

# Association of Residents of Queensland Retirement Villages

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# ARQRV

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## NEWSLETTER

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### Amendments to the Act



In our March 2005 Newsletter we reported that we were about to go through some thirty odd pages of the draft amendments proposed by the Department of Fair Trading. Well, we have been through them, chapter and verse. From the Department which still styles itself 'Office of Consumer Affairs' we have yet to see anything which is so blatantly anti consumer. We shall devote most of this newsletter to exposing some of those draconian draft amendments.

In the Queensland Act, (Section 3(d)), one of the objects is stated as being *“to encourage the continued growth and viability of the retirement village industry in the State”*

Faced with the same proposition, the NSW Department comments:

*“It was also determined that to encourage the viability and growth of the retirement village industry should not be included as it may result in the concerns of the operators and the industry taking precedence over those of the residents. Moreover, given that the Act is consumer protection legislation, promoting that viability seems outside its main function”*

So, NSW sees its retirement village legislation as consumer protection. Queensland, on the other hand, sees its legislation as

protecting the interests of the industry and that is abundantly clear from the Act and now the proposed amendments.

If you have access to the internet, go to [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and read the report on the review of the NSW Retirement Villages Act 1999. See how very superior its approach is compared with that of Queensland, which has made no report at all but simply produced, almost clandestinely, a draft of amendments it proposes to recommend to Government. Those draft amendments are on the internet at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au). Better to read and download the PDF file which shows the Act with the proposed amendments built into it. It is much clearer than just trying to read the amendments. But you won't find any report.

If any member would like a composite copy of those amendments with the Association's observations and responses interwoven with them, please let us know and we will send you a hard copy

### Residents & Committee meetings

Again, we should draw some distinctions. The NSW attitude is: *“Where a residents' committee exists, it is the committee's role to call and conduct meetings of residents and an operator has no right to attend.”*

Queensland Government would give village management complete control over the activities of residents' meetings. The amendments instruct residents on what to do and how to do it. They are to notify management of the substance of meetings called, record who attends, how the voting went and make it compulsory for residents to keep minutes and give management a copy of them. This is certainly a means of intimidating outspoken residents

How can we have residents' meetings if legislation insists that we must allow the presence of management? It would spell the end of residents' committees doing the bidding of residents, which is how it should be, and result in committees practically selected by management and doing the bidding of management.

It's ironic, isn't it: Government wants to require residents to certify minutes of meetings as a true record of the business of a residents' meeting but doesn't require scheme operators to certify financial statements given to residents as a true record of the collection and expenditure of their money. What an abysmal failure to see things in proper perspective.

## Reinstatement

This is what our Act recites (Section 58):  
***“reinstatement work means the replacements or repairs that are reasonably necessary to be done to reinstate the accommodation unit to a marketable condition....”***

The Department simply ignores that the Act provides a capital replacement fund for replacements and a maintenance reserve fund for repairs. Scheme operators will be very happy to know that they can ignore repair and replacement until a resident leaves the village and then make the resident pay for it. Curiously, in an earlier 'issues paper' the Department of Fair Trading remarked:

***“In a lease/licence arrangement, the unit***

***remains an asset owned by the operator and therefore it seems incongruous for a resident under such an arrangement to be liable for restoration of that asset ....”***

That is absolutely right but why has the Department changed its mind and abandoned that very obvious conclusion? The answer is obvious: too much pressure from scheme operators.

## When you leave

We have always taken the view that residents who leave the village should not have to pay their monthly fees until the scheme operator has been paid by a new lessee. It has always been our view that such continuing payment should be capped at six months, in line with Church run and some other non-commercial villages. The Department, in an earlier 'issues paper', canvassed a cap at nine months. In their proposed amendments they have surreptitiously stretched that to twelve months. We are reminded of something the Department wrote in an earlier issues paper: *“There has been very strong operator stakeholder objection to this course.....”* Well, wouldn't you know! And for the Department that settles it!

## Pay-out



There is not a mention in the Act or in the proposed amendments about the length of time a resident may have to wait for his or her ingoing contribution to be refunded, what was paid up-front when entering into the village. We want to see this capped as well. You can depend that this too has met with strong operator stakeholder objection! We have long campaigned for it to be capped at six months, as we have campaigned for recurrent contributions to be capped. But no, under pressure from the owners and developers the Department has ignored it altogether.

That means that, as has happened in the past, ex-residents could have to wait for years before

being paid their 'Exit Entitlement'. When the present building bubble finally bursts, as it inevitably will, when supply of retirement village Units matches or exceeds demand, village owners will have quite a lot of unleased Units on their hands. - 'Market Forces'! But owners will not suffer much, they can just keep us paying, in part at least, our recurrent fees for twelve months and can just hang on for ever to those ongoing contributions which we paid when we moved in.

The retirement village industry must be the only industry which has been enabled, by an Act of Parliament, to indemnify itself against any adverse effect of market forces. They are able to do this by making their customers continue to pay for both the accommodation and goods and services long after they have ceased to use them. No wonder new retirement villages are springing up all over the State. In cricketing terms, scheme operators are batting on a feather bed wicket.

## Disputes Tribunal

The Commercial & Consumer Tribunal provides that a party to a dispute may be represented by another person who is not a lawyer. This allows a resident who has a complaint to take to the Tribunal but who is reluctant to appear personally in such a setting and cannot afford to be represented by a lawyer, to get someone else to appear for them.

It means, for example, that they can be represented by someone not necessarily a resident of their village, a member of the ARQRV committee perhaps. But the scheme operators do not like that idea at all. So the Department of Fair Trading, in its draft amendments, proposes to outlaw that by restricting representation by another person to another resident of the same village.

That means that a resident can be represented by a lawyer, any lawyer, but not by a person, any person. A resident would not be able to be represented by a son or daughter, or a family friend or someone to whom they had given

power of attorney. It's very difficult to see where the justice in that lies. But in our experience justice is not a favourite pursuit of the Queensland Department of Fair Trading. We don't think it is a case of the Law Society trying to institute a 'closed shop'.

## Unfair contract terms

A little more than a year ago, interested parties were asked by the Department of Fair Trading to make contributions to a discussion of unfair terms in contracts. This Association did so and its submission and those of other bodies can be found on the Department's web-site. It is interesting to see the comments on unfair contract terms remarked upon by other consumer organisations:

*"...Allows the supplier to vary charges or rates or charge the purchaser any taxes or duties imposed in relation to the services at any time without prior notice to the purchaser"*

Whatever it is, charge the consumer, in our case the residents. Don't consult, just do it.

*"Our experience with unfair terms (as well as other consumer issues) in the Telecommunication Sector demonstrates that, if the matter is left to industry, wherever possible industry will choose the least intrusive form of regulatory instrument (for instance voluntary guidelines).*

How often have we said that voluntary guidelines and codes of conduct are virtually worthless. But it is what the Department of Fair Trading is advocating for Retirement Village operators.

*"...even where breaches of the regulation are documented, enforcement powers, and in some cases the will to act, may be lacking"*

In relation to retirement villages, the Queensland Department of Fair Trading

does have the powers but it doesn't have the will or even the inclination to use them. Burden of proof is one excuse, lack of resources is another. The expression 'cop-out' comes to mind.

## Public meeting

The meeting to which we drew attention in the March newsletter took place on the 27th April. MLA for Nicklin, Mr Peter Wellington, chaired the meeting which was addressed by the Honourable Margaret Keech, Minister for Fair Trading. Also in attendance were Ministerial advisers from the Department of Fair Trading. The meeting was extremely encouraging, two hundred village residents from around the Sunshine Coast came to air their views. Questions and observations came fast and relentlessly and the Minister could not have failed to be impressed by the breadth and depth of residents' concerns. We shall have to see whether those concerns translate into alterations to the proposed amendments.

Those of us on the ARQRV Committee were particularly gratified by the attendance and interest because residents were giving support for and echoing the concerns that this Association has been canvassing for years. Government must surely now acknowledge that the concerns that we express as an Association are firmly rooted in the opinions of residents. The Minister indicated that submissions could still be made. We urge you to do so.

## Investment

Following are some extracts from the 'Weekend Australian' of 2-3 April. "According to ASIC deputy chairman Jeremy Cooper, high yield debentures are typically risky investments with no guarantee, and vulnerable investors,

especially retirees, have been targeted"....."Under that ruling (ASIC's) Primelife acknowledged that the syndicates, which invite people to invest in retirement villages, should have been registered investment schemes"....."The company also agreed to pay up to a million dollars in costs for an independent accountant - as well as \$600,000 in ASIC's and the company's legal costs." (No wonder they are looking for more investors.)

Retirement village residents should be wary of 'investment advisors' who tout a particular company. Over the tea and bikkies, ask what commission or on-going (trail) fees they are getting. If they are getting any they can hardly be independent, can they? (But this is the sort of advice ASIC, ACCC and ACA are often giving publicly.) There is the old watchword: 'if it seems too good to be true, it probably is!'

## Blast from the Past



From Cliff Grimley's observations, January 2000, on the new Act: *(re exit entitlement)*  
***...the exigencies of market fluctuation are commercial risks which attach to the promoter and operator of the (retirement village) schemes. Residents should not be called upon to carry this risk. This is grossly immoral and inequitable. The defence of this policy by the industry, and given support by the Government, was the financial viability of the industry. I don't know of any other industry which can require its clients to underwrite its commercial risks.***

Over five years later the industry is still crying poor and Government is still wiping away industry tears with pro owner legislation. We still have to wait for our exit entitlements.

*Til July*