

NEWSLETTER

No. 41 June 2003

[Constitution](#) - [Review of the Act](#) - [Disputes Tribunal](#) - [Meetings](#)
[Budgets & Accounts](#) - [Accreditation](#) - [Bodies Corporate](#) - [Eviction](#)
[Economics of Retirement Village Living](#) - [Communication](#)

Constitution

Pride of place in this issue goes to the Constitution. As members will know, the Executive Committee is proposing some changes to the Constitution. It is not possible to list pages and pages of proposed changes in a newsletter but we have shown them on our web-site. There you can find the Constitution as it is now and also the new Constitution as proposed by the Executive Committee. There are no great fundamental changes but some are rather more than just cosmetic.

The Committee has convened a general meeting to be held as follows:

When. *Thursday 17 July 2003, starting 10.00 am.*

Where **Chancellor Park Primary School,**

Scholars Way, off University Way

Sippy Downs near Buderim Qld. 4556

We originally arranged to hold the meeting on 26th June and posted that date on our web-site but a number of events combined to make it necessary to postpone the date. The new date does now appear on the web-site. We hope nobody has been inconvenienced by the postponement.

The main purpose of the present Executive Committee is to make unrestrained proxy gathering, or stacking, impossible. As evident at the last couple of Annual General Meetings, to allow unlimited proxies devalues the voting rights of those who actually attend the meeting. That discourages members, who feel their voices are of no avail, from attending meetings. We, the Committee, believe that should be prevented. We have proposed that proxies be restricted so that a person may exercise a vote on behalf of not more than two other members. But it is for the general meeting to decide. The meeting may decide to prohibit proxies altogether or not to restrict them at all.

Another matter of importance is that we propose to remove the power of the Executive Committee to expel members from the Association. We propose that only a general meeting of members shall have that power. After all, if only a general meeting of members has the power to elect members of the Committee then it seems proper that only a general meeting should have the power to remove them or to expel members from the Association. A committee has only that authority delegated to it by the membership through general

meetings.

Under the Associations Incorporation Act, the only person whom the Executive Committee may remove from Office is the Secretary, whom the Act used to describe as the Public Officer.

If any member has any views on the Constitution or proposals he or she would like to put, please write to us; we undertake to make your views known at the meeting. We hope that as many members as possible will attend because it is members who will make the decisions, not the Executive Committee. The Committee may propose or move whatever it likes but if a general meeting does not approve then that's it. We think it's called democracy!

Review of the Act

The review of the Retirement Villages Act has been going on for almost two years now, at what might euphemistically be described as an unhurried pace! The momentum now seems to be increasing and we have expressed the opinion that we do not now want some last minute haste to jeopardise the comprehensiveness of the review.

During May of this year we were sent forty one pages of "issues papers" which contained the options that the Department of Fair Trading saw as open to Government on each of those issues addressed. Even so there were many issues of importance to residents that were not canvassed at all in those issues papers.

Subsequently, representatives of your Association met with representatives of village owners and officers from the Department of Fair Trading to discuss the content of those Issues papers, which had been prepared by the Department as a result of submissions which had been made to Government by both the owners' lobby and your Association.

Some of the options canvassed in the issues papers have our support but some do not. We haven't published them because they were only possibilities which the Department of Fair Trading wished to have discussed. But we have published on our web-site our observations on those options. Our observations are yet another restatement of our position, reached after much soul searching over a number of years. The merits of our case, our search for greater equity, have not diminished. Indeed they have increased in the light of increasingly unconscionable residence contracts being drawn up scheme operators' lawyers.

What is dismaying is that some of the options which have been put forward (not by us!) for Government's consideration, particularly but not exclusively in regard to repairs and replacement, espouse voluntary "codes of conduct", and even suggest that villages should be allowed to develop their own guidelines to determine those matters, that is to say to decide "who pays for what". That would be laughable but for the fact that it would also be disastrous for residents. Voluntary codes of commercial conduct are noted more for being breached than for being honoured.

We were sorely disappointed four years ago when Government sought refuge behind "Heads of Agreement" in justifying the lamentable lack of resident friendly provisions in

the 1999 Act. We are now perturbed by the thought that Government might again be persuaded to abdicate its responsibility by succumbing to the "codes of conduct" escape route, whereby it could to some extent blame any failure of such codes on the failure of others to abide by them.

We don't want any code of conduct to be voluntary. We want enforceable legislation and clear, unequivocal and mandatory guidelines in Regulations made under the Act.

What will happen next is that the Department will prepare a paper to be submitted for the consideration of the Minister who will, in due course and subject to further submissions, take her recommendations to Cabinet. It is unlikely that there will be any amendment to the legislation before the end of the present calendar year.

Meanwhile we should not relax our vigil. We must and will continue to press our case for comprehensive legislative change and for the outlawing of those village practices which any fair minded person would find unconscionable. If the residence contracts we are required to sign continue to be increasingly oppressive, if the Retirement Villages Act amendments fail to provide significant relief from them and from the other indignities imposed upon residents by scheme operators and their managements, then that failure is clearly to be sheeted home to Government.

Disputes Tribunal

The former Retirement Villages Disputes Tribunal has been superseded. From the 1st July this year there will be the "Commercial and Consumer Tribunal", a composite Tribunal which will hear cases under a wide variety of unrelated Acts including the Retirement Villages Act.

We believe that, on balance, the new Tribunal will not be disadvantageous for retirement village residents. Indeed, there are some things which may operate to residents' advantage.

Except in circumstances where the Tribunal thinks legal representation is highly desirable, neither party before the Tribunal will have an automatic right to be legally represented. That does not mean that parties may not be represented at all, only that, generally, the representative can not be a lawyer. Undoubtedly scheme operators will get legal advice, as they always have done, before they front up, so we shall have to make sure that we continue to be competently advised.

Another feature of the new Tribunal of advantage to residents is the ability to bring "class actions", where a resident or residents will be able to apply to the Tribunal on behalf of themselves and on behalf of other residents with an identical interest

Yet another feature is that hearings will not be closed.. Except in cases which the Tribunal rules should not be open, members of the public can be admitted. We hope that will lead to other residents going along to hearings, thus showing some moral support for fellow residents.

At present the Retirement Villages Disputes Tribunal administration seems to have been in "slow ahead". According to the Tribunal's web-site, no Tribunal Orders seem to have been

made since June 2002. Certainly some residents have been awaiting decisions for months and months. Similarly, there are applications by residents which are still awaiting a hearing date.

Matters which drag on for so long, with no information forthcoming as to what might be happening, become very stressful for elderly people, who are naturally anxious to learn of the outcome. As an eminent English jurist, Lord Chief Justice Goddard, once observed: "***Justice delayed is justice denied***". It is very much to be hoped that the new Commercial and Consumer Tribunal will have high regard for that maxim.

Meetings

The earlier Retirement Villages Act, the 1988 Act, had little to say about residents' committees and meetings but the 1999 Act attempts to legislate on when meetings can be called and by whom. We have made decided objections to some of those provisions.

Why should a scheme operator be able to call a meeting of residents at short notice, even as short as two days? If it's urgent information for residents then it's a matter for mail-boxes. A meeting at short notice might be called because the scheme operator wants residents to vote on something. In that case it must be a special resolution at twenty one days notice.

The following possibilities, even more invasive of our rights and privacy, were canvassed for inclusion in the review of the Act.

** That an operator should have the **right** to attend and to address residents' meetings.*

** That residents' Committees be **required** to keep records of its business and that such records be available in some circumstances (unspecified) to the scheme operator.*

Such requirements would be outrageous and undoubtedly a recipe for abolishing committees and meetings of residents. You may rest assured that we have expressed our absolute opposition to any such "Big Brother" provisions.

Budgets and Accounts

Another very important issue is our recurrent payments. It became apparent on a number of occasions during our recent Issues meeting with the Department, that many problems in relation to the General Services and Maintenance Reserve Funds and the Consumer Price Index would be resolved if there were early Budget meetings between residents or residents' elected representatives and management.

Objections have been raised that residents wouldn't understand what was involved. Well, not all retirees are innumerate and some, particularly perhaps ex-accountants in the village, could teach most managements a thing or two about accounting precepts.

Comprehensive details of our responses on those issues and others can be found on our web-site in our responses to the Issues Papers.

Accreditation

We see that the merits of "Accreditation" are still being propounded by Aged Care Queensland. As we have remarked before, accreditation may be of some advantage to village operators as a marketing tool in attracting the attention of prospective residents but it does not bestow any real benefit upon residents, neither existing nor prospective. And it doesn't guarantee any particular standard of facilities or service.

So, if scheme operators want their village to be thus accredited then let them do so, we don't see it as doing any harm. However, accreditation is not a service to residents, as contemplated by Section 12 of the Retirement Villages Act, so do not allow the cost of accreditation, which can be a few thousand dollars, to be charged to your General Services Fund - or any other Fund for that matter.

Bodies Corporate (Freehold)

On the Sunshine Coast, annual fees being charged to retirement village bodies corporate by members of the Queensland Institute of Body Corporate Managers, (QIBC) are currently about a hundred dollars p.a per Unit (\$2.00 a week). We learn that a non QIBC manager, who manages some retirement village bodies corporate on the Coast, is contemplating increasing its fees to a hundred and eighty dollars a year (\$3.50 a week). Unless you are contracted to do so, refuse to pay the increase and let that body corporate manager know that when his contract expires you won't renew it but will appoint somebody else instead. Remember that body corporate manager contracts are restricted to three years by the BC&CM Act.

Eviction

A couple of residents asked management for an estimate of the payout they would get were they to leave the village. They then went on holiday and when they returned from holiday they were told by the salesman that their Unit had been sold. They were of course flabbergasted. Asking for information about payout figures is not tantamount to giving notice of termination of residency. But management told them they had to leave. The couple sought remedy by application to the Disputes Tribunal under Section 169 of the Retirement Villages Act.

At the Tribunal hearing the scheme operator and the salesman realised that their defence would fail and withdrew their eviction notice. Another case of a scheme operator thinking that he could make timid residents submit. But these residents were not so timid; they remain residents.

Economics of Retirement Village Living

The University of the Third Age is going to run a seminar devoted to the economics of retirement village living! It will be held on Friday the 25th July at the U3A campus at 171 Eumundi Road, Noosaville. (opposite the Car Wash) It will start at 9.30 am. and go on for about a couple of hours. The speaker will be Mr. Bill Runciman, Secretary of this Association; ask him lots of questions! There is an entrance fee of \$1.50 and tea and

biscuits will be provided.

There must be many elderly people who would like to be well informed on the subject from a resident's viewpoint and there is no one better equipped to impart that information than Bill; a veritable walking PID! Our members are welcome to attend so, if you can, do put in an appearance – and take a non-villager friend.

Communication

It simply isn't possible for us to communicate to our members, through the newsletter, all that is going on in the retirement village scene. But we do put it on our web-site, from which anything may be downloaded on to a computer and printed out. We urge those of you with computers and connection to the internet to disseminate as much information as you can to those of your fellow residents who are less familiar with the mysteries of Information Technology.

[Back to top of page](#)