

# Association of Residents of Queensland Retirement Villages (Inc)

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## ARQRV

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**No 69**

**NEWSLETTER**

**October 2008**

## From the President

Within a rapidly-changing Industry, the ARQRV remains constant in seeking to advance and protect the interests of residents in Queensland retirement villages. Usually these objectives can only be achieved by legislative change or by a favourable interpretation of that legislation. However, regardless of how this metamorphosis occurs, the result of any decision which is beneficial to residents, especially when it affects the Operators' profit margins, will almost certainly be challenged. Such appeals, legitimate as they may be, also serve to extend an already protracted legal process such that the timeframe for resolution may often extend beyond two years. Time – a luxury many Residents do not have.

Usually the success of a case will depend upon the extent of the preparation and the quality of the argument. Again, time; which attracts a cost penalty. Given our Association's limited resources we must continue to rely upon a volunteer workforce to draft these cases, before our Legal Adviser applies the final polish. A few statistics. Since July 2008 more than three hundred complaints have been received from Members, ranging from minor maintenance issues, through to major financial mis-management matters. Although the majority of these problems have been resolved at Committee level, 20 have entered Dispute Resolution, having been unsuccessful at Preliminary Negotiation. Twelve are at, or will proceed to Mediation and a further four await listing for Hearing. Regrettably, three Exit Fee and Cost of Sale cases were heard in October and dismissed. As discussed later in this Newsletter, the Association is

preparing an appeal on the first Exit fee case. Additionally, the Supreme Court has heard the Judicial Review of the Sunnymeade case and a decision is expected shortly.

The outcomes of these appeals will have an Industry-wide impact. Not surprisingly, the Operators have arrayed impressive Legal teams to present each case. Your Association has responded in kind at considerable expense and will argue each case strongly, although no guarantee of success can be given.

There has been considerable speculation regarding possible changes of Village ownerships. Many Residents are concerned about their security of tenure under a new Owner. Notwithstanding that there may be some minor variations and new procedures introduced, there can be no significant variation to the Residence Contract without the Resident's approval. However, many Operators do not accept this interpretation and continue to advise of changes to Public Information Documents, inferring retrospectivity for the change.

The Visits-to-Villages program has generally been successful. The ARQRV information briefings are usually well attended, with excellent audience participation. Several frequently asked questions are addressed later in this newsletter. Regrettably, a number of Operators continue to resist our Association's presence and often promote an anti-ARQRV environment. Distressing as that attitude may be, of far greater concern is that some Residents support this stance and are often able to influence the Residents' Committee against our Association. Frequently, such Committees then become more concerned with solving the Operator's problems than representing the Resident body.

## Annual General Meeting

A feature of the AGM was the excellent morning tea prepared by the Ladies Auxiliary from Allora Gardens Retirement Village. Notwithstanding a disappointing attendance of 109, the Election of Office Bearers proceeded and was followed by a lively Question and Response session. AGM minutes and the Committee composition can be read on the Association web page. A sincere thank you to the outgoing Committee, and welcome to the new faces, Ted Davies, Barry Vassella, Maureen Lavis and Dave Lavis.

## Newsletter Distribution

The Association publishes 20000 copies annually of our Newsletter, over four issues of 5000. Production and mailing costs are approximately \$22000, ie. about one third of the annual budget. Effective from the first issue in 2009, electronic distribution will be introduced for members who elect to receive their copy via Email. Should you wish to support this major cost-saving initiative, simply Email to the Association: **“Yes please, Newsletter via Email”**.

## Membership

It is time to Renew Annual Membership. Have you renewed your membership? If not, will you remember to do so? In early 2008, more than 1200 members did forget. Considerable expense and administrative effort was then required to mail out reminder notices. This year, break the mould and renew NOW. Currently the Association has 6830 members representing 4845 Units. Impressive as that may be, it represents only 15% of the 45000 residents in the 284 villages in Queensland. Membership is our strength and allows our collective voice to be heard louder and with more impact. How can we increase the membership? What can you do to help? Simple: More publicity by the Executive and greater personal effort by Members.

Dave Lavis has accepted the challenging role of Membership/Liaison Co-Ordinator and will be launching a major advertising campaign to alert non-members to the benefits of our Association. Each of us can assist by adopting the slogan! “Every member get a member.” Don’t delay, do your bit for the

Association. Our aim is to have 7000 Units enrolled by end-2009.

## Liaison Officers Urgently Needed

When representing Members, the Association relies on Village Liaison Officers as the initial point of contact. Our Liaison Officers coordinate ARQRV Membership in the village, contact new residents and collect annual subscriptions. The following Villages require Liaison Officer: Bridgeman Downs; Buderim Gardens; CARV Yeppoon; Cascade Gardens; Cooloola Waters; Cooloolum Waters; Corinthian Court; Forest Place Clayfield; Mt Gravatt; Oasis Resort Currimundi; Robertson Park; Runaway Bay; The Residence, and Torbay. Interested members should contact Dave Lavis for further details.

## Exit Fees

Eventually, all Residents, or their heirs, will pay an exit fee. That is provided for at Section 15 of the Retirement Villages Act 1999. Although Exit fees were not introduced by that legislation, they have always been a feature of retirement villages under one description or another; the Act simply gave the change a uniform legislative name. Almost invariably the exit fee a resident is required to pay is expressed in their PID as a percentage of the next resident’s ‘ongoing contribution’, for every year of the departing resident’s occupancy. This Incoming Contribution is the amount the next resident pays up front to enter the village.

S.15(2)(a) provides that the exit fee is to be calculated “*as at the day the resident ceases to reside in the accommodation unit to which the residence contract relates*”. The ARQRV has always firmly believed, and still believes, that the exit fee should not be charged beyond the day the resident vacated the Unit. The Association’s view is that parts of a year should be calculated pro-rata. That is, as so many years and so many 365ths of a year. That, in our view, is the only fair and equitable meaning that could be ascribed to S.15(2)(a). However, some Operators have interpreted Section 15 as meaning simply that the rate of exit fee is determined at the day the resident vacates the Unit.

Regrettably, there has recently been a Commercial & Consumer Tribunal decision on exit fees which was difficult to comprehend and to accept. The Tribunal ruled that because the legislation was not specific

about the calculation of exit fees it was to be inferred that the calculation was meant to be just the rate of the fee. That seems a bit absurd because the rate is the same for any day during the year in which the resident vacates; it makes ‘the day’ the resident vacates somewhat meaningless. The Association acknowledges that the Tribunal cannot, of course, put into the legislation words which are not there, but considers that the Tribunal paid too much heed to S.3(1)(b) of the Act: “to encourage the continued growth and viability of the retirement village industry in the State”; and not enough to S.3(2)(a): “to encourage the adoption of best practice standards by the retirement village industry” By no stretch of the imagination can charging a whole year’s exit fee in respect of a few days be regarded as best practice standards. (The case in point resulted in an extra fee of \$9900 for just nine days occupancy after the previous completed year.)

The Association intends to lodge an appeal to the District court. The decision to appeal was not taken lightly: it may be an expensive case, with no guarantee of success. However, given the major adverse impact that the Tribunal’s finding will have on all residents, and recognizing the Association’s Consumer protection charter, there was no alternative.

## FAQ’s

### **Who may vote.**

**At Resident’s Meetings.** RV Act S133 prescribes that one resident of each accommodation unit may vote at a meeting of residents. However, residents may decide by Special Resolution voting to change this procedure to one vote per resident. If your Village has not exercised this option, one vote per unit prevails, and is applicable at all residents’ meetings. Refer to Commercial & Consumer Tribunal(CCT) Determination VH011-05 dated 22DEC 05 for the rationale on the one vote per unit decision.

**At Committee Meetings.** Residents are elected to a committee, often to a particular portfolio and then vote as that portfolio holder, not as a resident of a particular unit. Thus, each member of a committee is entitled to vote on any motion at a committee meeting, even if two committee members live in the same unit, regardless of the voting procedure in force at their Village.

**Meeting Procedures**      **Who may convene a meeting? Notice required?**

There are two sections of the RV Act which allow for a meeting of residents to be convened. S131, titled the Annual Meeting, is called by the Operator as soon as practicable after the annual audited financial statements are available, to present these accounts to the residents, giving 21 days written notice. S132, titled Other Meetings, requires 14 days written notice and may be called for any reason (other than the S131 meeting) by either the Operator or the Committee. Each year one of these meetings is usually held to re-elect the Residents’ Committee members, and is titled Annual General Meeting (AGM).

Note that the authority to convene a meeting of residents does not entitle the Convenor to chair that meeting. All meetings of residents must be chaired by a resident, usually the Chairman of the Residents’ Committee, although the meeting chair may be appointed from the floor if that is considered appropriate by a majority of residents present and entitled to vote.

S127 prescribes that committee members may be re-elected. It follows therefore that those seeking re-election must be nominated and seconded. Moreover, because any resident may seek election, both occupants of one unit may be nominated. Similarly, there is no restriction on the number of positions for which a candidate may be nominated, although subsequent nominations would become invalid immediately the candidate is elected to a portfolio. It would be unusual for a resident to self-nominate, but such action would be legitimate unless prohibited by the Residents’ Constitution. The proviso is that all nominees must meet the definition of “Resident” as prescribed in Act S9. Unless varied by a specific entry in the Constitution, nominations for Committee appointments usually close 7 days prior to the AGM date.

Voting can be conducted in any manner the Committee decides, but is usually by ballot paper. All residents are entitled to attend any meeting of residents. Those eligible to vote may do so either personally, by proxy, by Power of Attorney, or by Postal Vote.

Proxy forms and postal vote forms are usually issued by the Secretary, (acting as the Returning Officer), who should keep a record of the number of forms issued and pass that record to the Scrutineers before the meeting starts. Two scrutineers should be appointed before, and confirmed at, the commencement of the meeting. Their duties include: monitoring the Attendance and Voting Register, issuing ballot papers, receipt from the Chairman of the contents of the locked container for postal votes,

