

# NEWSLETTER

## No. 43 October 2003

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### **Annual General Meeting**

The Annual General meeting of the Association took place as scheduled on Monday 22nd September 2003 at the Maroochydore RSL club. Ninety two members attended the meeting which ran from 10.00 am until 11.50 am. It was a better attendance than anyone can recall. As the heading of this newsletter indicates, there is no change in either President or Secretary. In fact, the team which was elected last year has, but for one change, been elected for the forthcoming year.

One unusual motion was approved by the meeting, indeed the first of its kind - a life membership. No longer being a retirement village resident and therefore not able to be a member of the Association, Bill Runciman could not be elected to the Committee although it is within the terms of our Constitution and the Associations Incorporation Act, for the Committee to appoint him as Secretary. But it was seen as likely to be more satisfactory if he could be elected to the Committee as can any other member. So the meeting voted, without dissent, to confer a life membership on Bill Runciman.

The old Committee, now also the new one, was able to take a great deal of encouragement from the general tenor of the meeting, which certainly supported the attitude the Committee had been taking over the preceding year and the thrust of its newsletters.

### **Sections 113 and 131**

Section 113 of the Retirement Villages Act 1999 requires that scheme operators make available to residents annual audited financial statements within five months of the end of each financial year. However, if your contract or PID prescribes a period shorter than five months then you can hold your scheme operator to that period. If he does not comply it is a breach of contract and you can ask the Disputes Tribunal for an Order that your scheme operator give those financial statements to you in accordance with your contract.

Section 131 of the Retirement Villages Act provides that as soon as reasonably practicable after those financial statements are made available to residents, the scheme operator must call a meeting at which to present them to you. But he must give residents a minimum of twenty one days notice of the meeting. If he fails to do that then he is in breach of the Act

It is at that meeting that management usually also presents its budgetary estimate for the following year, even though that following year may be five months elapsed! Now, in

presenting that budget the scheme operator must also present to residents the actual expenditure for the preceding year. Unless this is done it is not possible to see whether or not proposed increases exceed the Consumer Price Index movement. But that is not all. A series of Tribunal decisions, from Schintler to Carlyle Gardens, (we report on the latter further on) have brought rulings on the procedure to be followed in presenting accounts to residents for the purpose of examining proposed increases in fees against the Consumer Price Index.

There has to be a number of columns, in which Section 106 items and Section 107 items are to be separately categorised.

Showing the estimated budget for the immediately preceding year.

Showing the actual expenditure for the immediately preceding year.

Showing the budget being proposed for the current year.

Any increase in excess of the CPI movement proposed for any individual S.106 item needs acceptance by a special resolution of residents. If your scheme operator departs from that procedure he is breaching the Act. Let us know.

It should be stated here, for the benefit of some scheme operators as well as residents, that the particular year over which the CPI increase is measured is the four quarters to the quarterly index last published before that annual S.131 meeting. Do not allow your scheme operator to back date any fees increase. If you pay your fees on the first of each month, you can insist on a calendar month's notice; more if your contract or PID prescribes a longer period of notice.

## **Salaries & Wages**

Section 107 of the Act details items of expenditure on which increases are not capped to the CPI movement. This is because they are, in theory anyway, imposed by external authorities, Council Rates for example. Included in Section 107 are salaries and wages **IF** they are payable under the Industrial Relations Act or a Commonwealth Act. That means just what it says and as far as we are aware there are no Industrial awards for Retirement village workers as such. But even in the absence of such award, some scheme operators are including wages and salaries under Section 107. In that way they try to increase salaries at will without having to keep within the CPI movement. We should tell our scheme operators that unless they can produce evidence that salaries and wages in our village have been determined under an award, that expenditure must be moved to Section 106, where it is subject to the CPI cap.

## **Sheer Perfidy**

We so often have to draw attention to the sharp practices and untrustworthiness of scheme operators. Here is an outstanding example of bad faith. Primelife, a major village management company, attended a mediation meeting with some residents of Carlyle Gardens village, at Bargara, near Bundaberg. Upon one issue they could not agree, so both Primelife and the residents agreed to refer the issue to the Disputes Tribunal and agreed

that both parties would abide by the decision of the Tribunal.

However, Primelife did not like the Tribunal's decision so they reneged on their agreement with residents and engaged their lawyers, Minter Ellison, (architects par excellence of unconscionable residence contracts and PIDs.) to seek leave of the Brisbane District Court to appeal the Tribunal's decision on the ground that the Tribunal had erred in law.

On hearing Primelife's application, the District Court Judge refused them leave to appeal. He refused on the ground that Primelife had undertaken to accept the Tribunal's decision and also on the ground that the Tribunal had not, in his view, erred in law but had reached a decision consistent with the Act and its relevant Sections. The judge ordered Primelife to pay the residents' costs. But what appallingly bad faith on Primelife's part. How can we possibly trust such scheme operators and managements?

## **Community Ambulance Cover Act.**

Most of us will be aware that as pensioners we have been entitled to use the Queensland Ambulance Service but have been exempt from paying the subscription. The new Ambulance Cover Act requires that the Service be funded not by subscription but by a levy added to electricity Bills. It has nothing to do with the consumption of electricity, it is just a way of collecting the tax to run the Ambulance Service. Centrelink Pensioners, DVA pensioners and persons holding a Queensland Senior's concession card will remain exempt from subscribing; their electricity Bills will not contain the levy.

But we have to warn you to beware of scheme operators who try to charge that levy to residents by charging it to their General Services Fund. Primelife (yes, again!) announced at Edenlea Village that residents would be required to pay it. But scheme operators will have to learn that residents will not pay it and if they persist they will find themselves again in the Tribunal. The ambulance levy is not a service to residents under Section 12 of the Retirement Villages Act.

On the 1st September 2003 we sought assurance from the Minister for Fair Trading that any such move to make residents pay would be outlawed. This is part of her reply dated 29th September:

***"Whether or not residents who enjoy an exemption under the Community Ambulance Cover Act 2003 are able to challenge operators passing on the ambulance levy to them, is a matter for which you should seek your own legal advice. If residents do not believe operators are entitled to pass on this levy the Dispute resolution process under the Act would be available."***

"If residents do not believe" it says! No way will the Minister or the Department of which she has charge say what they believe. This is a typical example of the way in which the Department of Fair Trading ducks issues. They produce legislation (not the Ambulance Levy Act) but are not to be expected to enforce it or even be able to explain it or say what it means. This from those who are the authors of the laws.

## **Retirement Villages Act Review**

The review was supposed to start on 1st July 2001; perhaps it did. Inconclusive meetings were held between the Department of Fair Trading, representatives of scheme operators and the ARQRV between November 2001 and May 2002. In May of this year we had a meeting with the Department and owner representatives for a few hours. It was an inadequate time to discuss forty one pages of "issues" and "options" and many of our submissions were not discussed at all.

In September of this year we were invited to another meeting, to discuss amendments to options put to us at the earlier May meeting. After twenty seven months of the Department's snail pace review we were invited to a meeting scheduled to last just one and a half hours. That ninety minutes, we were told, that ninety minutes, was to be the last opportunity the ARQRV would have to comment on those proposed amendments to the Act prior to their submission to the Minister and Cabinet. Without enthusiasm we (President) attended. All that was discussed were the changes made, at the insistence of scheme operators, to earlier options put by the Department. Many more and much longer meetings are obviously required. But not if scheme operators can help it.

There are of course limits to what Public Servants can decide but we do not believe the Department is taking a sufficiently courageous stand against grasping commercially operated village owners. Fifteen percent per annum after tax profit, the Courier Mail was saying of retirement village investment a couple of years ago. Ten percent plus, and "tax advantaged", which amounts to about the same thing, Primelife Corporation advertises on its website, to encourage investors. The owners keep crying poor and the Department listens.

## **In Confidence**

Issues papers which have been sent to us have been marked "confidential" with the notation that their content does not reflect Government policy. We should certainly hope not, but it obviously does reflect Department of Fair Trading policy. The Department seems unwilling to resist the decidedly unfair trading that is represented by commercially operated retirement village contracts. Owners are still trying to tip the playing field increasingly in their favour.

The Department should not, in any case, be judging issues at all. We do not want our views and submissions screened out by the Department; we want them put, quite unadulterated, to Government, for it to decide and be responsible for.

Perhaps the Minister and both sides of the Parliament will have the political courage to show a sharper cutting edge on our behalf because we obviously cannot look to the Department of Fair Trading for a champion of Consumers.

We, your committee, are accountable to you and starting with this newsletter we shall reveal as much as space allows of the options which the Department of Fair Trading seems likely to put to the Minister and Cabinet in relation to amendments to the Act. We shall no longer keep them in confidence but keep you as informed as we can.

One of the Department's suggested changes to the Act would have residents under legislative compulsion to not only keep records of their meetings but to make those

records available "in certain circumstances" to scheme operators. That would undoubtedly lead to even greater reluctance to serve on committees, much to the delight of some scheme operators who would much prefer that we confine ourselves to social functions and not poke our noses into more fundamental issues.

The Department is also saying that budgetary information can only be divulged to a residents' committee. So, what if you don't have a residents' committee? no information divulged at all? We seem quite unable to get the Department to understand that it is residents, not committees, who pay for everything and who are entitled to information, whether or not they elect a committee.

And it would be quite unconscionable of Government to embrace the Department's idea that residents or their committees should be made accountable to the Department for if, when or how they conduct their meetings or whether or not they keep records or even have meetings. We want the Act to prevent uninvited managerial intrusion into residents' meetings, not to invite Departmental intrusion as well.

The Department seems to be heading back to the first of the 1997 draft Acts, which actually tried to impose \$3,000 penalties on residents' committees for failing to act as messenger for the Department! That is the sort of attitude we are up against. As an office of Consumer Affairs it should be accountable to Consumers, not vice versa. We are constrained to wonder whether the Department has decided, as it did when drafting the present Act six years ago, that its bread is buttered on the owners' side.

## **Reinstatement**

In lease and licence (ie non-freehold) contracts entered into after the date on which the Act is amended, proclaimed the Department of Fair Trading, reinstatement costs will have to be paid by the scheme operator. This proposal, the Department said, recognises that the Unit always remains an asset owned by the operator.

But the owners objected to that reinstatement proposal and guess what! The Department, without any further consultation with us, simply capitulated and withdrew the proposal. So it's still residents paying for reinstatement. Perhaps the Department decided that Units were not going to remain an asset of the owner after all! We can't really understand why operators protested, they would have recovered their additional costs eventually, as they did for the Capital Replacement introduced by the 1999 Act, by simply increasing exit fees for new residents. But perhaps, as they have been steadily increasing them anyway, they were reluctant to add to them even further .....just yet.

## **Leaving the Village**

The Department proposed that for residents vacating their Unit after the amendment of the Act, continuing payment of the recurrent fees should cease after nine months. This is something for which we have long campaigned but with the cap at six months. Again, objection by scheme operators and....yes, further capitulation by the Department. At the owners' behest it agreed to payment of fees continuing for twelve months after vacating the Unit and that it shouldn't apply to existing contracts. Well, we do not agree. We shall continue to campaign for the cap to be six months and that it should apply to all contracts,

including those now in existence, as the Department originally proposed but from which it then backed away. We are not asking commercially run villages to do anything that Church run villages are not already doing.

## **Subscriptions**

Once a year money raises its ugly head. A reminder, if we may, that subscriptions for next year may now be paid. Any new subscriptions paid now will cover the subscriber up to the 31st December 2004. Your village liaison officer has brochures and membership application forms.

Until next time.

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