

The Association of Residents of Queensland Retirement Villages Inc.

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NEWSLETTER

February 2015

Vale Phil Phillips



"Philip has asked me to let u know that he is in hospital so won't be doing the work for u ..."

(6/11/14: the work was to continue his 'ARQRV Odyssey')

Ten days later, he was gone!

We were devastated.

Philip Godfrey Phillips was born on 26 July 1926, in the United Kingdom. His primary employment was as a Finance Manager in the British Council. In 1974, Phil emigrated to Australia.

After retiring from public life in this country, Phil entered the Eden Lea Retirement Village and, soon after, identified the need for a robust consumer protection agency for residents; thus, the birth of his beloved ARQRV. He was elected to the inaugural Committee in 1996, initially as a Committee Member, followed by a

series of administrative roles on the Committee and then as President from 2001 to 2007, and subsequently as Vice President until he retired in 2014.

During Phil's 18-year involvement in the ARQRV, he was instrumental in developing the fledgling Association into the vibrant consumer protection agency we know today. His seven years as President were particularly noteworthy, heralding the development of a strong, positive Constitution and the recognition of the need for residents to receive quality support when processing disputed issues. Phil recognised the importance of this and, accepting the difficulty that he, as a lay person, was having in performing that function, he arranged the appointment of the ARQRV Legal Adviser, David Wise.

Phil was a modest and gentle man. Therefore, he would not want to be spoken about in the glowing terms that he deserved. As part of that special breed of persons dedicated to serving others, Phil placed integrity, tenacity and meticulous attention to detail above self-interests. All those who knew Phil, especially the hundreds of residents in Queensland retirement villages who benefited from his expertise and assistance, will be saddened by his loss. Phil is survived by his wife, Marion, daughter Carolyn, and son Derek.

We will miss Phil all the more because we will not see his like again. Rest in Peace, Dear Friend.

Editorial

It is with regret that we accept the resignation of Helen Gundersen from the Committee, due to personal commitments. We thank Helen for her contribution to the work of the Association during the months she served on Committee – and especially for her involvement in the IT Project.

Despite the increase in fees approved at the AGM in October, it is gratifying to note that donations have continued to flow in, totalling \$4,088 (at 31 January), since the beginning of October. Thank you to all those members who show their support in this way and, perhaps, thanks are still due to our *anonymous Aussie battler*? Also, despite some early concerns, the fee increase has not had a significant impact on our membership.

At this time of the year, membership renewals flood in and processing the thousands of forms, deposit slips, cheques and so on, is an enormous workload. Here is where we value the tremendous work of our Liaison Officers, many of whom do the banking and send the information in a simplified format to our Treasurer/Membership Officer for processing. Thank you to all our Liaison Officers for this assistance. If you, as a member, have concerns about your membership, please be patient, because we are a committee of volunteers, not all located within easy reach of each other, and it takes time for this work to be done. Even so, if you are concerned, do let us know, so we can check, in case there has been an inadvertent slip-up, which needs to be put right.

The Insurance sub-committee has been very industrious, investigating a range of enquiries from members, and has produced some articles to be published in the Newsletter, from time to time. The first of these articles is on page 3. In addition, it has produced an Insurance Guidelines document which will be available on the website shortly.

With apologies in advance, the May Newsletter will be late: the Editor will be AWOL during May.

An Australian Honour for Les Armstrong

It was very satisfying to read, on Australia Day, that the Governor-General had awarded a Medal of the Order of Australia (OAM) in the General Division to our President, for service to aged welfare advocacy.

The citation reads:

President, Association of Residents of Queensland Retirement Villages (ARQRV) since 2007; Secretary 2006; Committee Member since 2005; Developed a comprehensive submission on behalf of the ARQRV to the Queensland Parliamentary Committee Reviewing the Retirement Villages Act in 2012, relating to consumer protection. Honorary Life Member ARQRV 2013.

Initiated establishment and Inaugural Chairman of, the Australian Retirement Village Residents' Association, 2010-2013.

As one supporter, an operator's employee writing in a personal capacity, wrote: *I am a great admirer of Les, and believe that he is solely responsible for opening and fostering meaningful communication with Scheme Operators in Retirement Living. His statesmanship has created a stronger profile for the ARQRV and for the rights and welfare of residents.*

Members will be delighted and proud that this has happened. Congratulations, Les.

State Election and the New Government

The ARQRV sent a message to all members whose email addresses are in the database, concerning the recent State election. The email message highlighted what the LNP Government had done well for the retirement village community and what had not been done well.

This message provided vital background information for our members. We are sorry that we were not able to send a print copy to all members but that is just beyond our current financial and manpower resources. It is possible that your Liaison Officer was able to display the message for all residents to see.

Many of our members replied, thanking the ARQRV for the information and indicating that they would raise the matter with their local candidates.

The thrust of the message was also relayed to all the Members of Parliament. We received over 25 responses – one very detailed reply from the then Deputy Leader of the Opposition, outlining what initiatives their Party would take if they were elected into Government.

Now that the outcome of the election is known, and the portfolios have been allocated, the ARQRV is writing to the appropriate new Minister, introducing the Association and seeking a meeting to discuss the needs of residents in retirement villages. The stagnated Review of the Retirement Villages Act, launched by the previous Government, will be high on the list of subjects for discussion, in the hope that this Review will be revisited and that more sympathetic consideration will be given to the importance of consumer protection as an essential element of a viable industry. Specifically, we will be seeking more reasonable emphasis on the residents' perspective than was previously included; in contrast to the operators' perspective. The Outcomes Report arising from the Ministerial Working Party, which conducted the RV Act Review, together with related documents, will be available on the ARQRV website shortly. Another subject to be raised is the Review of the QCAT Act, about which little has been heard, despite the Association having presented a well-considered submission, seeking to simplify the Dispute procedures for elderly Applicants. That submission will also be available on the ARQRV website shortly.

Website news – www.villagers.org.au

Progress is still under way, updating some aspects of the Website. Don't forget: to log in, use your surname followed by your unit or villa number, no space between. The default password is 'arqrv1234'.

Web Hint:

The last time you went to the ARQRV website, did you see that red semicircle at the top of the page with a magnifying glass in it? If not, check it out next time. This is the doorway to searching the entire website to find that article you would like to read. For example, left click on the magnifying glass. The page drops down and the text [Search] appears at the top of the screen. Left click on the text [Search] and enter the key word that you would

like to search for. After entering the text, push the [Enter] key on your keyboard and your quest is under way to find that valuable information that is only made available to ARQRV Members. Why not try [Disputes]?

Another one to try is the Role of the Liaison Officer. This is under "Village Operations" and "Committee Documents", but the Search function locates it immediately. If you do not have a Liaison Officer in your village and you think you might be able to help the Association by volunteering for this task, do check to see what is involved, and if you are willing to help in this way, please contact our Secretary, Steve Murray, who is also Liaison Officer co-ordinator.

Insurance in the Village

How can a simple incident turn into a major concern? This question arose when an appliance owned by a resident malfunctioned and water escaped, resulting in damage to carpets and other fittings, owned by the village, within that unit and neighbouring units. Following the insurer's refusal to cover the loss, the village operator required the residents to pay for the repairs, referring to a particular clause in their PID lease agreement. The residents were forced to pay several thousand dollars, to cover the repair costs.

The ARQRV suggests that all members check with their insurance company to ensure that fixtures, which are not owned by the resident but for which they may be responsible, are covered under the policy, and if not, change the policy to include such cover; or change their insurer to one which will offer the cover required.

The ARQRV's insurance broker, Jardine Lloyd Thompson, has sourced an appropriate policy from QBE, which is competitively priced and will cover the unique position in which residents of retirement villages are placed.

Village Residents' Constitutions

The ARQRV "Guidelines" Residents' Constitution, referred to in issues 89 and 90, drawn up by the Village Constitutions Sub-Committee, can be adopted in full or in part by residents who wish to do so. This "Model" Constitution has sometimes incorrectly been referred to as the Constitution of the ARQRV. It should not be confused with the formal Constitution of the ARQRV, which applies only to this Association and was drawn up under the Associations Incorporation Act – a totally different type of constitution.

Scheme Operators, Residents and Probate

Recently, the processing of Exit Entitlements for former residents' Estates has been delayed in the situation where the Estate's Executor or the Scheme Operator has elected to seek a Grant of Probate. The following article contains important information and has been prepared, pro bono, by Fox Certare Partners. The Association recommends that you keep this article with the article *Have you put your house in order?* published in Newsletter No. 91, August 2014.

What is Probate?

Probate is granted in circumstances where the deceased person has left a will nominating one or more executors (or personal representatives).

A Grant of Probate is an official verification and approval from the Supreme Court that the particular will is the last will and testament of the deceased person, and that the person named as executor is authorised to act in that capacity.

Why is Probate required?

From a practical perspective, the most common reason why a Grant of Probate may be required is that the deceased person's assets are of *substantial value* (for example, over \$50,000).

Most organisations will insist on sighting a Grant of Probate before they will allow a deceased person's assets to be dealt with. Organisations implement this policy in order to protect themselves against possible liability following the release of the assets.

If an organisation unwittingly pays or releases an asset to a person not lawfully entitled to it, without sighting a Grant of Probate, there is a risk that the organisation may subsequently be subject to a claim by the real executor or beneficiaries of the deceased's estate for the value of the asset 'wrongfully' paid or released.

Any party holding assets of the deceased, no matter what their value, may insist on sighting Probate before allowing the asset to be dealt with. It is now common practice for a scheme operator to sight the Grant of Probate before paying an exit entitlement to the deceased's estate.

What protection does Probate afford the scheme operator and the executor?

Section 53 of the *Succession Act 1981* (Qld) ("the Act") only protects persons who make payments and dispositions (in good faith) to the executor/s

named in the Grant of Probate. Section 53 provides as follows:

53 Effect of revocation of grant

(1) Every person making or permitting to be made any payment or disposition in good faith under a grant shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the grant.

(2) All payments and dispositions made in good faith to the personal representative named in a grant before the making or the revocation thereof shall be a valid discharge to the person making the same; and a personal representative who has acted under a grant which is subsequently revoked may retain and reimburse himself or herself in respect of payments and dispositions made by him or her which the person to whom a grant is afterwards made might properly have made.

(3) Without prejudice to any order of the court made before the commencement of this Act all dispositions of any interest in property made to a purchaser in good faith by a person to whom a grant has been made are valid notwithstanding any subsequent revocation thereof.

[Emphasis added]

Simply put, the legislation only protects the scheme operator and the executor where Probate has been granted.

Procedure

If an executor needs to obtain a Grant of Probate, then the executor must apply to the Supreme Court for such a grant and in doing so must follow the process required by the Court. The application is a fairly formal procedure and the precise steps that need to be taken will depend upon the circumstances of each case. However, the steps that generally need to be undertaken are as follows.

Step 1

The executor must advertise the notice of intention to apply for a Grant of Probate.

Step 2

The executor must lodge an application for Probate with the Court which application will be supported by relevant documents (including the will and death certificate).

Step 3

The Court will examine the application and if the Court is satisfied with the application and all

Village redevelopment plans

A number of members in AVEO villages have expressed grave concerns about plans of their Operator to redevelop their village, in some cases with high-rise buildings on the site. Concerns include the potential impact on the value of their units, as well as the possible adverse change to the village environment, including increased traffic.

AVEO recognise that the redevelopment proposals may be controversial and some of the relocation options will require detailed analysis by individual residents. A sound approach for residents to take, through their Residents' Committee, is to remain rational and cautious in exchanges with the Operator. Furthermore, the company will provide, on request, to residents, legal advice to the value of \$2,000 per unit. Although there is a vast range of extant Residence Contracts, which will contain clauses specific to the individual residents, most contracts allow for the Operator to construct additional facilities and to provide the services necessary to administer and manage those facilities. Consequently, residents may have no legal recourse against the redevelopment proposal. Notwithstanding this, the extant Residence Contract between the individual and the operator remains valid and cannot be varied without agreement

between the resident and the operator. The ARQRV has requested that the company allow our Association to be involved in this process. If our offer is accepted, the Association will work towards ensuring that no resident will suffer any material disadvantage arising from the redevelopment.

Classification of Facilities

Most Public Information Documents (PIDs) list the extant facilities, plus those under construction and those to be considered in the longer term. Broadly speaking, class 1 facilities are those in the village at the time the resident moved in; class 2 facilities are those which are planned or under construction at that time; and class 3 facilities are those which the operator may introduce at a later date, subject to sales and marketing considerations, etc..

It is important to consider these classifications when residents are discussing any village expansion: i.e., class 1 and class 2 facilities are contractual obligations which the Operator must meet; and residents are therefore required to contribute to the repair, maintenance and operating costs of those facilities. Conversely, class 3 facilities would need to be introduced as a New Service, under RV Act s108, requiring Special Resolution voting approval by residents.



Annual Membership Fees Are Now OVERDUE

**Please note that the membership year is January to December.
If you do not renew by 31st March, your membership will lapse.
To join again will cost you more.**

Please complete the form on the reverse and follow the instructions to submit your renewal either: via your Village Liaison Officer, or by posting it, with your cheque or bank receipt, to the Membership Officer at the ARQRV postal address, as on the form.

EVERY MEMBER GET A MEMBER!

**The ARQRV Quarterly Newsletter is available by email.
You are urged to receive your copy electronically:
it will reach you earlier, and it will save costs for your Association.
Please give the email address clearly on the Membership Renewal form on the reverse.**

Disputes Update

Currently, there are 17 disputes being processed; 11 at the Preliminary Negotiation stage, five at Mediation and one post-Hearing seeking an Enforcement Order against the Operator.

A summary of the key elements for the s154 disputes follows.

A large number of residents at a village located in the southern Sunshine Coast area have complained about the aggressive, dictatorial management style practiced by the village manager, which is affecting their entitlement to peace and quiet enjoyment. In isolation, a dispute based primarily upon an alleged breach of a PID clause would be unlikely to be successful at Tribunal. However, this case also includes several allegations of verbal and physical intimidation and threats that the residents' right to reside will be terminated if they continue to complain about the management style. It is worth noting that a resident's right to reside cannot be terminated unless the resident has committed a material breach of their Residence Contract as prescribed in RV Act s53. Because complaining about the management style is not a material breach, the residents need not fear termination action initiated under RV Act s53.

A number of villages operated by a large, not-for-profit, church organization continue to rent, on a long-term basis, vacant units not under a Residence Contract. These "renters" live in the village without having paid an Ingoing Contribution; i.e., they do not have a Residence Contract giving them a right to reside, and therefore cannot be considered to be a resident. However, these "renters" are afforded full privileges of a Resident, notwithstanding that they do not meet the prescriptions of RV Act s9, entitled *Who is a resident?*; they have access to all the village facilities, and are able to participate in, and vote at, meetings of residents, contrary to the prescriptions of RV Act ss132 and 133 which deal respectively with who may attend a residents' meeting and who may vote at such meetings. Moreover, although RV Act s105 requires that the Scheme Operator must pay the full General Service Charge for any completed unit not under a Residence Contract, these payments are not being made and, to compound the problem, the rental proceeds are being misdirected into corporate funds. This case has industry-wide implications because a number of the "for-profit" operators are also accepting renters, who occupy/reside under a Residential Tenancy Agreement or a long-term guest/visitor's licence. Unlikely to be resolved at

Preliminary Negotiation Stage and will therefore proceed to Mediation.

A further four disputes, all against the same major operator, are questioning the inclusion in the General Services Charges Budgets of line items for the costs of provision of staff uniforms advertising the operator, rather than the village; travel and accommodation costs for staff to attend regional meetings and training courses; and large increases in administration and management costs for head office personnel.

A further three cases are in progress against a major operator who is offering only non-capital appreciation leases for the re-sale of units currently leased under capital appreciation conditions. Additionally, this operator is refusing to make appropriate allowances for the fair wear and tear considerations applicable during reinstatement; for example, the average first-up quote for reinstatement of units in these villages is in the order of \$50,000+. Similarly, costs of sale are in the order of \$15-20,000.

In another two disputes, another Scheme Operator is refusing to allow the Residents' Committee to access the documentation necessary to verify expenditure on GSC Budget line items; citing as his defence that residents are not entitled to view this "commercial-in-confidence" documentation. However, RV Act s112 prescribes that a resident may receive a quarterly financial statement; and also requires that the Scheme Operator must provide to the Residents' Committee a document explaining the expenditure involved in providing each General Service; and any increase in the expenditure for that same line item in the previous General Service Charges Budget. This case illustrates the intractable stance adopted by a number of Operators. By refusing to allow the residents access to invoices verifying expenditure, the Operator is committed to the much more onerous task of preparing an exhaustive written statement detailing the information which could have been extracted by the resident if given the opportunity to examine the invoices. RV Act s112(4) refers to this requirement.

Two of the five Mediation hearings relate to GSC Budget issues where residents have not been allowed to vote on s106 line item increases despite the *total of the general services charges* increasing above cpi. A further three Mediation hearings will seek to resolve whether or not a large increase in a Telecommunications line item is a New Service requiring Special Resolution voting by residents.

(continued on page 8 >>>)

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Disputes update (continued from page 7)

Another case involves a small, not-for-profit church village which has failed to comply with a Tribunal order issued in 2014, requiring the Operator to re-cast the General Service Charges Budget and to remove a number of line items unrelated to General Services provided to the village. Notwithstanding protestations to the contrary, this Operator has retained in the re-cast Budget the disputed line items. The QCAT Act places on the successful Party the responsibility for enforcement of Tribunal Orders. This enforcement process therefore requires the successful Party to obtain an Enforcement Order from a higher jurisdiction, i.e. the Magistrate's Court, and a request to that effect is now being processed in this post-Hearing Dispute.

Every year, hundreds of residents depart from Queensland retirement villages. Invariably, these former residents, or their estates, endure protracted delays in receiving their Exit Entitlements because of the extensive re-sale time frame. RV Act Division 5 deals with re-selling the right to reside. Section 58 discusses the necessary reinstatement work, s60 discusses the agreement on re-sale value, s65 requires the Operator to advise the former resident on the progress of the sales procedure and s67 requires regular up-dating of the agreed re-sale value. In the event that any one of these four Sections is breached, and provided that the former resident has been materially prejudiced by that breach, the former resident may apply, under RV Act s171, for early payment of the Exit Entitlement. An application seeking this early payment by-passes the s154 Preliminary Negotiation Stage and the s157 Form 3 Application for Mediation Hearing. We are pleased to report that recently we successfully negotiated a s171 payment, despite lengthy procrastination by the Operator.

Short Stories Requested about Village Life

Wim Boog, an ARQRV member living in North Mackay, is writing a book and has requested short stories from residents. He writes:

After years of disputes between residents or villages and a Scheme Operator, it seems that the residents as a group are missing out on continuity and consistency. There are many instances of breaches of the Act and 'new rules' that defy common sense.

The government which is supposed to implement and control the Act has failed to do so. It is felt that this has resulted in many disputes.

Rather than relying on the dispute system residents should concentrate on pushing the Government to police and enforce the Act.

I am looking for short stories from residents about what is happening in the villages and hope to use them in the beginning of the book.

The stories should be about one actual event (good and bad) with 300 to 400 words. One can use his/her own name or a pseudonym.

Just a few possible subjects; Illegal use of MRF, introducing new services w/o approval, bad budget procedures, ignoring the rights of residents with 'old PIDs', the practice of using CPI -budget to budget- instead of -actual to budget-, contractual issues when villages are closed.

Wim Boog (wiluboo209@gmail.com)

Please send any contributions direct to Wim, at the above email address.