

WARVRA Newsletter

President's Report

Welcome to our Quarterly Newsletter, the purpose of which is to communicate with our Members and to inform them of new developments within WARVRA. It was very encouraging to start this year with a full Committee of 10 volunteers – now 8!

Membership Renewals:

The Treasurer has been very busy processing membership renewals, but there are still a number of villages (25) that have not renewed their membership despite reminders.

One point of concern is the failure of many villages to complete and return the Application for Membership or Membership Renewal showing details of current Chairperson/President and WARVRA Contact person.

Regional visits are being conducted at the moment and the response to these visits has been very positive.

Amaroo Village, Denmark, has joined our Association which means WARVRA has 100% coverage of the Great Southern Region.

WARVRA Associates:

A report on this topic appears on page 2 and includes the motion that was put to the last Committee Meeting, enabling the introduction of this new service.

The issues of Exit Fees, Refurbishing and assisting in finalising an estate are our biggest source of concern and we believe this new service will help residents' families and legal representatives finalise estates faster, more effectively and with less stress.

New Application Forms for this service will be available and on the website effective from our next General Meeting.

Legal Adviser Attachment:

Des Cousins has very kindly written on this topic (page5), with suggestions as to how to proceed.

The first task is to find suitable legal advisers that would be interested in assisting our Association with this strategy.

In this Issue

<i>Notice of next General Meeting</i> .1	<i>Village Operator Fined</i>3
<i>WARVRA President's Report</i>1	<i>Liquor Control Act</i>4
<i>Committee Directory</i>2	<i>Letter to the Editor</i>4
<i>WARVRA Associates</i>2	<i>Legal Advisor</i>5
<i>Legislation Progress</i>3, 5	<i>Treasurer's Report</i>5
	<i>Frequently asked questions</i>6


WARVRA

NOTICE OF GENERAL MEETING

A General Meeting of the Association will be held at
Department of Mines, Industry Regulation and Safety
140 Williams St, Perth: Exhibition Hall.

FRIDAY 11th May 2018 10:00am - 12noon

BUSINESS

President's Report - Ian Nordeck

Treasurer's Report - Rae Nordeck

Legislation and Advocacy Report - Eugene Browne

PRESENTATIONS

"Let's Talk About Complaints"

Phil Payne

(Director, Property Industries Directorate Consumer Protection)

Village Budgets - Des Cousins

(WARVRA Legislation and Advocacy Committee)

Please consider this matter and advise us if you may know of a legal practitioner who would like to discuss the matter further.

Liquor Control Act:

WARVRA is supporting a request from residents and villages in seeking an **exemption** from the Liquor Control Act regarding the supplying of alcohol within villages.

A copy of our submission appears on page 4 for your information.

It is important to understand that if our submission is granted:

- Villages will not need to apply for a licence to sell liquor; and
- The choice to participate remains with each village - it is not mandatory to participate.

At the Committee Meeting held on Friday, 13 April, 2018, the above motion was put to the Committee after discussion, and carried.

Ian Nordeck

President/Membership Convenor, WARVRA

Western Australian Retirement Villages Residents Association Inc

ABN 31 565 412 127

warvra.org.au, warvra@warvra.org.au, 0448 812 888

WARVRA Committee Directory

Name	Role(s)	Phone	Mob	Email	Correspondence
Ian Nordeck	President & Membership	08 9534 7650	-----	ianandrae@internode.on.net	57/22 Carnegie Place, Greenfields 6210
Ron Chamberlain	Vice President	08 9456 4598	0447 315 160	ronlyn2@bigpond.com	38/58 Canna Drive, Canning Vale 6155
Maureen Miller	Secretary	-----	0424 208 873	maureenmiller@westnet.com.au	3/155 Gaebler Road, Aubin Grove 6164
Rae Nordeck	Treasurer	08 9534 7650	0412 456 251	ianandrae@internode.on.net	57/22 Carnegie Place, Greenfields 6210
Corry Knappers	Assistant Secretary	08 9550 4964	0488 059 103	corryadri@terancamews.com.au	-----
Brian Woods	Assistant Treasurer	08 9582 8532	0417 948 113	blwoods@live.com.au	-----
Lexie Beardmore	Legislation & Advocacy	08 9311 4319	0406 539 720	krakowsky1949@gmail.com	-----
Eugene Browne	Legislation & Advocacy	08 6363 6477	0424 818 840	eugeneb@iinet.net.au	-----
John Hudson	Legislation & Advocacy	-----	0400 789 929	h3522@bigpond.com	-----

Regional Committees' Directory

NAME	POSITION	PHONE	MOBILE	EMAIL	REGION
Monika Cull	Convenor	08 9843 3786	0407 691 975	monikacull@gmail.com	GREAT SOUTHERN
Ron Sparks	Co-Convenor	08 9754 2614	0427 002 614	norskrap@bigpond.com	SOUTH WEST Busselton
Dianne Wilson	Co-Convenor	08 9724 4889	-----	didroy@hotmail.com	SOUTH WEST Bunbury
Ian Nordeck	Convenor	08 9534 7650	-----	membership@warvra.org.au	PEEL
John Lewis	Convenor	-----	0408 939 615	johnhenry@westnet.com.au	MID WEST

WARVRA ASSOCIATES

The people we will be encouraging to become **WARVRA Associates** are the Estate Executors and/or family members of the residents of retirement villages.

The procedural formation of this proposed group was discussed at the recent Legislation & Advocacy sub-committee meeting held on Friday, April 6, 2018. On the advice of Des Cousins and Peter Thobaven (Retired Magistrate), the word "Members" should not be used as the people we are attempting to attract do not meet the primary qualification of the WARVRA Constitution, that is – residing in a Retirement Village.

Further, and for the same reason, the formation of this subscriber group does not need to be recorded in the WARVRA Constitution.

Therefore, the recommendation is that this new subscriber group be known as "WARVRA Associates". A straw poll relating to the above was taken at the above L&A Meeting was in favour of and supported the above proposal.

It is suggested the annual subscription fee be set at \$10.00 per annum for the time being, the same as for individual members. In return, the subscribers will receive:

- The WARVRA Newsletter;
- Information Bulletins; and
- Assistance and Counselling in WARVRA matters,

when required, particularly in the matters of Refurbishing and Exiting of a Villa.

"WARVRA Associates" will be a stand-alone group, at arms-length from WARVRA. Applicants will be advised of the following prior to subscribing;

- They are not applying to become members of WARVRA;
- They are not entitled to vote on WARVRA matters;
- They are not entitled to attend formal WARVRA meetings; and
- They must have an email address for all communication purposes.

The proposal to move the following motion was put to the Committee meeting held on Friday, April 13, 2018:

"That a special subscriber group known as 'WARVRA Associates' be formed, with an annual subscription fee of \$10.00 for the time being, for the purpose of providing the following services to all paid up subscribers:

- The WARVRA Newsletter;
- Information Bulletins; and
- Assistance and Counselling in WARVRA matters, when required, particularly in the matters of Refurbishing and Exiting of a Villa."

Ian Nordeck, President

Legislation Progress ??

The process of reform of the retirement village legislation proceeds at a very slow pace!! It may be that those responsible, who do not live in retirement villages, do not see the need for any haste, while WARVRA receives almost daily complaints about what some retirement village operator is doing with the reserve fund or the charges being made for refurbishment and charged to the resident and so on.

The only thing that we can report that has actually happened is that the Code expired on 31 March 2018 – under the Fair Trading Act, a code of good practice must be reviewed and re-enacted at least every three years. On 29 March 2018, the Government gazetted a replacement Code, entitled Fair Trading (Retirement Villages Interim Code) Regulations 2018 to be in effect from 1 April 2018 to 30 September 2018.

The Interim Code mirrors the former Code – the only changes to the actual code that I can find are to the designation of legislation that has changed in the last three years. So, it won't make any difference to village operations and you can still quote the same clause numbers.

What is interesting is the decision, of which we were not forewarned, to make this an Interim Code, in force for only 6 months! Does this mean something is going to happen in the next 6 months?

Perhaps it does! The Department's announcement of the change says they will use the time to engage with WARVRA and the other stakeholders about a number of changes, including the future structure of the RV legislation and the enforcement of the Code. The Statutory Review of the RV legislation (completed in 2010, yes 2010!) recommended that the Code be made under the Retirement Villages Act

Continued on page 5

\$5,000 fine for owner of Mandurah retirement village (Stephen May/ Willow Creek Mews)

The owner of a Mandurah retirement village has been fined \$5,000 by the Perth Magistrates Court for failing to provide specific information to prospective residents prior to them signing contracts.

Stephen Graeme May of Mosman Park owns the Willow Creek Mews retirement village in Greenfields, near Mandurah. He pleaded guilty on 31 January 2018 and was fined over breaches of the Retirement Villages Act for failing to provide a "Form 1" as prescribed by the Act to three prospective residents between September 2013 and February 2014. He was ordered to pay costs of \$1,938.

Mr May pleaded not guilty to five other charges and was acquitted after a two-day trial. Consumer Protection was ordered to pay his costs of \$1,000 to defend these charges.

Under the Act, a prescribed "Form 1" containing specific information relating to the retirement village, a notice of rights, a copy of the residence rules, a copy of any applicable code and any other prescribed documents are to be supplied by the retirement village owner at least ten working days prior to a contract being signed.

Commissioner for Consumer Protection David Hillyard said this requirement is designed to provide transparency in retirement village contracts.

"Getting the prescribed information and having its receipt acknowledged ensures that potential residents have all the information they need at their fingertips to make an informed decision," Mr Hillyard said.

"Entering into a retirement village contract is a major lifestyle decision for our community and their families,

so these laws are crucial to make sure potential residents have specific and essential information before signing.

"Failing to provide the information in the form prescribed by retirement village regulations is not acceptable and village owners who do not comply may face action by Consumer Protection."

In December 2016 the State Administrative Tribunal (SAT) issued orders to the company that operated the retirement village Mayco Properties Pty Ltd and its Directors Stephen Graeme May and Louis Stephen May regarding the removal of misleading statements from the village's website as well as addressing maintenance issues.

The company was ordered to write to residents and post on its website clarifying statements including the resident's right to occupy the villa is through a lease; residents don't buy any portion of the villa; the lease does not provide the absolute security of home ownership and that the company does not discount utility charges, residents may be charged at a rate higher than the residential tariff but residents may be eligible for state government discounts.

The SAT also ordered the company and its Directors to establish a more effective maintenance system at the village where residents' maintenance requests are reported, tracked and resolved in a timely manner.

Anyone who has a complaint against a retirement village operator can contact Consumer Protection by emailing [consumer protection](mailto:consumer.protection@consumerprotection.wa.gov.au) or by calling 1300 30 40 54.

*Media Statement from Consumer Protection in the
07/02/2018 edition:*

Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Submission to

**Hon Paul PAPALIA CSC MLA
Minister for Tourism; Racing and
Gaming; Small Business; Defence
Issues; Citizenship and Multicultural
Interests**

**A proposal to exempt Retirement
Villages from the need to have a
licence to supply liquor.**

Introduction

Many Retirement Villages have “bars” in their Clubhouses. Some of these have a “Club Restricted Licence” but most do not.

These unlicensed bars operate by buying their liquor supplies from a licensed retail liquor outlet, do not sell spirits except in prepared mixers, limit the availability of liquor to residents or their guests, do not speak of “selling” the liquor (“contributions to cover the cost” or prior sale of tokens so that the liquor can be acquired) and avoiding awkward situations by maintaining an appropriate standard of service and behaviour.

As a result, the unlicensed bars have not attracted much attention and the regulatory agencies have largely ignored what is happening (suggesting they have much bigger and more demanding issues to deal with).

What Has Changed?

1. Retirement Villages are operating in a market which is coming under increasing scrutiny. The needs of an expanding ageing population, which will continue to grow for the next 30 or so years, has resulted in greater scrutiny and exposure of the activities of retirement villages. This has become even more evident since the expose of Aveo Villages last year by the ABC’s “Four Corners” program and the Fairfax newspapers. There are signs that the risk assessors advising retirement village operators are identifying unlicensed bars as a potential regulatory risk and Village Managers have been suggesting or requiring that residents cease any form of sale or supply of liquor unless the facility is licensed. We expect this trend to increase.

2. Some operators and resident associations are also becoming concerned that any sale or supply or consumption of liquor without a licence might void

Letter to the Editor

Mr Ian Nordeck
WARVRA Membership Convenor

Dear Mr Nordeck,

I am writing on behalf of my mother, Barbara Sadler of 12b/17 Lourdes Street, Lesmurdie (formerly).

She passed away on August 6th last year and all affairs to do with her unit have been finalised.

We found the meeting held at Villa Maria, Lesmurdie, in July of last year extremely helpful as was the lady who kindly gives her time to offer legal advice.

On behalf of my mother, brother and myself, our sincere thanks.

Kind regards, Lesley

Footnote:

The presentation made to this Village was ‘Exiting your Villa’, probably the most contentious issue and area of complaints that WARVRA experiences when families are finalising their parent’s estate when their villa becomes vacant. Presentations can be made at your village – all you need do is phone/email to make an appointment for WARVRA to visit.

‘WARVRA Associates’ has also been developed to help residents and their families understand what is required to vacate and refurbish a villa.

insurance policies. A detailed investigation by a legally experienced person in one village indicated that claims against the policy could be declined on grounds that the village was not complying with all applicable laws.

Proposal

Our proposal is that action be taken to amend Liquor Control Regulations 1989, r. 8. This regulation already exempts nursing homes and residential aged facilities.

Des Cousins, Advocacy Committee

WARVRA Newsletter

Next Issue 27 JULY 2018

*All contributions should be received by
Mid July 2018*

Contact Secretary for more information

(See Directory at top of page two)

Legal Advisor

For several years, Shelley Whitaker (Seniors Legal) provided legal advice to WARVRA. Shelley has now withdrawn from practice, at least temporarily. We have no arrangement in place at present.

What do we need?

The experience gathered by many WARVRA leaders is adequate to provide general advice to residents (e.g., “this appears contrary to Code”; or “you should go and get a lawyer” etc.).

But we are faced with a situation in which we need a higher level of advice, preferably from a practising lawyer.

Our particular needs are: (a) interpretation of the law; (b) available remedies to situations of concern; (c) assistance in preparing our arguments; (d) reviewing proposed changes to the law.

We also need to be able to advise our members where they might obtain legal advice and assistance.

What to do next?

There are two basic possibilities:

(a) find a member or friend of WARVRA who will provide free legal advice. Such a person should still be expected to have a current practice certificate (for insurance purposes) and if retired WARVRA could meet the costs of maintaining a practice certificate (*not sure of current cost, a lawyer who helped another organisation needed about \$1,000 for this a few years ago*).

(b) find a lawyer or legal practice that will provide legal advice to WARVRA for a negotiated retainer. The retainer might be reduced to reflect that the commitment that WARVRA would encourage members to use the services of the adviser (at normal fees) if the member was to commence any formal legal action in their own name.

The cost of this option could be much more expensive than the small retainer paid to Shelley Whitaker and could mean that WARVRA might have to find increased funds to maintain it. We won't know this until we make some enquiries.

... and to the future?

We ought to explore option (a) above first.

The need is urgent: the new legislation is coming sooner rather than later, we have exhausted many of the simple actions against operators and need to access the Australian Consumer Law which is far beyond our own competence and there are problems related to strata titled villages that require broad legal knowledge.

Experience dealing with Government departments and with the State Administrative Tribunal would be desirable.

Treasurer's Quarterly Report March 2018

	Year to Date \$
Opening Balance as at 1 Jan 2018	5,786.52
Receipts	
Village Membership	12,490.00
Individual Memberships	1,012.00
Bank Interest	1.07
Donations	10.00
O/S Cheque	84.28
TOTAL	19,383.87
Expenditure	
Membership & Education	.0
Legislation & Advocacy	.0
Expenses, President	710.33
Committee	252.10
Telstra	443.37
Annual Honorarium	550.00
Cash Float, Secretary	43.15
TOTAL	1,998.95
Cashbook Balance	17,384.92
Bank Reconciliation at 31/3/2018	
Closing Balance	17,474.86
Unpresented Cheques	89.94
Outstanding Deposits	.0
TOTAL FUNDS	17,384.92

LEGISLATION PROGRESS?? *cont'd from 3*

1992 and that a breach of some obligations be made an offence.

These matters are to be canvassed, we are advised, in a “Stage 2 Reform Interim Discussion Paper” which is currently being drafted (and has been in that process for many months!). When completed, no time is given, it will be released for comment and the stakeholders (WARVRA and the operator groups) will be invited to make submissions.

In January this year, the WARVRA Legislation Committee did make a submission about the faults in the present Code. Nothing has yet been done to address those matters though we are assured “they will be properly considered in the future drafting of reforms”.

We will keep you informed if and when any developments do take place. Meantime, if you need a copy of the Interim Code, it can be downloaded from the WARVRA website (warvra.org.au).

*Des Cousins
for the Legislation and Advocacy Committee*



What are ...

SPECIAL RESOLUTIONS ?

“Special resolutions” are referred to in both the Retirement Villages and the Association Incorporation Acts of the WA Parliament, both of which are in use in retirement villages. (“Special resolutions” under the Strata Titles Act are different and are not covered here.)

In both these Acts, a **special resolution** is required when a decision is to be made on an important and significant issue that directly affects the financial or general well-being of all the residents in a village.

Most issues in a retirement village will be dealt with by an **ordinary resolution**. An ordinary resolution is agreed (passed, approved) if more than 50% of the persons present at a meeting in person or by proxy vote in favour (yes).

For a **special resolution** to pass, the conditions to be met are more demanding:

- there must be at least 10 working days written notice of the meeting;
- the required quorum is at least 30% of residents present personally or by proxy;
- the resolution must be approved by 75% of those residents present personally or by proxy who actually cast a vote on the resolution.

Note: Where two or more residents occupy the same residential premises, each person is entitled to a vote **except** where their residential contract (deed) provides otherwise.

The following are matters that must be decided by a special resolution:

- (a) approving the application of any budget surplus in the village to a purpose, other than the future operating expenses of the village, generally of benefit to the

residents of that village (clause 20);

- (b) forming an incorporated association to carry out the function of the residents committee (clause 24(2));
- (c) dissolving a residents committee (clause 24(5));
- (d) removing a member of the residents’ committee during his or her term (clause 24(6));
- (e) collectively applying to the State Administrative Tribunal if a dispute arises between the residents and the administering body regarding an increase in recurrent charges or the imposition of a levy (*Retirement Villages Act 1992* section 57A);
- (f) opting out of the requirement that the annual financial statements of the village, presented to residents at the accounts presentation meeting, be independently audited for the financial year in which the resolution is passed (clause 19(10)); and
- (g) varying (including adding or deleting) the availability of a communal amenity or service (Regs 7C and 7E).

Two matters that must be agreed by special resolution of residents and with the agreement of the administering body are —

- (a) residents’ requests to vary or revoke the residence rules (clause 23(3)); and
- (b) varying the dispute resolution processes prescribed in the Code (clause 30(8)).

If you have a topic which is a common and frequent question, please advise Des Cousins (dcousins2402@gmail.com) and an answer will be prepared for a later issue of the newsletter.