

NEWSLETTER

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Annual General Meeting

The Annual General meeting was held at the RSL in Bundaberg on the 27th September. Holding it where we did enabled members living in villages in the Wide Bay area to attend an AGM for the first time. It was a pleasant venue and the meeting was well attended. The following members were elected to the Committee; those who were elected to the Committee for the previous year are shown with an asterisk:

Phil Phillips	Edenlea	(President)	*
Bill Runciman		(Secretary)	*
Keith Topham	Immanuel	(vice Pres)	*
John Sullivan	Caloundra	(vice Pres)	
Rich Squire	ChancellorPark	(Treasurer)	*
Ken Woodhead	Noosa Outlook		*
Allan Williamson	Noosa Outlook		*
Ivy Laundon	Buderim Meadows		*
Jim Leech	Wishart		

We welcome our two new members, Jim Leech and John Sullivan. Sadly, we also mourn the death of two committee members who died during the past year, Joan Petherick of Laurel Springs and Joan Rispin of Buderim Gardens, both of whom had long been champions of what one might describe as fair play for residents.

As foreshadowed in our September newsletter, the meeting was asked whether or not it approved the Committee's increasingly forthright and unflinching attitude toward what it regarded as the deceptions and aberrant practices of some scheme operators. The meeting overwhelmingly approved.

Main Objects of the Act

In our September newsletter we drew attention to, and printed, Sections 3(b) and 3(e) of the Retirement Villages Act, which set out two of the main objects of the Act, which are to do with fair trading practices and best practice standards.

As we have already implied, it will not have escaped the notice of members that over recent years we have become increasingly critical of the way in which so many scheme operators simply thumb their noses at that philosophy and continue to treat residents with disdain. We have long since stopped pussyfooting around what we regard as the malpractices of some of them and more recently we have been prepared to name names, to the considerable discomfiture of some scheme operators.

As we indicated in our September newsletter, we have attracted the ire and even threats from some owners and managements, coupled with instructions, would you believe, on the form and substance of how we should retract and apologise for our statements. The latest to jump on that particular bandwagon is Aged Care Queensland, that association of scheme operators which is seemingly so anxious that retirement villages in Queensland should have the accolade of their accreditation.

ACQ, PrimeCRS and others are trying desperately to escape the philosophy expounded by the Tribunal in the Carlyle Gardens case. They plead that the orders were confidential. We have never stated otherwise. What we have said and do say is that the philosophy and reasoning underlying the decision in that case cannot be said to be peculiar to Carlyle Gardens. If it applies to any village, which it obviously does, then it applies to all..

Pest Control

The Residential Tenancies Act requires tenants to “keep the premises clean, free from rubbish, vermin, insects etc.” but they are not responsible for remedying anything which is not their fault. They are not, for example, responsible for termites! Most of us in retirement villages are aware that our contracts require us to look after the premises in the same way. I don’t suppose any of us retirement village residents gave much thought to termites when we came into the village and as sure as eggs are eggs our scheme operators were silent on the subject.

But scheme operators, or their lawyers, tell us that zoologically speaking termites are insects - and so they are. Thus do we find ourselves having to pay for anything to do with termite prevention, eradication and repair of damage caused by them. It is bad enough that we have to pay as a General Services charge and should not be so, but some scheme operators are requiring their residents to pay personally and that is quite insupportable.

That Residents should be responsible for the costs of termite prevention and remedial action was challenged in the Tribunal by residents of a Brisbane village. Let us note an observation of the Tribunal in the course of reaching a decision:

“... the ongoing necessity for further inspection and treatment for termites and rectification of non structural damage is a matter of preventative maintenance. The

relevant tax ruling also suggests that preventative maintenance of this sort is properly charged to residents as part of normal and proper maintenance of the capital items in the village.”

Now this means and can only mean that the residents may be required to pay via their General Services Fund. It clearly implies that residents can not be required to be personally responsible for any of the costs associated with termites. If your scheme operator or management is requiring you to pay anything personally, refuse to pay and let us know. It is a case for the Tribunal.

Maintenance Reserve Fund & Serviced Apartments

In a recent case brought before the Commercial and Consumer Tribunal in respect of serviced apartments and the maintenance reserve fund, the Tribunal ruled that there is nothing in the Act that prevents the establishment of different sub-sets of accounts within the village maintenance reserve fund. The Tribunal observed that there were two different levels of care within the village resulting, in effect, in two different schemes and two different cost structures. The establishment of a separate fund for the serviced apartment complex would make it clear for which costs the serviced apartment residents were specifically responsible. The Tribunal ordered that that be done.

Many leasehold villages have what are referred to as serviced apartments, where laundry, housework and meals are provided to residents as personal services, for which they pay, including the addition (at present) of the GST. Many Independent Living Unit residents have complained to managements that the village accounts lump serviced apartments accounts with the accounts for the rest of the village. That is a poor way of accounting, for several reasons. One reason is that those personal services are subject to the Goods and Services Tax, which does not apply to the General Services supplied to all residents, including serviced apartment residents. There is good reason therefore to keep them separate.

Although, in the case referred to, the Tribunal was asked only to consider the Maintenance Reserve Fund, it is very likely that the Tribunal would rule similarly in regard to the General Services Fund. So, residents who are dissatisfied with the way serviced apartment and ILU accounts are lumped together in their village should, if they are unable to persuade their scheme operator to separate them, consider applying to the Tribunal.

Commercial & Consumer Tribunal

It is encouraging to see that an increasing number of residents are taking disputes to the Tribunal. As we have remarked in the past, if you would consult with us before actually applying to the Tribunal we may be able to help you. There are a few important things to keep well in mind:

- (i) Try not to seek orders on too wide a range of issues. It is better to go to the Tribunal on few clearly defined issues than to try to cover a variety of them.
- (ii) Your case should be prepared carefully and you must produce evidence to back your

claims. You cannot expect the Tribunal to fill in gaps in your submission.

(iii) Be specific, do not generalise about your complaint as to what your scheme operator is doing or failing to do.

(iv) Remember that the Tribunal has to operate within the parameters of the Retirement Villages Act and the provisions of your residence contract.

(v) Remember, too, that the Tribunal is not, unfortunately perhaps, an enquiry. It can only judge issues on what is put before it.

Residents' Committees

Down at the Runaway Bay village, on the Gold Coast, they have a pretty unique sort of 'residents' committee. It is comprised of:

Three local business people

Two Tricare (the scheme operator) representatives

The Village manager (Tricare of course)

Two Residents

What chance do two residents' representatives have amongst eight! This 'committee' has been and still is referred to as the 'Advisory Council'. Meetings of residents are called quarterly - by the village manager! This village was bought by Tricare from its previous owners in 1999. Tricare own and operate several retirement villages and Commonwealth subsidised Aged Care Establishments.

In 1998/99, the then CEO of Tricare, who was also Deputy President of Aged Care Queensland, was a representative of owners on the joint owners/residents Committee examining the Bill which was to become the Retirement Villages Act 1999. They all signed off on what is known as the 'Heads of Agreement'. Included in those Heads of Agreement were provisions which became the substance of Sections 127 to 129 of the present 1999 Act. It is worth quoting Section 127(1):

The residents of a retirement village may establish, by election conducted among themselves, a residents committee.

Despite Tricare's ownership and management of Runaway Bay village, they have apparently not sought to implement the legislation, in the development of which they were so closely involved. Tricare should immediately disband that so called advisory council, which masquerades as a residents' committee, and espouse the establishment of a proper Residents' Committee in accordance with the Act.

The Worst Village?

In Hervey Bay there's a retirement village called Urimbirra, owned by Milstern

Retirement Living Pty. Ltd. of Sydney. It's only a small village, just 49 Units. To begin with they were all leasehold but as residents have left, for whatever reason, instead of finding another lessee Milstern has been buying the Units back from the departing residents at what seems to be considerably less than market value.

Despite inflation, a resident may be offered only \$55,000 for a Unit for which they paid \$80 to \$90 thousand dollars quite a few years earlier, and are then required to pay the Exit Fee! Milstern then rents them out. No information is given to residents about this but remaining lessees believe that about half the village Units are now rented. The Department of Fair Trading should examine whether that is a breach of the conditions under which the village was registered as a retirement village. Renting does seem to be a breach of Section 7 of the Act.

The residents, those who are still lessees any way, still pay the maintenance reserve fund contribution as part of their General Services Fund but claim that little repair or maintenance has been carried out in recent years. As one might also expect, no satisfactory financial statements have ever been presented to residents. Every thing that could be done improperly and unfairly has, seemingly, been done improperly and unfairly. Much has been done in defiance of the Retirement Villages Act, which means unlawfully.

Bodies Corporate

Some residents in freehold or 'strata title' villages are in some doubt as to what the Body Corporate actually is. In freehold villages there is the Body Corporate and the Body Corporate Committee. The body corporate is comprised of every 'lot owner' in the village. When residents in such a village talk about the body corporate they are really talking about themselves. Every resident who is a lot owner is a member of the body corporate.

The body corporate committee is, unlike a residents' committee under the Retirement Villages Act, mandatory; a committee which is required to be elected by the body corporate under the provisions of the Body Corporate and Community Management Act and its 'Standard Module'. That committee may make some decisions on behalf of the body corporate without specific prior reference to the body corporate as a whole, but it is always accountable, as is any committee, to the body which elected it.

Council Rates

Apart from in a handful of shires and cities, residents of leasehold or loan/licence villages who are pensioners do not enjoy any reduction in their Council Rates in the same way as other pensioner ratepayers do. In no leasehold village at all does the State Government extend the further reduction in rates enjoyed by other pensioner ratepayers. This Association has from time to time re-opened the issue with State Government but it has always argued that we do not own the freehold and are therefore not ratepayers.

That argument is specious. We may not own the freehold but we do pay the rates. We do not pay them directly to the local Council but we pay them to the village operator who

acts as an agent and pays them to the Council. We do not just pay the scheme operator a rent from which he pays his rates bill. Our rates are specific and directly related to the Unit in which we live.

At this present time residents of Carlyle Gardens at Bargara, in the Burnett Shire, are taking the issue up again with Shire and State. This would be a good time for residents everywhere to write to the State Government and their local Shires over this issue of discriminatory rates relief.

Chat Room

We have opened a 'Chat Room' on the Internet, hosted by 'Yahoo'. Those of our members whom we know to have access to the Internet will have received an e-mail inviting them to join. We have already gathered a membership and we hope it will rapidly expand. We now have an opportunity to talk amongst ourselves about all those aspects of retirement village living that concern us. Send a blank e-mail to: VillageLiving-subscribe@yahogroups.com and follow the instruction on how to join. There is no joining or other fee.

The chat room should be a good place to question or follow up articles which are contained in our newsletter and which are on our web-site. The more we talk to each other the better informed we shall become. You can, if you wish, remain anonymous so you can be uninhibited in what you say in your messages without fear of reprisal from scheme operator or management. As has been indicated in our chat-room, a good subject to discuss is the previous article - Rates and unjustified discrimination against leasehold and loan/licence village residents.

Annual Subscriptions

Well, you've had the last News Bulletin for 2004, now for that annual nuisance, subscriptions. Much as our Association would welcome some financial assistance, we are one of few community organisations, and that's what we are, which receive no such assistance from Government. This does of course mean that, as an organisation, we can be totally independent and fearlessly critical where we believe criticism is warranted. The downside is that we have to collect subscriptions from our members. We rely on them, that is we rely upon each other to keep ourselves going; the Association cannot exist without those subscriptions and donations.

So, would you please raid your purses and wallets and pay your 2005 subscription to your village liaison officer who will forward it to our Secretary. Or, send it yourself to our Secretary whose address is at the top of the newsletter. It is still \$10 a year. This is a very fitting time to pay tribute to all our village liaison officers who, largely unsung, play a vital role in our organisation.

Christmas Greetings.

To all of us from all of us -- Christmas Greetings and every Good Wish for the New Year

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Butler McDermot & Egan - Solicitors
66 Howard Street, Nambour, Queensland,
4560.
Telephone: 5441 1044 Facsimile 5441
5096
Specialists in retirement village issues