

RRVV

NEWSLETTER

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2018 LEADERS' SUMMIT

Sector Focus is on Innovation but not on Residents

DoComeMonday, a small Sydney based media company focussing on retirement living and aged care, has presented the Leaders Summit every year since 2014. It held its 2018 conference in Sydney on the 15th and 16th of March. There were 28 speakers drawn from the ranks of retirement living and aged care operators, suppliers to the sectors plus one politician, one radio shock jock and the Executive Director of the Retirement Villages Association NZ.

Given the recent media coverage of the retirement living and aged care sectors, the focus on a different future was hardly surprising. Many of the initiatives canvassed were surprisingly innovative though primarily focussed on niche markets.

There were two mainstream themes; combining retirement living with either self-directed care or aged care to provide a 'continuum of care', and multi-story developments.

The lone politician, the NSW Minister for Fair Trading, gave an impressive and well-balanced speech. He spent more of the time available to him on residents' issues than other speakers except for the research firm that conducted the recent national retirement village survey (covered elsewhere in this newsletter). You can view the Minister's speech on YouTube: (<https://www.youtube.com/watch?v=tLSe40x9ygQ&feature=youtu.be>). RRVV recommends you discuss the points he raises with your local politicians.

Stephen Bull, the CEO of Retirement Living, Stockland, presented his company's Aspire village model. Aspire seeks to attract people who want the emotional satisfaction of home ownership, do not want traditional village management and a deferred management fee but do want the physical

and community attributes of a traditional village. Accordingly, Stockland is offering strata titled villages similar to some of the gated communities dotted around Melbourne, but with a requirement that all residents be aged over 55.

Stockland has two Aspire villages under construction, one in Sydney and one in Perth. Currently, State legislation prevents Stockland adopting Aspire in Queensland and Victoria.

RRVV's 1977 submission to the Consumer Affairs Victoria review of the Owners Corporations Act recommended legislating for something similar to Aspire but with a suite of protections to ensure active management if the Owners Corporation ceases to function effectively and to prevent the exploitation of residents unable to fend for themselves.

John Collyns from the Retirement Villages Association of NZ gave a stimulating presentation packed full of relevant information. Four things stood out. First, John reported with evident pride that New Zealand has resident focussed retirement villages legislation. Apparently, NZ

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owners and operators see putting residents first is good business practice. Second, the Association's members own or operate 97% of the nation's retirement living units. Therefore it can legitimately claim to represent the sector. The two main peak bodies purporting to represent the Australian retirement village sector cover only 60 % of the units. Third, adoption of the Association's code of conduct is mandatory by law. Adoption of the proposed Australian code is voluntary. Fourth, a supervisor independent of the association monitors owner and operator compliance with the code. The proposed Australian code relies on operators certifying their own compliance.

RRVV will publish more on the New Zealand retirement village sector in future newsletters.

DoComeMonday paid Lawrie Robertson's airfares and accommodation to allow him to attend the Summit.

A GATHERING OF PRESIDENTS

What do the Presidents of Residents of Retirement Villages Associations from around Australia talk about when they gather annually?

ARVRA—Australian Retirement Villages Residents' Association – is the umbrella body of retirement village residents groups from around Australia. Annually the Presidents gather and then attend a meeting with the Retirement Living Council (RLC) whose members are drawn from operators of retirement villages.

At the residents groups meeting each association presented a report on its activities since the last meeting and their achievements were impressive. All have much in common. Nevertheless, there are significant differences arising from the fact that state retirement living legislation differs. For example South Australia, New South Wales and Queensland have more developed administrative systems than RRVV.

The meeting with the RLC is an opportunity to talk directly to the industry.

On 2 May 2018 Lawrie Robertson, President of RRVV travelled to Brisbane to attend these meetings.

At the meeting with the RLC:

- Each state representative spoke to the issue on which they were concentrating at this time. Lawrie advised that RRVV was putting great effort into obtaining the appointment of an Ombudsman for the Victorian retirement sector.
- ARVRA informed RLC that its "Eight Point Plan" (see RRVV website) was a collection of vague motherhood statements rather than a genuine reform plan. For example RLC wished to make it mandatory that prospective residents seek legal opinion before signing a contract. ARVRA cannot support encouraging prospective residents to get independent legal advice until there are consumer-oriented lawyers with a good knowledge of the relevant law and regulations. ARVRA advised the RLC that it would not endorse the RLC's Eight Point Plan.

It was beneficial to hear of the unique methods each of the state resident representatives had of managing their issues. What was disconcerting was that these issues had changed very little since the previous meeting 12 months ago.

The meeting with the industry representatives ie RLC was less than satisfactory as it was obvious that the RLC had no understanding of the value of genuine resident (ie stakeholder) participation in forming policy. The Retirement Living Council paid Lawrie Robertson's air fares and accommodation to allow him to attend the meeting.

SUBSCRIPTION RENEWAL FOR THE 2018-2019 FINANCIAL YEAR

Annual RRVV subscriptions for the 2017-2018 financial year expire on 30 June. You will find a renewal form inserted in this newsletter if your village is not covered by our whole of village subscription plan.

The renewal form explains the payment options on offer including the credit card payment facility on our website www.rrvv.org.au under 'Join RRVV'. Please quote your member number if you have one. If you have already paid your subscription for the 2018-2019 financial year or you have whole of life membership please ignore this reminder. Of course, you may use any of the payment options to make a donation. Donations make up a significant proportion of our income, and we welcome them.

If you are paying by direct deposit to our Bendigo Bank Account, please ensure when making the deposit that you provide us with your surname and village if you can't quote your member number.

Subscription renewal time is a good time to remind our members of some of the services and support we offer.

Calls and emails to our information line (03) 9015 8402 and rrvv.vic@gmail.com are running at a higher rate than last financial year. Most callers seek basic information but over a third ask for assistance in resolving a dispute (mostly an unresolved complaint). In most cases, we can assist members in dispute with their operator by giving advice on the process, highlighting the relevant clauses in their contract and pointing out useful provisions of the Retirement Villages Act or the Owners Corporations Act. In some cases, we're able to take a more active role. For example, a few members appoint an RRVV committee member to act as their representative at a mediation conference. More and more we are helping residents take their case to a higher level in the operator's organisation than the village manager, in many cases with the support of that manager. As always, inadequate legislation, lack of action by Consumer Affairs Victoria (sometimes due to inadequate powers and sometimes inadequate resources) hamper our efforts. Nevertheless, members who seek our support get a satisfactory resolution in most cases.

Visits to our website (www.rrvv.org.au) vary from month to month but show an increasing trend year on year. There is lots of useful information on the website, and we recommend you check it from time to time.

Email usage is growing amongst our members, and we now provide news updates and notifications of upcoming events to members who register their address with us. To subscribe to our email service go to www.rrvv.org.au and click on the green button at the bottom of the 'Contact' page.

Our lobbying activities continue unabated. Currently, we are asking Victorian politicians of all stripes to include the retirement village sector reforms we advocate in their election platforms. We are also pressing village owners and operators to accept that both the proposed code of conduct and the revised village manager training program are inadequate in their current form.

We have secured assistance from a senior retired lawyer to help us in our quest for plain English contracts and expect to have a draft revision of one of the most widely used contracts within the next couple of months. We will use this draft to demonstrate that it is possible to make retirement village contracts more readable. This is part of a longer-term project to achieve simpler and fairer contracts. Similarly, we are currently negotiating with a senior retired academic with relevant expertise to help us draft a comprehensive charter of residents rights.

We look forward to your continued support.

INCREASE IN SERVICE FEES FOR FINANCIAL YEAR STARTING 1 JULY 2018

It's that time of year again when operators of retirement villages are considering increasing their service fees or "maintenance charge". The extent to which they can do this without reference to residents is determined by the annual increase in the Consumer Price Index. The prescribed method for calculating the allowable increase is now included in the Retirement Villages Act (Section 38AA) instead of a separate set of regulations. Note, however, that Section 38(5) allows increases above the CPI increases without resident approval (see below).

According to the Act, the increase for the next financial year is calculated by dividing "the sum of the consumer price index numbers for each of the reference periods ending in the previous relevant financial year" by "the sum of the consumer price index numbers for each of the reference periods ending in the relevant financial year immediately preceding the previous relevant financial year" . The Financial Year in this context is the year used to calculate the CPI increase.

The "reference periods" refer to the three monthly periods, or quarters, which the Australian Bureau of Statistics uses to calculate the CPI figures.

RRVV expects most operators to continue to use the figures for the four quarters ending on 31 March as in previous years. This enables budgets to be prepared in time for presentation to residents before or near 1 July when the new budget financial year starts for most operators (the

June quarter figures are not usually published until the 2nd or 3rd week of July).

The table shows the relevant figures for calculating the increase for the new financial year (1 July 2018 to 30 June 2019) using the latest quarterly CPI figures published by the Australian Bureau of Statistics on 24 April 2018:

Quarter	Melbourne CPI
Jun 17	111.0
Sep 17	111.5
Dec 17	112.3
Mar 18	113.3
Total	448.1
Jun 16	108.6
Sep 16	109.1
Dec 16	109.9
Mar 17	110.9
Total	438.5

Source: Australian Bureau of Statistics 6401 (All Groups)

The total of the first set of four index numbers (448.1) is 2.19% higher than the total of the second set (438.5) and operators of retirement villages in Victoria are entitled to increase their fees to residents by this percentage. Any proposed increase higher than 2.19% would require residents' approval, either in the form of a majority vote at a meeting of residents or a resolution of the residents' committee.

As indicated above, Section 38(5) of the Act allows a retirement village operator to increase service fees by more than 2.19% without residents' approval when the proposed increase is caused by increases in:

- “(a) rates, taxes or charges in respect of retirement village land or the use of a retirement village land levied under an Act or subordinate instrument; or
- (b) salaries or wages paid in accordance with an award made by a Commission, Tribunal, Board or other body under—
 - (i) an Act other than this Act; or
 - (ii) a Commonwealth Act—

if the salaries or wages are paid to a manager or a person employed in connexion with the retirement village.”

Apart from this section an operator may not impose an increase above the CPI increase.

GST TREATMENT OF FEES AND CHARGES PAYABLE ON EXIT BY RESIDENTS

ANALYSIS OF GSTR 2012/4 –

This is an abridged version of the complete article ... for a copy of the full article please go to the following link: <https://chrissievers.com/analysis-of-gstr-20124-gst-treatment-of-fees-and-charges-payable-on-exit-by-residents-of-a-retirement-village-operated-on-a-leasehold-or-licence-basis/>

Introduction

This ruling explains the GST treatment of amounts which a resident becomes liable to pay to the operator of a retirement village when the resident's interest in the village terminates (defined as exit payments). The relevant 'interest' is the resident's right to possession of the premises under a lease or a licence with a right to use the communal facilities in the village. In this regard, the ruling does not deal with the treatment of exit payments where the resident holds a freehold interest.

The ruling describes an exit payment as one generally made by a resident of a retirement village to the village operator on exit from the village (also commonly known as a deferred management fee, exit or termination fee). Other payments made at this time may include selling fees, capital improvement fees, renovation fees and cleaning fees. Exit payments are consideration for a lease or licence of the residential premises where they relate to expenses or outgoings of the retirement village operator incurred in supplying the residential premises or they relate to supplies which are incidental to the supply of residential premises (and not to any other supply made to a resident). To determine the GST treatment of the payment, it is necessary to consider the nature of any supplies made by the village operator and the extent of the connection (if any) between those supplies and the exit payment. Depending on the

circumstances, exit payments will be treated as consideration for the supply of residential premises (which will be input taxed unless the premises are GST-free under s 39-25(4A) as the supply of a serviced apartment).

Lease or licence arrangements

The ruling states that under the lease or licence arrangement, the village operator makes an input taxed supply of residential premises (unless the supply is GST-free under s 38-25(4A) as the supply of a serviced apartment). Where the operator also supplies a licence over the common areas in the village, that licence will be input taxed where the common areas are an ancillary or incidental part of the residential premises made available to the resident under the lease or licence.

The operator may also provide incidental or ancillary services to the resident, which will form part of the input taxed supply of the residence (being a composite supply – the dominant part of which is the input taxed supply of residential premises) – or part of the GST-free supply of a serviced apartment. Whether services are “ancillary” will depend on the circumstances of each case, but the ruling considers that an ancillary service is one intended to ensure, facilitate or enhance the resident’s enjoyment of the lease or licence and is not provided as an end in itself. Ancillary services include such things as:

- maintenance of units, fixtures and fittings and common areas
- safety and security
- administration

The operator may also provide non-incidental services which may be taxable. Non-incidental services may include optional services which have no necessary connection to the enjoyment of the residential premises. These services may include such things as meals, internal cleaning, laundry, linen, medical care, social events etc.

Exit payments as consideration for supplies made

The ruling appears to adopt the following principle:

Unless the particular terms of the legal arrangements indicate otherwise, an exit payment is wholly consideration for the supply of residential premises where:

- the operator does not provide services other than incidental services; or

- the operator does provide non-incidental services, but the resident is liable to provide separate consideration in respect of those services and the value of that consideration is not less than the market value of those services.

Capital appreciation or depreciation amounts

Under some arrangements, on exit from the village some residents are entitled to share in the increase in the market value of the residence or to contribute to a decrease in that market value. These entitlements may be subtracted or added to the exit payment or there may be a separate obligation.

The ruling considers that the payment is connected to the lease or licence of the residential premises. Accordingly this payment represents an increase, or reduction, as the consideration for the supply of the residential premises – regardless of whether the payment is set-off against (or added to) the exit payment or exists as a separate entitlement (or obligation).

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THE LATEST SECTOR RESEARCH PUTS THE SPOTLIGHT ON VILLAGE MANAGERS

Villages.com.au released the results of its 2018 national resident survey on 15 March 2018.

A whopping 19,476 retirement village residents responded to the 49 survey questions. The results show resident satisfaction is high, but diving beneath this positive result RRVV sees growing concerns about fairness, transparency and responsibility, and an increasing level of complaints.

Only 37% of respondents feel a valued customer of the operator, and only 41% feel understood. While a majority feel positive about their village manager, a troubling third do not believe their village manager has the required skills and knowledge to do the job properly and even more feel their manager falls short on necessary personal qualities such as being proactive, quality focussed, consistent and accountable.

There is a correlation between the reduced satisfaction reported by some residents and

perceived poor response by the village manager and operator to residents' complaints.

Only half of those expressing a complaint felt their manager or operator dealt with it quickly, fairly, respectfully, and sensitively and only a quarter considered the matter resolved.

Satisfaction declines with longevity in the village, with the greatest decline in the first four years, as frustration with the management and operations of the village increase.

These results strengthen RRVV's case for the appointment of an ombudsman or the like with powers to investigate residents' complaints and make binding determinations. They also bolster RRVV's case for greatly strengthened training for village managers.

Since then there have been three successive Queen Bees at The Beehive. The current Queen Bee has been very patient as she guides The Beehive bees through much change. Unfortunately gender does not indicate whether or not a King or Queen Bee is successful in their job.

The management style of both King and Queen Bees has a huge impact on bees living in any hive. Sometimes bees choose not to participate in any of the activities within their hive due to their fear of the current King or Queen Bee. This should not happen. Ageing and sometimes, frail bees, should not be bullied in their retirement years.

The Big Bumble Bees and the Very Big Bumble Bees who run the retirement hives from afar are difficult to approach and seem to have no idea what life within a retirement beehive is like. Have you noticed how young they all are?

Then I joined a group of very dedicated bees who had volunteered to stand up for the bees living in retirement beehives. The wise old bee who is the leader of this group buzzes all day visiting other hives, advocating for bees with problems, lobbying drone bee politicians, writing submissions and attending dozens of meetings.

My time buzzing along with this hard working group has been very fulfilling. It was (and still is) a steep learning curve for me. Who would have thought that this late in a bee's life she would have to learn about legislation, how the state government worked and contracts etc. When the group had wins we all enjoyed feasting on the resulting honey.

Retirement beehives are changing. Millions of bees all around Australia are beginning to age. They even have a title - "Baby Boomer Bees". This group of bees is often quite rich, have been successful, have good superannuation, wide life experience and they know their rights and will demand they receive them.

Baby Boomer Bees will not be easy to bully or patronise so the management of retirement beehives will have to change. Baby Boomer Bees are usually fitter than my generation and have no intention of moving into a retirement village until they can no longer travel the world. So the bees in future beehives will be older, and frailer and richer. They will pay more for their cells and their services but they can afford this - anything to prevent going into a government, aged bee institution.

A HUMBLE WORKER BEE FLIES FROM THE BEEHIVE RETIREMENT VILLAGE

After three and a half years living at the Beehive Retirement Village the time has come for this bee to fly away and establish a new home interstate – not in a beehive.



Living in The Beehive has been a formative experience. My main learning has come from the other bees in The Beehive – those who model dignity, kindness, generosity and humour as they age.

There is another side of course.

The first monthly gathering of the bees living in this hive that I attended was my introduction to the politics of living closely with other bees. I was a little shocked at the back-buzzing of some bees and the stinging criticism which sometimes was flying around.



At that time The Beehive was ruled by a King Bee who was very aggressive, condescending, patronising, bullying and just plain rude. I remember clearly thinking – “what have I done – moving in here?”

The model of retirement beehive into which I bought originally was termed “Independent Living” - meaning bees buzzed in and out of the hive as they pleased, because they could. The new model of retirement beehive is actually not “retirement” at all - it is luxury care for frail aged bees - which is great for them but not for me.

When I was chatting with my neighbour bee recently she said how lazy she felt she had become because she no longer had to work in a garden, check to see the roof guttering was OK, put out the rubbish bins, make sure all the doors were locked, know at all times where her keys were etc.. I don't believe that is “laziness”. I believe that is how retirement living should be.

So back I go to my previous lifestyle – living alone (but near family), responsible for myself and independent. Wish me luck.

My wish for all of you is a secure beehive, an efficient, empathetic King or Queen bee, enjoyable buzzing with other resident bees, soothing, oozing honey to be shared by all, the comfort of friends and family, protection from storms of change and good health.

MAKING YOUR COMPLAINT COUNT

On Monday 14 May, RRVV along with our advocacy partners ran a well-attended workshop on how to make your complaint. For those who were unable to attend, please go to our website (Google RRVV) to access valuable handouts on how to best present your case.

Consumer Affairs Victoria (CAV) representatives explained to workshop attendees actions available to them to enforce the retirement Villages Act and regulations and deal with systemic breaches of Australian Consumer Law. CAV relies heavily on complaints to detect systemic issues. Typically residents let unresolved complaints lapse at the village level, so CAV has little understanding of what is going on. To make your complaint count it is important to lodge it with CAV if you cannot get it resolved quickly at the village level. If you require help, RRVV will support you through the process.

To lodge a complaint with CAV ring 1300 55 81 81 or go to www.consumer.vic.gov.au/contact-us/resolve-your-problem-or-complaint/when-we-get-

[involved-with-a-problem-or-complaint/residential-accommodation-complaint](#).

Please note that the body that will deal with your complaint on referral from CAV is the Dispute Settlement Centre of Victoria (DSCV). Please see the sidebar. DSCV offers a conciliation service, but please note that it does not have the power to make binding determinations.

The Retirement Villages Act provides residents who use their operator's internal dispute resolution process with an unequivocal right to representation at the conference. The DSC allows representation

Help for retirement village disputes now available in one place

From 30 April 2018, CAV will refer relationship disputes between retirement village residents or management to the Dispute Settlement Centre of Victoria (DSCV) for support.

DSCV provides a free and confidential range of dispute resolution services, including advice and conflict coaching to people to help resolve their own disputes.

Previously, Consumer Affairs Victoria provided a conciliation service for disputes between a resident and a manager, while DSCV provided a service for disputes between residents.

Consumer Affairs Victoria will continue to educate retirement village operators and managers about their legal obligations, and address any breaches of the law. Residents and managers can still contact Consumer Affairs Victoria for information on their rights and responsibilities, including the steps they can take if there is a dispute.

Consumer Affairs Victoria recommends that residents and managers should first try to resolve any complaint or dispute through the village's internal dispute resolution scheme.

For information about retirement villages, visit consumer.vic.gov.au/retirementvillages

For information about the range of dispute resolution services provided by DSCV, visit disputes.vic.gov.au

only in a limited range of situations but does allow a support person to accompany you on the condition he or she does not speak.

RRVV continues to press the Government to introduce a free and expert non-adversarial dispute resolution service with the power to make binding determinations. Conciliation is no substitute.

RESIDENT LIAISON OFFICERS (RLO'S) - WHAT WOULD RRVV DO WITHOUT YOU?

After the Special General Meeting to amend the RRVV Association Rules held on 5 April 2018, 35 RLOs remained to discuss the current issues related to being an RLO.

RRVV would love to be able to establish an RLO at each of the retirement villages in which our members live and would be delighted to hear from anyone reading this who would be interested in representing RRVV within your retirement village.

It would also be a huge help if the committee could recruit some ARLO's (RRVV is becoming as adept as the public service in adopting jargon). What are ARLOs? Assistant Resident Liaison Officers – someone to back up and work with the RLO. For example someone to take delivery of the newsletters should the RLO be away.

To be honest, these can be challenging positions. The RRVV Committee are all volunteers and as hard as it tries it sometimes doesn't please everyone so it will be the RLOs and the ARLOs at the coalface who will be the people to whom disgruntled members will complain. On the other hand they could also be the person whom happy members compliment (it does happen).

There was a sense of camaraderie and mutual support as the RLOs discussed their issues. What the RRVV Committee wanted to know was how it could support RLOs much better than it had done recently.

It was agreed that the committee would:

- Email RLOs with information to enable RLOs to keep residents informed of the wider picture of the retirement sector.

- Publicise the RRVV website via the quarterly newsletter
- Distribute RLO contact details to all RLOs in order to enhance mutual support.
- Distribute to individual RLOs a list of RRVV members in the RLO's village.
- Inform members, through the quarterly newsletter, and the RRVV website what the RRVV Committee actually "does".
- Contact the Retirement Living Council to discover what Emergency Evacuation Drills were in place amongst their operator members.

The positive outcomes of this meeting between RLOs and the RRVV Committee were a clearer understanding of shared goals and mutual support – very valuable.

RRVV WEBSITE

Did you know that RRVV has a website? Just "Google" RRVV and the website will be displayed.

Then explore the links to a wealth of information not only about RRVV but in connection with the retirement sector as a whole.

The RRVV Committee ensures up to date information is regularly added to the website. For example:

- RRVV submissions to various levels of government
- Descriptions of upcoming seminars, meetings etc
- Events
- "How to" articles on:
 - ◆ Advocacy
 - ◆ Lobbying your local Member of Parliament
 - ◆ Joining RRVV

It's worthwhile having a look.