

Association of Residents of Queensland Retirement Villages

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NEWSLETTER

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Buderim Gardens Village

In our last newsletter we brought you news of the scheme operator being ordered to refund the sum of a hundred thousand dollars to the village maintenance reserve fund. For a while, the word was that the scheme operator was going to appeal the decision. But it seems he has decided not to. Must have been advised that he had no chance of success because there was no point of law which he could challenge.

More recently he has been, as directed by the Tribunal, conferring with the residents' committee there on how to comply with the Tribunal's orders in respect of the Maintenance Reserve Fund and serviced apartments. Word has it that a special Committee meeting resolved that it was out of its depth. Then at a further meeting they rescinded that resolution. Oh dear.

The residents' committee at that village had nothing to do with the Tribunal case; indeed they were critical of the residents who did take the case. One expects that they will not wish to benefit from the Tribunal decision. One also expects that residents there will realise that their interests are not well served by that committee and elect another.

GST & Serviced Apartments

In our January newsletter we referred to the possibility of residents in serviced apartments being freed of the GST on the fees they are paying. We did point out in that article that relief from the GST would only be available to those who were assessed as requiring daily living assistance or nursing services and other requirements were also met. We did not describe exactly what those other requirements were because it would have taken far too much space. Full details can be found on the ATO web-site.

However, all may not yet be lost. The legislation seems to allow the Federal Minister for Aged Care to make a new determination of the 'Quality of Care Principles' which might benefit all serviced department residents. But we shouldn't hold our breath.

We are more concerned, as we said in our July 2004 newsletter, that serviced apartment residents whose scheme operators have not been collecting the GST from them, should not now be required by their scheme operator to pay GST back to July 2000. That would be insufferable. If it happens to you, let us know.

Contracts & PIDs

During 1998, in the lead-up to the Retirement Villages Act 1999, at the request of the then Minister for Fair Trading, a series of meetings between three representatives of residents (ARQRV) and six representatives of village owners (something of an imbalance, wouldn't you say?) took place to try to reach agreement on a number of issues. The result was a paper, signed by all representatives, titled "Heads of Agreement". Matters agreed upon were to appear in the new legislation.

One of the issues agreed upon was that replacement of capital items owned by the scheme operator would be at his cost, not a cost to the residents. We have remarked before how that sparked scheme operators' lawyers to draft contracts and Public Information Documents (PIDs) with more onerous terms, for example increased Exit Fees, with a higher maximum amount and reached after a shorter period of residency.

The Heads of Agreement allowed that things which were already a resident's contracted responsibility, which meant when the Act came into force, would remain so. Hence the definition in the Act: **"An existing residence contract is a residence contract existing immediately before the commencement of this Act"**. At the time of the Bill's passage through Parliament, as Hansard records, Mr. Purcell, member for Bulimba, remarked that:

"the major stumbling block to effective reform of this industry has been the complexity and variety of residence contracts that have been developed over the years. Once we legislate to do something, the owners and developers will try to come up with a contract that will absolve them of responsibilities in regard

to people who are in their villages" How true, how prophetically true, because that is exactly what has been and still is happening. Following is what has been appearing in some contracts in recent years:

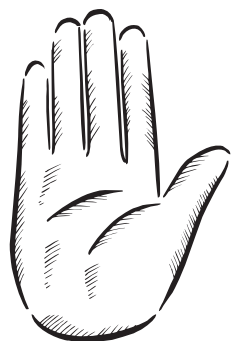
"The Resident agrees with the Scheme Operator to regularly maintain and properly repair or replace (with items of the same or similar quality to those in use when they were last replaced) any fixtures, fittings, equipment, appliances, furniture, furnishings and other property in, on or fixed to the interior or exterior of the Accommodation Unit that are made available by the Scheme Operator." (note the expression 'made available'. How pitifully it tries to avoid the simple truth - 'belonging to' the scheme operator).

That completely and utterly defies the Retirement Villages Act 1999, Sections 91 to 96 (Capital Replacement) in relation to 'replace', and Section 97(1)(a) in relation to 'maintain and properly repair' But that does not deter scheme operators from trying it on. They reason that neither residents nor their heirs know any better and will not contemplate going to the Tribunal; they will just pay up.

Thou shalt not meet

Let us look at another dictatorial innovation designed to keep residents utterly subdued. Here is an extract from the PIDs currently being issued to new residents at the Hibiscus group of villages:

"The resident shall not hold or permit to be held any gatherings of persons within the Community Hall which exceeds five persons in number or which is an outside Club or organisation without the consent of the scheme operator in its sole discretion."



The first thing to say is that unless that PID is part of your contract it simply does not apply to you. You can ignore it. To deny or restrict the ability of residents to meet in the village common areas is a denial of the right of assembly and a breach of Section 10(3)(b) of the Act:

“To be a residence contract, a contract must..... purport to give a person, or give rise to a person having a right in common with other resident in the retirement village, to use and enjoy the retirement village's communal facilities”

And that is in a place for the construction of which residents have paid and for the maintenance of which they continue to pay. For that reason the scheme operator should not be allowing use of the Community Hall by outside organisations without **residents'** permission, because such use diminishes residents' access to and use of the Hall.

Not content with savagely trying to restrict residents' use of what they are paying to use, that new PID goes on to say that the scheme operator may allow other organisations to use the Hall and, at his sole discretion, for payment of a fee, and that the scheme operator may keep that fee for himself. Avarice unbounded! If the residents permit such outside use of the facilities for which they are paying, any fee should be paid into the General Services Fund for the benefit of residents.

We say to you: ignore that piece of despotic and entirely unreasonable instruction and go ahead and have your meeting, so long as it does not inconvenience other residents. There is nothing your scheme operator can legally do in reprisal. The days of sending in the bailiffs to evict a tenant are long since gone. A Court order is necessary and no Court in the land would order eviction in such circumstances. And scheme operators well know that. In fact a Court

would rule that it was a matter for the Jurisdiction of the Commercial & Consumer Tribunal. If you are threatened with eviction, even if the threat is veiled, you should let us know. We will help you make a special application to the Disputes Tribunal if that is necessary.

Threats of eviction will be dealt with by the Tribunal immediately.



Insurance & Repair

We reported in our January 2004 newsletter on a case where a resident at Carlyle Gardens, Mackay, suffered a broken window, from some externally launched missile, to wit a fishing sinker! The scheme operator told the residents that they would have to pay for its repair themselves and that the scheme operator would do nothing about the window until the residents had paid the scheme operator the amount of the insurance excess. Extortion we said.



Our resident refused to accept having to pay and sent a dispute notice to the Commercial & Consumer Tribunal.

The Tribunal arranged a mediation hearing and the result was that the scheme operator conceded that he had to carry out the repairs regardless of insurance. The scheme operator was obliged to pay not only for the repair but also for the residents' out of pocket expenses in bringing the case to the Tribunal. Wisely, the residents refused to make it confidential.

Review of the Act

We have now had thirty three pages of draft amendments to the Retirement Villages Act

1999. It is said that anything worth having is worth waiting for. Well, we shall have to see what the Department is putting forward before we can pronounce on that. We shall no doubt be burning a lot of midnight oil in considering the proposed amendments and formulating our comments and responses to them. On this occasion we have at least been given a respectable length of time to do so. We shall keep you informed.

State member for Nicklin, Peter Wellington, has arranged for the Minister for Fair Trading, the Honourable Margaret Keech, to visit the Sunshine Coast on the 27th April of this year to talk about amendments to the Retirement Villages Act. The ARQRV has arranged for this to take place at the Millwell Road Community Centre in Maroochydore (adjacent to the Myer carpark), at 10.00 am.

Blast from the Past



(A response from the late Cliff Grimley, ARQRV President, to Minister's 1998 policy document, following ARQRV submissions)

“The Document appears to present a fait accompli situation. This is unacceptable. The decisions taken on specific issues are unsubstantiated. Our submissions on the issues were detailed and supported with defensible arguments. We require therefore to be told what factors influenced the decision.”

It seems to us that we shall have to approach the present draft amendments to the Act with the same degree of scepticism as Cliff did seven years ago. The intransigence of scheme operators has not wilted.

B A P A

British Australian Pensioner Association

As we have remarked in the past, many of our members are British pensioners, whose pensions have been frozen at their original level without any indexation to the cost of living in Britain.

It is not the same for British expatriates living in Europe or the United States or some other places; their pensions are regularly increased. A British expatriate pensioner, living in South Africa, Mrs. Annette Carson, has been battling the British Government over the issue, unsuccessfully so far.

Her case has got as far as the British House of Lords which is now sitting in judgement on it.

Fuller details, including copies of UK newspaper reports on the Lords hearing, can be seen on BAPAs web-site <www.britishpensions.org.au>

Colourful Reading

Our last newsletter, No. 50, brought you a changed format, with larger print. Responses have been favourable.

This time we have introduced some colour. We hope you approve of it as increasingly readable.

For those who, like me, are just a bit absent-minded, it is not too late to renew your subscription for 2005! Cheers.

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