

Association of Residents of Queensland Retirement Villages (Inc)

President
Les Armstrong
PO Box 1361
Buddina
Qld. 4575
Ph. 5493 7112
vi.lesarm38@bigpond.com

ARQRV

www.villagers.org.au

Secretary
Grace Rutherford
PO Box 1361
Buddina
Qld. 4575
Ph. 5444 4690

No 67

NEWSLETTER

June 2008



From the President



There is much to report since the March newsletter, notwithstanding that my contribution to ARQRV matters was negligible during late-April when I walked the Kokoda Track in PNG, enduring 8 days in the most demanding and inhospitable terrain imaginable. I survived however, and returned home with an enhanced appreciation of the indomitable spirit of the young soldiers who fought there in 1942, and their contribution to our Country. Wiser and temporarily-exhausted, perhaps I can now translate some of the hard-learned lessons and characteristics into our Association's effort on behalf of the Membership.

The excellent response to the Visits program continues. During April and May the Association's aims and achievements have been outlined to Residents at: North Lakes, AVEO Newmarket, Samford Grove, Farrington Grove, Cleveland Manor, Wellington Manor, Fraser Shores 1 & 2, Masters Lodge, Urimbirra and Noosa Outlook. Aside from the excellent morning tea provided by the Samford Grove ladies, the highlight of each visit was, as always, the Questions & Responses session. A summary of 3 of the matters most-frequently raised follows later in this Newsletter. Others will be included in subsequent issues.

Although the matters raised in each Village were specific to that location, the common themes were repeated, reaffirming the Associations contention that there is nothing new in "The

Industry", merely repeats of old issues. This need to re-visit every major problem, regardless of the number of Commercial & Consumer Tribunal decisions in support of the Association's stance, stems primarily from the inability of the ARQRV and Aged Care Qld to arrive at any common interpretation of the confusing and complex Retirement Villages Act and related documentation.

There may however be some resolution in sight! The Attorney-General, Kerry Shine, has convened a Ministerial Working Party comprising representatives from ACQ, ARQRV and the Office of Fair Trading to address some of the contentious areas of the Legislation. Agenda items suggested by our Association include:

- a. Exit fees, especially clarification of Section 15(2)
- b. Revised definition of Capital Items as contained in the recent CCT Determination VH003-07
- c. Procedures for Budget Development
- d. Cost of Selling, including charges by "third party" service providers
- e. Reinstatement of Unit on departure, especially major refurbishment; and delays in presenting the Unit for sale, arising from such extensive work

Phil Phillips and David Wise will join me in presenting the Association's views to the working Party. Members may be assured our case will be well-prepared and that we are ready for the battle!!

Budgets

In both our January 2007 and June 2007 Newsletters we explained the implication of the new Sections 102A and 129B. By now, your committees should have asked for and been given a copy of the draft budget for 2008/2009. That is not optional for management; it is required by Section 102A.

Not only that, your committee should by now have had or should soon be having a meeting with management to discuss the draft budget. This meeting is also not optional for management; Section 129B requires management to attend such meeting and if they do not they are in breach of the Act. Residents do not have a power of veto over the budget but if they consider the budget unacceptable they can refuse to accept it. If, nevertheless, the scheme operator imposes it, residents can go to the Tribunal to seek its overturn. However, we caution residents to make sure that their own homework is well done when refusing to accept a draft budget.

In 2007, residents of Urimbirra Village refused to accept a budget in which the fees had been increased well beyond CPI, without seeking residents' agreement by special resolutions. In this case the Scheme Operator went to the Tribunal to get the Budget adopted, but his application for enforcement of the budget was dismissed by the Tribunal on the grounds that the Budget did not comply with the Act in that increases were imposed in Section 106 items beyond the CPI and without the necessary special resolutions.

Surpluses and Deficits

A word about surpluses and deficits. Section 102A(6) provides that surpluses and deficits may be carried forward and taken into account in framing the following year's budget, although the ARQRV stance is that deficits should be recovered gradually and not made the subject of a special levy or charge. That doesn't mean we can't challenge a deficit. Under Section 112 the scheme operator may be required to explain: *"any increase in expenditure involved in providing a general service that varies from the expected expenditure for the general service in the budget for charges for general services."* 2

Also keep in mind that the carrying forward does not operate until the financial year 2007/2008, ie as at the 30th June 2008. It does not provide that surpluses or deficits are to be carried forward from previous years. Section 102A did not come into operation until 1st January 2007 so it cannot, in our view, apply before financial year 2007/2008.

Another caution. Surpluses accumulated in the General Services Fund (excluding that paid into the MRF) may be carried forward but not into the MRF or the operator's CRF. MRF contributions are to be based on the Quantity Survey predictions, even though circumstances may warrant a departure from them. Funds provided for one purpose cannot be cannibalised for use on another purpose. That stance was reinforced in Tribunal ruling in Phillips v Edenlea case. It is even less acceptable to put such surpluses into the Capital Replacement Fund. That would be contrary to Section 94(3). Nevertheless, some Scheme Operators are pursuing those practices, and thus leaving themselves open to possible Dispute.

Insurance

Residents are required to pay insurance premiums, and are therefore entitled to see evidence of what they are paying for. This will mean getting sight of the insurance policy, not just the premium notice. What we are expected to pay for is insurance as set out in Sections 109 and 110. We should not be expected to pay for things like professional indemnity, fidelity guarantee, director's liability, product liability and loss of profit.

The ARQRV policy on Insurance is being drafted and will be a feature article in a future Newsletter.

Requests for Documentation on Salary & Wages

A frequent response to a Committee's request for access to information on salaries and wages paid to staff is; "Sorry not available. The Privacy Act prevents such disclosure". However this disclaimer is incorrect. The Privacy Act currently does not prevent disclosure by employers of "employee records" (which includes details of salaries and wages), provided that the disclosure is related to the employment

relationship and is not done for commercial gain by the employer.

The reason for this exemption is that, when the Act was passed through Federal Parliament in December 2000, the Attorney-General was of the view that, although employee records deserved privacy protection, such protection is more properly a matter for Workplace Relations legislation. (However, Workplace Relations legislation still does not protect the privacy of employee records!)

Operators may try to argue that disclosure to residents is not related to the employment relationship” and therefore is not within the exemption. However, the Explanatory Memorandum to the Privacy Act states that the disclosure will be exempt if it is “related to current employer relationship so as to ensure that employers cannot use 'employee records' for commercial purposes unrelated to the employment context”. Therefore, disclosure of an employee's details to residents within the Village where the employee works is within the context of the employment relationship, and there is certainly no commercial gain for the Operator in making the disclosure to the residents.

Disclosure of personal information is also allowed under the Privacy Act where the disclosure is “required or authorised by or under law”. Given that the cost of salaries and wages of Village employees is met by residents via the GSC, the disclosure of those details is “required or authorised” by the RV Act. In particular S112(4) arguably requires this, particularly when it is read in conjunction with S107(b). The residents must be provided with sufficient information in relation to salaries and wages to assess whether any increase is as required under an award, certified agreement, enterprise flexibility agreement, industrial agreement, Queensland workplace agreement, or other industrial agreement made, approved, certified, or continued in force under relevant industrial relations legislation.

The RV Act does not specifically require the disclosure of employee records to residents, but impliedly requires the disclosure. The

Explanatory Memorandum to the Privacy Act recognises that an implied requirement could be enough. “There could be situations where the law requires some actions which, of necessity, involve particular uses or disclosures, but this sort of implied requirement would be conservatively interpreted”.

Regional Meetings

There are ARQRV members in Villages as far North as Mossman, out West in Mt Isa, and South to Tallebudgera. Given this wide dispersion, and recognising that many members are unable or unwilling to travel long distances to attend meetings, the Association has in the past held the Annual General Meeting at different locations ie Brisbane, Beenleigh, Bundaberg and Sunshine Coast. This variable venue concept has been successful in allowing many members who might otherwise not attend, to participate. The ARQRV meetings schedule has now been expanded and will include three Regional General Meetings per year. The Inaugural Regional gathering will be held at Manly Gardens RV on 16 June 2008. The meeting Agenda and Venue information are included in this Newsletter. Details for succeeding meetings, including venues, will be advised.

Membership

Our March Newsletter included a personal reminder to those 1500 members who had not submitted their 2008 fees. The extra administrative workload and increased postage costs for these reminders were justified however, because over 1100 renewals have now been received from these members. Unfortunately, a minor problem in our Data Base identified a number of members as being unfinancial, when in fact they had already paid for 2008. Apologies to these folks. The fault has since been rectified and Association records are now up-to-date. As at 1 June 2008, there are 4477 Unit memberships, (Including 248 Life) representing 6330 Residents.

Any enquiries related to membership on the Data Base should be directed to Vi Armstrong; contact details as at the top of this Newsletter.

Maintenance, Repairs and Replacement

Many members will have experience of Operators charging Residents personally for repairs and replacements in and around their Units. Many may remember that in previous Newsletters we have advised members to resist such charges.

In August 2007, a Resident in Edenlea village brought a case in the Tribunal against the Operator in relation to some plumbing repairs in her Unit and an insurance 'excess' for both of which she had been obliged to pay. The Resident was wholly successful and the Operator had to reimburse the Resident for both. In a subsequent repair case, the 'Galletly case' where the circumstances were somewhat different, which we needn't elaborate on here, the Tribunal distinguished it from the earlier case and found in favour of the Operator. In our view, that latter decision, whatever its basis, was morally quite unsatisfactory and we determined to pursue another similar case with all the legal and moral argument we could muster. And we did!

At Sunnymeade Park RV in Caboolture, residents had a wide ranging 'overcharging' dispute with the Operator which resulted in the Operator making a substantial repayment to Residents. However, there was one issue on which the Operator would not relent. Residents were told they had to pay personally for repairs carried out to their water heaters. We challenged this and the matter was heard by the Commercial & Consumer Tribunal.

The Operator was represented by Minter Ellison. The Residents were represented by the ARQRV lawyer, David Wise. This issue went to the very heart of who pays for what in terms of maintenance, repair and replacement. We have always argued, that it is quite wrong, whatever the PID contains, to expect Residents to pay personally for the maintenance and repairs of items in their Units for which they are also required to contribute into the maintenance reserve fund. This argument and others pertinent to the issue were comprehensively

advanced by David Wise. Minter Ellison relied substantially on a very broad interpretation of the 'capital items' definition in the dictionary to the Act, but the Tribunal did not agree. The Tribunal found in the Residents' favour and also went to the extent of saying that, with the benefit of the legal argument advanced, it no longer held the view it had expressed in the Galletly case.

This is undoubtable the most significant success our Association has had in the Tribunal forum, because it has the widest implication. We cannot recite all the arguments put to the Tribunal or the Tribunal's reasoning in this newsletter but we encourage residents who have an internet connection to go to the Tribunal's web-site to read it: www.tribunals.qld.gov.au then follow the prompts to 'Delphine Power and certain residents of Sunnymeade Ret. Village. v Jomal Pty Ltd.

When we have finished rejoicing we need to pause and contemplate what the Operators' reaction may be. Perhaps they will attempt to increase contributions to the MRF. There is some logic in that approach based on the argument that repairs which had not been forecast will have to be funded. However, that will be tongue in cheek because they had no good reason to suppose that repairs would not be a MRF charge when the Act commenced. In any case, most of us who came into our village before the present Act, and even in the first year or two after then, would not have had a PID requiring us to pay personally for maintenance and repairs or replacement. Under the 'Instrument of Approval', Operators were then obliged to keep a 'Sinking Fund' funded by residents, to which repair and replacement costs were to be charged. The sinking fund subsequently became the MRF and the CRF.

But apart from that sort of technicality, if there is a move to increase your MRF contributions you should require your Operator to demonstrate the need for an increase. The sort of 'surplus' which your MRF has now, and will probably have at the end of the ten year cycle, is almost undoubtedly sufficient to absorb the additional

repair costs. In our experience, MRFs have more than enough funds to meet predicted requirements. Let us remember the additional costs will only relate to fixtures & fittings within the Unit; that is likely to be a relatively minor cost. Nothing like the cost of repainting or termite treatment! If additional contributions were able to be justified, these increases could be accommodated by reducing the very significant surplus in the MRF. Alternatively an additional year could be added to the repainting cycle, or the 'contingency' element could be utilized.

Members' Money Matters

At the time of this report subscriptions have been received from 4,477 members. The Life Membership drive has been well received with an increase in numbers to 250. Sufficient funds have been invested in term deposits for the interest payments to cover the reduced income we would have received from, now non-contributing, members. During this financial year we have received donations in excess of \$2,500.00. Thank you to those donors. Also "well done" to our Liaison Officers who soldier on trying to get new members and reminding existing members when fees are due. Liaison Officers are reminded that they may submit an expenses claim to the Treasurer, with receipts please.

A brief reminder of our receipt policy. All Life memberships and donations will be acknowledged with a receipt. For renewals, the arrival by post of the next Newsletter indicates receipt of your payment.

The preferred method to pay subscriptions is through the Village Liaison Officer. For those Villages without Liaison Officers Members may deposit the payment into either of the Association accounts. Details follow:

Commonwealth Bank BSB 06 4162 Account No 10062890 or,
Bank of Queensland BSB 124001 Account No 20511301

Please forward the bank receipt and members details to The Treasurer, ARQRV, P.O. Box 1361, Buddina, Qld, 4575.

Other contact details are Phone: 5437 8667

E-mail: enjayel@bigpond.com

Liaison Officers. The responses to the March Newsletter have been incorporated as shown below. Note that there are still 18 Villages without an LO. If your village is listed please consider accepting the role, perhaps in conjunction with another Resident to spread the load.

Changes to Liaison Officers Listed in Newsletter No 66

Aveo Gardens SOUTHPORT 4211

Marcia Hartley Unit 15

Eaglemont BEACONSFIELD 4740

Denis Travers Unit 49

Fraser Shores 2 PIALBA 4655

Wal Berwick Unit 94

Heritage Gardens EARLVILLE 4870

Barry McKeown Unit 21

Hisbiscus Bellflower SIPPY DOWNS 4556

Ranald Sutherland Unit 137

Kawana Island Ret Village PARREARRA 4575

Jane Keim Unit 31

Masters Lodge PIALBA 4655

Alan Pitt

Prins Willem Alexander BIRKDALE 4150

Rudi Moerke Unit 131

Sunnymead Park CABOOLTURE 4510

Helga Chillman Unit 4

Urimbirra Ret Village TORQUAY 4655

John Sheppard Unit 31

Willow Glen Ret Village TOOWOOMBA 4350

John DeGaris Unit 103

Tranquility Gardens HELENSVALE 4212

G & B Whitingstall Unit 68

Waharoonga Ret Village BILOELA 4715

Ben Simons Unit 6

Liaison Officers required for :

Bellcarra Village CALOUNDRA 4551

Bridgeman Downs Ret Village BRIDGEMAN DOWNS 4035

Buderim Gardens BUDERIM 4556

Cascade Gardens RACEVIEW 4305

Coolooh Waters Ret Village TIN CAN BAY 4580

Corinthian Court Ret Village KIRWAN 4817

Fraser Shores PIALBA 4655

Forest Place Clayfield ALBION 4010

Hisbiscus Ret Resort NAMBOUR 4560

Melody Park NERANG 4211

Mt Gravatt RV MT GRAVATT 4122

Nandeebie Blue Care ALEXANDRA HILLS 4161

Oasis Ret Resort CURRIMUNDI 4551

Pine Lake Ret Village ELANORA 4221

Plains Ret Village EIGHT MILE PLAINS 4113

Robertson Park Ret Village ROBERTSON 4109

5 The Residence Ret Village CLAYFIELD 4011

Torbay Ret Village TORQUAY 4655

AGENDA
ARQRV INAUGURAL REGIONAL MEETING
TO BE HELD AT
AVEO MANLY GARDENS RETIREMENT VILLAGE
112 WHITES RD MANLY
ON MONDAY 16 JUNE 2008 AT 10.15AM

1. Opening & Welcome
2. Apologies
3. Minutes of Previous Meeting
4. Business arising
5. Correspondence
6. Reports
 - A. Treasurer
 - B. Membership Coordinator
 - C. President
7. Tribunal Matters
8. Ministerial Working Party
9. Questions & Responses
10. General Business
11. Next Regional Meeting
12. Closure

(G. Rutherford)

Secretary

ARQRV

20 May 2008

Notes:

1. Seating in the Manly Gardens RV Community Centre is limited to 210 places. Morning tea will be provided from 9.15am onwards. Members considering attending are requested to advise either John Elliott, on 54510037, or Ron Wallace on 33934823 in order to facilitate catering and seating.
2. Parking in the Village is limited. Attendees should car-pool where possible, drop-off passengers at the Community Centre and then park along Whites Road or in Gannan Street.