

# NEWSLETTER

## No. 42 August 2003

[Constitution](#) - [Annual General Meeting 2003](#) - [Prime news](#)  
[Public information documents](#) - [Direct debits](#) - [Accreditation](#)

### Constitution

The general meeting to change the Constitution was held, as arranged, on the 17th July 2003. Everyone attending the meeting was given a copy of the new Constitution as proposed by the Executive Committee.

The President began proceedings by going through all the changes proposed by the Committee, which had been on the Association's web-site, comparing the existing Constitution with the proposed new one, explaining what the Committee saw as the implications of the changes and the reasoning behind them. He then invited questions from anyone needing clarification of anything he had said. He then exhorted members to take part in debate and express their views quite openly but be prepared to accept the decision of the meeting.

The adoption of the new Constitution was moved by Rich Squire and seconded by Jim Wales, both of the Executive Committee

There was no opposition expressed to the relatively minor amendments, the omission of clauses in the existing Constitution which simply had no practical relevance to our Association. Similarly, there was no opposition to the proposal to remove some authority from the Executive Committee and repose it in members, to be exercised by them at a general meeting.

The question of restriction of proxies attracted a good deal of discussion. It had to be borne in mind that the existing Constitution already denied proxy votes at general meetings and for special resolutions, such as to change the Constitution. In those circumstances it has been and still is, to put it somewhat picturesquely, a matter of bums on seats!

So the use of proxies has, in practice, been confined to electing members to the Executive Committee at annual general meetings. Even so, there has rarely been need for a vote or ballot because there has rarely been more candidates than positions to fill.

From the experience of the past couple of years the meeting recognised that the unrestricted collection of proxies had the potential to swamp the voices and votes of those actually attending the meeting and also of the genuine, unsolicited, proxies of other members around the State. But the meeting was also well aware that to abolish proxies was to deny members who could not attend a meeting the right to vote on Association matters. Since we extend from the Tweed to Cairns a considerable majority of members cannot attend, wherever the meeting is held. So what to do? "Ay, there's the rub" as

Hamlet lamented.

The choice was to leave matters as they were, ie unrestricted proxies, which the meeting was evidently reluctant to allow; to abolish proxies altogether, which was also not favoured, or to reach a compromise between the two, as the Committee had proposed. When put to the vote, the motion to adopt the Committee's new Constitution was carried by seventy one votes to one. There were no abstentions. Thus, we hope, we can put the Constitution back to bed for another ten years or so

It was suggested during the debate that the Association could not restrict proxies. Actually, at common law there is no right at all to vote by proxy. An organisation can itself determine whether there is to be proxy voting and the rules

that apply to it. Also raised was the subject of postal voting. As no notice had been given of any proposal to include postal voting in our Constitution it could not properly be admitted in the debate. The Associations Incorporations Act, under which we are registered, makes no provision for postal voting, which is presumably why our old Constitution did not do so. We are constrained to observe that it, too, can be manipulated as can proxy voting.

## **Annual General Meeting - 2003**

The annual general meeting for the year 2003 will be held as follows:

**When Monday 22nd September 2003, 9.30 (refreshments) for 10.00 am**

**Where Maroochydore RSL Club,**

**Memorial Avenue off First Avenue**

**Maroochydore Qld. 4558**

**In the "Ripples Room", lift to 1st Floor**

***RSL multi storey car park (free) opposite.***

We can guarantee that this venue will be far more salubrious than that at which we held the "Constitution" general meeting in July!

The Agenda for the AGM will follow the usual format and will include a report by the President, a sort of "State of the Union" address if you like, and a report on the state of our finances and membership by the Secretary. We, that is your present Committee, will want you to tell us if we have been pursuing policies of which you approve. We do not have reason to doubt it but we nevertheless seek your approval and encouragement. There will of course be "other business" at which members may raise issues of their choosing. We do not wish to stifle discussion.

We very much hope that the restriction of proxies and the consequent increased importance of the voices and votes of those actually at the meeting will result in a large and involved Annual General Meeting this year

Once again we shall be electing the Executive Committee for the ensuing year. With a couple of changes, members of the present Committee, which a year ago described itself as the "reform team", again offer to represent you. The team:

President: Phil Phillips, Edenlea

Vice-President Keith Topham, Immanuel Gardens

Vice-President Ken Woodhead, Hibiscus, Tewantin

Treasurer Rich Squire, Hibiscus, Chancellor Park

Members Ivy Laundon, Hibiscus, Buderim Meadows.

John Sullivan, Caloundra

Jim Wales, Laurel Springs

Joan Petherick, Laurel Springs

Alan Williamson, Hibiscus, Tewantin

Any member may of course nominate themselves or another member for any position on the Committee and a nomination form for that purpose is shown on the [AGM Forms page](#). It should be completed as shown.

The form allows for the nomination of a Secretary but the law does not actually require the Secretary to be a member of the Association. Our present Secretary, Bill Runciman, though no longer residing in a village, has indicated that he is willing to continue and it would be a little foolish of us not to seize on that. On the same [AGM Forms page](#) is a form by which, if you will not be attending the annual general meeting yourself, you may appoint a member who will be at the meeting to be your proxy to vote on your behalf. Remember to satisfy yourself that the person you wish to appoint is not already proxy for two others. The number of proxies a member may exercise on behalf of others is now restricted by our Constitution to two.

## **Prime News**

Some, at least, of our members will be interested in the following article from the "Australian" newspaper's "Stock Watch".

*Retirement village property developer Prime Life continued to surge in the wake of the placement to Robert de Crespigny and Ron Walker. (don't fret about the meaning of that) The presence of these two has given new confidence to the stock, which has been plagued by litigation, bad press, and scepticism over its accounts..... Walker's Albany Bank lent the company \$10.8 million and took a placement and options at a huge discount (\$1.53m.), reflecting the market's dubious view of Prime Life."*

Prime Life took over the management of many retirement villages from Co-operative Retirement Services two or three years ago and since then have been acquiring

management contracts from other village owners. But the owners of some villages which used to be managed by Prime Life have since dispensed with their services. They're not universally popular it seems.

## **Public Information Documents**

A more ominous development is that a major player in the retirement village management stakes tried to use Sections 36 and 37 of the Retirement Villages Act to make retrospective changes to existing residents' contracts.

Three years ago we drew the then Minister's attention to the very distinct likelihood that some scheme operators would try to use those Sections in an attempt to change residents' contracts to their (residents) disadvantage. and were assured by the Minister that those Sections could not be used in that way. No doubt, as part of the current review of the Act, Sections 36 & 37 will be re-written to make sense, as we then suggested, and thus to prevent such operations by scheming scheme operators!!

That particular management company was persuaded, at a hearing held under the auspices of the Commercial and Consumer Tribunal, that their notices to residents in relation to Sections 36 and 37 were invalid and it was constrained to withdraw them.

## **Direct Debit**

In our February Newsletter we took Australian Retirement Homes to task for its arrogance in trying to compel residents to change their customary method of paying their recurrent fees to paying by direct debit. We suggested that it was unlawful under Section 50 of the Queensland Fair Trading Act.

We ought now to report that ARH seem to have accepted the error of their ways and relented. In ARH villages with whose residents we have been in touch, that attempt to compel direct debit seems to have been abandoned. We trust that not only ARH but other scheme operators are drawing back from such arbitrary impositions and paying heed to the Trade Practices Act and the similar State Acts.

## **Accreditation**

A year ago the "Residential Services (Accreditation) Act" was enacted by the Queensland Parliament. Its purpose, along with the Residential Services (Accommodation) Act, is to regulate the sort of residential services provided by hostels, boarding houses and similar establishments. A Regulation, one solitary regulation, was made pursuant to the Accreditation Act saying that the Act does not apply to retirement villages..... providing that, by July 2004, they are accredited under Aged Care Queensland's voluntary accreditation scheme.

One could be forgiven for thinking the Regulation is just a plug for Aged Care Queensland. As we have said before, if scheme operators want accreditation let them have it, providing they do not try to foist its cost on to residents. We have heard, however, of scheme operators, encouraged by that Accreditation Regulation, telling residents that they must pay for the accreditation from their General Services Fund because accreditation is

required by law. We say most emphatically that ***IT IS NOT REQUIRED BY LAW*** and even if it were that does not mean that residents would have to pay. Accreditation is not a service to residents so do not be conned into paying for it.

Two of the main objects of the Retirement Villages Act (Section 3) are:

*"to promote fair trading practices in operating retirement villages and in supplying services to residents"* and

*"To encourage the adoption of best practice standards by the retirement village industry."*

Then why, oh why, do we residents have always to be on the alert for unfair trading practices and far from best practice standards by scheme operators and their managements?

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[Back to top of page](#)