

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

Organisation: Retirement Village Residents Association Inc.
Name: Ms Jan Pritchett
Position: President
Date received: 16/12/2011

Additional Submission to the Parliamentary Enquiry on CTTT by the Retirement Villages Residents Association

Below are excerpts from the RVRA December Newsletter. The newsletter contains summaries of some of the CTTT cases in which our members had been involved in the past year. Also an article is included which is an overview by our Honorary Solicitor Peter Hill, who assisted in the case of the appeal against the CTTT finding.

Summaries by Jan Pritchett - RVRA President

In Peter Hill's article at the beginning of this newsletter, he outlines some of the important cases heard in the past year in the Consumer Trader and Tenancy Tribunal (CTTT) with results assisting the residents across NSW.

Whilst a CTTT decision does not set a precedent, in the way a court decision holds weight for future cases, there is a requirement under the CTTT Act that there is some consistency in decisions, and CTTT Members should refer to other decisions in making their deliberations.

Many of our committee members and RVRA members have been involved in these cases, and are willing to share their experiences, in the hope this may assist other residents.

These cases have been summarised in this newsletter, but a fuller account of the cases, and the lessons learned, are available on application to the RVRA Office.

Queens Lake Village Pty Ltd v Queens Lake Village Residents Association

Village: Queens Lake Village Laurieton

Operator: Queens Lake Village Pty Ltd, a subsidiary company of Aevum Limited, now owned by Stockland Ltd.

The Advocates: The CTTT case was conducted by a resident at the village, John Cooper (Vice President of the RVRA from August 2009 to August 2011). In the District Court appeal the Residents were represented by Peter Hill of Hill & Co Lawyers.

The Dispute: The residents voted unanimously to reject the proposed budget and proposed increase in recurrent charges because of lack of transparency in the proposed cost of Insurance and Corporate Recharge (Management Fees).

The Case History: The final hearing of the case in the CTTT resulted in the line item of "insurance", in the sum of \$23,100.00, as well as the line item of "corporate recharge", in the sum of \$28,594.00, be excluded from the budget for Queens Lake Retirement Village for the financial year 2010-2011.

Four weeks after the Order was received, a Summons was delivered to the Residents Committee Secretary advising that the matter was being appealed to the District Court citing the Queens Lake Village Residents Association as Defendants and notifying the operator's intention to claim costs. After a campaign by residents, the operator agreed not to claim costs and to assist

the residents with their legal fees.

Early in 2011 there were several days of hearings in the NSW District Court before Judge Levy. Both hearings were attended by a loyal supporting group of residents from various villages who followed the case through to the end.

The Result:

Judge Levy made the following Orders:

1. The appeal by Queens Lake Village Pty Ltd is dismissed;
2. The orders made on 9 December 2010, by the Consumer, Trader and Tenancy Tribunal in proceedings, numbered RV 10/28914 and RV 10/31794, are confirmed;
3. Queens Lake Village Pty Ltd is to pay the costs of the Queens Lake Village Residents Association on the ordinary basis unless, otherwise ordered. The findings of the District Court confirm that the line items of Insurance \$23,100 and Corporate Recharge \$28,594 (a total of \$51,694) are to be removed from the 2010-11 budget.

What has been learnt from the Queens Lake Village Case?

This case has now set a precedent in law on at least the following points:

1. Residents only have to meet the cost of Insurance for the items identified in the Act.
2. In respect of budgets, residents are entitled to receive sufficient detailed information so as to enable them to make an informed decision as to the acceptance or rejection of the budget. Transparency by every operator of details of all proposed expense is now mandatory. The information must also show that the statement of proposed expenditure relates directly to services provided to the operation of this village.
3. This case could have been avoided if the operator had been more transparent with the information that was given with the budget, and had been more agreeable to communicate, negotiate and conciliate.
4. The residents did not waver in their resolve, in spite of the intimidating circumstances.

Residents can win if they stand united, and do not bow to pressure.

Note: John Cooper assisted the residents at Maybrook Manor with their CTTT case, which was based on the same grounds. Because the operator had provided more information in this case, the decision was in favour of the operator. But, this decision was made before the decision of the District Court case was known.

Daley v Scalabrini Village Limited

The Advocates: The CTTT case was conducted in 2010 by a resident at the village, Judith Daley (Vice President of the RVRA, from August 2011).

The Dispute: The village contract was confusing regarding the method of increase in recurrent charges, as it referred to "CPI variations of the increase in the single aged pension".

Village: Scalabrini Village, Drummoyne

Operator: Scalabrini Village Ltd

The Case History: Judith Daley applied to the CTTT, and after the Directions Hearing, the case was decided on the documentation provided by the applicant and the operator.

The Result: The Senior Tribunal Member ordered that:

"Pursuant to section 128(2) of the Act, I order that (a) Schedule Three to the Contract; Variation of recurrent Charges according to a Fixed Formula; should be amended as follows:

"This fee will be varied half yearly, equal to the CPI variations for the year to March, and for the year to September figures respectively, published from time to time by the Australian Bureau of Statistics."

The Senior Tribunal Member also ordered that:

"Clause 15.06 of the contract should be amended as follows: "15.06 recurrent charges will be varied according to a fixed formula: (a) the Recurrent Charge may be varied: as per Schedule Three".

What has been learnt?

A resident acting alone, and taking a case to the CTTT, can assist the whole village, and result in all residents being treated in a fairer and equitable manner.

Note:

While the recurrent fees were increased by the stated figures, the contracts have not yet been amended as Ordered. On advice of the Chairperson Kay Ransome, Ms Daley has completed the process to "Renew the Application".

Carey Bay Retirement Village Residents Committee v Anglican Care

Village: Carey Bay Retirement Village

Operator: Anglican care

The Advocates: The CTTT case was also prepared by Judith Daley (see previous page) as an RVRA advocate, on behalf of the Residents Committee of Carey Bay. The Chairman of the Residents Committee, Ms Joyce Clarkson, assisted Ms Daley.

The Dispute:

It is a small village with 34 units. There are six different levels of contracts in the village for units that are all exactly the same size. The highest rate of recurrent charges is 94% higher than the lowest rate. The surplus, achieved each year, was distributed to each resident in equal shares, but this meant that a couple received two portions of the surplus.

Each resident received the same amount regardless of their payment to recurrent charges.

The following budget line items were also disputed: Insurance; Property Maintenance; Gardens and Grounds; Security Light; Security Hand Rails; Audit Fees and Legal Fees.

The Case History:

The Tribunal appeared to be uninterested in probing into aspects of the contracts in any way. However, a fairer formula to cover any future refund of the surplus recurrent fees was requested by the residents.

Budget Line Items:

The operator provided additional information regarding most of these items first listed, so that the residents could understand the charges, and the claims were (reluctantly) withdrawn. However, detailed evidence was heard regarding Repairs and Maintenance -Plumbing; Repairs and Maintenance – Shower Screen; Security – Vital Call System; Management and Administration Fees (Marketing, Software Licenses and Conference Education Fees); Chaplaincy; and Welfare Fees.

The Results:

A formula to cover any future refund of the recurrent fees was agreed by consent, and that will restore some equity. This formula means the amount to be refunded for each unit must be individually calculated according to the formula decided between the parties and approved by the CTTT.

The residents were successful in saving \$9,399.40 from the budget line items in dispute.

What has been learnt?

Some of these successes resulted from the principles established in the Queens Lake Village decision, in the District Court. That means, because insufficient detail was provided by the operators this year, and because they had “averaged the costs across several villages or used a formula”, the costs were disallowed this year. In future, if proper information is provided, the residents will have to pay these line items.

Other successes were to provide some clarification between ‘capital maintenance’ and ‘capital replacement’, but this still seems open to interpretation on each line item.

It meant in this case, that the repair cannot be charged to the residents, if the part is so essential that the unit will not operate without it. This was established by the CTTT’s ruling that, replacing the faulty flushing mechanism within a toilet system, in a leased premises, is not considered to be a repair, but is a replacement to be paid by the operator, not by the resident, or from residents’ Recurrent Charges.

The Landings and Sakkara Investment Holdings Pty Ltd

Village: The Landings, North Turramurra

Operator: Sakkara Investment Holdings Pty Ltd (trading as a Trust)

The Advocate: Neil Smith, a resident at The Landings, represented 28 other residents (including Jan Pritchett, the President of the RVRA). Neil has worked tirelessly for his village and for the RVRA in promoting fairness in the industry. He has been an active member in the RVRA Study Groups.

The Dispute: Residents identified six typical instances where they believed the Village Manager had inappropriately spent from Recurrent Charges for the financial year ending 30-6-2010. The residents believed these items should have been paid by the operator, under legislation.

One of the six items was for Management Fees of \$30,118, that had been charged to residents, without residents' consent to a new contract, or any transparent disclosure of detail, or the operator having established relativity to residents' benefits.

The other five matters were carefully selected as typical examples of what could constitute "repair" as distinct to "replacement" of items of capital, both in dwellings and in common areas of the village.

The total would have amounted to \$54,500 if all six items that were being challenged were considered by CTTT to be refundable. The Member's comments included his opinion that the legislation prior to 1st March 2010 (the date that the new legislation commenced) was applicable to some of the matters and he had ruled accordingly on those matters.

The Case History: Tribunal interpretations according to legislative definitions were in reality being sought under legislations applying both before and after 1st March 2010.

There was a one day hearing. The elapsed time between residents' application and CTTT Member's issued ruling was well over ten months.

The Result:

The result was most pleasing, to not just the twenty-eight pioneers who lodged the application, but to all the 280 residents at The Landings, who benefited by the CTTT's ruling to refund to residents of:

- Management Fees of \$30,118, which had unjustifiably been paid by the Village Manager out of residents' funds, to a contractor, who was unable to substantiate that their services were to the benefit of residents;
- \$5,777 for work that the Village Manager had unfairly classified as "repair", but which the CTTT Member clearly agreed with residents that the work constituted "replacement", and had to be paid for by the operator.

What has been learnt?

Residents should never be hesitant to question how the Village Manager is spending their money, collected as Recurrent Charges. Legislation is now in place to protect residents, but they need to understand possible interpretations and work together, through the RVRA, to keep those operators who try and take unfair advantages, honest by taking steps to achieve enforced compliance with legislation.

Note: This village has had two further CTTT hearings in the past year, because the residents rejected the proposed large increase, in the vicinity of 30% for each year, in recurrent charges for the 2011 and 2012 financial years. CTTT Mediation on the first case took so long that the financial year had ended, and the village had run normally on the previous recurrent charge rate, and there was a surplus. However, the mediation on the second case is still continuing.

Alloura Waters Retirement Village and Living Choice Australia Ltd

Village: Alloura Waters Retirement Village

Operator: Living Choice Australia Limited

The Advocates: Appearing for the Alloura Waters Residents were Gai McGlynn (Vice-President of the Residents Committee) and Bill Plant (RVRA Committee from early 2011)

The Background:

- The residents rejected the budget initially for Payroll Tax, and the operator said that they were unhappy with the rejection, as this was the only group village to do so.
- The residents rejected the amended budget on the grounds that the operator had not justified the Head Office Management fee charges in accordance with the Regulations 26(e) and 17(2) of Act, and
- the operator was claiming that loose items of capital replacement should be funded by the village residents by special resolution under section 30. Residents were told that they were the only one of the operator's group of villages not using clause 30 for capital item replacement.
- Removal of the payroll tax of \$24,000 was offset by other budget amendments, to reduce the budget costs by around \$12,000.
- The Head Office Management fee calculation for the Village was found, verbally, to be higher than that charged to all other villages in the operator's group, although the method of allocation between villages was the same. Alloura Water's increase was 12% and others 4%.

The Dispute:

The decisions required from the CTTT finally were:

- Whether the increase in the component for administration fees included in the proposed budget figure for recurrent charges is justified.
- Whether the contribution to the line item "Capital Maintenance Fund" in the proposed annual budget is justified.

The Case History:

This case was a very complex one, and several hearings were held. The case took eleven months from time the application went to the CTTT and when the decision was received. The Operator was represented by a Gadens solicitor, Arthur Koumoukelis, who did not comply with some directions of the CTTT, and who argued that many items of evidence from the residents be disallowed.

The CTTT Member became ill during the case, and so the decision was finally given many months after the case was heard.

A detailed outline of this case is available from our Administration Office and web site, but there is not sufficient room to elaborate further here.

The Result:

Issues:

- (1) Whether the increase for Head Office Administration Fees is justified, and
- (2) Whether the contribution to Capital Works fund is justified.

Issue (1): The Senior Member reduced the **increase in recurrent levies** from 12% to 4% which was the same as other villages operated by LCA. No other items requested by residents were altered.

Issue (2): Loose Capital Items. The operator had included a schedule for replacement of clothes dryers, microwaves, venetian blinds, entertainment equipment, office equipment, PVC outdoor settings, and timber outdoor settings. The evidence included a letter stating that these could be funded from the Capital Works Fund with the agreement of residents under RV regulation clause 30.

Alloura Waters Retirement Village cont

In the rulings of the Senior Member, he wrote:

36. The operator draws some distinction between fixed (capital) assets and non-fixed (capital) assets. Neither the Act nor the Regulation makes such a

distinction.

37. Section 97(2) RVA clearly establishes that any capital replacement cost "*...in respect of an item of capital*" is the responsibility of the operator.
38. The quantity surveyor's items nominated for the 2010/2011 budget, described by him as "loose items", clearly fall within the categories of "items of capital" defined in Reg. 4. The inclusion of this item of \$18,014, within the capital works fund budget, is in contravention of RV Act s 97(2).

What has been learnt?

- **The Operator is responsible for any item of capital.**
- Do not be overawed by the proceedings, and stand up for your opinions.
- Do not consent to items that you have reservations about; argue them with the Member.
- Be prepared to argue on points raised by the operator, and to cross examine.
- Don't be afraid of requesting an adjournment.

Note: Bill Plant also acted in an advocacy role for the residents at the New England Masonic Village at Armidale when the operator applied to the CTTT about the resident's rejection of the budget. Bill spent some time at the village in discussions with residents and the management, and a compromise was reached.

Leura Fairways Partnership v Residents of Leura Fairways Retirement Village

Village: Leura Fairways Retirement Village

Operator: Leura Fairways Partnership

The Advocates: Initially the Residents Committee of Leura Fairways asked the RVRA for assistance. John Wheeler who was Treasurer of the RVRA at the time, took on the role of Advocate for the Residents Committee. Later, the new Chairman of the Committee, who had legal experience took over the case.

The Dispute:

The Operator submitted the 2010/2011 proposed budget based on the 44 completed units (29 occupied). This raised the proposed recurrent charge from \$393 to \$600.63 per month, (53% increase). The residents rejected this budget.

Background: There are two Features that distinguish this Tribunal Hearing:

- Tribunal use of "An Estoppel" (The proposed expense budget reduced by half.)
- The use of a Forensic Accountant.

When Leura Fairways Retirement Village was established some 10 years ago, the expectation was that, ultimately, 56 units would be built. For some 10 years that '56 unit model' was used as a basis for calculating the recurrent charge. However, after 44 units were completed, and, 29 occupied, the Operators application to council for constructing further units was rejected.

The Case History:

The residents submitted evidence that all their Disclosure Statements contained the following clause in bold letters.

"The Village is not fully occupied so that the village operator meets the

majority of expenditure"

Residents submitted statutory declarations stating that they relied on this clause when signing their contracts.

Leura Fairways Retirement Village cont..

During the hearings, the Resident Committee Chairman, in advocating for the residents, requested a "Forensic Accountant" to examine the finances of the village.

The Result:

The Tribunal directed that –

- Such a statement, included in all Disclosure Statements' is a relevant matter to take into account under Subsection 115(6) (c).
- 'an estoppel' should arise in relation to allocation of expenditure from year to year. In relation to the 2010/2011 expenditure of \$317,137.00 the Tribunal directed that half of this amount \$158,568.00 would be included in the recurrent charge calculation. So that the Operator would incur no further loss this amount was spread over the 29 occupied units.

This resulted in a recurrent charge of \$450 per month for the 2010/2011 financial year, as opposed to the \$600.63 per month proposed by the Operator.

The Residents' Advocate is entitled to receive a significant proportion of the costs (\$ 5,500) which he properly expended in obtaining an opinion from a Forensic Accountant, because of the failure of the Operator to be transparent in relation to maintenance (No compliance with Sect. 98). Cost was awarded in the sum of \$2,750.00.

What has been learnt?

Residents must always have their documents relating to their contract and Disclosure statement on hand to ensure that the operator is complying with the agreement they made on moving into the village.

A Year in Review by Peter Hill (RVRA Honorary Solicitor)

It is timely to look at CTTT cases over the past 12 months, and to review the learning's from these for residents, but also to understand the second and third order impacts that these decisions will propagate in the future.

The centrepiece of the past 12 months is the Queens Lake Village Case, a decision of the District Court of NSW. (Aevum / Stockland appealed a CTTT decision to the District Court)

In practical terms, this decision held that an operator:

- cannot charge residents through their recurrent charges for insurance costs beyond the requirements of the *Retirement Villages Act 1999* (the Act), and
- cannot charge residents through their recurrent charges for unjustified head office expenses, and

- must be transparent in their detail as to how these line items in a budget actually provide the benefit of services to residents in the village.

The decision also reinforces the point that the Act is predominantly a beneficial piece of legislation, directed at protecting the interests of residents as consumers. Operators cannot also rely on their contracts to justify their actions, where they are at odds with the protections for residents in the legislation.

I might add here that the *Maybrook Manor* (2011) decision of the CTTT went the other way, but was decided before the benefit of the District Court decision in *Queens Lake*, and is consequentially of dubious precedent value.

It is fair to say that the decisions before the CTTT in *Sakkara* (April 2011) and the *Living Choice Case* (June 2011), in part also reinforce the need for operators to be more rigorous in the detail they provide on head office costs in annual budgets. If some form of apportionment across various villages is to occur, then the methodology is open to challenge when again it cannot adequately justify what benefit or services are actually being received by the village.

Can I say in conclusion that I commend the work of the Committee of the RVRA over the past 12 months. Their leadership and strength has been unyielding, often at times in the face of significant and robust challenges of very large and powerful operators wanting to have their view carry the day.

The *Queens Lake Case*, in my view, has been a turning point in the collective efforts and history of the RVRA (including the work of Residents Committees generally) and their combined diligence has acquitted the work of these very important organisations, both ably and with distinction. I feel confident and safe in the knowledge that the newly elected Executive and their significant capabilities will continue to advance the interests of residents across retirement villages in NSW and, indeed, beyond this State.

On behalf of my firm, Hill & Co lawyers, it has been a privilege to be involved over the past 12 months, and I thank all members for their support and outstanding efforts.

PETER W HILL

Hill & Co Lawyers

Honorary Solicitor RVRA

August 2011



**RETIREMENT VILLAGE
RESIDENTS
ASSOCIATION (INC)**

NEWSLETTER

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PETER HILL—ADDRESS TO THE AGM

Due to an editorial error, the wrong article was published in the September newsletter, in place of the address given by Peter Hill at the Annual General Meeting.

Our sincere apologies to Peter, and to RVRA members, for this error. The correct address starts below.

The Editor.



THE YEAR IN REVIEW

It is timely to look at CTTT cases over the past 12 months, and to review the learning's from these for residents, but also to understand the second and third order impacts that these decisions will propagate in the future.

The centrepiece of the past 12 months is the Queens Lake Village Case, a decision of the District Court of NSW. (Aevum / Stockland appealed a CTTT decision to the District Court) (cont...page2)

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ADDRESS TO THE AGM by PETER HILL cont...

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The decision also reinforces the point that the Act is predominantly a beneficial piece of legislation, directed at protecting the interests of residents as consumers. Operators cannot also rely on their contracts to justify their actions, where they are at odds with the protections for residents in the legislation.

I might add here that the *Maybrook Manor* (2011) decision of the CTTT went the other way, but was decided before the benefit of the District Court decision in *Queens Lake*, and is consequentially of dubious precedent value.

It is fair to say that the decisions before the CTTT in *Sakkara* (April 2011) and the *Living Choice Case* (June 2011), in part also reinforce the need for operators to be more rigorous in the detail they provide on head office costs in annual budgets. If some form of apportionment across various villages is to occur, then the methodology is open to challenge when again it cannot adequately justify what benefit or services are actually being received by the village.

In the CTTT decision in the *Minkara Case* (June 2001), the operator could not show that the formula used to attribute wages and salaries of staff in head office, both as costs for services to the village, and in its implications for payroll tax, met the requisite rigour required by the Act, to actually say that these were reasonable estimates to provide services to the village. It mattered not that the formula used was commercially convenient to the corporation, and provided a uniform formula to spread across all of the operators villages, and the fact that this was the methodology used over time.

In *Scalabrini* (October 2010), the CTTT reinforced the point that fixed formulas to set recurrent charges must be in line with the Act, notwithstanding that the contract may provide a different approach, as interpreted by the operator.

In the *Elliot Tuthill Nominees Case* (February 2011) the Supreme Court reinforced the requirement for operators to comply with the processes under the Act when presenting budgets, and not claim recurrent charges from residents where their process to have the budget approved has not complied with these protections.

So what do we learn from these cases for the future?

Well, the **consumer protection focus** of the Act, as a benefit to residents, is now beyond doubt. The bar has definitely been lifted in relation to the detail and level of information transparency operators need to supply residents, in order for them to make informed decisions, particularly around budgets. The fact that it is convenient and administratively more efficient for an operator to use their own methodology and it has been accepted by residents in the past, provides no licence or requirement for residents to approve it this way in the

future. The primacy of the Act, and the protections it provides, are axiomatic to the regulation of resident contracts in NSW, and the contract must give way where it is at odds with these protections.

The other point here is that operators are permitted to run multiple villages under the Act, but the **apportionment of costs must be specific, actual and real** to a particular village so as to prevent cross subsidization of residents in one village, by residents in another. History is a good teacher and it was not very long ago that departure fees were described as a 'deferred management fee' because they were really designed to pick up these managerial style costs and what we know today as head office costs.

Now we have both, and the change in the nomenclature masks a tendency for operators to 'double dip' on:

- high departure fees on vacation, and
- also requiring residents to now pay for these managerial style costs through recurrent charges during their residency.

The recently released Productivity Commission Report on *Caring for Older Australians* recommends that retirement village regulation continue to be State based.

I believe that it is very important to cement the hard won gains thus far in the Act, and as interpreted by the CTTT and Courts in future reforms of the legislation. The reason why this becomes so important is that operators, certainly post wave one of the global financial crisis, are becoming larger, and there is definitely a tendency for them to average costs across all of their villages, unrelated to the benefits residents are actually receiving in their particular village. It is important to point out also that the long touted benefits by operators of scale because of their size has definitely not been borne out, indeed neither accepted by the Courts or Tribunal system in

NSW as their arguments intersect with the resident protections under the Act, and certainly not in reality in those villages that seem to have their budgets increased dramatically on merger, particularly through the charging of head office costs that previously did not exist.

We have also seen in recent times an uptake in advertising by operators extolling the virtues of retirement living. For many, it does serve their interests well. But there must be a balance. Education is vitally important in the industry for future consumers, because it is often the families that are coming to terms with the hefty departure fees imposed on the estate of their late parents. The reality is that retirees are usually not buying "bricks and mortar", but a lifestyle, under a long-term lease or licence. I believe that this is an area, again from an educative and consumer protection point of view, that needs to be looked at carefully in the future by the RVRA and particularly regulators. Operators are continuing to advertise 'retirement units for sale' which suggests that future residents are buying freehold and own them outright. These marketing campaigns, in my view, need to be more correctly aligned with the Act, and the underlying value proposition of what prospective residents are actually purchasing.

But, there is also another reason why the work of the RVRA is so important. The hard yards won by supporters and volunteers alike across this industry, now and in the past, will likely benefit their children and the next generation, the baby boomers, as they move into retirement, and the choices they make around their accommodation needs as they age. These choices, in my view, will only be improved where they have the capacity to make informed decisions, which to a large extent will be built on the solid foundations laid by their forefathers and mothers.

Can I say in conclusion that I commend the work of the Committee of the RVRA over the past 12 months. Their leadership and strength has been unyielding, often at times in the face of significant and robust challenges of very large and powerful operators wanting to have their view carry the day.

The *Queens Lake Case*, in my view, has been a turning point in the collective efforts and history of the RVRA (including the work of Residents Committees generally) and their combined diligence has acquitted the work of these very important organisations, both ably and with distinction. I feel confident and safe in the knowledge that the newly elected Executive and their significant capabilities will continue to advance the interests of residents across retirement villages in NSW and, indeed, beyond this State.

On behalf of my firm, Hill & Co lawyers, it has been a privilege to be involved over the past 12 months, and I thank all members for their support and outstanding efforts.

PETER W HILL
Hill & Co Lawyers
Honorary Solicitor RVRA
August 2011

HELP US TO HELP YOU
SUPPORT THIS STATE WIDE
RESIDENTS ASSOCIATION
BY ENCOURAGING YOUR
FELLOW
RESIDENTS TO BECOME
MEMBERS

PRESIDENT'S REPORT



It is hard to believe that we are again in the final days of another year, and the Christmas Season is upon us.

Planning for the Future

The RVRA Committee has held some planning sessions over the past few months to make decisions about how best to move the Association forward by:

- **increasing our membership**, and therefore our influence over the policies which affect our lives so much, and
- finding ways to put the Association on a **better financial** footing and not solely dependant on our very small income from membership fees.

To this end, we have formed two **sub-committees** - one to look at promoting the RVRA in the community, and another to look at alternative ways of financing our work.

We welcome contact from members who have some expertise in these areas, or ideas about how the committee might achieve these aims.

Please contact me through our office to discuss these issues - we need all the assistance we can muster.

RVRA Committee – positions unfilled

I must also remind you that we have two positions on the **RVRA Committee** which are not filled for this committee year. We have ten committee members at the moment, due to the resignation of Wayne Harrison, and in our age bracket the issue of poor health of some committee members becomes

a major problem in planning to run an Association such as ours. Again, we would welcome anyone, who has an interest in retirement village issues, and in supporting residents in these villages, to find out more about our committee work, and to consider joining us.

The RVRA Constitution

As a result of the above decisions, and the formation of the sub-committees, it is necessary to make some amendments to the Constitution to progress with the planned actions. This will require an Extra-ordinary General Meeting for these revisions to be passed by the membership. This meeting will be held on at 10.30 am on Wednesday, 8th February, at The Sydney Mechanics School of Arts, 280 Pitt Street Sydney. (Between Park and Bathurst Streets)

The proposed revisions, and the details for voting on these amendments are on the pages containing the Notice of Meeting inserted in this news letter.

CTTT Reports

I have compiled a few short summaries, from information provided by some of our members, who have cause for celebration about their CTTT hearings in the past year. You will find them in the newsletter on pages 7-13.

In some of these cases the RVRA Committee has been closely involved in the preparation of the CTTT submissions, and in some cases have been advocates for the residents. Many of these cases have been mentioned in Peter Hill's excellent article at the beginning of this newsletter.

Residents should take heart that we have some "runs on the board". This will affect all retirement village issues across NSW, to the benefit of all residents. It may encourage members, who may have had concerns in their village life, to investigate if there are answers to these concerns.

Remember the RVRA is here to support you!

Networking

The committee is forging strong ties with other organisations and Associations with a place in the sector dealing with ageing.

We meet regularly with:

- The Aged Rights Service (TARS), and
- The Council of the Ageing (COTA).

We are strengthening ties with:

- The Council of Social Service of New South Wales (NCOSS) and
- The Public Interest Advocacy Centre (PIAC) to name just a few.

We are also meeting, on a bi-monthly basis, with the operator groups of:

- ACS (Aged Care Services – the not-for-profit operator group), and
- the RVA (Retirement Villages Assoc. – the for-profit operator group).

In November, the secretary and I attended the RVA Conference in Melbourne. This incorporated meetings with our colleagues in ARVRA (The Australian Retirement Village Residents Association), which occur on an annual basis.

We also meet with some specific operator groups to discuss items of mutual interest in their villages. These meetings have resulted in us being able to solve some member's problems, quickly and efficiently, through the operator of their village.

We believe that all these contacts, and the others which we have forged over the past year in particular, are very important to our work in support of our members.

RVRA has filled two important roles recently. One is with the Minister's Retirement Village Advisory Council. The other is on the Expert Committee advising on the standardisation of retirement village contracts. Malcolm McKenzie is on both these committees, and has a heavy work load to fulfil the requirements set out by the Minister, the Honourable Anthony Roberts. Whilst the work of these committees is confidential, Malcolm will outline the general aims in his report.

I conclude by wishing to all our members, on behalf of the RVRA committee, the compliments of the season, and a successful and healthy year ahead.

Jan Pritchett

SECRETARY'S REPORT



Village Contacts

Our contacts are our Association's life blood, and we are always deeply indebted to them for the work they so willingly carry out on our behalf.

We have visited several villages during the year, and met our contacts in them on

those occasions for the first time. These visits are arranged at the request of, and in conjunction with, their respective Residents' Committees. Our management committee members are keen to continue this objective in the coming year, particularly if we can increase the numbers of our members as a result.

Consequently, if you feel your village would benefit from such a visit, please contact me through the advertised number, or by email, and we shall discuss the details with your committee.

Another organisation we have addressed is Probus. While the number of Probian members who are village residents is small, those clubs give us the opportunity of speaking to prospective members, and being able to answer some of their questions about future plans.

Membership

While we lose many members with residents moving from retirement villages for a variety of reasons, we are maintaining our numbers at over 5000. An increase in membership is vital if we are to be effective lobbyists for retirement.

In addition to my work as secretary of the RVRA I have a position on two important groups relating to retirement villages.

1. The Minister's Retirement Village Advisory Council

This Council consists of members of operator groups, residents, policy officers and ministerial staff from NSW Fair Trading, TARS and Legal Aid.

The Minister for Fair Trading, Anthony Roberts, has set a program for the Advisory Council to research and present information to his office about three aspects relating to retirement villages:

- The response to the revised legislation which came into force of March 1st 2010;
- Adequacy of the disputes process for retirement villages and residents;
- Educational processes which can be used to assist residents and operators.

I am a member of the group looking at the response to the Act and can report that there will be surveys, presently being prepared, for distribution to residents, resident committees, the legal fraternity and operators. At present the questions to be asked, are being reviewed, together with the format for the questionnaire. It is hoped that the questionnaires will be circulated early in 2012.

John Cooper, (the ex RVRA Vice-President) being the coordinator of the group studying the dispute processes, is highlighting the problems encountered by residents in the CTTT. The recommendations of the Council will be considered by the Minister and his staff.

2. The Expert Committee on the Standardisation of Leases

The RVRA nominated me as their representative on this committee, which consists of legal advisors, operator groups, and Ministerial and NSW Fair Trading staff.

The committee has been studying the terms required for a standardised contract, and have now reached the stage for a preliminary document to be drafted by a contracted lawyer. The Minister plans to have a consultation draft early in 2012.

Administration Services

Lynne and Sonja continue to operate the office, the phones, and take enquiries, and pass them to the committee. These enquiries are always attended to as promptly as possible, but please keep in mind that the staff work part-time, and the committee members are all volunteers.

Malcolm McKenzie

CTTT CASE RESULTS

In Peter Hill's article at the beginning of this newsletter, he outlines some of the important cases heard in the past year in the Consumer Trader and Tenancy Tribunal (CTTT) with results assisting the residents across NSW.

Whilst a CTTT decision does not set a precedent, in the way a court decision holds weight for future cases, there is a requirement under the CTTT Act that there is some consistency in decisions, and CTTT Members should refer to other decisions in making their deliberations.

Many of our committee members and RVRA members have been involved in these cases, and are willing to share their experiences, in the hope this may assist other residents.

These cases have been summarised in this newsletter, but a fuller account of the cases, and the lessons learned, are available on application to the RVRA Office.

Queens Lake Village Pty Ltd v Queens Lake Village Residents Association

Village: Queens Lake Village Laurieton

Operator: Queens Lake Village Pty Ltd, a subsidiary company of Aevum Limited, now owned by Stockland Ltd.



The Advocates: The CTTT case was conducted by a resident at the village, John Cooper (Vice President of the RVRA from August 2009 to August 2011). In the District Court appeal the Residents were represented by Peter Hill of Hill & Co Lawyers.

The Dispute: The residents voted unanimously to reject the proposed budget and proposed increase in recurrent charges because of lack of transparency in the proposed cost of Insurance and Corporate Recharge (Management Fees).

The Case History: The final hearing of the case in the CTTT resulted in the line item of "insurance", in the sum of \$23,100.00, as well as the line item of "corporate recharge", in the sum of \$28,594.00, be excluded from the budget for Queens Lake Retirement Village for the financial year 2010-2011.

Four weeks after the Order was received, a Summons was delivered to the Residents Committee Secretary advising that the matter was being appealed to the District Court citing the Queens Lake Village Residents Association as Defendants and notifying the operator's intention to claim costs. After a campaign by residents, the operator agreed not to claim costs and to assist the residents with their legal fees.

Early in 2011 there were several days of hearings in the NSW District Court before Judge Levy. Both hearings were attended by a loyal supporting group of residents from various villages who followed the case through to the end.

The Result:

Judge Levy made the following Orders:

1. The appeal by Queens Lake Village Pty Ltd is dismissed;
2. The orders made on 9 December 2010, by the Consumer, Trader and Tenancy Tribunal in proceedings, numbered RV 10/28914 and RV 10/31794, are confirmed;
3. Queens Lake Village Pty Ltd is to pay the costs of the Queens Lake Village Residents Association on the ordinary basis unless, otherwise ordered. The findings of the District Court confirm that the line items of Insurance \$23,100 and Corporate Recharge \$28,594 (a total of \$51,694) are to be removed from the 2010-11 budget.

What has been learnt from the Queens Lake Village Case?

This case has now set a precedent in law on at least the following points:

1. Residents only have to meet the cost of Insurance for the items identified in the Act.
2. In respect of budgets, residents are entitled to receive sufficient detailed information so as to enable them to make an informed decision as to the acceptance or rejection of the budget. Transparency by every operator of details of all proposed expense is now mandatory. The information must also show that the statement of proposed expenditure relates directly to services provided to the operation of this village.
3. This case could have been avoided if the operator had been more transparent with the information that was given with the budget, and had been more agreeable to communicate, negotiate and conciliate.
4. The residents did not waver in their resolve, in spite of the intimidating circumstances. Residents can win if they stand united, and do not bow to pressure.

Note: John Cooper assisted the residents at Maybrook Manor with their CTTT case, which was based on the same grounds. Because the operator had provided more information in this case, the decision was in favour of the operator. But, this decision was made before the decision of the District Court case was known.

Daley v Scalabrini Village Limited



The Advocates: The CTTT case was conducted in 2010 by a resident at the village, Judith Daley (Vice President of the RVRA, from August 2011).

The Dispute: The village contract was confusing regarding the method of increase in recurrent charges, as it referred to "CPI variations of the increase in the single aged pension".

Village: Scalabrini Village, Drummoyne

Operator: Scalabrini Village Ltd

The Case History: Judith Daley applied to the CTTT, and after the Directions Hearing, the case was decided on the documentation provided by the applicant and the operator.

The Result: The Senior Tribunal Member ordered that:

"Pursuant to section 128(2) of the Act, I order that (a) Schedule Three to the Contract; Variation of recurrent Charges according to a Fixed Formula; should be amended as follows:

"This fee will be varied half yearly, equal to the CPI variations for the year to March, and for the year to September figures respectively, published from time to time by the Australian Bureau of Statistics."

The Senior Tribunal Member also ordered that:

"Clause 15.06 of the contract should be amended as follows: "15.06 recurrent charges will be varied according to a fixed formula: (a) the Recurrent Charge may be varied: as per Schedule Three".

What has been learnt?

A resident acting alone, and taking a case to the CTTT, can assist the whole village, and result in all residents being treated in a fairer and equitable manner.

Note:

While the recurrent fees were increased by the stated figures, the contracts have not yet been amended as Ordered. On advice of the Chairperson Kay Ransome, Ms Daley has completed the process to "Renew the Application".

Carey Bay Retirement Village Residents Committee v Anglican Care

Village: Carey Bay Retirement Village

Operator: Anglican care

The Advocates: The CTTT case was also prepared by Judith Daley (see previous page) as an RVRA advocate, on behalf of the Residents Committee of Carey Bay. The Chairman of the Residents Committee, Ms Joyce Clarkson, assisted Ms Daley.

The Dispute:

It is a small village with 34 units. There are six different levels of contracts in the village for units that are all exactly the same size. The highest rate of recurrent charges is 94% higher than the lowest rate. The surplus, achieved each year, was distributed to each resident in equal shares, but this meant that a couple received two portions of the surplus.

Each resident received the same amount regardless of their payment to recurrent charges.

The following budget line items were also disputed: Insurance; Property Maintenance; Gardens and Grounds; Security Light; Security Hand Rails; Audit Fees and Legal Fees.

The Case History:

The Tribunal appeared to be uninterested in probing into aspects of the contracts in any way. However, a fairer formula to cover any future refund of the surplus recurrent fees was requested by the residents.

Budget Line Items:

The operator provided additional information regarding most of these items first listed, so that the residents could understand the charges, and the claims were (reluctantly) withdrawn. However, detailed evidence was heard regarding Repairs and Maintenance - Plumbing; Repairs and Maintenance - Shower Screen; Security - Vital Call System; Management and Administration Fees (Marketing, Software Licenses and Conference Education Fees); Chaplaincy; and Welfare Fees.

The Results:

A formula to cover any future refund of the recurrent fees was agreed by consent, and that will restore some equity. This formula means the amount to be refunded for each unit must be individually calculated according to the formula decided between the parties and approved by the CTTT.

The residents were successful in saving \$9,399.40 from the budget line items in dispute.

What has been learnt?

Some of these successes resulted from the principles established in the Queens Lake Village decision, in the District Court. That means, because insufficient detail was provided by the operators this year, and because they had "averaged the costs across several villages or used a formula", the costs were disallowed this year. In future, if proper information is provided, the residents will have to pay these line items.

Other successes were to provide some clarification between 'capital maintenance' and 'capital replacement', but this still seems open to interpretation on each line item.

It meant in this case, that the repair cannot be charged to the residents, if the part is so essential that the unit will not operate without it. This was established by the CTTT's ruling that, replacing the faulty flushing mechanism within a toilet system, in a leased premises, is not considered to be a repair, but is a replacement to be paid by the operator, not by the resident, or from residents' Recurrent Charges.

The Landings and Sakkara Investment Holdings Pty Ltd

Village: The Landings, North Turrumurra

Operator: Sakkara Investment Holdings Pty Ltd (trading as a Trust)



The Advocate: Neil Smith, a resident at The Landings, represented 28 other residents (including Jan Pritchett, the President of the RVRA). Neil has worked tirelessly for his village and for the RVRA in promoting fairness in the industry. He has been an active member in the RVRA Study Groups.

The Dispute: Residents identified six typical instances where they believed the Village Manager had inappropriately spent from Recurrent Charges for the financial year ending 30-6-2010. The residents believed these items should have been paid by the operator, under legislation.

One of the six items was for Management Fees of \$30,118, that had been charged to residents, without residents' consent to a new contract, or any transparent disclosure of detail, or the operator having established relativity to residents' benefits.

The other five matters were carefully selected as typical examples of what could constitute "repair" as distinct to "replacement" of items of capital, both in dwellings and in common areas of the village.

The total would have amounted to \$54,500 if all six items that were being challenged were considered by CTTT to be refundable. The Member's comments included his opinion that the legislation prior to 1st March 2010 (the date that the new legislation commenced) was applicable to some of the matters and he had ruled accordingly on those matters.

The Case History: Tribunal interpretations according to legislative definitions were in reality being sought under legislations applying both before and after 1st March 2010.

There was a one day hearing. The elapsed time between residents' application and CTTT Member's issued ruling was well over ten months.

The Result:

The result was most pleasing, to not just the twenty-eight pioneers who lodged the application, but to all the 280 residents at The Landings, who benefited by the CTTT's ruling to refund to residents of:

- Management Fees of \$30,118, which had unjustifiably been paid by the Village Manager out of residents' funds, to a contractor, who was unable to substantiate that their services were to the benefit of residents;
- \$5,777 for work that the Village Manager had unfairly classified as "repair", but which the CTTT Member clearly agreed with residents that the work constituted "replacement", and had to be paid for by the operator.

What has been learnt?

Residents should never be hesitant to question how the Village Manager is spending their money, collected as Recurrent Charges. Legislation is now in place to protect residents, but they need to understand possible interpretations and work together, through the RVRA, to keep those operators who try and take unfair advantages, honest by taking steps to achieve enforced compliance with legislation.

Note: This village has had two further CTTT hearings in the past year, because the residents rejected the proposed large increase, in the vicinity of 30% for each year, in recurrent charges for the 2011 and 2012 financial years. CTTT Mediation on the first case took so long that the financial year had ended, and the village had run normally on the previous recurrent charge rate, and there was a surplus. However, the mediation on the second case is still continuing.

Alloura Waters Retirement Village and Living Choice Australia Ltd

Village: Alloura Waters Retirement Village

Operator: Living Choice Australia Limited

The Advocates: Appearing for the Alloura Waters Residents were Gai McGlynn (Vice-President of the Residents Committee) and Bill Plant (RVRA Committee from early 2011)



The Background:

- The residents rejected the budget initially for Payroll Tax, and the operator said that they were unhappy with the rejection, as this was the only group village to do so.
- The residents rejected the amended budget on the grounds that the operator had not justified the Head Office Management fee charges in accordance with the Regulations 26(e) and 17(2) of Act, and
- the operator was claiming that loose items of capital replacement should be funded by the village residents by special resolution under section 30. Residents were told that they were the only one of the operator's group of villages not using clause 30 for capital item replacement.
- Removal of the payroll tax of \$24,000 was offset by other budget amendments, to reduce the budget costs by around \$12,000.
- The Head Office Management fee calculation for the Village was found, verbally, to be higher than that charged to all other villages in the operator's group, although the method of allocation between villages was the same. Alloura Water's increase was 12% and others 4%.

The Dispute:

The decisions required from the CTTT finally were:

- Whether the increase in the component for administration fees included in the proposed budget figure for recurrent charges is justified.
- Whether the contribution to the line item "Capital Maintenance Fund" in the proposed annual budget is justified.

The Case History:

This case was a very complex one, and several hearings were held. The case took eleven months from time the application went to the CTTT and when the decision was received. The Operator was represented by a Gadens solicitor, Arthur Koumoukelis, who did not comply with some directions of the CTTT, and who argued that many items of evidence from the residents be disallowed.

The CTTT Member became ill during the case, and so the decision was finally given many months after the case was heard.

A detailed outline of this case is available from our Administration Office and web site, but there is not sufficient room to elaborate further here.

The Result:

Issues:

- (1) Whether the increase for Head Office Administration Fees is justified, and
- (2) Whether the contribution to Capital Works fund is justified.

Issue (1): The Senior Member reduced the **increase in recurrent levies** from 12% to 4% which was the same as other villages operated by LCA. No other items requested by residents were altered.

Issue (2): Loose Capital Items. The operator had included a schedule for replacement of clothes dryers, microwaves, venetian blinds, entertainment equipment, office equipment, PVC outdoor settings, and timber outdoor settings.

The evidence included a letter stating that these could be funded from the Capital Works Fund with the agreement of residents under RV regulation clause 30.

Alloura Waters Retirement Village cont

In the rulings of the Senior Member, he wrote:

36. The operator draws some distinction between fixed (capital) assets and non-fixed (capital) assets. Neither the Act nor the Regulation makes such a distinction.
37. Section 97(2) RVA clearly establishes that any capital replacement cost "*...in respect of an item of capital*" is the responsibility of the operator.
38. The quantity surveyor's items nominated for the 2010/2011 budget, described by him as "loose items", clearly fall within the categories of "items of capital" defined in Reg. 4. The inclusion of this item of \$18,014, within the capital works fund budget, is in contravention of RV Act s 97(2).

What has been learnt?

- **The Operator is responsible for any item of capital.**
- Do not be overawed by the proceedings, and stand up for your opinions.
- Do not consent to items that you have reservations about; argue them with the Member.
- Be prepared to argue on points raised by the operator, and to cross examine.
- Don't be afraid of requesting an adjournment.

Note: Bill Plant also acted in an advocacy role for the residents at the New England Masonic Village at Armidale when the operator applied to the CTTT about the resident's rejection of the budget. Bill spent some time at the village in discussions with residents and the management, and a compromise was reached.

Leura Fairways Partnership v Residents of Leura Fairways Retirement Village

Village: Leura Fairways Retirement Village

Operator: Leura Fairways Partnership

The Advocates: Initially the Residents Committee of Leura Fairways asked the RVRA for assistance. John Wheeler who was Treasurer of the RVRA at the time, took on the role of Advocate for the Residents Committee. Later, the new Chairman of the Committee, who had legal experience took over the case.



The Dispute:

The Operator submitted the 2010/2011 proposed budget based on the 44 completed units (29 occupied). This raised the proposed recurrent charge from \$393 to \$600.63 per month, (53% increase). The residents rejected this budget.

Background: There are two Features that distinguish this Tribunal Hearing:

- Tribunal use of "An Estoppel" (The proposed expense budget reduced by half.)
- The use of a Forensic Accountant.

When Leura Fairways Retirement Village was established some 10 years ago, the expectation was that, ultimately, 56 units would be built. For some 10 years that '56 unit model' was used as a basis for calculating the recurrent charge. However, after 44 units were completed, and, 29 occupied, the Operators application to council for constructing further units was rejected.

The Case History:

The residents submitted evidence that all their Disclosure Statements contained the following clause in bold letters.

"The Village is not fully occupied so that the village operator meets the majority of expenditure"

Residents submitted statutory declarations stating that they relied on this clause when signing their contracts.

Leura Fairways Retirement Village cont..

During the hearings, the Resident Committee Chairman, in advocating for the residents, requested a "Forensic Accountant" to examine the finances of the village.

The Result:

The Tribunal directed that –

- Such a statement, included in all Disclosure Statements' is a relevant matter to take into account under Subsection 115(6) (c).
- 'an estoppel' should arise in relation to allocation of expenditure from year to year. In relation to the 2010/2011 expenditure of \$317,137.00 the Tribunal directed that half of this amount \$158,568.00 would be included in the recurrent charge calculation. So that the Operator would incur no further loss this amount was spread over the 29 occupied units.

This resulted in a recurrent charge of \$450 per month for the 2010/2011 financial year, as opposed to the \$600.63 per month proposed by the Operator.

The Residents' Advocate is entitled to receive a significant proportion of the costs (\$ 5,500) which he properly expended in obtaining an opinion from a Forensic Accountant, because of the failure of the Operator to be transparent in relation to maintenance (No compliance with Sect. 98). Cost was awarded in the sum of \$2,750.00.

What has been learnt?

Residents must always have their documents relating to their contract and Disclosure statement on hand to ensure that the operator is complying with the agreement they made on moving into the village.

CITY FUTURES PROJECT

In the last edition of the RVRA newsletter we printed information about "The City Futures Project" being conducted by Dr Hazel Easthope, of the University of NSW. Dr Easthope has been in touch with the RVRA thanking us for the support of the residents who responded, and saying that the information the team received was very helpful.

As a follow-up, there has been further information from Dr Easthope which might interest those residents in strata villages. Dr Easthope wrote:

As part of our project 'Governing the Compact City', we are pleased to announce the publication of two new publications:

STRATA DATA Residential Strata in NSW Issue 4, October 2011

STRATA DATA 2010-2011 Summary Comparison

You can access the publications by following the links at the bottom of the project website:

<http://www.fbe.unsw.edu.au/cf/research/cityfuturesprojects/governingthecompactcity/>

For more information about this project and other activities being undertaken at City Futures in the area of High Density Living, please visit:

<http://www.fbe.unsw.edu.au/cf/highdensityliving/>

All articles in this newsletter express the opinion of the contributors and must not be taken as legal advice or the views of the Committee of the Retirement Village Residents Association.

DID YOU KNOW?

Over the past few months the committee has made many enquiries about retirement village issues to the Minister's Department or to the NSW Fair Trading policy officers. Some of the responses might be of interest to other RVRA members.

Long Term Contracts

Long term maintenance contracts entered into by an operator are not binding on residents, and the operator is still required to follow the appropriate annual budget process in relation to work proposed to be funded from recurrent charges.

GST Not Payable on Deferred Management Fees.

The Australian Taxation Office has advised on the GST treatment of the Deferred Management Levy, saying that it should be input taxed, and as such no GST is applicable. The ATO advise that this advice is based on their ruling Interpretive Decision ID2001/634.

This ruling should be noted, if you are contemplating the sale of your lease! It means that, if there had been any GST applicable to the purchase of the lease, it would have been dealt with at the beginning of the transaction, or when the resident occupies their unit, and no further GST would apply thereafter.

Non- Compliance with CTTT Orders

It has come to our attention that although some residents have won their CTTT cases the operators have not complied with the decisions.

The RVRA are compiling records of non-compliance. We would like to receive details of the circumstances of these cases, so that we can provide information to those RVRA members affected.

AUSSIE FARMERS DIRECT

There has been one further village presentation for Aussie Farmers Direct in the past few months. The sponsorship arrangement we have with this company has brought a donation of \$347.88 for the RVRA account over the past six months. As more village residents join, and have the quality produce delivered to their homes, these donations will be a regular source of additional income for our Association.

ADVICE ABOUT SCAMS

Many of our members villages have had a visit from Fair Trading to give residents advice about some of the recent scams which unscrupulous people are trying, particularly with the elderly sectors of the community. One of the villages visited by the Minister, The Honourable Anthony Roberts, and Fair Trading Officers, was Camden Downs, where the secretary of the RVRA, Malcolm McKenzie, lives.

These visits also provide an opportunity for the Minister to visit a variety of villages and meet residents.



Hon. Anthony Roberts, Minister for Fair Trading;
Malcolm McKenzie, RVRA Secretary;
Norma Welch, Camden Downs Res Committee;
Chris Patterson, MP for Camden.

WRITTEN BALLOTS AND SPECIAL RESOLUTIONS

There is a need to clarify the varying requirements for voting by residents, for matters requiring majority consent, and special resolutions. It is necessary to refer to the Act and Regulation, and desirable to refer to the OFT model rules for practical expansion.

Clarifying options for Special Resolutions

Additional procedures for special resolutions are required because in the Retirement Villages Act the ballot papers **must** be sent out with the notice and can be lodged in a ballot box before the meeting then any debate at the meeting could be superfluous. There is no requirement under the Act and Regulation for Residents to discuss the resolution before it is sent out.

There are options necessary to ensure that time is given for discussion and consideration of these resolutions. Ideally they should be in the Retirement Villages Act or Regulation, but can be included in a Residents Committee Rules or constitution.

Option 1

Prior to the issuing of the Notice of Motion and ballot papers, a general meeting of residents should be called to discuss the matters surrounding the calling for the special resolutions.

Option 2

At the above general meeting, residents should debate the issues for the special resolutions being put forward, then compile a document for and against the issues. This document should be included with the Ballot paper. This is necessary as Residents not attending meetings are sent a ballot paper without having the benefit of discussion.

Option 3

At the meeting where the ballot is declared, two matters should be noted:

a) If a qualified voter has submitted a postal vote, this includes a vote submitted prior to the meeting, that voter may not change or withdraw his or her postal vote in person or by proxy at the meeting in respect of the special resolution.

(b) There must be a procedure to accept votes on the day with proxies (CTTT Ruling) but they can be added to those pre-counted under the procedure advised by the Returning Officer.

Matters that require consent by special resolution

The matters requiring a special resolution are listed under Schedule 7.2 of the Retirement Villages Regulation:

- a) proposed variations in services or facilities [section 60(3)];
- b) a proposed amendment to the village rules [section 51(3)];
- c) a request for the operator to provide a village emergency system [section 59 (1)]; and
- d) a request for the operator to pay from the capital works fund for any other purpose than capital maintenance or distribution to residents. [section 99(5) Regulation 30(2)];

The Procedures

The procedures including notices, quorums, are covered in Schedule 7 of the Retirement Villages Act and additional information can be obtained from our RVRA Website: on: www.rvra.org.au

RVRA
Residents supporting Residents

RVRA OFFICE HOURS AT CHRISTMAS AND NEW YEAR

The RVRA Office will be closed from 22nd December, 2011, until Monday 9th January, 2012. This will be applicable to the 1300 787 213 phone number and for the administration email address. If you have an urgent enquiry over that period, please mail a letter to the PO address and a committee member will respond.

Advertorial

Do you fall asleep while watching television?

I'll bet you do, and I do too!

Especially annoying when it's a programme you have been eagerly waiting to see!

But it is even more important if you are experiencing the same problem while driving your car.

This could be fatal, not only for you, but for everyone else who are your passengers, or the occupants of the car you might hit.

How much do you value your life? Most of have car insurance, but what protects us?

Road Test by an RVRA Committee Member

The RVRA has been approached by the makers of the **Driver Fatigue Alarm** to see if you, our members, would be interested in purchasing one of these safety devices!

With this approach came two alarms for me to try! One had a 'vibratory signal, and the other a loud audible sound, both operating when one's head drops past a certain level! This little life saving device sits on your right ear, and it's very easy to operate by pressing only one button to switch ON or OFF.

Now, I decided to put the audible alarm model to the test on a visit to Bowral.

Did it work, you ask? It sure did, to the extent that my wife threatened to have me turn around and drive her back home immediately! This happened because if you need to move about, like adjusting the radio, the alarm will go off. You can merely tap the On/Off button to switch the device off if you need to move your head around. Just remember to switch it back on when you are ready again.

One problem you could experience is if you wear a hearing aid on you right ear, together with prescription glasses and sun glasses with thick side handles. Those in total add up to great 'above ear' utilisation, and there just might not be the room!! One solution is to not drive with the hearing aid in place. Provided you have one in your left ear, you would be able to listen to your wife/partner, correcting you on your driving habits, etc.

This is a 'preventative' piece of equipment just like seat belt, for extra safety precaution which might save your life, or at any rate, remove the need to purchase a DVD of the programme you missed

Vision of Innovation P/L, the provider of the **Driver Fatigue Alarm**, say they will donate 20% of all sales proceeds, back to RVRA. **Remember to mention RVRA.**

The Driver Fatigue Alarm is retailing for \$49.95 which includes postage.

It comes with a 30 day money-back satisfaction guarantee, and twelve months warranty.

Added bonus is two extra sets of spare batteries, included free of charge!

The manufacturers believe this safety device makes a great Christmas gift for family members to keep them safe over the Christmas and New Year holiday.

For phone orders call (02) 9633 9999 and for online orders go to www.driverfatiguealarm.com.au

You can watch a video demo of the Driver Fatigue Alarm in action, on:

www.driverfatiguealarm.com.au/video



*The RVRA President and Committee
extend Seasons Greetings to all,
wishing each a
Safe and Peaceful Christmas together
with a Healthy and Happy New Year*

