

Association of Residents of Queensland Retirement Villages (Inc)

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NEWSLETTER

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Special Resolutions

The Retirement Villages Act defines 'Special Resolutions' as:

"at a residents' meeting, means a special resolution passed-

(a) at the meeting of which the residents are given at least 21 days notice stating the intention to propose the resolution as a special resolution; and

(b) by a majority of at least three-quarters of the residents entitled to vote and voting personally at the meeting or by postal ballot"

The Retirement Villages Act 1999 requires that any proposal to increase residents' fees, in respect of items falling under Section 106 of the Act, in excess of the CPI increase, requires a special resolution to be voted upon at a residents' meeting.

Any resolution to increase fees requires a special resolution to be voted on by the residents. It should be the subject of debate like any other motion. The scheme operator must obviously be allowed to speak in support of the resolution but the Chairperson of the meeting must allow other speakers, for and against it. It is for the scheme operator and others who support the resolution to convince the meeting of the merits or necessity for the increase being proposed. It must also be open to those who oppose the

resolution to speak against it. That is the Democratic process. Sadly, it is not being followed in all villages.

What so often happens is that at the meeting, the resolution to increase fees is usually put by the village manager. Ballot papers are distributed and residents simply told to vote for or against, without any discussion at all. There is rarely anything but the briefest reason given. If that's the manager's idea of debate then residents should simply vote against the resolution.



The case for the increase is sometimes put in threatening terms. Residents are told that if they do not pay the increased fees, services will have to be reduced. Why? If residents vote against an expansion of a Service or spending significantly more on it, then it continues as it was.

There should be no reduction in the service nor should other services be affected.

Ballot Papers

One of the purposes of ballot papers is to protect the anonymity of voters. It should not be possible for anyone to see how any resident voted. When managers require a resident's name to be put on the ballot paper, as they often do, that fundamental precept is immediately denied. It is not at all difficult to conduct a secret ballot and



make sure it is just that, secret! Residents should insist on that because it is the only way to ensure that reprisals cannot be taken against residents who 'vote the wrong way'. It may mean that village managers will have to do a bit of research but there are plenty of sources in the libraries. Ballot papers should show only the resolution to be voted on and voting boxes; nothing else. They are not a place for encouraging yes votes or indicating consequences of voting for or against. That is the purpose of the debate.

If the vote is against the increase proposed by the resolution then that is the end of it - or it should be. However, we have learned that following a recent residents' meeting where the scheme operator's proposal to increase fees was defeated, the village manager subsequently went around to see residents who did not vote and tried to get them to vote - for the resolution! This is unbelievable. We hope his boss points out the error of his ways and dismisses the results of such errant behaviour.

Voting Entitlement

In some villages there is an insistence by the scheme operator, or the village manager, that voting is to be one vote per Unit. Except in Body Corporate matters there is no legal foundation for that. The Retirement Villages Act refers to voting by residents; there is no suggestion anywhere that a couple living in the same Unit cannot both vote. To deny one of a couple a vote would therefore be unlawful. It would also be a denial of universal suffrage.

If one vote per residence were to be the practice, who would determine which one could vote and on what basis would the determination be made if both wanted to vote? However it were determined, there would undoubtedly be a case of discrimination to be brought before the Anti-Discrimination Tribunal.

Managements often make the spurious claim, echoed by the Dept. of Fair Trading, that one vote per Unit "protects the interests of sole

occupants". That sounds very solicitous but against what or whom does it protect them?

When and in what way do the interests of single occupants differ from those of double occupants? In important matters their interests are really identical.

The truth is that most single occupants are elderly ladies on their own and, with all due respect to them, are much more easily persuaded, intimidated even, than couples are, by management pursuing its own agenda. The important interests of elderly single occupants are best protected by themselves, their fellow residents, including double occupants, and by this Association.

Rates Rebate

No pensioner in a leasehold or loan/licence village gets the State Government rate rebate, on the technically correct but spurious grounds that they are not ratepayers. I think we all see this as unfair discrimination. In an effort to tackle this once again, we are promoting a petition to the State Government. We have sent to our liaison officer in your village some petition forms and have asked him to collect signatures. We have nothing to lose and perhaps something to gain, so we hope all residents will sign them.

The leading lights in this are residents in Carlyle Gardens Village, Bargara, to one of whom the petitions should be sent. Your liaison officer will have more details. That area's local State Parliament member, Rob Messenger, will present the petition in the Parliament.

Laurel Springs Dispute

Residents of a Nambour, Sunshine Coast, village, Laurel Springs, recently had a successful case before the Tribunal. They were represented by Mr



Peter Boyce, of Butler McDermott and Egan. The former scheme operator and owner of the village was ordered to repay into residents' funds almost \$30,000 in respect of improper charges for water rates and 'administrative expenses'. The Tribunal remarked that because of the lack of transparency of the financial accounting in the village, the basis on which administrative and travelling expenses were claimed was only made apparent on cross-examination of the former scheme operator. Repayments to residents is now being made. Costs, that is residents' legal costs, were awarded against the operator. The present Laurel Springs scheme operator was not implicated in the proceedings.

Buderim Gardens Dispute

In the Tribunal case involving Buderim Gardens Village, in which residents were again represented by Mr Peter Boyce of Butler McDermott and Egan, and upon which we reported earlier this year, substantial costs were also awarded by the Tribunal against the former scheme operator.



Curiously, one might think, in a recent newsletter circulating in that village, the present owners of the village, well, the village manager anyway, tried to defend the previous owners for their actions against which the Tribunal had ruled in

Favour of residents. But then, as the present manager was also the village manager under the previous owners, perhaps it isn't so curious.

Using the Tribunal

It might perhaps be worth noting here what the procedures are for going to the Tribunal. The first thing a resident or residents are required to do if they have a grievance is to try to achieve an acceptable (to the residents) settlement. See Section 154 of the Retirement Villages Act. This is a necessary prelude to going to the Tribunal. If such meeting fails, which is quite likely, then the resident(s) complete an application to the Tribunal (Notice of Dispute). This involves filling in some forms and sending them to the Tribunal.

The Tribunal will order a mediation hearing and will appoint a mediator and tell you so. This mediation will take place near to where you live. The object is to get the parties to come to an agreement. If there is no agreement then the mediator reports the lack of success to the Disputes Tribunal. The resident then sends to the Tribunal an application for a 'Tribunal Hearing'. This will lead to an appearance before the Tribunal. If this seems daunting help is readily at hand. Just telephone either the President or the Secretary of this Association, who will help you through all the stages.

Resident Funded

Scheme operators are fond of representing their villages as 'Resident-Funded'. What does that mean? It certainly means that residents pay for everything, one way or another. But it doesn't mean quite that to scheme operators. They see it as meaning that all costs and expenses, of whatever nature, are to be charged to the residents' General Services Fund. They brush aside the fact that each resident funds the village with two or three hundred thousand dollars (or more) on entering the village: the 'ingoing contribution'. In a new village, once construction costs, borrowings and interest on borrowings have been recovered, which is before the village becomes fully occupied, the scheme operator derives very substantial income from the use of our ingoing contribution. So what we pay in terms of our recurrent fees is only one part of our total funding of the village.

But scheme operators see those ingoing contributions as being totally sequestered from the operation of the village, not to be used to pay for anything. In their view, they do not even form part of village funds. In a recent Tribunal case, it was argued by the scheme operator that as there was no surplus in the General Services Fund, a refund ordered by the Tribunal to be paid to residents could not be paid from that Fund. In response to applicant's request for an order that respondent be required to make the refund from resources other than the General Services

Fund, the scheme operator claimed that *“the proposal that the scheme operator pay the refund was unacceptable.”*

Needless to say the Tribunal considered it eminently acceptable and ordered the scheme operator to pay.

Freehold Matters

We are a bit concerned about contracts into which some bodies corporate, through their body corporate committees, have been persuaded by village operators to enter. In these contracts the body corporate has appointed the scheme operator as ‘**Manager**’ for a term of ninety years. By such contract the body corporate effectively gives the **Manager** the authority to appoint the Body Corporate **Manager** and the Service contractor. And of course the **Manager** (scheme operator) appoints itself. And when the terms of engagement of those body corporate managers and service contractors terminate, as they must, the **Manager** simply re-appoints them (itself) with another contract.

The Body Corporate and Community Management Act puts the responsibility for appointing body corporate managers and service contractors in the hands of the body corporate. But that responsibility and authority seems to have been usurped by the sort of **Manager** contract that we have described above. We should like to hear from any body corporate or freehold resident who believe they may have been subjected to a similar **Manager** contract.

Deficit Budgeting

One of the Department of Fair Trading’s proposed amendments was that any deficit in the General Service Fund at the end of a financial year should be carried forward into the ensuing financial year. We are opposed to carrying forward deficits. Here is what we said on that score in our responses to the proposed amendments:

“As we have said before, we are totally opposed to deficits being carried forward. This proposed amendment will just encourage

*scheme operators not to concern themselves very much about overspendings because they can just recover them in subsequent years. They will not be troubled by having to keep an increase within the CPI limitation. They will just spend and subsequently recover the deficit. They will argue, as has been done, “we have spent it for your benefit so you must pay. We might relent on our opposition to carrying forward deficits only if you change proposed S.103 to read: “**The scheme operator and residents must adopt.....**” giving residents equal say and with no relaxation of the need for a special resolution of residents to exceed the CPI increase”.*

We are also opposed to surpluses being carried forward. All that does is to provide a buffer against future over-spendings or under-estimates. If there is a significant surplus then residents have been required to pay too much. It must therefore all be refunded to the residents who paid it. That was the view of the Commercial and Consumer Tribunal in a recent dispute, which ordered such surplus to be refunded.

Non-Reviewable Contracts

This is the least understood of all the provisions of the Goods and Services Tax. Let us make clear at the outset that it is unlikely that a resident in a leasehold or loan/licence village had a non-reviewable contract. Supplies made by the Scheme operator to residents, apart from the exceptions already noted, are input taxed and the operator cannot add any GST. Neither can he claim any ‘input tax credits’.

Section 103(6) of the Retirement Villages Act provides that we residents can be required to pay any amount directly or indirectly attributable to the GST. Sections 106 and 107 of the Act also provide for increases (reviews) that may be imposed. The CPI cap on Section 106 items does not in itself make the residence contract non-reviewable and Section 107 increases are not even capped. Not only that, our contracts and PIDs make clear that we

must pay our share of 'total outgoings'; that is the usual description.

Our residence contracts have been reviewed and fees increased annually since well before the advent of the GST. Residents in some villages are being told that those with pre 1 July 2000 contracts have not been paying the GST included in the cost of services provided and that they should, from 1 July 2005, pay higher fees to bring them into line with post 1 July 2000 residents who have been paying. Contrary to what residents are being told, in relation to non-reviewable contracts it is not 1 July 2000 which is relevant but 2 December 1998, or, in respect of personal services (taxable), 9 July 1999. The latter is likely to apply only to serviced apartment residents.

In villages where non-reviewable contracts are being claimed, no evidence seems to have been produced to residents to support a claim of differing GST treatment between residents. Moreover, residents' fees actually increased to cover the increase in costs due to the GST way back on 1 July 2000. In a communication at that time, residents in one group of villages were told:

".... Until we have firm correspondence from the ATO regarding reviewability, GST costs have been included in the July 2000 monthly accounts."

That 'firm correspondence' seems not to have been produced to residents.

Notwithstanding all the above, we are aware of an anomaly in the GST Transitional Arrangements which permitted scheme operators to claim some input-tax credits. Had this saving been passed on at 1 July 2000 to residents whose contracts pre-dated 2 December 1998, it would have lessened those increases in fees imposed at 1 July 2000 and attributed to the GST. Did residents in fact enjoy such lessening?

The number of residents at 1 July 2005 who became residents before 2 December 1998, and might therefore be paying less than post 1 Dec.

1998 residents is likely to be small and there should not have been a very significant impact on their fees. But those residents who are claimed to have non-reviewable contracts should demand an explanation of how it came about before paying additional fees.

Some are now being asked to vote on a special resolution to increase their fees. It is not enforceable and residents would be wise to reject it without a comprehensive and satisfactory explanation and justification.

Review of the Act

In our May 2005 newsletter we drew attention to some of the more outrageous proposals of the Queensland Department of Fair Trading and we have remarked upon how the Department's proposals are protective of scheme operators. Here is an interesting observation about the retirement village industry by the Council on the Aging (COTA) to the NSW Act review *"It is not the role of Government to give one section of the housing industry greater protection than any other. There is no indication that the industry is at risk"*



Well said COTA. To hear scheme operators, one might believe they are all headed to the Bankruptcy Court.

Aging in Place

To encourage the concept of "aging in place", residents of retirement villages should be allowed, indeed encouraged, to remain in their village for as long as they can and provided with all reasonable assistance to enable them to do so. Village owners should be under some compulsion to allow the installation of physical aids to independent living, such as ramps for wheelchairs, grab rails etc. Much research has been done and literature is available on sensible and appropriate housing design for elderly people.

Village owners/managers should have, display and make available, as much literature as possible concerning the existence of support

services such as HACC etc. and it should be a requirement that managers have or acquire an adequate knowledge of the assistance available. This is not generally the case.

Unmet expectations

In some villages, prospective residents are allowed to believe that there is on-going care. There needs to be very clear statements of what the village provides and what it does not provide. Whatever that is, it should not be consigned or confined to the obscurity of a Public Information Document.

Retirement Villages are another form of high density accommodation pitched at the elderly although, as remarked above, not especially designed for elderly people.

Quite misleadingly and unashamedly, the glossy brochures depict the younger of the elderly, in laughing carefree mode in what could be a holiday resort. That is really quite deceptive.

Annual General Meeting

Two years ago we held the AGM in Maroochydore and last year in Bundaberg. This year we shall be holding it in Beenleigh, between Brisbane and the Gold Coast. This will, we hope, be convenient for residents from both Brisbane and the Gold Coast to attend.

Time and place

Friday 30th of Sept. 2005 at 10.00 am

Beenleigh RSL, Mount Warren Park,

Beenleigh. (Tea and Coffee from 9.30 am)

We are assured there is plenty of car parking but for those travelling by rail we will organise a taxi service between Beenleigh station and the RSL. It would be helpful if you would let us know if you wish to take advantage of this. If any village or villages hire a bus to take 25 or more residents to and from the meeting the Association will pay half the cost.



Constitution

At our 2004 AGM we had someone who, although a resident of a village, was an employee, the salesman of the scheme operator. We think that is undesirable. We therefore take this opportunity to give notice of a proposed change to our Constitution, to be considered at the 2005 Annual General meeting. The motion is:

That a new Subsection (ii) be inserted:

“Membership shall not be open to any person who is a scheme operator or a relative of a scheme operator or an employee of a scheme operator or an employee of any retirement village management company.”

That existing sub-Sections 4(1) (ii) & (iii) be renumbered (iii) & (iv) respectively.

This is a ‘Special Resolution’ and can only be passed by a 75% majority vote at the meeting. Proxy votes are not admissible on special resolutions.

Nominations and Proxies

Most of the present Committee are running for office again but we nevertheless invite nominations for membership. We really must get some youth on to the Committee; a few youngsters in their sixties perhaps! If you wish to nominate yourself or another resident please telephone or write to or e-mail the Secretary, who will send you a nomination form. Similarly, if you wish to give someone your proxy to vote on your behalf, please get in touch with the Secretary, who will send you a proxy form.

6 ‘Til next time then.

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