

WARVRA Newsletter

July 2015 Vol. 15 No. 2

Issued Quarterly



WARVRA

WARVRA President's Half Yearly Report

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A big **Hi** to all our member villagers and in particular the new members who perhaps will receive or view this newsletter for the first time.

Whatever happened to the first six months of 2015 one may well ask. Well from a WARVRA Committee and additional volunteer helpers perspective – a lot of hard work! Meetings; Seminars; Advocacy help; and countless phone calls and emails (in and out); and travel on your behalf.

In their various Committee portfolio roles it's been a full-on six months with a lot of positive results.

Our membership total has significantly grown not only within the Metropolitan Area but also the Southern regions. We now have two additional Regional Branches – Albany and Bunbury/Busselton. So in total WARVRA represents four Branches in the Regions of Perth Metropolitan, Peel, Albany and the South West; Bunbury/ Busselton etc. ***Our membership development officer Ian Nordeck has been and continues to be a very busy lad!***

Now that **most** of the Retirement Village Bill #1 Legislation reforms have come into effect, your legislation Team of four are already up and running working on Bill 2. David Street's report is contained in this newsletter.

The Seminar Forum team also have been very busy holding three successful information seminars for members and is now preparing for a Prospective Residents Forum in September. Their report is also contained in this newsletter.

Our Treasurer Ron Hasluck continues to manage your membership funds most efficiently and Ron Lulfitz keeps us up to speed with all information etc from COTA.

Last but not most definitely not least is our tireless Secretary Des Cousins who, having stood down from the Presidency, has taken on board the secretarial role plus Legislation with enormous passion and energy. ***Surely he couldn't have imagined his workload would decrease!***

We as a Committee are also developing a handbook to help members and their families/estate executors understand the procedures and financial implications of exiting a Lease or Strata residence contract following many enquiries from members and families on this topic.

Finally, work is progressing with an outcome in sight on the Association's database. This will enhance our communication capabilities enormously. Also we're upgrading some of our training capabilities to better and more professionally deliver these programs for both our member and external programs.

My very best wishes to all our members for the remainder of 2015.

Colin Edwards, President

NOTICE OF GENERAL MEETING

A General Meeting of the Association will be held at the

**Piney Lakes Environmental Education Centre,
Leach Highway, Winthrop**

(The entry to the centre is on the south side of Leach Highway between Murdoch Drive and Winthrop Drive)

FRIDAY 14 AUGUST 2015 at 10am

BUSINESS

President's Report
Treasurer's Report
Legislation Update
Seminars Committee Report
General Business
Members' Issues

GUEST SPEAKER

Andrew Hopkins

Andrew Hopkins is the Principal of WA Aged Care Financial Solutions. In the light of the many changes to the Aged Care system, Andrew will address questions such as:

- What are the Aged Care fees and charges, and how will they be paid?
- Will the Centrelink or DVA pension be reduced?
- Will there be enough money to afford long term care?
- Will there be enough spending money?
- Will the family home have to be sold or are there other options?

WA Aged Care Financial Solutions is an experienced local provider of financial advice to Aged Care residents, and Home Care recipients, and their families.

As testament to their reputation, WA Aged Care Financial Solutions has been selected by Aged & Community Services Western Australia (the not-for-profit peak industry body) as its exclusive Business Associate Partner in regard to financial planning advice for Aged Care recipients.

Western Australian Retirement Villages Residents Association Inc

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WARVRA COMMITTEE DIRECTORY 2015-16

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CORRESPONDENCE ADDRESSES

PRESIDENT	COLIN EDWARDS	11/10 HUNGERFORD AVENUE, HALLS HEAD 6210
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MEMBERSHIP	RON HASLUCK	23/41 GEOGRAPHE WAY, THORNLIE, 6108

☆☆☆☆ MEMBER ALERT ☆☆☆☆

DO YOU NEED A NEW CONTRACT?

The proclamation of a new Retirement Villages Code 2015 and amendments to the Retirement Village Regulations 1992 has raised the question of whether current residents need to have a new contract in order for them and the Village operator to comply with the law.

ALL NEW CONTRACTS TAKING EFFECT ON OR AFTER 1 OCTOBER 2015 MUST BE COMPLIANT WITH THE AMENDED REGULATIONS AND THE NEW CODE.

Village operators will probably need to make some changes to their existing contracts.

BUT ...

CURRENT RESIDENTS DO NOT NEED A NEW CONTRACT

and you should strenuously resist any attempt to get you to sign any new contract unless you have legal advice from a solicitor experienced in retirement village law that it is safe to sign the new contract.

Under the new Regulations, from 1 October 2015 there are certain matters that must NOT be included in residence contracts (these are referred to as the "prohibited matters"). In summary, these are:

- a power of attorney cannot be required as a condition for being admitted to the occupation of residential premises and an administering body cannot accept a power of attorney except for dealing with rights of occupation in purple title villages or if the administering body is a relative of the resident;
- a contract cannot be varied without the consent of the resident except if the variation is required to comply with a written law;
- a resident cannot be required to give more than 30 days' notice of the resident's intention to terminate the contract, to permanently vacate the residential premises occupied by the resident or to vary the provision or availability of a personal amenity or service;

- a resident cannot be required to do more than the four steps set out in section 23(1) of the Act to establish that the residential premises are permanently vacated;
- a resident cannot be required to contribute to costs for maintenance, repair, replacement or renovation of the residential premises that would exceed or be inconsistent with the requirements for refurbishment work set out in the Code;
- a resident cannot be required to pay for any damages to the residential premises caused in carrying out an alteration arranged by the administering body; and
- an exit fee related to a period of time cannot be calculated on any other basis than a pro-rata daily basis.

If any of these matters are included in your contract, it will NOT have to be varied to remove them as section 14A(4) of the Retirement Villages Act 1992 makes such provisions void (of no effect).

The new Regulations also contain a large number of matters that MUST be included in contracts made after 1 October 2015. Most of these were formerly in Division 4 of the Code and would have been included in existing contracts. Only THREE of the provisions that must be inserted into a residence contract (these are referred to as the "mandatory matters") will apply to existing residence contracts. These three provisions relate to:

- not varying an existing communal amenity unless the residents of the retirement village consent to the variation by special resolution;
- not varying an existing communal service or introducing a new communal service unless the residents of the retirement village consent to the variation by special resolution; and
- giving all residents living in a village access to a process for "urgent repairs" by having this inserted into the residence contract.

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LEGISLATION REPORT

15 July 2015

The June meeting of the Legislation sub-committee discussed in detail a number of issues to be considered as priorities for Bill #2 submissions and prepare "Position papers".

These included a draft format for the proposed "Retirement Village Register";

Endorsing the proposal of a retirement village on Crown Land, subject to any possible legal implications.

Establishing and define funding and administrating of Reserve Funds;

Definition of "Retirement Village Scheme";

Capping of Exit Fees, (eg. similar to South Australian legislation, which is 30% of sale price).

In addition, a "Members Alert" to be prepared, advising changes required in new contracts effective as October 1st, 2015, due to the recent amendments of the Regulations and the new Code. This is in response to a number of member enquiries asking for clarification.

We have received a number of enquiries both at recent seminars and by phone on 2015/16 Village Budgets, particularly, substantial increases, (5% to 12%), primarily related to general maintenance, a lack of prior consultation with residents committees before releasing the Budget to residents and in some instances, only providing basic details of Operating Account line items.

Under the April 1st, 2015, Code amendments the presentation of detailed village accounts must be in place for the 2016/17 financial year Budget and Operators will have to abide by these requirements.

Following a letter from the Association to the Minister for Energy, on anomalies with electricity supplier's on-sellers charges to residents in Retirement Villages, where customers are being charged a higher rate than the Domestic A1 tariff. We received a reply that the matter was referred to the Public Utilities Office for investigation. Consequently we were advised on June 29, by the Office that their investigations were almost completed and submissions and recommendations will be shortly made to the Minister and we will be advised.

I should also make comment on our special meeting with the Minister for Commerce, the Hon. Michael Mischin, M.L.C., held at Dumas House, 26 May last.

The Minister was advised in detail of the Associations background, retirement village industry role, our significant membership, our ongoing contribution to legislative reforms and specific items that are on the agenda for Bill # 2 discussions.

The Minister and his staff were gracious with their time and in the light of recent legislation it was an excellent opportunity to "meet and greet".

David Street, Convener.

Seminar Committee

Seminars for 2015 have now been completed. While attendances were a little disappointing, nevertheless, the interest shown, for the topics presented, from members attending was certainly encouraging. Thank you to all our members who came along and we hope to catch up again in 2016. If you did not complete a feedback form or have some suggestions for Seminars for 2016 please contact WARVRA through the email and your suggestions will be passed to the Seminar Committee who will be most grateful for your contribution. Alternatively you can talk to a Seminar Committee member at the General meeting who will be happy to hear your suggestions.

Our next presentation will be the Forum for Prospective Village residents which will be held at Piney Lakes in Winthrop on September 17th at 10am. We urge members to encourage friends and relatives to come along if they are contemplating Village life as an option in the future. Flyers are available for display at venues you may feel would be appropriate to help advertise the Forum and these can be emailed or posted to you on request. We would appreciate any assistance members can offer in circulating information about our Forum.

Julia Lynch, Co-Convener Seminar Committee

2015 SEMINARS PROGRAM

Please keep this program for future reference

FORUM FOR PROSPECTIVE RESIDENTS

Thursday 17 September 2015, 10.00 am at
Piney Lakes

Cost \$10.00 per person. Please register for this Forum by phone, email or registration form.

Tell your friends, neighbours & family about our Forum, they will receive valuable information from Village residents about Village life.

DO YOU NEED A NEW CONTRACT?

CONTINUED FROM PAGE 2

There is no need for a new contract to cover any of these prohibited or mandatory matters. Matters prohibited if included in contracts are void (of no effect) and mandatory matters can be added by a small "Deed of Variation" though it might be deemed that these provisions apply as they are now in the "written law".

Any proposed variations to a contract (unless required by law) will be subject to a resident's consent.

If any residents are asked to sign a new contract or to agree to variations to their existing contracts they should consult their solicitor or ring the Seniors Housing Centre or WARVRA for further information.

The information in this "Member Alert" was conveyed to operators by letters from the Department of Commerce Consumer Protection Division at the end of March 2015.

Prepared by Des Cousins, July 2015

BUDGETS AND ACCOUNTS: The Code Has Changed

A new Retirement Villages Code (see warvra.org.au under "legislation" for a copy) came into effect on 1 April 2015. It contains significant changes, in clauses 17, 18 and 19, to the requirements for reporting to residents on budgets and accounts. These changes must be implemented in time for the financial year beginning 1 July 2016, so they will apply to the budgets prepared in the early part of 2016.

These are the basic requirements for reporting to residents on budgets and accounts:

- The Administering Body ("AB") manages funds provided by the residents, usually through a regular fee ("recurrent charge"), to provide for the administration and common services of the Village. In addition, the AB may also manage a reserve fund or funds (may have other names, such as maintenance fund, refurbishment fund, painting fund etc. but by whatever name known it is covered by the title "reserve fund") also provided by the residents or ex-residents through a charge on the operating fund or a levy payable when the right to your residential premise is sold.

- The procedures relating to the management of these resident-provided funds (operating and reserve) are controlled by the Retirement Villages Code. For every fund, it is now required, or will be required from 1 July 2016, that there be:

- a **budget** (for both operating and reserve funds) which must be available at least one month before beginning of the financial year. The budgets must be presented in a consistent format from year to year and include separate entries for the items detailed in the Code and all necessary information relevant to the

residents' understanding of the budget;

- **quarterly accounts** which must be available within one month after the end of the quarter. The accounts must cross reference back to the line items in the budget and must contain notes disclosing particular matters that are relevant to the residents' understanding of the accounts and the reasons for any variations of 10% or more between actual and budgeted expenditure;

- **annual accounts** which must be presented within 5 months of the end of the financial year. These accounts, too, must cross reference back to the line items in the budget and must contain notes disclosing particular matters that are relevant to the residents' understanding of the accounts and the reasons for any variations of 10% or more between actual and budgeted expenditure. In addition, these accounts must disclose the opening balance and the closing balance of the accumulated surplus or deficit at the beginning and end of the financial year and must be audited.

WHAT IS NEW?

- The village operating budget must contain the separate line items detailed in the Code (clause 17(3)(a-s)) – this is a minimum requirement, additional line items can be added as needed.

- If residents are contractually required to pay money towards a reserve fund, there must be village reserve fund budget which must contain the separate line items detailed in the Code (clause 17(4)(a-j)).

- Quarterly and annual accounts must reference back to the budgets (i.e., use the same format) and must include notes to enable residents to understand the accounts (clauses 18(6) and 19(8)).

- Reasons must be given for any variation of 10% or more between actual and budgeted expenditure in quarterly and

annual accounts (including the reserve fund) (clause 18(6)(b) and 19(8)(b)).

- The notes to the annual accounts must disclose the opening balance and the closing balance of the accumulated surplus or deficit at the beginning and end of the financial year (clause 19(8)(c-d)).

- Any budget surplus cannot be used for any purpose, other than being used for the future operating expenses of the village, without the approval, by special resolution, of the residents, regardless of any provision made in the contract to use it in other ways.

- Balances, either surplus or deficit, at the end of the year must be shown.

- Financial statements must be audited unless the residents have resolved by special resolution at the time of the presentation of the annual accounts that they do not wish the accounts for the then current year to be audited (clause 19(10)).

RESIDENTS SHOULD CHECK:

That the AB consults with the residents before:

- any change to amenities or services that involve increased costs to residents or a reduction or loss of an amenity or service (see also Regulation 7E and 7F);

- planning for the expansion or substantial alterations to the Village;

- upgrading buildings, fixtures and fittings where the residents or former residents are financing the whole or part of the work.

That the budget separately identifies:

- the contribution made by the AB to the village operating income in place of recurrent charges that would have been paid by a resident for whom the time cap on recurrent charges now applies (note: "non-owner" villages only);

- expenses for the training of, or for travel by, staff;

- expenses of marketing and advertising the village (except for amounts residents are contractually required to pay for marketing individual residential premises);

- accreditation and membership fees paid to any industry body whose main purpose is to represent the interests of ABs;

- fees for the provision of management and administration services to the village residents.

Note that the full list of items that must be separately identified is in the Code (17 (3)(a-s)).

The notes to the budget must disclose:

- the method of calculating any apportionment of expenses between the village and another entity;

- the method of calculating management and administration fees and the separate disclosure of material expenses not otherwise disclosed.

- An annual financial statement must show budget and actual amounts for each line item and provide comparative information for the preceding financial year.

Your right to be involved in all these decisions

- Administering Bodies must establish procedures for consulting with residents on the day-to-day running of the village (clause 16(1)(d)).

- ABs must establish procedures for consulting with any established residents committee (clause 16(1)(e)).

Failure to consult properly (what is "effective consultation" is described in a shaded box at the end of clause 4 of the Code) is a breach of the Code and should be reported to the Commissioner for Consumer Protection.

*Prepared by Des Cousins,
July 2015*