

# RRVV NEWSLETTER

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*The RRVV  
committee sends  
you season's  
greetings and  
best wishes for  
the New Year.*



*Our office will close on  
Monday 24 December  
and reopen on  
Monday 7 January.*

## RRVV News

### Ombudsman

The campaign for a retirement living ombudsman is gathering momentum despite continuing opposition from some owners and operators. Currently, only a minority of operators (but a growing minority) actively support the campaign in Victoria. All six state retirement village residents' associations and the national residents' association now actively support the campaign.

Residents' participation in the ombudsman postcard campaign was outstanding – almost 1,500 RRVV members agreed to send a postcard to the Premier, Daniel Andrews. The NSW Opposition (Labor) now supports introducing an ombudsman in that state following representations from residents. See [http://www.lukefoley.com.au/nsw\\_labor\\_to\\_establish\\_retirement\\_village\\_ombudsman](http://www.lukefoley.com.au/nsw_labor_to_establish_retirement_village_ombudsman) The Victorian Greens have confirmed their commitment to an ombudsman and now extend it to all housing. See <https://greens.org.au/vic/news/greens->

announce-victorian-housing-ombudsman-and-rent-caps. The Victorian Government (Labor) has hinted that it might support something like an ombudsman but did not make an announcement before the election.

### RRVV Meetings with Ministers

On the 19th of September RRVV and our advocacy partner organisations met with the Minister for Consumer Affairs, Marlene Kairouz. We left with the impression that Labor was actively considering the representations we made throughout the year and that Consumer Affairs Victoria is now tasked to perform a root and branch review of the Retirement Villages Act rather than the lesser review we had feared.

On the 23rd of October, RRVV and our advocacy partners met with the Minister for Ageing, Martin Foley. We also left this meeting with the impression that Labor was actively considering the representations we made throughout the year.

### Contents



RRVV News.....	p1
National Retirement Living Summit.....	p2
Your New Committee.....	p3
Australian Consumer Law.....	p4
From 'The Beehive'.....	p5
Evacuation Plan Obligations.....	p6
Embedded Electricity Networks.....	p7
Volunteer Wanted.....	p8
Owners Corporations Regulations.....	p8

## Code of conduct

The peak bodies representing owners and operators of retirement villages (Aged and Community Services Australia Leading Age Services Australia and the Retirement Living Council,) received around 250 resident responses from across the States to their request for feedback on the draft code of conduct. RRVV understands much of the resident feedback was highly critical. The Peak bodies have not yet released the results of this direct resident feedback.

Our reading of the mood of the peak bodies suggests that they intend to, after taking some resident feedback into account, prepare and release a final code rather than to start again and engage in genuine consultation as RRVV had recommended. The RRVV committee will review its position on the code when it has had a chance to study whatever it is that the peak bodies release.

## Updated Consumer Affairs Victoria publications on good practice

Consumer Affairs Victoria recently revised two of its publications covering good practice for retirement villages. One focusses on village operators and one on residents interests. These publications will soon be available on the Consumer Affairs website. To read the resident focussed version of the publication use your search engine to find "Retirement villages: good practice to address key issues".

RRVV is not an enthusiastic supporter of these publications. The information they contain is OK. Our indifference stems from the fact that most operators ignore them. We want the Government to implement mandatory standards.

## National Retirement Living Summit

The Retirement Living Council (a division of the Property Council of Australia and the largest of three peak bodies representing the owners and operators of retirement villages) runs its National Retirement Living Summit sometime in November each year.

The 2018 Summit concluded on 30 November. Not surprisingly, it was a good news event. According to most speakers, things are good in the retirement living sector and getting better, although there are some challenges ahead. There was little mention of problems in the sector or of plans to overcome them.

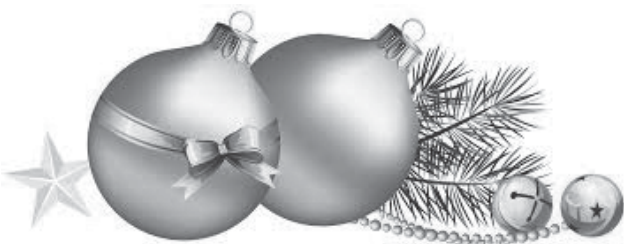
According to the preamble to the Summit program, the theme was "Putting People Front and Centre". There was some focus on residents and staff including one outstanding presentation by a retirement and aged care market researcher from the USA but overall the focus was on operators' businesses and on the work of the Retirement Living Council.

This year, representatives from three of the residents' associations had around 25 minutes of on-stage airtime. This time allocation was certainly better than last year when there were no residents on the stage, but a token allocation nevertheless.

The Retirement Living Council announced that it would release the Code of Conduct in mid-December.

Over the past year, RRVV made strong representations to the Retirement Living Council on the process employed in developing the Code of Conduct, most particularly the late involvement of residents' representatives and the one way nature of that involvement. Added to this, we pointed out the Code drafters largely ignored our first two rounds of feedback. They did take greater notice of our third round of feedback, but we won't know just how much until the public release of the Code. RRVV will publish the Code of Conduct on the website [www.rrvv.org.au](http://www.rrvv.org.au) as soon as it is available.

The Retirement Living Council also announced that two previously foreshadowed initiatives were well underway; the development of an



accreditation scheme and unit reinstatement guidelines. We understand the accreditation drafting committee did consult residents with experience of the existing schemes but did not see any need to involve RRVV or any of the other residents' associations at the early stages. Similarly, the Retirement Living Council did not involve RRVV or any of the other residents' associations in the early stage work on the unit reinstatement guidelines. It seems they still do not see residents as stakeholders in their businesses nor appreciate the benefits of deep engagement with all stakeholders in a position to affect their prosperity.

Lawrie Robertson attended on behalf of RRVV and reported it was a great learning experience received feedback from operators and their suppliers indicating the Summit was, from their point of view, a great success.

RRVV sees the Summit as an opportunity to study the sector participants at work and play. Behind the spin and showmanship, they are much the same as they have been for some years; mostly short-sighted and unskilled when it comes to engaging with residents.

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## **Your new committee**

### **Lawrie Robertson - President**

Lawrie served on his village's residents' committee for three years before joining the RRVV committee four years ago. He also serves on the committee of the advocacy group formed by RRVV, Council on the Ageing (Vic) (COTA), Housing for the Aged Action Group (HAAG) and Consumer Action Law Centre (CALC).

Before retiring Lawrie worked as a financial planner, director of an ASX listed company, management consultant, senior lecturer in business administration, telecommunications engineer and Army officer.

### **Peter Saalmans - Vice President**

Peter and his wife moved into a retirement village just over nine years ago. They joined RRVV in 2011, and Peter subsequently became a member of the committee. During this time he was also chairman of the village's owners'

corporation committee (also the residents' committee) for a year.

Before retiring Peter worked in IT and telecommunications as a manager and consultant in various industries and countries, including managing Australia's first national internet network. Not surprisingly, Peter's main role on the RRVV committee has been to look after IT related matters.

### **Graeme Seymour - Treasurer**

Graeme has been a resident of a retirement village for five years where he is actively involved with the Residents Advisory Committee.

A recently retired Accountant, Graeme worked in Public Practice for 49 years, other than a 3-year stint as Chief Financial Officer for a Private Company. Activities outside of village life include playing cricket in Veterans Cricket Victoria (Over 60's Competition) which also takes Graeme and his wife on regular overseas cricketing holidays. He is currently the Finance Manager for the Ringwood & District Cricket Association.

### **Mike Leighton**

Mike worked as a site engineer on major civil engineering projects for 18 years before emigrating to Australia in 1979. He then worked as a site manager, construction manager and design manager for major engineering companies in Adelaide, Brisbane and Victoria before retiring in 2016.

Mike recently moved into a retirement village where he has become involved with helping some of the residents in addressing building construction defects. Mike has joined the RRVV committee as he sees it as being a proactive group with the intent of improving the lot of retired people.

### **Kaye Graham**

Before retiring, Kaye worked as a primary school teacher for 46 years. She and her husband chose to move into a retirement village in 2008 and have been heavily involved with village life.

A member of the Genealogical Society of Victoria (GSV) for 16 years, Kaye enjoys working on

databases for them. She has also been on the committee of the Combined Probus Club of Knox for the past eight years.

Kaye is a new member of the RRVV committee and is looking forward to learning more about our organisation so that she can make a positive contribution.

### **Ruth Peters**

Ruth has many years of experience running non-official post offices including eight years at Waitche in the Mallee area near Swan Hill, then 14 years at Kilsyth, before managing the Australia Post office at Hawthorn West for 12 months. She and her husband then bought and ran a motel at Ulladulla in NSW for 14 years before retiring and moving to Queensland.

Two years ago Ruth moved to Victoria and now lives in a retirement village.

Ruth has joined the RRVV committee to help with the improvement of all villages.

### **Mike Turner**

Mike has worked in the IT Industry for 25 years in Sales, specialising in database and internet business solutions from an end user, not technical, perspective.

Living in a retirement village for one year, he has a deep understanding of the issues and challenges faced each day by confused residents. Mike brings his talents to RRVV to provide growth by the clever use of modern technology.

### **Jo Watkins**

Jo worked in the Public Health sector for 20 years before retiring in 2005. She moved into a 26-unit retirement village in 2008.

Outside of village life, Jo's interests include book club, movies, charity knitting and craft work. She is an active charity fundraiser and works with a dedicated group of women who have raised \$50,000 for the cancer council in the past five years.

Jo has joined the RRVV committee to support fairness, firmness and the rights of residents in all villages in Victoria.

## **Australian Consumer Law - Your Friend in Need**

Some of us when we are contemplating lodging a complaint turn to our residence contract and the Retirement Villages Act (1986) for guidance. Very few of us turn to other sources. This omission has significant implications. We are all customers of the operator of our villages and as such have a very useful range of rights in addition to those provided by the Retirement Villages Act. Australian Consumer Law brings most of those rights together in one place.

Many of us believe some of the terms in our contract are unfair. Under Australian Consumer Law, a term may be unfair if it:

1. Causes significant imbalance in the parties rights and obligations.
2. Is not reasonably necessary to protect the legitimate interests of the advantaged party.
3. Would cause detriment to a party if the advantaged party exercised it.

In determining if a term is unfair, it is important to consider:

1. If the term is transparent.
2. The contract as a whole.

Some examples:

1. Terms that allow one party but not the other to vary the contract (unilateral variation)
2. Terms that allow one party but not the other to avoid or limit their performance under the contract.

A contract term that allows a village owner to avoid building a promised bowling green at their absolute discretion, for example, is likely to be unfair.

Similarly, some of us believe that the operators representative was not entirely truthful when extolling the virtues of the village at the time we were considering signing the contract. Australian Consumer Law provides "a person must not, in trade or commerce, engage in conduct that is misleading and deceptive or likely to mislead or deceive". In determining if the conduct is

misleading or deceptive, it is important to note:

1. The conduct can be express or implied (e.g. by silence).
2. The intention of the representor is not relevant.
3. The conduct is likely to mislead the relevant audience.
4. It is important to distinguish between conduct that misleads or deceives and conduct that merely confuses.
5. A promise of future conduct is misleading or deceptive only if untrue at the time of the representation.

Take the case of a resident who asked the operator’s representative if all the appliances would be in good working order at the time she moved into her unit and received assurances that the operator would check them and have any necessary repairs completed. When she moved in, she discovered some did not work and had not done so for some years. The operator argued that ‘buyer beware’ applied. She took the case to VCAT and won.

Retirement village residents are entitled to the same consumer guarantees as all other consumers of goods and services. The Australian Consumer Law provides guarantees that apply regardless of any warranty or contract term to the contrary.

Australian Consumer Law guarantees services to be:

1. Provided with due care and skill.
2. Fit for the purpose that the consumer has requested.
3. Supplied within a reasonable time.

Australian Consumer Law defines the acceptable quality of goods (as distinct from services) in the following way:

1. Would the consumer think the goods are:
  - a. Fit for the purpose they are normally supplied.
  - b. Acceptable in appearance and finish.
  - c. Free from defects.
  - d. Safe and/or durable.

2. Taking into consideration the:

- a. Nature of the goods.
- b. Price paid.
- c. Statements made about the goods on the packaging or label.
- d. Representations made about the goods by the supplier or manufacturer.

Australian Consumer Law also guarantees that a supply of goods is fit for any disclosed purpose.

An owner offered to sell Mary the lease on a unit it proposed to build. Mary accepted, after pointing out that she did not handle summer heat well, so it was important to her that the air conditioner kept the whole of the unit cool on the hottest days. Early in her first summer, she reported that the air conditioner did not meet her needs and backed this up with temperature readings. She asked the owner to install urgently another system that would keep the temperature down. The owner refused, saying that the unit supplied met domestic building requirements and was the standard unit installed in all units of the same design.

On the face of it, under Australian Consumer Law, Mary has a case.

*Note: this newsletter article is a general guideline only, and you should not rely on it or use it as a substitute for professional legal advice specific to your circumstances.*

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## From the Beehive



Years ago while attending a friends 40th birthday (which is weird in itself because a bee’s life expectancy is six weeks!), I found myself in deep conversation with a scientist. Thinking I was pretty cluey on science speak, I commented about

what ‘sad’ times we were experiencing. How fast we were approaching the apocalypse. Wars, disease, increase in natural disasters! What hope was there for beedom? His response surprised me. “For the average bee out there

it would appear that this is how the world is, but in the world of science incredible things are happening. Science is going to find clean water for everyone. They are going to engineer answers for food production, cures for diseases and pestilences” I remember feeling amazed, encouraged and relieved.

I was reminded of this conversation recently when a friend passed on his copy of New Scientist (9 June 2018, pages 40-41), in which appeared an article titled ‘Buzz Off’. The article had two parts to it. One - bees are remarkably smart even though our brains are the size of a mustard seed. Two - bees are capable of emotions similar to humans. According to the article it was ‘presumed that bees lacked individuality and simply slaved mindlessly for the larger purposes of the hive but, under the scrutiny of imaginative scientists, we are now learning that bees actually have unique personalities.’

Unique personalities? Yes. This fact struck me recently when the beehive held a general election because too many bees wanted to be on a committee. I admire bees who selflessly give up their precious time for the betterment of others. Not being a joiner myself one can only feel grateful that others are willing to set up furniture, take exercise classes, make cups of tea and sandwiches, plan and execute events etc. The smooth running of a beehive requires lots of volunteers. Some of the jobs are big, and some are small, but all are important.

The organising bees distributed forms with a short profile on each candidate. You had to tick up to nine out of the twelve boxes to appoint the committee members. What an amazing and diverse choice there was. Male and female, previous paid and unpaid jobs, careers, talents and gifts. It was so hard to decide.

So it looks like New Scientist got it right. We are very smart. We have unique personalities, and we work mindfully, not mindlessly, for the larger purpose of the hive. Each in their own way and I for one am very grateful.

Wouldn't it be great if the management bees recognised that we are smart and not all the same?

## Village operators' emergency evacuation plan obligations

Not all retirement village operators develop and implement emergency evacuation plans. Most of the operators that do not argue that their villages are independent living communities and each resident should formulate his or her own emergency plan. Many RRVV members in villages without established emergency plans, particularly those in bushfire prone areas, express concern for their own and their neighbours' safety.

### The law on emergency plans

There is nothing in the Victorian Retirement Villages legislation about obligations on retirement village operators to maintain a safe and secure environment, let alone to have an emergency plan in place. Nevertheless, the Victorian Occupational Health and Safety Act 2014 (OHS Act) does contain useful provisions.

The objects of the OHS Act are:

- (a) to secure the health, safety and welfare of employees and other persons at work;
- (b) to eliminate, at the source, risks to the health, safety or welfare of employees and other persons at work; and
- (c) to ensure that the health and safety of members of the public is not placed at risk by the conduct of undertakings by employers and self-employed persons; and
- (d) to provide for the involvement of employees, employers, and organisations representing those persons, in the formulation and implementation of health, safety and welfare standards - having regard to the principles of health and safety protection set out in section 4.

The relevant provisions of section 4 are:

- (1) The importance of health and safety requires that employees, other persons at

work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

- (2) Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible.

While the Victorian OHS Act doesn't specifically provide for an employer to have an emergency plan, explanatory documents published by Work Safe Victoria indicate that the employer's obligations would necessitate having an emergency plan in place that includes evacuation procedures in the event of fire, for example, that extend to other persons in the workplace. RRVV understands that Work Safe Victoria suggests that in a retirement village "other persons" would include residents in their homes. In RRVV's view, for "other persons" not to include residents in their homes would be unconscionable and contrary to the objects of the OHS legislation.

What if your operator does not accept the views expressed above?

If your operator rejects RRVV's view that your village must have and comply with an emergency evacuation plan, please:

1. Advise us on 03 9015 8402 or office@rrvv.org.au and,
2. Contact Work Safe Victoria on 1800 136 089

**Further reading**

You might find a Guidance Note from Work Safe Victoria available through the following link helpful - <https://prod.wsvdigital.com.au/sites/default/files/2018-06/ISBN-Emergency-managment-developing-a-plan-for-a-small-organisation-guidance-note-2010-02.pdf>

*Note: this newsletter article is a general guideline only, and you should not use it as a substitute for professional legal advice specific to your circumstances.*

**Do Embedded Electricity Networks Save Residents Money?**

Many retirement villages in Victoria have "embedded" electricity networks through the village operator which supplies electricity to residents via a network which is internal to the village. In these villages, residents pay the operator for the electricity they use in their units.

Members in 13 of these villages provided details of the rates they pay for electricity (in columns 2 and 3 in the table) which we have compared with the prices electricity retailers offer in the same postcode, referred to as "market" in columns 4 and 5 of the table below). The sample consists of four villages in the inner suburbs of Melbourne, eight in the outer suburbs and one in a regional town.

Village	Rate per kWh (c)	Daily Supply Chrg (\$)	Market Rate Per kWh (c)	Market Daily Supply Chrg (\$)
A	16.17	1.06	17.34	1.22
B	18.06	0.83	22.13	1.06
C	18.85	0.98	22.13	1.06
D	20.04	1.09	22.13	1.06
E	20.15	1.24	19.36	1.34
G	20.20	1.18	22.99	1.43
F	20.20	1.24	22.99	1.43
H	20.30	0.87	22.13	1.06
I	21.50	1.28	22.99	1.43
J	24.29	1.23	22.26	1.27
K	24.47	1.09	22.13	1.06
L	28.20	0.80	22.13	1.06
M	32.13	1.32	22.99	1.43
<b>Avg</b>	<b>21.89</b>	<b>1.09</b>	<b>21.82</b>	<b>1.22</b>

The charges and prices shown are for peak general domestic usage; kWh = kilowatt hour.

The results indicate that residents in these villages pay on average a similar rate per kWh as retail customers in the same area (21.9¢ per kWh compared with 21.8¢ per kWh). However, residents pay significantly less for their daily supply charges - \$1.09 per day compared with an average market supply charge in the relevant postcodes of \$1.22 per day. This reduction

results in lower monthly electricity bills overall. There is, however, considerable variation between villages, with some village residents paying more per kWh than households in the same area. RRVV estimates that Village “M” residents are paying around \$10 per month more than non-village households in the same area. Fortunately, it appears that most villages allocate any surplus made on electricity sales to village funds that benefit all residents.

For more information about embedded networks, go to the RRVV website homepage [www.rrvv.org.au](http://www.rrvv.org.au), scroll down and click on ‘Information for Customers Living in Retirement Villages’. If you have a complaint about the electricity supply in your village that you can’t resolve locally, whether the supply is via an embedded network or not, you can contact the Electricity & Water Ombudsman on 1800 500 509 or via [www.ewov.com.au](http://www.ewov.com.au)

RRVV understands that recent changes to state government legislation mean that embedded network operators should join EWOV and register with the Essential Services Commission (ESC). Members who get their electricity supplied via an embedded network should check with their managers that their networks comply with this new requirement.

### Volunteer Wanted

Do you enjoy calling people and updating information on computer systems?

We are looking for a volunteer for a few hours per week to call registered retirement villages in Victoria and add or update village details in our RRVV database.

This could be done either from our office or at home if you have a computer and internet.

If you are interested, please email [office@rrvv.org.au](mailto:office@rrvv.org.au) with your details, and we will give you a call.

## Owners Corporations Regulations 2018

New regulations under the Owners Corporations Act 2006 prescribing certain information and requirements will come into operation on 2 December 2018. The Owners Corporations Regulations 2018 will replace the Owners Corporations Regulations 2007.

The new Regulations are largely the same as the previous ones, but now include new measures in response to issues the Government identified and matters raised by stakeholders.

These measures include:

1. prescribing additional information requirements for owners corporations’ maintenance plans
2. enabling owners corporation committees to, by resolution, remove members who are absent from 25 per cent or more of meetings within a six-month period without giving prior notice or a reasonable explanation to the committee
3. increasing the required minimum level of professional indemnity insurance for registered owners corporation managers to \$2 million, and
4. prescribing additional model rules about the appointment of sub-committees, making changes to the external appearance of lots, and renovations or other works which may affect the common property.

You can download PDF and Word versions of the new Regulations from the Victorian Legislation and Parliamentary Documents website.

### Consultation process

RRVV was one of only 12 parties lodging a public submission. To see all submissions and responses to submissions, visit Owners Corporations Regulations 2018 Regulatory Impact Statement page.

