

Association of Residents of Queensland Retirement Villages

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NEWSLETTER

“May” 2014

Editorial bits & pieces

Once again, because of heavy workload, the Newsletter is late – we should perhaps call it a June Newsletter, but it was due in May.

The Committee has devoted a considerable amount of time to what one could refer to as administrative matters in recent meetings: centred around how to harness the wide range of tasks that come our way and to use the abilities and availability of individual committee members to the greatest advantage of the Association. We had an Extraordinary Committee Meeting devoted to fund-raising, with a range of suggestions put to us by one of our Liaison Officers with a significant background with the Council on the Ageing. Part of the discussion focused on the need for the Association to have a paid Administrative Officer, to handle all initial enquiries and, if not answered at that point, channel them to the appropriate Committee Member. However, the Association does not have sufficient funds to enable this to happen. We did write to the Minister for Housing and Public Works (who is responsible for administering the Retirement Villages Act) to seek advice, but the response was negative – primarily because the Queensland Government had recently made a very generous grant to a Brisbane legal firm to enable that company to conduct, pro bono, the functions currently performed by the ARQRV. See article on this page. Another suggestion for fund-raising was that, apart from seeking donations, we should invite our members to consider making a Bequest to the ARQRV in their Will. We put this suggestion to members for their consideration. If you feel that this Association is of really good value and has an important function to perform to help residents in need, to promote consumer protection whilst maintaining the viability of the retirement village

industry, and you would like to help it further but can't spare your money while you are alive, then please consider making such a Bequest. Every little bit helps.

Caxton Legal Centre – PAVIL

A number of members have expressed concern at the item in the Queensland Premier's Newsletter of 10 April 2014 announcing: *Free legal advice for park and retirement village residents.* In a completely misleading statement, it says: “*For the first time in Queensland, a new service will be available to residents of manufactured home parks and retirement villages to help them better understand their rights and responsibilities.*”

The Park and Village Information Service (PAVIL) has been around for a number of years. The “first time” part of it, apparently, is that now, Caxton Legal Centre has received a huge grant from the Queensland Government to fund a pilot project for two years and they have employed two new people: a Solicitor and a Project Worker. The ARQRV President and Secretary met these two in Brisbane, to “get to know” them and the nature of their project and to answer some of their questions.

It is worth noting that, from time to time in the past, Caxton Legal Centre has sought advice from the ARQRV, which has been given freely, in the interest of helping residents in distress. From now on, however, this information will have a price tag on it.

The service that PAVIL will provide: “*free legal advice to these residents on their rights under the contracts and legislation governing their living arrangements*” is a service that has been provided to members of the ARQRV over many years – for the small cost of a membership fee.

Enough of splitting hairs! The article is both misleading and annoying, and the Association has expressed its displeasure about what has been written and, more importantly, about the fact that the Government has given such a huge grant, without apparently giving any consideration to the fact that the ARQRV has been doing that work for residents in Queensland retirement villages for over 20 years. The Association could certainly do with such a grant, especially as we feel, now, that we would benefit from having a part-time administrative officer, but do not have sufficient funds to afford that luxury. Having expressed our displeasure with the Minister's staff, in no uncertain terms, we can only move forward now and try to find the positive aspects of this new development.

If the PAVIL staff are successful in helping residents with their problems, then this could help to relieve the workload carried by ARQRV Committee members. Whatever reduction, if any, in our workload, resulting from this new development with Caxton, will be more than welcome.

When it comes to promoting ARQRV membership to residents who have become aware of this new, free service, we can put three strong arguments in favour. First, the ARQRV offers much more to its members than advice and assistance in the event of difficulties: there is the quarterly Newsletter, full of useful information; village visits undertaken as and when possible, during which residents (members or not) can ask questions related to their village life; the Association has developed a "model" Village Residents' Constitution for use by members who request it, as well as offering comments on existing constitutions; and further, the Committee is developing a Residents' Committee Training Syllabus and booklet (this project has been pushed aside because of more urgent tasks, but will be resumed as soon as possible).

Second, on the question of offering advice and assistance, the Caxton employees are new to the job and will be relying heavily on advice from their legal contacts, who happen also to be legal advisers to Operators, so this advice will, to some extent, be influenced by that divided loyalty. Third, the ARQRV has been "in this business" for 22 years now, and has not only an extensive knowledge of the Retirement Villages Act 1999 (Qld) (The Act), but also of Tribunal Decisions over that length of time, which have a bearing on how the Act is interpreted. This depth of knowledge cannot easily be replaced and cannot be emulated by "a new chum on the block".

Having said that, we wish Caxton's PAVIL success in helping residents in distress. At least the Government's granting of these funds is an acknowledgement that a number of retirement village residents do have complaints and are indeed in need of legal advice.

Update on IT Restructure

To update members on progress:

- The document storage facility is complete and Stage 1 of the scanning of archived documents (files going back over more than 20 years) will have commenced by the time this Newsletter is finalised.
- The email distribution facility was used for the "February" Newsletter, with only a minor hiccup: a few members had difficulty opening the Newsletter. A slightly different procedure will be followed this time, in the hope of avoiding that glitch.
- The Website Redesign development has progressed and the Committee has been kept informed of developments. The next phase, that of transfer of content and creation of new content is not far off, and then it will be ready to go live!
- The Membership database has caused some headaches. As mentioned last issue, BlueDog Web Design, and the ARQRV Committee, are committed to achieving the highest level of accuracy that is possible. The database is very complex, and it is taking longer than we had anticipated, to "get it right".

As suggested in our last issue, you should continue to visit the Website and look for changes. When the restructuring has been completed and is fully operational, members will be advised and will then be able to gain access as appropriate.

Lend Lease

In our February Newsletter, having reported on the successful conclusion to the water rebate problem, we expressed a desire to work together with Lend Lease to restore harmonious and mutually-beneficial communications. It is good to be able to report that this has already begun: the ARQRV attended a meeting in May with several senior Lend Lease representatives, during which the discussions were positive and productive.

Leaders' Summit 2014

The ARQRV Secretary attended a Retirement Village Industry "Leaders' Summit" in Sydney on 20 and 21 March, organised by the publisher of *villages.com.au*, the Australia-wide, one-stop web site with information about retirement villages,

aged care, home care and other related services. The Summit subject was: *Retirement Villages and Aged Care at the Crossroads – the Next 5 Years*. Copied below is a part of the Secretary's report to the ARQRV Committee, which may be of interest to a number of members.

It was a full programme, with some interesting speakers. The general concentration was on sales of villages or manufactured home parks or of residential units, and also on care facilities. But not exclusively. There were a few speakers who emphasised the importance of considering residents!

Some points of interest:

Senator Mick Fifield referred to the trend, now, for aged care to be on a user-pays basis (provided they can afford it).

Ray White: the market in NZ has been strong for two years, but in Australia has only picked up, during the recent four months. Chinese buyers are strong in NZ. In Australia, over last three months, institutional buyers have returned to the market, having been silent since 2008.

Terry McDonald, President of ARVRA (Australian Retirement Villages Residents' Association, the national body that was established some three years ago by our President and funded for two years by the ARQRV) said the ARVRA role was to communicate and support the views and needs of residents, and that it was essential for the retirement village sector to be transparent. He then referred to working with Mary Wood, of the Property Council (PC)'s Retirement Living Council (RLC), in dealings with the Government, to show that residents and operators are united. (Afterwards, Terry asked me "how did I go?". After some hesitation, I suggested that he had tended to "suck up to the operators" somewhat. He coped with that comment, and we are still friends, but it would appear that Victoria, where he comes from, has a better relationship with the PC's RLC than Queensland does.) *[This is not surprising, considering the aggressive introduction into Queensland by the RLC's publication in the Courier Mail of an extremely critical article related to the ARQRV's presentation to the Government Working Party on the Retirement Villages Act Review. Refer STOP PRESS Article accompanying Newsletter No. 85 in February 2013.]*

Andrew Giles, former CEO of the Retirement Village Association (for four years) observed that, prior to its being absorbed by the PC, it had been

fragmented, with not-for-profit organisations not involved, whereas now there was one powerful industry voice and the sector was positioned for growth.

Mary Wood, RLC, the village peak body, claims that the Deferred Management Fee (also known as the Exit Fee) is "a great financial model for those on lower incomes". *[Yes, that's what she believes! which contradicts the attitude of the vast majority of residents and fails to recognise that Exit Fees are the most controversial issue in any Residence Contract and are the prime deterrent to many residents seeking to exit their village!]* Mary referred to the "dead weight of government legislation" (which confirmed the PC's attitude of resistance to the ARQRV's recommendations for amendments to our RV Act).

Robyn Batten, Executive Director of Blue Care, presented a refreshing and more balanced approach. She described "the perfect manager" as a people person, one who was involved with and integrated with residents; must be dedicated; continuity of employment important and operators must not lose sight of the common man. "We haven't got the peak body right yet" (referring to the Property Council). "The resident is the most important person in the village; they are the life of the village".

A further, refreshing view came from Peter Wilton, from the UCLA School of Business – Marketing, who spoke about Customer Loyalty. He said that, having heard some of the presentations, and looked at promotions on web sites: "it's all a real estate story"! What about the customer? You need to concentrate on the resident or potential resident ... "How well do you know me? How valued do you make me feel? How much do you care? How responsive are you to my needs? How reliable are your promises? ... Your Industry is too focused on physical assets and not sufficiently on the customer." ... *(I wonder how many operators took any notice?)*

There were interesting comments from Martin Cotterell, Ingenia, about manufactured home parks; a totally different concept from retirement villages: the resident buys the home but not the land, and when leaving, can move the home or sell it.

Phil Usher, Tall Trees, described their approach, of "Flexicare": residents can remain in the village and receive the care they need up to and including palliative care. Consideration for residents and their needs was very evident.

In personal conversations, I mentioned to both Mary Wood and Chris Baynes (organiser and promoter of the Leaders' Summit) that, whilst it was evident that the majority of retirement village residents were happy, there were a number who were not, and these people must not be overlooked simply because they were in a minority: some of their concerns were serious, and often deleterious to their health, and such problems needed to be addressed. Mary noted this. Chris, however, was more positive in his response and, in fact, had intended to make such an observation in the subsequent proceedings, but time ran out.

The Leaders' Summit reinforced the view that villages.com.au presents a balanced view of the Industry, and has introduced many initiatives beneficial to residents whilst still recognising the need to maintain a viable industry. [For example, in conjunction with the ARQRV, villages.com.au has developed a Costs of Sale proposal where operators may list on the national website units available for sale or resale for a one-off cost of \$200 per listing payable by the operator at time of listing and reclaimable from the resident upon the sale. The expectation is that this national listing will enable far better comparisons by prospective residents and also expedite resales. Residents should encourage their operators to use this service.]

Retirement Villages Act – Update on the Review of the Review

Two further submissions related to the Review of the RV Act have been requested by, and submitted to the Minister, on: a “Compulsory Buy-back Clause” and “Bad Behaviour”. With regard to the former, the ARQRV has proposed a compulsory buy-back after nine months (which is expected to receive strong resistance from the Operators). As for “Bad Behaviour”, in effect, ‘bullying’, it was not difficult to tabulate examples of this, demonstrated from the many complaints the Association receives from members about management and operators. It is at least encouraging that the Minister has sought input on these two problem areas of retirement village living. But there are so many more that are not receiving such attention.

As advised in our previous Newsletter, the Ministerial Working Party reviewing the RV Act has completed this task, and produced a comprehensive Outcomes Report which will soon be available on our Website. The next stage in the process will be to produce Regulatory Impact

Statements which will determine the Industry responses to a number of key Recommendations from the Review. The first Statement deals with Closure of Villages and is in draft form. Although Village closure is a topical issue, the ARQRV is concerned that other, more important Recommendations will not generate an individual RIS but merely be grouped together in a conglomerate document. For example, Gleneagles on the River, a high-rise development by a not-for-profit organization, and subsequently sold to a private operator, is the only village that has undergone forced closure since the introduction of the Act on 1 July 2000. Although the residents of Gleneagles on the River were disadvantaged by this closure, much more significant problems arise daily in relation to payment of Exit Entitlement; the slow sales turnover and the lack of a buy-back clause.

Insurance

The question of insurance is becoming more and more complicated. The Association has been asked many questions, some addressing very hypothetical situations, on this wide-ranging matter. Key considerations include the definition of a capital item, ownership of fixtures and fittings, including skylights, carpets and solar panels, etc.. Moreover, the question of public liability cover for the Association for its officers (including Liaison Officers) must be considered. Rather than asking the Legal Adviser to look into all the variations, the Committee has decided, to avoid spending a huge amount of funds on that advice, to set up a sub-committee to look into this matter first, to narrow down the specific questions on which legal advice will be sought. The sub-committee will include a member from Wheller on the Park, with a background in insurance. The Terms of Reference for the sub-committee are now being drawn up and it is hoped that it will meet soon. For those who have asked specific questions, we ask their forbearance: it is going to take some time to draw a clear picture of the full situation, and to then get appropriate advice.

Pensioner Subsidies – no Progress

As reported in the May Newsletter, No. 88, the Association had written to each of the Minister for Communities, Child Safety and Disability Services (CCS&DS) (regarding the Pensioner Rates Subsidy) and the Minister for Energy & Water Supply (E&WS) (regarding the South-East Queensland Pensioner Water Subsidy). A reply was received from the Office of CCS&DS, repeating what had been stated in our letter and also

referring to local government legislation which defines a property owner as a *'registered proprietor of freehold land'*. The Association then wrote to the Attorney-General and Minister for Justice, on the grounds that denying pensioners in leasehold or loan/licence retirement villages these discounts was not true justice, and suggesting a suitable change to the definition to resolve this matter. The Attorney-General simply passed our letter on to the Minister for Housing & Public Works (H&PW) (the Minister responsible for administering the Retirement Villages Act). As already noted in the May Newsletter, the Parliamentary Committee reviewing the Retirement Villages Act recently recommended that the Minister (H&PW) ask relevant authorities to investigate whether these subsidies can be extended to include pensioner Residents of retirement villages.

A reply from the Office of E&WS got lost in the post and, belatedly, that has now been received, by email. You may guess what is coming ... they forwarded our letter to the Minister for H&PW, as did the Attorney-General!

Are we going around in circles? The matter is being tossed from one Ministry to another, or filed in the "Too Hard" basket. But we will persevere.

Just before finalising this Newsletter, a response from the Office of H&PW informed us that responsibility for administering both of the subsidies in question is with the Minister for CCS&DS. A further letter from the CCS&DS Office informed us that the three Ministries (CCS&DS, H&PW, E&WS), plus Smart Service Queensland are *"working together to examine the financial and administrative implications"* involved: Further, *"any proposed changes ... will need to be considered by Queensland Treasury and Trade in the context of the government's overall policy and budget priorities"*. The ARQRV will now try to convince these people that most of the pensioners on whose behalf we are writing did receive these subsidies before they moved into the retirement village and therefore the government has made considerable savings by not providing them.

Budget time again!

Check if yours complies with the RV Act

Many residents new to a retirement village believe that their monthly fees will not be increased by more than the CPI. This is not so.

Certain items of expenditure (see RV Act s107) are not linked to the CPI. These are: rates and taxes, salaries and wages, insurance premiums or excesses, and Maintenance Reserve Fund (MRF)

contributions. Note, however, that RV Act s107A prescribes that before increasing such a charge, the Operator must consider whether there is a more cost-effective alternative. All expenditure items that fall outside the s107 listing are covered by RV Act s106. In any properly prepared Budget, s106 items and s107 items are shown separately.

The CPI cap applies to a figure referred to as the Total of General Services Charges (*tofgsc*) (see RV Act s106(2)(b)). The relevant CPI figure is that for the March quarter over the March quarter. This year, that figure is 3.1%. To calculate the *tofgsc*, which needs to be done for the year in question (FY 14/15) and also for the previous year (FY 13/14), take the following steps:

1. Identify those s107 line items which have increased beyond the CPI (3.1%) and add them up.
2. Deduct that figure from the "Total Expenditure" (i.e. the total of all s106 and s107 items). The result is the *tofgsc*.

Next step in the Compliance Check is to calculate the percentage change in the FY 14/15 *tofgsc* over the FY 13/14 *tofgsc*. Sometimes there is a decrease. If the increase is more than the CPI (3.1%), then Residents are entitled to vote, by Special Resolution (SR), individually on any s106 line item that has increased by more than the CPI (SR voting requires 21 days' notice in writing of the Motion, and at least 75% of residents entitled to vote and who vote in person, by proxy, by power of attorney or by postal vote, voting in favour of the SR).

Depending on the outcome of those SR votes, the Operator may need to recast the Budget and, if significant changes arise from this, to convene another Meeting of Residents.

Frequently, there are s106 line items that have increased by more than the CPI but the *tofgsc* increase is not more than that CPI figure, so the Budget is compliant, and residents do not have an entitlement to vote on those increases.

The Income Stream, ideally, should show fees income from Residents (RV Act s103), from former Residents (RV Act s104), from the Operator for units not under contract (RV Act s105) and, in a developing village, an Operator's contribution. In addition, MRF contributions should be noted (RV Act s20) and, if any of the village facilities are occupied and used by entities other than those managing the village, Rental Income.

Financial Documentation

The Retirement Villages Act (Qld.) 1999, provides, at several of its Sections, that financial statements,

of one kind or another, are to be made available to Residents' Committees and, in some cases, to village residents. The purpose, in all cases, is to enable residents and their committees or sub-committees to familiarise themselves with the village's running costs and to ask questions about them in an effort to understand them. It is, after all, the residents who pay those running costs, through their monthly General Services Charges, so it is entirely reasonable that they know what they are paying for.

The more dialogue and consultation there is between Residents and the Scheme Operator on the substance of the financial statements the better will be our mutual understanding.

General Services Charges (GSC) Budget

RV Act s102A deals with the GSC Budget for the coming year. The Residents' Committee can, at no less than 28 days' notice, require the Scheme Operator to provide it with a draft of the Budget at least 14 days before the start of the financial year. It is not a requirement that a copy be 'made available' to village residents who request a copy but it would be a very unreasonable village manager who refused to provide one to an interested resident. After all, one of the objects of the RV Act, at s3(2)(c), is "*to facilitate participation by residents, who want to be involved, in the affairs of retirement villages*". In addition, the Residents' Committee, which is elected to serve all residents' interests, can pass copies to interested residents. Any interested resident is entitled to satisfy himself or herself that the budget raises a 'reasonable amount', as required by RV Act s102A(2).

The Budget will necessarily include provision for the Maintenance Reserve Fund (MRF), as prescribed in RV Act ss97-100. Contributions to the MRF are determined by the Scheme Operator, who must give due regard to the Quantity Surveyor's Report and the purpose of the Fund. It is therefore essential that the Residents' Committee have the latest QS Report, so that they can monitor provision and expenditure.

Quarterly Statements

RV Act s112 provides interested residents with the opportunity to monitor the progress of the expenditure, to compare that with the Budget for the GSC, the MRF and the Capital Replacement Fund (CRF). If an item seems headed for an overspending, this can be taken up with the Scheme Operator then, rather than leaving this till the end of the financial year, when it is too late to do anything about it. A resident who asks for a quarterly

statement must be given one within 28 days of asking. For not complying with such request the scheme operator will have breached the RV Act and in this instance, attract penalty provision of 100 units per breach (a more detailed article on penalty provisions and legislative breaches will follow in our next Newsletter). These Quarterly Statements must be comprehensive and capable of being audited, not just a collection of notes.

Annual Financial Statements

RV Act s113 prescribes that an audited Financial Statement must be given to any resident who so requests: this statement is to be very comprehensive and must list every category of Expenditure and Income separately and the word category is to be interpreted narrowly. Collective descriptions like 'Administration', 'Building Works', 'Employment Costs' are too broad: they must be itemized. Scheme operators are allowed five months to supply these end-of-year Statements. In this case, the penalty provision is 200 points for each breach.

Substantial repairs and maintenance are properly chargeable to the Maintenance Reserve Fund but charges must be attributed to what exactly was repaired or had maintenance work carried out on it. Residents, or their Committees, must be able to compare what was done with what was forecast by the Quantity Surveyor and question any inconsistencies.

Annual Meeting

RV Act s131 prescribes that the Scheme Operator must call a meeting each year, to present the Financial Statements. The meeting must be called as soon as practicable after these audited accounts are available, and must give residents 21 days' notice.

It is logical, and demonstrates transparency, that copies of the audited Financial Statements either accompany the Notice of the Meeting or are made available to any resident who requests them as soon as the Notice of Meeting has been issued. As with Special Resolutions, the twenty one days stipulated give residents reasonable time to study the documents and be able to question and discuss them with the Scheme Operator at the Meeting: after all, that is surely the whole purpose of the Meeting.

The ARQRV position is that the audited financial statements should be issued to residents with the notice of meeting, although not all Operators agree that this is so. The Association is seeking clarification from the Residential Services Unit.

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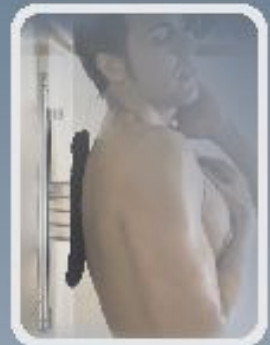
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Village Residents' Constitutions

The article in our May Newsletter on this subject elicited a number of enquiries from members, either for a copy of the ARQRV “Model” or “Guidelines” Constitution, or for comment on the existing Constitution for their Village. One thing that has struck us, with some concern, is the number of existing Constitutions that are called Residents’ Committee Constitutions. Put simply, a constitution governs only those people in its title. So, a Residents’ Committee’s Constitution cannot even cover how the Committee is elected, because that is done by all residents. What is needed should cover, first, Residents’ Meetings, and voting and then the election of a Committee, and how the Committee does its job. Another point of some concern is a suggestion that management may have been involved in drawing up a Constitution. This is not acceptable, and is in contravention of the RV Act.

Should you be considering drawing up a Constitution or amending an existing one, if you would like any comments or advice from the ARQRV, do not hesitate to contact Ernie Hatton, co-opted Chairman of the Village Constitutions sub-committee; contact details on this page.

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.

Other contacts

Co-opted Chairman, Village Constitutions sub-committee:
Ernie Hatton – Ph. 5412 1686
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ARQRV Legal Advisor:
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