



*RETIREMENT VILLAGE
RESIDENTS
ASSOCIATION INC*

NEWSLETTER Number 104 - September 2014

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THE ANNUAL GENERAL MEETING

In the past, a report on the RVRA Annual General Meeting has been included with the September newsletter.

However, this year, the report will be included in the December Newsletter.

The AGM will be held a little later than usual to fit in with the Minister's schedule. The Minister for Fair Trading, The Honourable Matthew Mason-Cox, will be our main speaker, and our Honorary Solicitor, Peter Hill will also be speaking.

The AGM will be held on 25th September, (see page 8)

Reports of the work of the RVRA for the year will be given, and the attendees at the meeting will be asked to vote to have Malcolm McKenzie recognised by an award which will be recorded in our RVRA archives for his incredible work for the Association. It will be a sad event for the Association, as this award will be made posthumously. The Committee wishes that Malcolm's work be recognised by the future committees, and members of the RVRA.

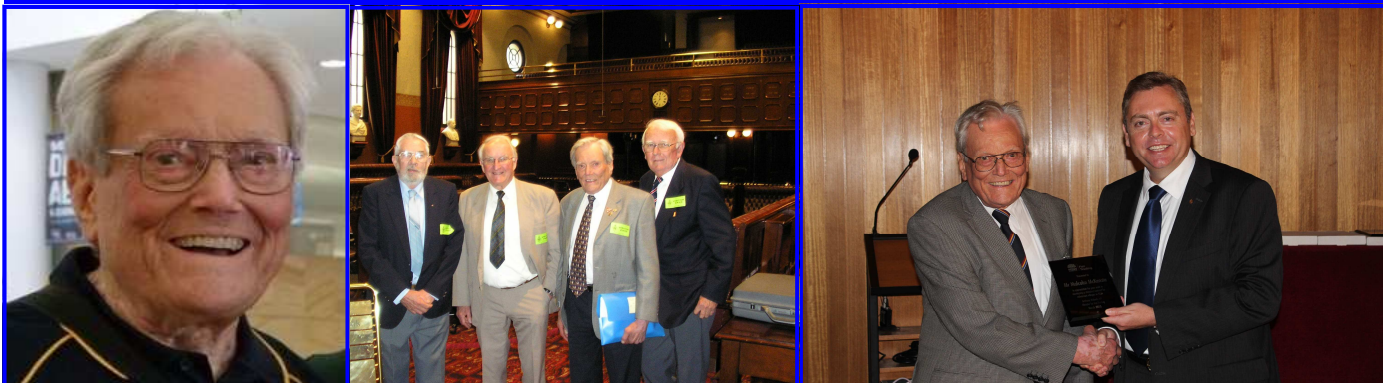
The new committee for the year 2014/2015 will be named.

Time will not allow individual problems of Members to be aired at this meeting.

Please call 1300 787 213 or email admin@rvra.org.au to advise of your attendance.

In this issue:

The Annual General Meeting.....	Page 1
Vale Malcolm McKenzie	Page 2
President's Report	Page 3
New Rules for Aged Care	Page 4
Legal Opinion by Peter Hill	Page 6
Retirement Village Regulation Review..... Smoking Policy.....	Page 7
Information Meeting at Cromer / RVRA AGM & response slip	Page 8



On 4th July I emailed advice of Malcolm's death to all our members who have provided their email addresses to the office. Almost immediately, the email notification started to alert me that responses were pouring into our email address. These were heartfelt messages of sadness, and appreciation for Malcolm's contribution to the residents at many villages, all over NSW, as well as from Managers and Operators of Retirement villages, and the former Minister for Fair Trading, The Hon. Anthony Roberts. I have compiled these into a document and have sent it to Malcolm's family. I will also do this with any further messages which come to the RVRA. The family had little knowledge of the type of work Malcolm did for our members, and the extent of his involvement with so many residents. Many people expressed their condolences to the family, as well as the Committee, for their loss.

Malcolm's family responded with the following message to all those who wrote to them:

On behalf of Malcom's family, thank you for your heart felt messages and condolences. It has been extremely comforting to know that he touched and helped so many people. Dad was always such a giving person, and did so without needing or wanting praise or acknowledgement. Thank you for giving him the recognition and love that he so deserved. We are touched and grateful for your kind thoughts and words.

The McKenzie Family

On 17th July, in *The Source* Newsletter, which goes to the RV industry, Chris Baynes of villages.com wrote this tribute to Malcolm:

Last Friday over 100 people attended the funeral of Malcolm McKenzie. A large number were residents of retirement villages, a sign of respect and appreciation for his eight years' tireless work as Chief Advocate of the state resident association, the RVRA.

Malcolm's family expressed his love of living in a retirement village (he was a resident of Aveo Camden Downs with his wife Jill, then, when on his own, he moved to Northhaven Village, Lindfield). However he was a forceful advocate for residents, when he felt a balanced and fair treatment was not being provided to a resident.

Several speakers stated that Malcolm was a 'good man'. Following his membership of the Advisory Committee on the Minister's review of the NSW Act and development of the Standard Contract, the Minister for Consumer Affairs, Anthony Roberts, famously said in his Minter Ellison presentation that he had instructed his staff "Whatever Malcolm says, I accept".

RVRA lawyer Peter Hill gave an impassioned eulogy, as did Malcolm's Rotary colleagues. Malcolm had been awarded a Paul Harris Fellow, named after the founder of Rotary; it is Rotary's highest honour. Malcolm was 82.

PRESIDENT'S REPORT



Committee Issues

It is with great sadness that the committee has had to make arrangements to carry on without Malcolm. Malcolm had served on the Committee since 2007, and had been an Office Bearer continuously since early 2008, serving as the Secretary, President and also the Advocacy Chairman. His experience and wisdom will be greatly missed.

Thank you to all members who have sent cards and messages to the RVRA Committee on Malcolm's passing. These came from all parts of NSW, and also from our interstate counterparts. It is good to know that his work has been so greatly appreciated. Please accept this as my personal thanks. There have been so many messages and letters, it would be very difficult to respond to them individually.

I am grateful to Dorothy Swanton who has agreed to take the position of Secretary, and Jim Kelaher, who is filling the casual vacancy on the committee. We have nominations for a full committee for 2014/15.

The committee's work has continued with:

In June

- Meeting with Alison Quinn, CEO of Aveo, to discuss issues relating to their villages, including media coverage surrounding exit payments after vacating villages.
- I attended the NCAT (NSW Civil and Administrative Tribunal) Forum, where consumers have an opportunity to report to Stuart Westgarth, the Deputy President

and Division Head for the Consumer and Commercial Division, and to ask questions regarding the NCAT cases for retirement villages.

- Members of the RVRA Committee, and two Stockland village residents, met with management at Stockland offices.

In July

- A video conference was held by members of the Australian Retirement Village Association (ARVRA), where representatives from each state shared information and ideas.
- The Minister's Advisory Council meeting (RVAC) finalised recommendations for previous topics researched, and a new research project was introduced. This involves a **review of the 2009 Regulation**. Tributes were paid at this meeting to Malcolm McKenzie by The Commissioner for Fair Trading, Rod Stowe, and also to me by members of the Minister's staff, and the Fair Trading Staff.

In August

- Village meetings about the work of the RVRA were held at Settlers Ridge, Gillieston Heights, Maitland, and also at Wood Glen Village, Erina.
- RVRA representatives met with members of the Retirement Living Council (RLC) NSW Committee. The review of the Retirement Village Regulation is high on the agenda for both groups, and we hope to set up a joint working group to find any common areas of concern.
- I was invited as a speaker on a panel at the Retirement Living Forum, speaking about sections of legislation which residents would like changed in the Retirement Village Regulation review, which will be completed in 2015.

Jan Pritchett

NEW RULES FOR AGED CARE



Karen Martin is assisting the RVRA and will advise on issues pertaining to care in a village, and transitioning to a residential care facility.

Changing and challenging times for people needing aged care services

There is a lot of 'noise' at the moment about the changes to Australia's aged care system, but what exactly is all the fuss about?

Under the previous system, people entering residential aged care were not necessarily made aware of the assorted fees and charges payable, until after they had agreed on their accommodation. This often meant that families felt there was no option but to sell the family home, and make other financial decisions that were not necessarily in the best interest of the person entering care.

The focus of the changes that took effect on 1st July 2014, has been on making sure that aged care providers let people know what living within their facility will cost them, what the accommodation looks like, and what additional services they can access while in care.

In practical terms, these changes have brought with them published room prices for all residential aged care, choice of payment options, a means tested fee for some residents and the ability for residents to request additional services, such as a drink of wine with dinner, or a newspaper, whenever and however they like. The essence of these changes are transparency and choice!

In Retirement Villages

Of course there are a lot of retirement village operators looking to weigh in on the opportunities this new legislation allows. Many operators are providing packages within their village. While this may be useful as

far as ease of obtaining these services, a note of caution to all residents is to make sure you check what your real options are in home care before agreeing to anything your village management may be offering. You are entitled to bring in and arrange your own additional care services from which ever provider you choose. If you do decide to purchase additional services from your village management, then please make sure you carefully check any contract provided, to make sure the services are on an 'opt in, opt out' basis. You don't want to get caught paying for services that you may not need forever and a day.

The detail in the changes for Aged Care

Published room prices

All aged care providers are now required to list on their website, their marketing materials and on the Government's new My Aged Care website, the cost of each and every room in all of their aged care facilities. This is so anyone thinking of going to that facility will have a rough idea of what style of accommodation they can reasonably afford. That said, under the new legislation, the published room price is the maximum price an aged care provider can charge.

This opens the way for incoming residents and their families to 'negotiate' a price to suit their circumstances. This would be even better news for consumers if all aged care providers were open to such negotiations. However, some fairly large aged care operators, including not for profit operators, have set their maximum prices and are refusing to negotiate. So tip number one is to make sure you ask, very early in any conversation, whether there is negotiation on room price. If they say no, you might want to go and speak to someone else who may actually have your best interests at heart.

A note of caution - It will be easy to be swept away by the very glossy and glib marketing materials that are being produced by aged care operators today, but make sure you find the financial information and read it before you lose your heart to a nice view and a fluffy pillow. Certainly don't sign anything until you have had some independent advice.

Payment options – As mentioned, a lot of folk have felt that they had no option in the past but to sell the family home to settle their accommodation debts with aged care providers.

Under the new system greater emphasis is being placed on resident's choice in payment arrangements to help avoid this situation. The choices are:

- Lump sum payment, which pays for the accommodation up front with the whole amount returned to the resident or their family, at the end of the residency.
- A daily payment, which is a daily penalty interest only payment. This means that any daily payment that you make will not be returned to you when you leave.
- Combination payment arrangement which combines options 1 & 2

Mean tested fees – residents of residential aged care services have always been asked to pay what is known as an Income Tested Fee, which was calculated based on their income potential following admission to care. As of 1 July this fee has changed to become a means tested fee. This new fee assesses people based on both their assets and their income, which means more people will now be asked to pay this additional fee than in the past.

Flexible Services – these additional services were previously the domain of the 'extra services' aged care providers, who charged you an additional fee for a raft of extras whether you used them or not. Now under the changed rules you can request 'add-ons' to your care, no matter where you are accommodated, and the good news is that you only pay for what you use.

In reality however, not every provider is going to be able to give you everything you want at a minute's notice, so once again, determine, before you enter care, what can be reasonably and consistently provided to you at your facility of choice.

With all this in mind, it is really important

that prospective residents speak with an aged care financial planner, before making any firm decisions about their aged care services. Whilst there will be a fee for their services they can help you avoid additional on-going costs and hidden charges. You should also spend some time on the My Aged Care Website reviewing the aged care services in your area. This website will give you information about the rooms, the community facilities, their social activities and so forth.

Most of us don't really consider residential aged care, until we find ourselves in a crisis, but the time to shop around and speak with your advisors is while you are still well enough to be in control of your own destiny. Any move to aged care is stressful, but it can be made more so if you have to make big financial decisions in a hurry. Forward planning can help alleviate some of the stress for you and your family.

Of course, there is more to the story than has been covered in this overview, so if you do have any questions then please contact the RVRA and we will try and help you navigate your way through the aged care maze.

Karen Martin

For Further Information

COTA— The Council of the Ageing

In the COTA August/September newsletter there is information about changes to aged care. An article on Home Care is also of interest to Retirement Village Residents, and includes how to make the most of Consumer Directed Care. COTA is also organising information sessions on these issues.

Phone 9286 3860

Regional Calls: 1800 449 102

Web Site: www.cota.org.au

Australian Government Assistance:

My Aged Care: Phone: 1800 200 422

Web site: www.myagedcare.gov.au

TARS—The Aged Rights Service

The TARS web site has information on the web site: www.tars.com.au

Ph: (02) 9281 3600

NSW country callers: 1800 424 079

They also have advice for Retirement Village Residents in accessing care.

LEGAL OPINION



Peter Hill is Honorary Solicitor for the RVRA Committee

Peter Hill kindly provides advice to the RVRA Management Committee.

If individual members of the RVRA want to approach him for advice, that will need to be on a fee paying basis.

Any issues that affect residents generally, should be raised firstly with the Secretary.

I am writing about three issues which are worrying in the industry that relate to inadequate legislative protection for village residents.

90 Day Settling In Period

The first of these are the settling-in provisions under the *Retirement Villages Act 1999* ("the Act"). These provisions allow a resident to terminate their contract within 90 days of occupation, if they are not happy with their move. The problem is that registered interest holders must wait until their dwelling is sold before they can have their original monies returned (less some small expense catered for by the Act). Registered interest holders are those on a registered long-term lease, who share at least 50% of the capital gain. This causes a lot of hardship, as often the resident has all of their life savings tied up in their dwelling, and cannot afford to move to alternative accommodation because they need the funds. It really is a 'claytons' settling in period.

I believe there should be legislative reform in this area to put a reasonable time period on the return of funds if the dwelling takes a long time to sell.

Serviced Apartments

Registered interest holders under a long term lease for a serviced apartment, can often end up paying large amounts in recurrent charges after they move out. This is because it often proves difficult to sell serviced apartments. I am aware of one instance where it took years for the apartment to sell. Meanwhile, recurrent charges, which are high because of the services defined as "general services" under the serviced apartment contract, were still being charged at the full rate.

Again I believe that the legislation needs to put a reasonable time limit on the payment of recurrent charges for registered interest holders.

Few Probity Checks

There are very few probity checks on who can become an operator under the RV Act, and no fidelity fund is required for when operators become insolvent, or colloquially speaking, go 'belly up'. In the past two years there have been a number of cases in which residents have been waiting inordinate lengths of time to receive their redemption monies after vacation, or the operator simply has had no money to replace capital items in the village, or to complete the village to the state promised in the Disclosure Statement, because of financial insolvency issues. Most incoming contributions operate as unsecured loans. Again, this is a worthy area for reform to protect residents.

RVRA Note: *A recent case left residents in a very precarious situation. This village is being sold by the mortgagor. This left the residents devoid of rights.*

*In the RV Act **Section 40 Contractual rights of residents against new operator**, it states:*

(1) A village contract between a resident and a former operator of a retirement village may be enforced against any operator for the time being of the village.

(2) However, proceedings do not lie against the owner of land in a retirement village (not being a person involved in the management or control of the village) for the enforcement of rights under subsection (1)

Therefore, there is no legislative protection to guarantee their funds or the completion or continuation of the village.

On a final note, we are continuing to run our **estate planning seminars** across NSW, to support the RVRA. In these seminars we talk about wills, powers of attorney and enduring guardianship. We have already held two, and a number of others are locked in. If your Resident Committee has not already done so, they should contact our Office if they are interested.

PETER W HILL

Solicitor & Practice Manager
Hill & Co Lawyers.

Retirement Villages Regulation 2009 Review

The Retirement Villages Regulation is due for renewal in 2015. This happens automatically every five years.

There is no news about when the Retirement Villages Act might be reviewed. However, study of the Regulation may provide a good opportunity to locate areas of the Act that need to be reviewed and amended at some time in the future.

The RVRA Committee has already had discussions with the Retirement Living Council NSW Committee about jointly doing some review to ascertain if there are any areas where the residents and operators might jointly make representations to the Minister and the policy makers. We have already identified one area which both groups would like changed, and that is the term describing our present **Capital Works Funds**. In other states these are referred to as **Maintenance Reserve Funds**, which is a much better description of the purpose of these funds. Using the word "capital" in this title, often leads operators and residents to think that this money can be used for the replacement or purchase of capital items. This is not so. This fund is meant to be only for maintenance costs in a village.

The other item identified as needing an overhaul, unsurprisingly, is the section on **Capital Maintenance, Replacement and Repair**. However, it may be much more difficult to achieve agreement about this section, and will need some very deep research and discussion before any agreeable decision can be reached.

The RVRA would like **input from our members** on areas of the Regulation they feel should be changed. We will be compiling these into an official submission to go to the Minister and to the Policy makers.

For some time I have been trying to set up a **Study Group** to review the Act and Regulations, but have had few interested people. Maybe now that the review of the Regulation is imminent, there might be more interest. While it may be possible to do some of this by email, some would prefer to meet to carry out these discussions. If we have sufficient people in any one region we might be able to create Regional groups for this purpose.

If you wish to participate, please advise by phoning 1300 787 213 or

Email: president@rvra.org.au

Jan Pritchett

RVRA POLICY ON SMOKING IN RETIREMENT VILLAGES

"It is RVRA policy to encourage each village to develop its own rules regarding smoking in any part of their premises."

Village Rules can be made or amended by Residents, as well as Management.

Under Section 51 of the RV Act, 5 residents or 10% of residents (whichever is greater) can request a Special Resolution ballot to be held for this purpose.

Information Morning at Cromer

On **2nd October**, an Information Morning will be held at Willandra Village,
81 Willandra Road Cromer.

At **10.00 am Peter Hill** will speak about Wills, Power of Attorney, and Enduring Guardianships etc.

After morning tea at 11.00 am

the RVRA will speak about their work, and issues of interest for Retirement Village residents.

ALL WELCOME!

RSVP for residents outside Willandra Village for seating and catering purposes

RVRA 1300 787 213

You are invited to attend the RVRA Annual General Meeting

The meeting will be held at the Sydney Mechanics School of Arts,
280 Pitt Street Sydney on Thursday 25th, September 2014
at 10.00am for morning tea and 10.30 am for meeting

Hear the Speakers:

- **The Minister of Fair Trading, The Hon. Matthew Mason-Cox MP, and**
- **Mr Peter Hill – Hill and Co Lawyers, advisor to the RVRA Committee**

Pay Tribute to Malcolm McKenzie

Meet the Committee and other RVRA Members

Time will not allow individual problems of Members to be aired at this meeting

RSVP for the AGM by 15th September

(to assist with printing, catering and seating)

RSVP by Email: admin@rvra.org.au

By Phone: 1300 787 213

Postal RSVP: The Secretary, PO Box 3176, North Turrumurra 2074

I / we will be attending the AGM of Thursday 25th September, 2014.

Name(s): _____

Phone: _____

Village: _____