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## NEWSLETTER

*Residents of Retirement Villages Victoria Inc.*

Issue No 22 June 2011

### Transition to Aged Care: Some Legal Issues, Myths and Practicalities

This article may be useful for those who are contemplating entering aged care, professional aged care advisers, and children, or other close relatives assisting those entering aged care.

Although the article relates primarily to Victorian residents, comments about Commonwealth aged care facilities are relevant to all States and Territories.

**Definition:** 'Elder law' is that area of law specifically concerned with advising older persons.

#### Introduction

One often sees the use of the word 'navigation' in articles about entering residential aged care. Unfortunately, finding one's way into suitable aged care is a matter of moving through uncharted waters, and there is an enormous amount of misunderstanding about it. These difficulties are compounded when the move has to be made quickly, as in the event of a health crisis.

This article aims to introduce some of the issues that will be encountered, to assist in the navigation process and to dispel some myths about residential aged care, especially in relation to accommodation bonds.

#### The Best Piece of Advice: Get Advice!

It is crucial for prospective aged care residents to seek professional advice in three areas.

##### 1. Financial Advice:

The importance of seeking financial advice - expert aged care financial advice - cannot be emphasised enough. This advice should be obtained at the earliest possible opportunity. In order to be eligible for subsidised aged care it is necessary to undergo income and assets assessments. These assessments are based on different principles to, say, income tax assessments, and there are a myriad of complexities involved.

If a financial adviser is contacted early enough, it may be possible to restructure financial affairs so as to take full advantage of the income and asset assessment rules.

##### 2. Placement Advice

Aged care placement agencies assist people to find suitable residential aged care.

These agencies talk to prospective aged care residents and their close relatives, provide a list of possible facilities in appropriate locations, advise as to fees, negotiate accommodation bonds, complete paperwork and organise ACAT assessments. Importantly, they have insight into and awareness of the accommodation available, from, amongst other things, feedback from clients.

Aged care placement agencies are particularly useful when a move into aged care has to be made quickly. No greater mistake can be made than to rush into a facility, only to find it unsuitable, and have to make another move later on.

The agency's fees may be quickly recovered if, for instance, a lower bond is negotiated.

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### 3. Legal Advice

The types of aged care accommodation vary greatly, but one common feature is that a residence agreement is always entered into. Moreover, the legislation both State and federal is complex. Residence agreements are almost universally long and complicated. An experienced aged care lawyer will be familiar with these contracts and the issues that should be considered; advice is often surprisingly inexpensive.

#### **Where to Find This Advice?**

It is very well to recommend the seeking of advice, but it is an entirely different matter to find suitable advisers.

#### **Financial Advice:**

Some advisers specialise in this area and do nothing else, some offer it as part of their business, and many do not work in this area at all. As indicated above, financial advice in relation to, say, setting up a superannuation fund, is entirely different to aged care financial advice. So, it is not always appropriate to follow a recommendation from a friend unless that friend has received advice of the same type.

The advice of an adviser who works solely in aged care is strongly recommended. Perhaps contact the Financial Planning Association, or do a Google search and look specifically for an adviser who emphasises aged care advice and planning.

The best way to find a suitable adviser may be to ask a placement agency or a specialist elder law solicitor – they will certainly know someone suitable. These recommendations can be worth their weight in gold.

#### **Placement Agencies**

Seeking aged care placement agencies is a little easier. Placement agencies are (often) single purpose private firms. Here, a recommendation from a friend can be useful.

The agencies are a little hard to find with a Google search, and it is worth visiting the *DPS Guide to Aged Care* website at [www.agedcareguide.com.au](http://www.agedcareguide.com.au) to conduct a search of placement agencies there. Many are listed.

#### **Legal Advice:**

Getting suitable legal advice is perhaps the most difficult of all. Most aged care residence contracts do not involve conveyancing, and are long and complicated. Such contracts are often outside the experience of many solicitors. Very few solicitors specialise in this area.

The Law Institute of Victoria (LIV) and Law societies in other States have systems of accredited specialisation. There is no LIV accredited specialisation in elder law. There is now talk of such a specialisation being introduced in the future.

Thus getting a general referral from the LIV referral service is not recommended, because this is more of a first cab off the rank system. Finding an experienced practitioner in elder law by this method is unlikely.

Perhaps conduct a Google search of solicitors, looking for a solicitor who significantly emphasises this area of law. This emphasis would entail much more than a one line reference to practising in elder law, or similar.

Again, the best type of recommendation is probably from a specialist financial planner in aged care, or from a placement agency.

#### **What is Available in Residential Aged Care?**

The first thing to note is that there are two types of aged care accommodation: State/Territory regulated, and Commonwealth regulated.

Secondly, if long term residential aged care is being sought, and there is a likelihood that the care will need to be increased as time goes by, it is probably going to be recommended that Commonwealth, subsidised, facilities are more suitable (depending to some extent upon the location of the prospective resident).

State/Territory aged care includes independent living units, serviced apartments, respite care, various forms of in-home community packages, and (depending how widely one defines 'aged care'), granny flat arrangements. In Victoria there are also Supported Residential Services, more commonly known as 'SRSs'.

Each of these options is controlled to some extent by State/Territory legislation. The types of facilities and services vary widely. Apart from exceptional cases, they do not receive any form of support or subsidy from State/Territory governments. It is accordingly likely that if one is seeking a high standard of accommodation, with some care, one will be paying a substantial amount (more than in a comparable Commonwealth subsidised facility).

Special mention should be made of SRSs. In some instances these are probably closest to the Commonwealth low care facilities. Many of them offer nursing and other care services, although often not on a 24 hour basis. The primary difficulty with SRSs is that if care needs reach a level that an SRS does not offer, the resident can be asked to leave. This will be part of the residence agreement, and is not controlled by any protective legislation.

The other difficulty with SRSs is that they are not 'single purpose' facilities. Historically, they have never catered only for aged care residents. Accordingly, regulating legislation has never imposed standards specifically related to aged care, but rather for the diverse needs that these facilities cater for.

Some (pension only) SRSs have residents of any age that are referred from hospitals and other institutions that can no longer accommodate them. Some suffer from psychiatric conditions and others from drug or alcohol related conditions.

Moreover, since there is no subsidisation by government, the fees paid are entirely a matter of negotiation with the facility.

### **Commonwealth Funded Aged Care Facilities**

The remainder of this article addresses Commonwealth facilities.

Subsidised Commonwealth facilities can be strongly contrasted with the State regulated facilities.

All Commonwealth facilities are classified as either low care or high care. A prospective resident must be assessed by ACAT (an Aged Care Assessment Team) as suitable for either low care or high care. It is not possible to enter a facility without this assessment.

Commonwealth facilities are very tightly regulated by the *Aged Care Act 1997 (Cth)* and by various pieces of subordinate legislation. Moreover, they are based on the principle of universal access, that every Australian citizen has a right to high quality aged care, irrespective of financial resources. They are subsidised by the Commonwealth.

Facilities are not run, only regulated by the Commonwealth, and the Commonwealth does not employ their staff. Most are privately owned, and the remainder run by community, charitable and other not-for-profit organisations.

With the exception of the accommodation bond, all daily care and other fees are fixed by the Department of Health and Ageing (DHA). A Commonwealth regulated facility itself has no say in what these fees will be, although negotiated lower fees may be agreed.

One cannot pay for a higher standard of care within a Commonwealth facility – the legislation imposes a consistent universal standard for all residents. Certainly, extra services can be bought, for instance hairdressing or better choice of menu, but the daily health care itself is the same for all residents.

A resident in a Commonwealth regulated facility cannot be asked to leave (other than for some technical reason like the closure of the facility). The only circumstance where this might happen is if the resident is in a low care facility and his or her care needs require high care. Even in this case, the low care facility must assist the resident to find suitable and affordable alternative accommodation.

Some facilities have 'ageing in place', which means that the move from low care to high care can be made within the same facility.

### **Accommodation Bonds**

This is perhaps the most misunderstood aspect of entering aged care. There are a number of myths about accommodation bonds.

**Myth:** *It is always necessary to pay an accommodation bond – wrong.*

Bonds are not paid when the resident enters *high* care, unless that resident chooses to pay for 'extra services.' For example, pensioners and part pensioners will very rarely, if ever, pay for extra services; accordingly, an accommodation bond would not be applied.

**Myth:** *I won't be able to enter into low care because I have no assets – wrong.*

Legislation requires that a resident be left with (approximately) \$40,000 in assets after payment of the bond. If a prospective resident has no assets, or assets less than \$40,000, it is illegal to ask for a bond. Such a person is called a fully supported resident, and every Commonwealth facility must have some places for fully supported residents.

**Myth:** *I will lose most of the bond (or my estate) when I leave the facility – wrong.*

In total, a facility can only retain a maximum amount of (approximately) \$18,500 from the bond when the resident leaves, or dies. This is the case whether a bond is \$100,000 or \$800,000. The facility can only retain the monthly 'retention amount' of (presently) \$307.50\*, for a maximum of five years. The facility is also entitled to all interest earned on the bond.

\*a lower retention amount applies to bonds of less than (approx) \$40,000; the retention amount cannot be increased, even for CPI movements, after occupation starts. (Gauld & Co. Elder Law Solicitors, Hawthorn)

**Myth:** *I will have to pay the accommodation bond in a lump sum – wrong.*

An accommodation bond may be paid in a lump sum, but it may also be paid by way of periodic payments. Periodic payments are usually paid by way of monthly instalments, comprising the interest component on what the lump sum would otherwise have been, plus the retention amount (\$307.50). After five years the retention component drops out and only interest is paid. It is also possible to pay a bond partially as a lump sum and partially by periodic payments.

**Myth:** *I will have to sell my house to pay the accommodation bond – sometimes wrong.*

If a resident rents out his or her home and uses the rental income to pay some aged care expenses, the income and the capital value of the home may not be taken into account in the aged care income and asset assessments. So, again, obtaining expert financial advice may enable a resident to keep his or her house. There are also other strategies that may be put into place to enable one to retain one's home.

**Myth:** *I am at risk of losing my bond if the facility goes broke – **wrong**.*

The Commonwealth government fully guarantees all accommodation bonds.

**Myth:** *The facility will be able to retain my bond for a long period after I leave or die – **wrong**.*

A Commonwealth facility is required to return the accommodation bond (less the retention amounts) within 14 days of the resident leaving, or within 14 days of sighting a probate.

### **Other Fees**

All fees, or maximum fees, apart from the accommodation bond are fixed by DHA.

Most residents will pay a basic daily care fee of approximately \$40 (\$280 per week - this equates to about 84% of the full single pension). A resident may also pay an income tested fee, which is currently fixed on a sliding scale up to a maximum of about \$63 per day. If assessed income does not reach a certain level, a resident will not pay this fee at all.

Some facilities have 'extra services' status, which can apply to both low care and high care. This entitles the facilities to provide and charge for additional services and amenities (not better *care!*). An additional fee would be charged according to the type and range of extras provided.

So, most residents will pay daily fees of between \$40 and \$100 (that is, between \$14,600 and \$36,500 per annum). Some fully and partially supported residents will pay less, and some residents who chose extra services will pay more. Once set, these fees never change other than to reflect minor CPI movements.

A resident, in high care only, may be asked to pay an 'accommodation charge' (to be contrasted with an accommodation bond in low care) which is fixed by DHA. This is an additional *daily* fee, based on an assets test. It is currently set on a sliding scale up to a maximum of approximately \$30 per day. A resident with assessed assets when he or she enters care of greater than \$40,000 may pay all or part of this fee. As its name implies, an accommodation charge is the resident's contribution towards the accommodation provided (just as the accommodation bond in *low care* is the resident's contribution towards accommodation).

Apart from the above, there are no other fees in Commonwealth regulated facilities. Any fees are fixed at the start of occupancy and, other than CPI adjustments for some fees, they will not change during occupancy.

### **Leaving Commonwealth Facilities**

A resident has a 14 day cooling off period after signing an agreement during which he or she can leave with any payments refunded.

In contrast to some retirement village agreements, a resident in a Commonwealth facility can leave at any time without penalty (although some minor penalties may apply if a resident leaves within the first three months).

If applicable, the bond balance must be refunded within 14 days.

### **Conclusion**

For those not familiar with the aged care industry, the prospect of finding suitable residential care is daunting. Moreover, many myths and misunderstandings have arisen to compound and further cloud what is already a difficult task.

This article has tried to encourage prospective residents to seek advice in three areas, and as early as possible. Such advice can often be a good investment of time and money. Many strategies can be put into place, especially in financial matters, which may significantly lessen the emotional and financial impacts involved in making this important decision. This is more so the case when the move has to be made quickly.

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Suite 5, 1st Floor, 838 Glenferrie Road, Hawthorn, Melbourne, Australia, 3122.

### **RRVV Needs YOUR Help**

The giving of time and effort to an organisation is seldom without limits, and so it has been with two Members of our RRVV Committee, who filled the roles of Secretary and Treasurer for some years, John Schlafrig and Jim Burrows. John left the Committee at the AGM last year and Jim is trying to lessen his workload as we speak, although he is still our key adviser on financial matters.

We now need successors for these two, and would love to hear from other Members who might be able to serve on our Committee.

Both roles are well documented and supported by the rest of the Committee, and can be as **big** or **small** a role as needed by the occupant.



If you'd like to have a chat about either role, our President, Terry Macdonald, would love to hear from you, on 9725 5465 or to [terry.macd@bigpond.com](mailto:terry.macd@bigpond.com)

**A List of Current Requests for Assistance**

Many Members, thank goodness, do not require assistance from RRVV for their daily living. However, many do and below for your general information is a list of topics being followed up at present.

- Querying a "Fair Price" offer made to the daughter of a Member has led to legal issues.
- Structural damage to a Unit not being repaired in accordance to RV Act requirements.
- Many complaints re "Fair Price" offers at a particular Village.
- Attempts by Owner to change Contracts in an illegal way.
- A prospective Resident asking for advice prior to signing up.
- Another example of the first example above.
- Queries arising out of a Village Visit by Committee members.
- An Owner/Operator not providing community facilities and resident concerns about financial viability of the Village.
- Another "Fair Offer" complaint.
- Residents complaining about excessive Maintenance costs.
- Prominent Owner attempting to change Contracts and Association Rules.
- Complaint regarding incorrect electricity billing involving smart meter.
- Advice requested on method to discipline employees.

**What a wide range of issues we cover on your behalf!**

## Flood update for residents Apia provides peace of mind for customers

Automatic flood cover is included as a standard feature on all Apia home and contents insurance products.

Apia provides peace of mind for customers by covering flood damage to insured buildings and contents caused by river or creek flooding, flash flooding, rainwater run-off and storm water.

Please contact Apia on 13 50 50 if you would like further information.

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Please refer to the PDS by calling 13 50 50 for full details of Apia's cover. Australian Alliance Insurance Company Limited issues this product through its authorised representative Australian Pensioners Insurance Agency



## Value Adjustment Sum – ("VAS") as in Loan/Lease Agreements

Whilst this iniquitous Clause literally binds the unfortunate resident to a paltry exit settlement, it's mathematical calculation can be seriously challenged.

(1) Quoting an actual offer of \$268,000 (in 7.5 years!) made to a resident, the VAS is a miserable 3% compounded increase from the \$220,000 original purchase price! (refer Compound Interest calculator). On the other hand, (refer the "Melbourne House Prices" on the internet), the median prices in Melbourne for Units rose from \$255,000 (Feb 04) to \$425,000 (Feb 11), an increase of \$170,000 - or 66% which equates to 7% per annum (refer again to the compound tables) as against the ridiculous 3% they offer!

Similarly, the House prices went from \$300,000 to \$500,000, also an increase of 66% (7% compounded!)

With that factual increase established, a resident may well claim and calculate \$220,000 @ 7%, for the VAS to be \$365,000 - being approx \$97,000 more than their 'offer' of \$268,000!

(2), if the money is needed now (e.g. to fund a bond for entry into a care facility) the alternative offer of a paltry \$131,185 is equally ridiculous, the discount of \$136,815 being a massive 10% compounded decrease (supposed interest forfeiture) as against the current Reserve Bank official rate of 4.75% - a difference of 5.25% from the 10% dishonestly discounted.

This difference - see Present Value calculation of what \$268,000 is worth at 4.75% - 7.5 years earlier - means it should be a present-day pay-out of \$189,200 - up \$58,015 from their paltry offer of \$131,185.

But joining the 2 arguments in logical sequence, then (see 1) as the unit is worth \$365,000, and therefore (2) the discounted present value price at 4.75% is worth \$257,600 - the VAS should be nearly double the offer of \$131,185.

**SUMMARY:** whilst the resident is 'stuck' by the VAS clause in their contract, these factual realities of the capital appreciation and interest rates provide some real ammunition to improve residents' settlement to \$365,000 in 7.5 years time or \$257,000 now. The arithmetic certainly provides a foundation to lodge strong OBJECTIONS - to the implementation of the VAS with its unconscionable offer.

*Jim Burrowes*  
Hon. Treasurer  
21/5/2011

**Your Annual Maintenance Charges  
2011/2012**

Your annual maintenance charges are set (or should be) by Village Management each year in accordance with the Retirement Villages Act 1986 and our Treasurer has provided this report on how the level of the **ADJUSTED MAINTENANCE CHARGE (CPI)** (relevant to Section 38 (2) and (4) of the Retirement Villages Act 1986) **for the financial year 1 July 2011 – 30 June 2012** will be affected. It will be indexed by a **relative percentage** of 3.18949 % (rounded off to **3.19 %**).

Under the Retirement (Contractual Arrangements) Regulations 2006 – Sect 8A the **ADJUSTED MAINTENANCE CHARGE (“AMC”)** is determined by a formula based on the increase (expressed as a percentage) in the aggregate of the Australian Bureau of Statistics (“ABS”) indices (Melbourne All Groups) for the 4 quarters (see next paragraph), over that of the 4 quarters of the previous year.

Taking into consideration the need to establish the ensuing year’s budget of Service Fees prior to the close of the current year, the formula uses the 4 consecutive quarters **preceding** the yet to be determined final quarter, over the corresponding 4 consecutive quarters of the previous year.

(For those interested in the arithmetical calculations of the **3.19 %**, they are set out in the appendage below).

**Agreeing to the Proposed Budget for your Village**

Residents need to be aware that any increase put forward for next year’s budget beyond the 3.19 % **is in their sole control, requiring to be passed by ordinary resolution** of the Residents Committee or the residents at an annual or general meeting, in accordance with:

- for leasehold villages - Section 38 (4) of the Retirement Villages Act 1986, and
- for strata title villages - Section 23 of the Owners Corporations Act 2006.

There is an exclusion - Sub-Section 38 (5) applies in the impractical situation that an increase is solely for rates, taxes etc or a salary under an Act.

Residents are also warned that the **adoption of a budget which includes increased fees** above the AMC **does not satisfy** the requirement of Section 38 (4), nor to set fees under Sect 23. **Both of these Sections require a formal ordinary resolution by the residents or the residents’ committee to approve them.**

Jim Burrowes  
Hon.Treasurer  
29/4/2011

**APPENDIX:**

**Calculations of the indices for the fiscal year July to June period**

**Sect 8A (2) ‘B’ - 4 consecutive quarters of the current year (preceding the final quarter):**

June 2010	169.5	
Sept “	170.5	
Dec “	171.5	
March 2011	<u>174.4</u>	= 685.9

over the -

**Sect 8A (2) ‘C’ - 4 consecutive quarters of the previous year :**

June 2009	164.4	
Sep “	165.4	
Dec “	166.4	
March 2010	<u>168.5</u>	= <u>664.7</u>

**Increase** = 21.2  
**divided by** 664.7 = 3.1894087%  
 which is rounded up to **3.19%**

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Strange how much you have got to know  
 Before you know how little you know!

Live honestly, eat slowly, work hard, sleep sufficiently

And keep on lying about your age!

To do for the world more than the world does for you—that is success.

**A Successful Forum 2011**

Attendees at the recent RRVV Forum 2011 were very happy with the topics and the discussions held during the day. The Keynote Address given by Kenton Miller of the Victorian Equal Opportunity and Human Rights Commission covered a wide range of information about Human and Equal Opportunity Rights as they exist for people such as us. Much of material covered had not ever been specifically considered by residents before as rights, but rather just decent and considerate ways to act towards one's fellow humans. We all now know better! Kenton gave copious contact details for residents to follow up or seek help.

Our friends from HAAG, Jeff Fiedler and Shanny Gordon, presented a Report on research into Residents awareness of their rights and their abilities to take action when necessary. This was another very informative session with a busy question time. Again contact details were left with the audience for any further queries.

The final address was on the subject of the transition to Aged Care, and covered both the legal aspects (with Peter Gault) as well as the need to prepare for the care aspects. This latter segment was presented by Jillian Slade and Denise Tomaras of TenderLivingCare, a specialist Agency in this area. The question time was very busy and brought out much opinion and many informative answers.

The afternoon was the Discussion Segment, when ten issues, chosen as the highest priorities by Members, were given to ten groups for discussion and a report by each group was presented to the Forum. The issues were:

**1. Sinking/Long Term Maintenance Funds:**

Are these utilised properly? Better methods? Is the contribution shared between Residents/Management? Use and protection of these funds.

**2. Service Fees.**

Are levels linked to effectiveness of results? Are they approved by residents as provided in legislation?

**3. Financial Reporting:**

Quality, timeliness and credibility of Village finances – satisfactory?

**4. RV Contracts:**

Standardisation needed? Why? Test for legality under consumer laws needed?

**5. Deferred Management Fees:**

A review of purpose needed? Should levels be controlled?

**6. Standards of Maintenance of Units and Facilities:**

Who should set standards? Is safety considered highly enough?

**7. The Role and effectiveness of Village Managers:**

Minimum standards needed? Who sets these standards? Regular reviews of performance?

**8. The Operation of Residents Committees:**

Are guidelines required? Mandatory? Who reviews?

**9. Oppression and Criminal Behaviour in RV's:**

Can this behaviour be minimised/controlled/eliminated? What responses from residents are possible/necessary?

**10. Owner's Long Term Intentions for RV's:**

Are residents kept informed of future intentions? What resident's issues need flagging?

These reports will be prepared for consideration by the RRVV Committee and followed up in the next Newsletter.

As we wound up the Forum and members packed up and headed out, I was personally

gratified at the number of those who came to express their thanks for an enjoyable and useful day. As we also had good catering for the day, I agreed with all of these well-wishers!

*Terry Macdonald*

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## The Human Rights of the Village Resident

In the lead up to the Forum some who have spoken to me have expressed puzzlement because they thought Human Rights were only needed by the unfortunates in our Community. I thought that I should correct this view – Human Rights are for ALL.

Those at the Forum were surprised at the importance of these rights to us all and so, as well as providing Contact details for the Commission, I summarise these Rights for all those Members who were not at the Forum. Our speaker, Kenton Miller, has offered to arrange a program of visits to Villages where there is an interest by a significant group of Residents.

**The Victorian Charter of Human Rights and Responsibilities - what is it?** The Charter is an Act of the Parliament of Victoria that clearly sets out our rights and freedoms, and the responsibilities that go with them, in one document. The Charter focuses on civil and political rights, and includes well known democratic rights such as the right to vote and freedom of expression.

**How does the Charter work?** The Charter is an agreed set of human rights, freedoms and responsibilities protected by law. Government departments and public bodies must observe these rights when they create laws, set policies and provide services. This means that Government, public servants, local councils, Victoria Police and others are required to act in a way that is consistent with the human rights protected under the Charter. These bodies will have to comply with the Charter and take human rights into account in their day-to-day operations.

**Some** examples of the impact of Human Rights on the Retirement Village experience are:

***Freedom of movement, expression, assembly and association:*** People have the right to hold opinions without interference from the government or from other people. People have the right to seek out, receive and pass on information and ideas of all kinds whether orally, in writing, in print, as an artistic expression or in any other way of their choosing. People have the right to assemble and meet peacefully, to freely associate with others and to form and join trade unions. For some Villages, RRVV members who wish to have a representative of RRVV come and speak publicly are told by their Manager or their Residents Committee that this is not “approved”! Freedom of Assembly??

***Property rights:*** A person must not be deprived of his or her property except in accordance with law. The financial treatment of some RRVV Members who have had to leave a Village and have been delivered a much smaller residue of their initial investment expected is an example where their Human Rights must be protected.

**More Reading?** There are many more areas of Rights and Victorian Equal Opportunity and Human Rights website at [www.veohrc.vic.gov.au](http://www.veohrc.vic.gov.au) will provide ample information.

*Terry Macdonald*

## Victorian Equal Opportunity and Human Rights Commission

### CONTACT DETAILS:

Level 3, 204 Lygon Street, CARLTON

Advice Line: 1300 292 153

Telephone: 1300 891 848

TTY: 1300 289 621

Interpreters: 1300 152 494

Email: [information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au)

Website: [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

## For all you Golfers



**#10 Golfer:** "I Think I'm going to drown myself in the lake."

**Caddy:** "Think you can keep your head down that long?"

**#9 Golfer:** "I'd move heaven and earth to break 100 on this course."

**Caddy:** "Try heaven, you've already moved most of the earth."

**#8 Golfer:** "Do you think my game is improving?"

**Caddy:** "Yes, you miss the ball much closer now."

**#7 Golfer:** "Do you think I can get there with a 5 iron?"

**Caddy:** "Eventually."

**#6 Golfer:** "You've got to be the worst caddy in the world."

**Caddy:** "I don't think so. That would be too much of a Coincidence."

**#5 Golfer:** "Please stop checking your watch all the time. It's too much of a distraction."

**Caddy:** "It's not a watch - it's a compass."

**#4 Golfer:** "How do you like my game?"

**Caddy:** "Very good, but personally, I prefer golf."

**#3 Golfer:** "Do you think it's a sin to play on Sunday?"

**Caddy:** "The way you play, it's a sin on any day."

**#2 Golfer:** "This is the worst course I've ever played on."

**Caddy:** "This isn't the golf course. We left that an hour ago."

**#1 Best Caddy Comment: Golfer:** "That can't be my ball, it's too old."

**Caddy:** "It's been a long time since we teed off, sir."

**From the Captain's Table**  
*An inaugural Message from*  
**Terry Macdonald, President RRVV**



I was very pleased to be elected by your Committee as President Elect on 11<sup>th</sup> May 2011. Whilst I am still in the learning phase about much of the detailed knowledge of Legislation, personalities in the Sector and contacts in Villages, I am used over many years and many different organisations to be able to assume a leadership role rapidly. This is helped greatly by RRVV having a Committee composed of members who have all the knowledge and experience needed to be shared.

We are working on establishing contact with the key Ministers, their staff and Departmental officers to ensure that our voice is adequately heard when the Retirement Village sector is being examined, discussed or reviewed. We are making sure that RRVV's written submissions are being sent to the key areas of Government so that our opinions are fully understood.

Our areas of priority are as detailed in the letter from the President to the Minister for Consumer Affairs which was printed in the March Newsletter and completed in this Newsletter.

We are looking to strengthen our links to other key stakeholders such as COTA, HAAG and CAV. We are also moving to improve our quality of contact with Members and to upgrade our efforts to recruit new members.

We still place a high importance on contacts from our members, either by phone to our Voicemail line 9015 8402 or to our new Postal address, GPO Box 215, MELB VIC 3001, asking for information or requesting assistance.

Regards to you all

*Terry Macdonald*

22<sup>nd</sup> May 2011

**A Tribute to Arnold Paeglis**

Arnold Paeglis is leaving the RRVV Committee and we wish to thank Arnold for the immense effort which he put into his time as President of RRVV.

Arnold took over the role with the Secretary role vacant and therefore became the de-facto Secretary as well. Because of coincidental changes to the office staffing, he was faced with the need to be very involved with more day-to-day issues than his predecessors. Nevertheless he persevered with the follow up of the many phone messages from members, visits to Villages and the Presidential liaison role with other bodies such as Consumer Affairs, Retirement Villages Association and many others.

His experience in the Retirement Village Sector was considerable and his beliefs were firmly held. He generated many robust discussions at Committee meetings, all with the welfare of Members at the centre of his concerns.

The Members of the Committee wish Arnold and Nelda all the best for their future life.

*Terry Macdonald*

President RRVV

11/5/2011

**The News Column**

**RRVV's New President:** Following Arnold Paeglis' resignation from his role, the Committee elected Terry Macdonald (formerly Vice President) as President until the AGM later this year. Terry lives at Mingarra Village in Croydon with his wife Lenore. He was elected President of the Residents Committee earlier this year. Although Terry has been a member of RRVV only since March 2010, he is very aware that not all Residents are as fortunate as are the Macdonalds and is keen to increase the effectiveness of RRVV on behalf of those needing support. He is a former Engineer and is still active in other Community organisations. He is a member of the Boards of Philanthropy Australia and Volunteering Australia as well as others.

**The Council Rates Discount Issue:** Although many individuals and Village-based groups have tried to obtain this discount from their local Councils, few have succeeded. Recently Terry Macdonald realised that there was strength in numbers (he says that he should have thought of this much earlier) and will arrange a gathering in July for all members who have made attempts, or want to, put effective pressure on "government" to recognise the legitimacy of our claims. The meeting will then look at all our options and agree on what should next be done as a mobilised, united group. Stay tuned!

**The National Association of Retirement Village Residents:** Although there has not been much news of progress in the formation of this national body – to be called ARVRA (Association of Retirement Village Residents Australia) – action is continuing towards the creation of ARVRA as an Incorporated Association. The members of the Queensland equivalent of RRVV are handling these matters. As well as Qld, NSW, Vic and SA Associations being involved so far, ACTRVRA is now enquiring about joining. RRVV will have a representative as a member of the Board of ARVRA.

**RRVV Office Staffing and Changes:** Edith Chen is now staffing the RRVV office in the City for three days a week. A new Postal Address for RRVV is:

**GPO Box 215, Melbourne, 3001**

Voicemail requests or comments are still to be made to **9015 8402**.

**Submission to the Minister for  
Consumer Affairs**

The following is the completion of the Submission to the Minister for Consumer Affairs in January 2011, of which the first part was published in the March 2011 RRVV Newsletter.

**4. Financial Management**

Reporting, budgeting and allocation of expenses has always been a source of friction and disputes in the retirement villages. Accounts are often presented in a format that is not easily understood by the residents or residents' committees, often financial reports include expenses incurred by the operator in managing their associated businesses.

Insufficient attention is given to proper classification of accounts, little regard is given to distinction between replacement, repair and maintenance expenses, thus avoiding the responsibility of operators paying their share of expenses.

Accumulated maintenance/capital replacement funds must be in control of the residents of a village and held as deposits in Trustee approved investments.

Involvement of the residents and resident's committees in the financial management of villages is not at present supported by legislation and is largely ignored by the operators. Any deviation from the legislated formula is subject to interminable disputation creating feelings of distrust between the residents and the management.

The financial structure underlying the loan/lease arrangements is not transparent enough to enable the residents to assess their financial commitment. The practice of charging so-called Deferred Management Fees that have no relationship to the management of the village but is simply a money-lending scheme should be identified as such and the operators compelled to comply with the relevant legislation. In addition, such loans should be exited without penalty to the resident.

Any refurbishment fees applicable on termination of the contract must be clearly identified in the contract and the resident must be given an opportunity to seek alternative sources. The resident must also be in full control of arrangements regarding the sale of the lease. Any provision for sharing appreciation of the lease must be clearly stated in the residence contract.

**5. Village Management**

Retirement Villages Act 1986 falls short of providing rules and guidance for residents' participation in the village management. The rights of residents to convene a residents' meeting, meeting procedure and voting rights are not considered in the Act. The residents' committees are to establish their own procedures, very little information is provided as to their rights and responsibilities.

Effective interaction between the management of the village and elected residents' committee is one of the most important aspects of village life. Unless both parties, the management and the committee, clearly understand their respective responsibilities, it usually results in an unhappy and dysfunctional village. Lack of clarity in the Act leads to many unnecessary requests for mediation by Consumer Affairs, when adequate provisions in the Act would facilitate dispute resolution at village level.

It appears that the draftsmen of the Act had little appreciation that in the retirement village context we are dealing with residents of advanced age, whose abilities to participate in village management are severely restricted and who require clear and understandable guidance to avoid unnecessary stressful experiences due to lack of clarity in the Act.

RRVV strongly recommends that the Act is revised and amended to fill the gaps in the existing provisions. This could be easily accomplished within the existing structure of the Act by incorporating rules for convening residents' meetings, voting rights, election of committees and interaction with the village management.

**Conclusion**

The above recommendations are the result of the considerable experience of RRVV in working with the villages' residents and an assessment of effectiveness of similar legislation in other States and New Zealand. In some respects we must accept that the legislation in other States is more thorough, though not necessarily successful enough to consider it as the model for introduction in Victoria. Our recommendations are aimed at creating as little structural disturbance of the Act as possible by amending several Sections of the Act and providing supplementary Regulations for the others.

If such recommendations are implemented, the next step of determining interrelationship of Retirement Villages Act 1986 and Owners Corporations Act 2006 becomes a simple exercise.

***From a Catholic Primary School Test:***

Adam and Eve were created from an apple tree.

Noah's wife was Joan of Ark. Noah built an ark and the animals came on in pairs.

Solomon, one of David's sons, had 300 wives and 700 porcupines.

David was a Hebrew king who was skilled at playing the liar. He fought the Finkelsteins, a race of people who lived in biblical times.

### Long-term Maintenance Fund (LTMF)

This article attempts to summarise and clarify a lurking problem at many villages.

Whilst the script is generally quoting from the actual legislation, any comments outside it are shown in italics, as the writer's opinion.

Notwithstanding that there is no coverage of the LTMF issue in the Retirement Villages Act 1986, it is embraced specifically in the more up-to-date Owners Corporations Act 2006, and should be followed in all retirement villages as a direct and necessary responsibility of good management.

As set out in Division 3 - Maintenance Plan (Sections 36-39) of this Act, a village "may prepare a maintenance plan for the property for which it is responsible". (For a "prescribed village legislated by regulations", it is obligatory i.e. "**must** prepare").

The plan sets out the anticipated repairs and maintenance required, with estimated costings, **within** the next 10 years, but it may be noted that "within" means a shorter period could be covered. In my opinion, 10 years is too long into the future to be practicable, and 5 years is more appropriate, bearing in mind that current members are paying present-day allocations within their fees, for the future benefit of others (if they are no longer resident).

Also, in accordance with the Strata Schemes Management Act 1996 - Section 75A(4), the plan should be reviewed within 5 years, anyway.

The Maintenance Plan only takes effect when approved by resolution of the Owners Corporation, i.e. its OC Residents Committee (which resolution has effect as a resolution of the Owners Corporation (Section 113), and is then reported to the residents at the AGM as its approved plan.

Having established it, there is no point in having a plan if it's not then acted on.

The next 6 clauses under Division 4 - Maintenance Fund (Sections 40 - 45) state that, having approved a plan, it "**must** establish a maintenance **fund**" to "be used for the implementation of the maintenance **plan**", and "any part of the annual fees that is designated as being for the purpose of the maintenance plan **must be paid into the fund.**"

At this point it is appropriate to observe that the Act is silent about what constitutes a 'fund'. The obvious inference, and logical answer is that it's a 'sinking fund' into which fees (allocated in the budget) must be paid into i.e. a separate (preferably interest-earning e.g. Inge Direct) bank account, in the name of the Owners Corporation. A new fund will of course take time to finance an ideal level of comfort from annual fees, and can be augmented by a levy, or any other source available (even the operator!).

Money may then be paid out of that account "at any time in accordance with the approved maintenance plan."

The use of the term "sinking fund" can be subject to varying interpretation (e.g. for emergencies), but is identified by Washington Brown (professionals in strata title and Owners Corporation administration), for "expenses of communal areas including painting, driveway refurbishment and replacement of common property items like carpets, roofing and guttering etc".

In any case, under Section 44, extraordinary payments may be made out of the fund if approved by special resolution, and under Section 45, certain purposes (without special resolution) can be made i.e. any court order, expenditure necessary for safety, and anything forgotten in the original plan (that's open-ended!).

*Jim Burrowes (Treasurer)*

### The 2011 Annual General Meeting of RRVV

The Annual General Meeting for all Members of RRVV will be held:

**Date:** Wednesday 21<sup>st</sup> September 2011

**Time:** 10.00

**Venue:** The Hayden Raismith Room  
4<sup>th</sup> Floor, Ross House  
247 Flinders Lane  
Melbourne (in between Swanston and Elizabeth Streets)

We will have a keynote speaker from the Association of Independent Retirees and there'll be morning tea as well.

This is an important part of the operation and governance of RRVV and we hope that you'll note the date and attend.

There will be a full Notice of the meeting in the September Newsletter.



## A Vision for the Retirement Village Sector in Victoria

**RRVV recently approved this Statement of its Vision to enable all in the RV Sector to understand the Principles for which RRVV stands on behalf of its Members.**

A common goal shall be the wellbeing of all residents so as to ensure that in the future their Village life will be satisfying, and with cooperative rather than confrontational relationships being the norm.

Through full and understandable disclosure of conditions and expectations prior to entry, all Residents will appreciate the roles and responsibilities of Village Owners/Managers.

The Retirement Village sector will be an essential, transparent and viable part of the Australian Community and Economy, one which is able to provide Owners with a fair profit thus allowing them to plan to expand to meet the future requirements for Independent Living for the retired aged at affordable entry prices and ongoing costs.

In all Villages there will be a transparent process of full disclosure to Residents of conditions relating to entry, exit and operational costs and consultation on the management of these costs.

The RV Sector will be economically viable without there being any need for financial management practices which generate unplanned financial hardships for Residents and/or their families.

All stakeholders in the RV Sector will work to ensure the observance of all legal and regulatory requirements which recognise the Human and Legal Rights of Residents.

There will be an acceptance of decision making processes which use the opinions and reasonable expectations of Residents as an important consultative component of complex decision making processes.

*Terry Macdonald*

President

May 2011

## Our Committee



**Back Row:** Charles Adams (Vice President), Howard Campey, Terry Macdonald (President),  
Rennie Coutts, John Lumley.

**Front Row:** Elizabeth Paramanathan, Edith Chen (Office Supervisor), Pat Willmott.

**Absent:** Gerry Backhouse, Jim Burrowes and Trevor McPhee