refund to Residents of the resultant GSC overcharge; how will that Refund be apportioned amongst the contributors to the GSC?

The Applicant considers that the previous determination in the QCAT Appeals Tribunal, following VH 010-09, provides an appropriate methodology for proportional refund to residents, former residents and the Operator, based on their contribution percentage to the overall forecast expenditure.

This Case is set down for a Hearing on the Papers in mid-October 2013.

OCL 036-13 Cotterell vs Peninsula Palms RV

This Dispute concerns presentation by the Scheme Operator of a non-compliant Budget. The major

problems are that the Budget has been developed around a calendar year, rather than a financial year; Sections 106 and 107 line items have not been separately identified, thus preventing an accurate calculation of the "total of general services charges"; there are a number of conglomerate line items; there has been significant co-mingling of accounts with other Entities associated with the Retirement Village and no justification has been provided for above-cpi increases in line item charges.

The recent Mediation Hearing was unsuccessful and the matter will proceed to Hearing later this year.

OCL 132-11 Armstrong vs Kawana Island RV

The RvAct Section 90 prescribes that the Operator is solely responsible for the cost of the Village's capital improvement and includes in the definition of capital items "all plant, machinery and equipment used in the operation of the village".

In this Dispute, the Applicant claims that the Operator has incorrectly passed on to Residents the acquisition costs associated with provision of a Photocopier. The application for reimbursement of these acquisition costs was dismissed; based, inter alia, on the judgment by the Hearing Officer that the Photocopier was not a capital item but was a component of a general service available to all residents. Therefore the cost of providing that general service should be met through the GSC Budget.

An Application for Leave to Appeal this Decision has been lodged, based on a number of Errors of Law. The considerable expense of proceeding to an Appeal is justifiable because a favourable decision will have considerable impact within the Industry in that it will clarify RvAct s90 and reaffirm that Operators will be solely responsible for the acquisition costs of capital items. Moreover, similar acquisition costs previously charged to Residents may be refunded.

Email requests for advice or assistance

Most contacts with the Association requesting advice or assistance generate a written reply and often lead to protracted discussions and meetings. The Association's initial response will generally be to speak directly to the contact, to verify the circumstances. Therefore, please provide a telephone contact number with every enquiry.

ARQRV Committee Members' Duties and Responsibilities

President: Les Armstrong
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Policy Development, Representation, and Dispute Management.

Vice-President:
Phil Phillips
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vp1arqrv@gmail.com

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.
(filmar@westnet.com.au)

Vice-President:
Eric Stadhams
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vp2arqrv@gmail.com

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. (eric.stadhams@bigpond.com)

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Office Administration and Secretarial support to Committee members. Preparation of Minutes. Routine enquiries and Correspondence. (murrayas1@bigpond.com)

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