



The Association of Residents of Queensland
Retirement Villages Inc.

RESIDENTS COMMITTEE MANUAL

A guide for the establishment and operation
of residents committees in Queensland retirement villages.

A residents committee is a body working for residents, but unless authorised by residents, is not entitled to make decisions on behalf of residents.

RESIDENTS COMMITTEE MANUAL

Disclaimer: The information in this manual relates to the *Retirement Villages Act 1999 (Qld)*. In developing this manual, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best practice. The information contained in this resource does not constitute legal advice.

Acknowledgments

This manual was produced under a grant from the Queensland Department of Housing and Public Works under their Building Consumer Confidence Initiative 2018/19.

The ARQRV developed this resource for residents committees in Queensland retirement villages, in the hope that it will prove a valuable resource to assist them in their role.

You must acknowledge the ARQRV where this work is copied or distributed.

Manual distribution

ARQRV will supply a free copy to be available to every village with a residents committee and to every village wishing to establish a residents committee.

ARQRV trusts this manual will be easily accessible to all residents in the village.

The manual is also available in read-only format, on the ARQRV web site – arqrv.org.au/information/for-residents-committees/resident-committee-manual

Obtaining copies of the manual

Every village is entitled to receive one free copy for use by the residents committee and all residents.

Residents may also decide at a residents meeting to purchase additional copies.

Any financial member of ARQRV may purchase and own a copy of the manual for their own use.

Contact the ARQRV office to order a copy of the manual for \$35, which covers printing and postage.

Updates to the manual

The manual will be updated in line with future legislative changes.

Where contact details registered with ARQRV – for a period of not more than 3 years, updates will be automatically emailed as PDF documents to registered users.

To receive ongoing updates, users must ensure contact details are kept up to date with the ARQRV office.

Contact details not registered with ARQRV – non-registered users will be advised via ARQRV newsletters that updates are available. Members must telephone the office on 0429098417 to arrange for a hard copy to be sent. Postage may be charged.

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2 Read this first

2.1 About this manual

Information in this manual reflects legislative requirements under the *Retirement Villages Act 1999* but it must not be considered as legal advice.

The manual provides recommendations and suggestions for best practice in implementing the legislative provisions and requirements.

Other information is based on the experience and knowledge of the ARQRV Committee and is provided as options to consider for your village.

2.2 How to use this manual

The manual is not designed to be read as a novel from cover to cover. If you are establishing the first residents committee in your village, read from the start but if you are only wanting to find out more about a particular topic, read only that part.

ARQRV trusts the manual will help you, your village's residents committee and your community as a whole.

2.3 Examples provided in this manual

There are various notices and forms referred to throughout the manual. Examples of these are included in the annexures at the end of the manual.

Notes about examples:

- examples are provided as a suggestion or a guide only
- examples may not be fully relevant to your situation or village, so they may need alteration to suit your specific needs
- some aspects of notices and forms have requirements under the *Retirement Villages Act 1999*, so these parts must not be altered. You must refer to the relevant part of the manual to fully understand these requirements.

All examples are available from the ARQRV web site in MS Word format for modification and use by residents – www.arqrv.org.au/information/for-residents-committees/resident-committee-manual.

2.4 Familiarisation with the *Retirement Villages Act 1999*

Throughout the manual the *Retirement Villages Act 1999* is referred to as the RV Act.

All members of a residents committee should familiarise themselves with the relevant parts of the RV Act in addition to the contents of the manual to better understand the role of the residents committee.

It is also advisable for members of a residents committee to keep referring to the RV Act and not rely on memory, what has happened in the past or what you are being told by others.

The current RV Act is freely available to view or download by using the 'In force legislation' option on the Queensland Government legislation website, www.legislation.qld.gov.au.

[See part 3.1 – Law relating to retirement villages and residents participation](#)

[See part 3.2 – Definitions under the RV Act](#)

2.5 Guide to meetings and other procedures

The RV Act provides strict guidance for some procedures at residents committee meetings and residents meetings while being silent on many others. Other procedures may be included in a residents constitution. However, as every procedure will not be covered in these two documents it is advisable to refer to a single reference source that provides best practice for meetings and voluntary groups – one such source is the two-volume series *Guide for Meetings and Organisations* by NE Renton. The book is designed to be readily taken to meetings and referred to speedily whenever contentious procedural points arise.

Note – reference books must be used only where the RV Act or a valid residents constitution is silent and only then as a general guide due to the differences of operation between other bodies and residents committees.

2.6 Quick look at a residents committee

The residents committee role and elective financial functions are sourced from, and expressly provided for, by the provisions of the RV Act. Therefore, the following points should be noted.

In general terms, it is the role of the residents committee to:

- deal with the scheme operator on behalf of residents about:
 - every complaint or proposal raised by a resident or a group of residents; and
 - day-to-day running of the village
- action the resolutions of, or positions taken by, residents which have been agreed to by a vote of residents
- to be a conduit between residents and the scheme operator
- undertake various village budgetary functions in conjunction with the scheme operator as provided by the RV Act, if it decides to do so.

Other than the above functions, a residents committee has no authority to take a position on or decide a matter other than the action or position agreed to by the residents.

The role and operation of a residents committee is explained further in various parts of this manual.

A residents committee:

- is not a decision-making body and is not entitled to make decisions on behalf of residents without authority from residents; and
- does not 'run' nor control the village.

A residents committee role is different to that of:

- a committee that oversees a club or an incorporated association
- a board of directors of a company
- a political party with policies or views on specific issues or matters
- running a business.

[See part 6 — Operation of residents committee](#)

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3 Introduction

3.1 Law relating to retirement villages and residents participation

An Act must be ‘read as a whole’ and should be interpreted in a way that promotes the purpose of the Act or gives effect to its purpose. An Act once read in its entirety provides the ‘feel’ for what it is trying to do even though it may not be expressed in words.

A few comments relating to the application of the provisions of Part 7 of the RV Act which deals with residents participation. The view held by the ARQRV Committee is that legislators intended the procedures for residents meetings and for establishing and operating residents committees to be as simple as reasonably possible. We consider this view is strongly supported by

- (a) the RV Act provides only limited direction on many matters and remains totally silent on others; and
- (b) if procedures were overly onerous it may and probably would limit residents participation.

To put it simply, we contend that, as long as residents and residents committees adopt or otherwise comply with all legislative requirements, other matters not provided for by law but needing to be addressed by residents or the residents committee may be decided by a majority vote of residents at a residents meeting.

3.2 Retirement Villages Act

The *Retirement Villages Act 1999* provides the law for the establishment and operation of retirement villages in Queensland. The participation of residents is specifically mentioned in s 3(2)(c) and is subsequently covered in Part 7.

The objects of the RV Act are set out in section 3, which is reproduced below:

3 Objects

(1) The main objects of this Act are –

- (a) to promote consumer protection and fair trading practices in operating retirement villages and in supplying services to residents by—*
 - (i) declaring particular rights and obligations of residents and scheme operators; and*
 - (ii) facilitating the disclosure of information to prospective residents of a retirement village to ensure the rights and obligations of the residents and scheme operator may be easily understood; and*
- (b) to encourage the continued growth and viability of the retirement village industry in the State.*

(2) The following are also objects of this Act –

- (a) to encourage the adoption of best practice standards by the retirement village industry;
- (b) to provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion;
- (c) to facilitate participation by residents, who want to be involved, in the affairs of retirement villages;
- (d) to provide for processes for resolving disputes between residents and scheme operators.

The parts of the RV Act which are especially relevant to residents committees are as follows:

Capital works, budgetary and insurance matters – Part 5 Divisions 3 to 9 (ss 90 – 113A) provide the law about capital improvement, capital replacement fund, maintenance reserve fund, charges for personal services, charges for general services, insurance, financial accounts and statements.

Residents participation – Part 7 (ss 127 – 133) provides the law about retirement village residents participation in a residents committee and in residents meetings.

Rights and obligations of scheme operator, residents and others – Part 8 (ss 134 – 136) provides the law about the scheme operator respecting the rights of residents, and residents respecting the rights of others.

Dispute resolution, Applications to tribunal – Parts 9 – 13 (ss 153 – 215) provide the law about procedures for resolving disputes first informally and then formally.

The current RV Act is freely available to view or download by using the ‘In force legislation’ option on the Queensland Government legislation website, www.legislation.qld.gov.au.

3.3 Definitions under the RV Act

The RV Act defines the meanings of various words and terms that are used throughout the Act. Those definitions apply wherever the RV Act uses those terms, including in relation to residents committees.

Refer to Part 1, Div 3 (including the Schedule) of the RV Act (and in some instances to other relevant parts) for definitions where required.

Who is a resident

Particularly relevant to a residents committee is the meaning of **resident**.

A person who lives in a retirement village is not necessarily a resident. By proper definition, provided for in s 9 of RV Act, a **resident** of a retirement village is a person who, by a residence contract, has been granted both of the following:

- a right to reside in the retirement village; and

- a right to receive 1 or more services in relation to the retirement village.

Of course, the contract which grants the right to reside and the services must also satisfy the requirements of a residence contract in s 10 of the RVA.

Residents with modified residence contracts

In some instances, scheme operators offer the right to reside to prospective residents under modified residence contracts whereby they pay ongoing and regular payments rather than paying an up-front ingoing contribution. They also pay the usual charges for general services and a maintenance reserve fund contribution. These persons are residents under a residence contract for the purposes of the RV Act and they have the same general rights as any other resident.

Persons living in village under residential tenancies agreements

A person renting in a village with only a residential tenancies agreement under the *Residential Tenancies and Rooming Accommodation Act 2018*, and not a residence contract under the RV Act, is not a resident for the purposes of the RV Act and are therefore not entitled to vote at a residents meeting or being a member of a residents committee.

Long-term visitor or carer

Where a person is living with a resident on a long-term basis, but they have not been granted a right to reside under a proper residence contract they are not considered a resident for the purposes for the RV Act, and are therefore, not entitled to vote at a residents meeting or become a member of the residents committee.

3.4 Different communities in villages

Accommodation premises provided by retirement village scheme operators may be either Independent Living Units or Serviced Units (s 5(1) of the RV Act).

Independent living units are for residents to live independently and not be a danger to oneself or others and being able to acquire additional services as necessary. The scheme operator may provide those services via a personal services contract, or residents are able to acquire services through outside independent agencies.

Serviced units usually provide residents with meals; and cleaning and laundry services. In addition, there has been a recent development in the provision of assisted living units which are still classified as independent living but provide some basic support for the resident to continue to live independently.

Given the above, the community (and hence any residents committee and subcommittees) that develops in any one retirement village may be very different from others – for example, the interests and the lifestyle of the residents in a village which is marketed for the ‘over 55s’ would be different to a village with co-located aged care facilities because of the dissimilar facilities that each village offers.

Residential aged care facilities (which offer higher levels of care) and home care services subsidised by the Australian Government are regulated by the *Aged Care Act 1997 (Cth)* and not

the RV Act. Privately funded residential aged care and home care services are not subsidised or regulated by the Australian Government

3.5 Persons living in village who are not residents

Persons who are not residents for the purpose of the RV Act but are living long-term in a village (for example, rental tenants or long-term guest or carer of a resident) may wish to participate in the village community. In these cases, it would be prudent for residents to decide an appropriate plan how best to include these persons into village life – for example, incorporate relevant procedures in the residents constitution to include these persons in relevant social subcommittees (see part 7 – Subcommittees).

In some villages, rental tenants elect a ‘rental representative’ who may be their voice. Residents may decide for the representative to be invited as a guest and possibly participate in discussion at residents meetings and residents committee meetings. Residents may consider it appropriate that a rental representative only attends for a portion of a meeting.

The residents committee does not have any legislative authority to deal, on behalf of a rental tenant or long-term visitor, with the scheme operator.

A rental tenant or long-term visitor does not have authority under the RV Act to:

- request from the scheme operator, village financial statements or operational documents; nor
- request the scheme operator comply with s 135(2)(f) by providing a response within 21 days.

Rental tenants may seek resolution to disputes under other relevant law.

3.6 Residents committee as an entity

A residents committee is an entity established only for the purpose intended by the RV Act. A residents committee has no legal rights or functions other than those rights or functions provided by the Act.

The RV Act has no provision for a residents committee, where established, to be an entity with perpetual succession. As such, a residents committee is only established when residents decide to do so, by holding an election, from time to time.

A residents committee simply will not exist at a time where there is insufficient interest, and hence nominations, for an election of committee members. For example, there may have been a residents committee for some years in a village but due to lack of interest, by residents of- the- day, none is established at that time.

4 Benefits of establishing a residents committee

There are many benefits in having a residents committee. Below are some of the more obvious:

1. a residents committee can approach, and deal more formally and collectively with the scheme operator on behalf of one or more residents with proposals or issues about the day to day running of the village. One major benefit of this is that residents would remain personally removed from any worrisome discussions and dealings with the scheme operator.
2. only a residents committee has the authority under the RV Act to request the scheme operator:
 - provide a document explaining expenditure involved in providing a general service that varies from the expected expenditure for the general service in the budget
 - provide copies of all three draft village budgets and meet to discuss the draft budgets
3. a residents committee has authority under the RV Act to form and oversee subcommittees – for example, the formation of a social or sports subcommittee and ensure any monies raised and spent is in accordance with the decisions made by the majority of residents.

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5 Establishment of first residents committee

5.1 The law relating to establishing a residents committee

Because a residents committee is a creature of the law, it must be created under law, thus a previously formed group within a village for social or sporting activities etc. cannot simply decide to become a residents committee. A residents committee must be established at a meeting of residents convened for that express purpose.

The appropriate law is s 127 of the RV Act, which provides in subsection 1:

The residents of a retirement village may establish, by election conducted among themselves, a residents committee.

Notwithstanding that s 127 clearly includes only residents are entitled to be included in this activity, some scheme operators attempt to influence the outcome of this meeting by attending and even participating. Clearly, such attendance or participation is contrary to the Act. The scheme operator is not entitled to interfere in the establishment of a residents committee.

There are no express provisions in the RV Act about how a meeting to form a residents committee is called, what notice must be given, how many residents must attend the meeting or voting procedures. These matters were clarified by the finding by Queensland Commercial and Consumer Tribunal (*Gilbert J & others vs Jodaway Management Pty Ltd application filed 2 August 2005 – decision delivered 8 August 2006 QCCT RV 2*). It provides the following:

“The legislature intended in our view that the procedure for establishing a residents committee should be more relaxed with respect to requirements for voting and the giving of notice than is required for subsequent meetings after the initial establishment of the committee. This view is consistent with the object of the Act contained in section 3(g) which is “to facilitate participation by residents, who want to be involved, in the affairs of retirement villages”. In order to facilitate the participation by residents in a residents committee, the establishment of such a committee is intended in our view to be an extremely simple procedure.”

“...Section 127(1) when viewed in the context of the other sections in Part 7 of the (RV) Act dealing with voting at residents meetings and residents committee meetings, is that voting requirements in those other sections are not intended to apply to the election to establish for the first time a residents committee. A minority of the residents present at a meeting called to establish a residents committee upon reasonable written notice can conduct an election among themselves to establish a residents committee, and furthermore the number of residents present at such a meeting can be a minority of all residents in the village....”

“Section 132 certainly indicates a legislative intention that residents should generally be given 14 days written notice of residents meetings. The section does not expressly apply, however, to the situation where a group of individual residents call a residents meeting to establish a residents committee. There were no urgent circumstances here, but in the absence of an express provision stipulating a period of notice for

calling a residents meeting to establish a residents committee, we consider that there should be, as in the case where urgent circumstances exist, reasonable notice but not less than two days."

In summary, the Tribunal found that residents who are present at a meeting called to establish a residents committee upon reasonable written notice (two days or more) can conduct an election among themselves to establish a residents committee. Furthermore, the number of residents present at such a meeting can be a minority of all residents in the village. For the purposes of s 127 of the RV Act, it is accepted that only two or more residents need to decide to form a residents committee and call a meeting of interested residents.

5.2 Procedures to establish a residents committee

As explained above, the procedure for establishing an initial residents committee is less structured than the procedures provided by the RV Act relating to residents meetings where a residents committee exists.

There is no existing organising body (that is a residents committee) nor a constitution to provide how a meeting should be called but at the same time an organising body needs to be established.

The tribunal recommended that residents adopt a simple procedure when establishing a residents committee. To this end the following procedures are provided as a suggested guide. However, it is envisaged that it would take at least two meetings of residents to establish a residents committee. A preliminary meeting to decide practical matters and organise the election and a second meeting relating to the election.

The procedure we recommend follows:

1. Two or more residents agree that the formation of a residents committee would be desirable
2. The two or more residents call a preliminary meeting of residents by providing all residents a notice of meeting (placing a notice in an appropriate place and by a letter-box drop, or door-to-door delivery). Notwithstanding the findings mentioned above about the period of notice, it would be prudent to provide well more than two days notice to offset any controversy. We suggest 14 days. The notice should contain at least the following information:
 - a. The purpose of the meeting is a preliminary meeting to organise the establishment of a residents committee
 - b. The date and place of the meeting
 - c. That there will be only one vote for each accommodation unit as provided for under s 133(1) of the *Retirement Villages Act 1999* (unless the residents have already decided by special resolution that each resident may vote)
 - d. The matters for discussion (the following statements may be condensed for the notice)

- i. Composition of the residents committee (for example—the minimum and the maximum number of members and the offices to be established President, or Chairperson, Deputy, Secretary, Treasurer, and ordinary members (for a developing village consider a residents committee that could grow in size with the size of the village)
 - ii. Timeline for the election process and election meeting (for example—date of meeting, nominations opening and closing, when votes are being taken where a poll)
 - iii. How the election is to be conducted (for example—by a show of hands at the meeting or by a secret postal vote ballot before or at the meeting)
 - iv. How nominations are to be made (for example—verbally at the meeting or beforehand in writing) and if required how advertised to the residents
 - v. Allocation of tasks to willing persons (for example—chair of election meeting, taking of minutes, preparation and production of any voting papers and notice of election and meeting)
3. Hold the preliminary meeting and minute relevant discussions and all decisions.
4. The interested residents prepare for the election and second meeting
 - a. Call a second meeting of residents and advertise the election by providing all residents a notice of meeting (placing a notice in an appropriate place and by a letter-box drop, or door-to-door delivery). Notwithstanding the findings mentioned above about the period of notice, it would be prudent to provide well more than two days notice to offset any controversy. We suggest 14 days. The notice should contain the following information bearing in mind the procedures for the election decided at the preliminary meeting:
 - i. the purpose of the meeting is to establish a residents committee under the R V Act
 - ii. the date and place of the meeting
 - iii. the composition of the residents committee
 - iv. how the election will be conducted
 - v. how nominations are to be made and when nominations close
 - b. Provide an appropriate form for nominations (nominated resident and nominee resident), if relevant.
 - c. Advertise the names of the nominees, if relevant.
5. Conduct the ballot where it was decided by residents to have a postal vote ballot prior to the meeting (the scheme operator must provide a locked ballot box refer to s 133(5) to (8))

of the RV Act (ensure independent residents are used as vote counters and scrutineers).
Note — this method is preferred as it is easy to monitor the one vote per accommodation unit provision and gives time to count a significant number of votes

6. Hold the meeting to announce the results (ensure minutes are recorded, for example — date, time, how many residents were present and names of successful candidates)

OR

1. Open the meeting, call for nominations (if required) and conduct the election by ballot (if nominations were taken previously) or show of hands/paddles etc. (a ballot would only be suitable at a meeting where there are a small number of voters), tally and announce the results (ensure minutes are recorded for example — date, time, how many residents were present and names of successful candidates)
2. following the residents meeting all elected members immediately meet to, among themselves, elect office bearers as decided at the residents meeting (basic minutes of this meeting should be recorded)
3. The residents committee informs all residents and the scheme operator or manager of the outcome in an appropriate manner.

Once a residents committee is established:

- the residents committee may decide their own procedures for their operation, for example—how often they meet and who must be present to reach a quorum
- subcommittees may be formed, and appropriate subcommittee procedures decided.

[See annexure 1A – Example Notice of meeting to establish a residents committee](#)

[See annexure 1B – Example Notice of preliminary meeting to establish a residents committee](#)

[See annexure 5 – Example Nomination form for residents committee](#)

5.3 How many members should be on a residents committee?

The number of members on a residents committee will vary between villages. The meeting of residents to establish the residents committee should include a discussion and a decision regarding its composition.

Factors which it may be helpful to consider when deciding on the numbers of members on a residents committee include:

- how many residents reside in the village
- the community that exists in the village
- the level of resident interest in joining the committee

- any particular focus of the residents committee (was there a particular reason the committee was formed? – for example, was the committee formed with the intention of forming a subcommittee to organise social or leisure activities, or is there a particular issue within the village that needs to be addressed in a cohesive manner).

5.4 How is it decided who is elected as members of the initial residents committee?

Where there are more nominees than the maximum number allowed on the residents committee, the least complex method of determining successful nominees would be, the candidates with the highest number of votes being elected. For example:

- it has been discussed and decided by residents that the initial residents committee will consist of a maximum of five members; but
- there are seven nominees; therefore
- the five with the most votes would be elected.

If the number of nominees is equal to or less than the maximum number then the residents may decide that no ballot is necessary.

Residents may decide other methods but it is recommended to keep it simple.

5.5 Commonly found positions on a residents committee

Different villages will have different requirements due to each village having its own community. However, the following composition is usually considered to be adequate:

- a chairperson or president
- a deputy chairperson or vice-president (optional)
- a treasurer or financial officer
- a secretary
- a number of ordinary committee members.

It is suggested that voting for designated positions on a residents committee be conducted only among the members of the committee as this method requires the least effort. Voting by residents for specific positions on the committee may become difficult to administer as residents may nominate for multiple positions which may require multiple elections.

5.6 No restriction on nomination for election or voting by committee members

5.6.1 No restriction by the RV Act on nomination for election

The only requirement needed for a person to be nominated for election as a member of the residents committee is that they must be a *resident* of the village. (See part 3.3 – Definitions)

Note—the law relating to the establishment of a residents committee, set out in s 127(1) of the RV Act, provides:

The residents of a retirement village may establish, by election conducted among themselves, a residents committee.

As can be seen, this provision does not exclude any resident from being a member of a residents committee. Therefore, in the absence of anything further, the intent of that provision is that every resident be eligible for nomination.

In addition, the RV Act is one of inclusiveness of all residents which is demonstrated by one of its objectives:

...to facilitate participation by residents, who want to be involved, in the affairs of retirement villages

As stated in part 3.1 of this manual, an Act must be ‘read as a whole’ and should be interpreted in a way that promotes the purpose of the Act or gives effect to its purpose. An Act once read in its entirety provides the ‘feel’ for what it is trying to do even though it may not be expressed in words.

Part 7 of the RV Act provides the law for residents participation. Nowhere in this part, nor elsewhere in the Act, is there any restriction or limitation on the right of any resident to participate in the affairs of a village (other than s 133 relating to voting by residents, which is provided for a very valid reason). Therefore, it is the view of ARQRV that the legislators intended that participation in all matters be fully inclusive of all residents.

Further, it is of no consequence if two residents from the same accommodation unit are committee members as a residents committee is only a facilitator of resolutions by residents, and has no decision-making authority other than that already provided by a vote of the residents at a residents meeting. This is explained in detail in other parts of this manual.

5.6.2 No restriction on voting by members at a residents committee meeting

There is no restriction at law on a member of a residents committee voting at a meeting of the committee. To explain, the RV Act is silent on this matter and the provision of s 133(1) of the RV Act which deals with persons entitled to vote (usually one resident of each unit) does not apply here, as this section applies expressly to only “...meeting of residents...”, not meetings of a residents committee.

5.6.3 No restriction by residents constitution on nomination

Section 128(1) of the RV Act which provides the law for residents constitutions requires:

...the constitution may not be inconsistent with this Act...

Therefore, when you take into account the object of the Act relating to residents participation explained above, any clause incorporated in a residents constitution that attempts to restrict nomination for election or membership of a residents committee; attempts to restrict a member

from voting on matters which have been authorised by residents or any other participation in village affairs would be considered as inconsistent with the Act, and would be unlawful.

5.6.4 Summary of no restriction on nomination or voting

To summarise, any resident may be nominated for, and elected to, the residents committee. Thus, two residents from the same accommodation unit may be elected. Further, the committee, as elected, functions normally, with every member able to vote on those matters relevant to the residents committee.

5.7 Term of membership for members of a residents committee

Section 127(2) of the RV Act provides:

A member of the residents committee holds an office for a term of not more than one year, but may be re-elected; and may be removed, at any time, by special resolution at a meeting of residents.

As stated in part 3.1 of this manual there is limited direction in Part 7 of the RV Act including the above provision as to how many times a resident may be re-elected. For example, and until a clarifying decision is given by the tribunal, one might take this provision to mean that a resident may be re-elected only once, which of course, is totally unreasonable as this is too prohibitive. Another view may be that a resident may renominate and be re-elected indefinitely, which again is unreasonable as this is not an ideal situation for the welfare of a village community. One might say, the election process would prevent a resident from being re-elected indefinitely. However as seen by the ARQRV Committee, residents can become complacent with the election process, which inadvertently may allow a small core of residents to persist for years as residents committee members, and who may see themselves as omnipotent, and thus gradually have undue influence over many, if not all aspects of village life. This troublesome outcome is not the intention of Part 7 of the RV Act nor for that matter, the purpose of a residents committee.

Considering the above arguments for the number of times a resident may be re-elected to the residents committee i.e. once or indefinitely and that the provision is somewhat unclear, it is our view, that this matter should be approached in a manner that is both reasonable, is suitable for the specific needs of the village, satisfies the wishes of the majority of residents and is one which provides the most satisfactory outcome for that village community while still remaining within the intention of the section; namely, allowing a resident to be re-elected, although for a finite number of years in a particular position.

The best way forward would be for a residents constitution to contain a clause that limits the term a resident may hold a particular position (for example—chairperson, secretary or treasurer etc.). The following clause is provided as an example — *‘No member of the Committee may be elected to the same position for more than [XX] consecutive years and is not eligible to be re-elected to that position for a period of [XX] years.’*

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6 Operation of residents committee

6.1 Residents committee role and accountability to residents

The residents committee role and elective financial functions are sourced from, and expressly provided for, by the provisions of the RV Act. Therefore, the following points should be noted.

In general terms, it is the role of the residents committee to:

- deal with the scheme operator on behalf of residents about:
 - every complaint or proposal raised by a resident or a group of residents; and
 - day-to-day running of the village
- action the resolutions of, or positions taken by, residents which have been agreed to by a vote of residents
- to be a conduit between residents and the scheme operator
- undertake various village budgetary functions in conjunction with the scheme operator as provided by the RV Act, if it decides to do so.

Other than the above functions, a residents committee has no authority to take a position on or decide a matter other than the action or position agreed to by the residents by resolution or by inclusion of appropriate authority in the residents constitution.

The role and operation of a residents committee is explained further in various parts of this manual.

A residents committee:

- is not a decision-making body and is not entitled to make decisions on behalf of residents without authority from residents; and
- does not 'run' nor control the village.

A residents committee role is different to that of:

- a committee that oversees a club or an incorporated association
- a board of directors of a company
- a political party with policies or views on specific issues or matters
- running a business.

Under law a residents committee authority is specifically limited to that which is provided by the RV Act (even then the role and operation of the residents committee is subject to the residents constitution provided the constitution does not contravene the RV Act), namely:

- to deal with the scheme operator on behalf of residents about the day-to-day running of the village and any complaints or proposals raised by the residents (every complaint and proposal must be dealt with as the Act does not allow the committee to pick and choose which matter they will address and refer to the scheme operator)
- call meetings of residents
- decide its own procedures, but subject to the residents constitution
- form subcommittees and decide their procedures
- request the scheme operator to provide copies of draft budgets and ask the scheme operator to attend a meeting to discuss them; and ask the scheme operator to provide written explanation about expenditure in providing each general service, and
- on behalf of the majority of residents request the scheme operator to get quotes for particular capital improvements to the village where it was agreed by passing a special resolution.

Note – a residents committee must not become involved with issues between residents as they must remain impartial, and also the RV Act does not provide authority to do so.

Some additional authority may be granted permanently or from time to time to a residents committee by:

- a residents constitution, provided that authority is not attempted to be given by clauses which are inconsistent with the RV Act; or
- by a vote of residents at a residents meeting under s 133 of the RV Act.

A residents committee cannot be given, by a residents constitution nor by vote of residents, authority to decide, on behalf of residents, on matters which must be voted for by residents which are expressly provided for under the RV Act – for example:

- voting on a special resolution
- voting for members of a residents committee
- voting on matters dealing with the adoption or alteration of a residents constitution.

It would be considered prudent for a residents committee to put a matter to a vote by residents at a properly called meeting where any doubt exists prior to action by the committee.

It is worth quoting from an eminent authority on the laws governing meetings of bodies in Australia, the late Sir Percy Joske.

“Committees have no authority except that delegated to them by those who appointed them.”

To put all of the above plainly, as with any committee it has **no authority simply by being a committee**. It is always accountable to those who elected it - that is, the residents; and in this case a residents committee's authority is further limited to only that authority which is provided by the RV Act. This aspect is often overlooked by residents committees who may see themselves as autonomous, and, decide matters on residents behalf or authorise expenditure of residents funds above any pre-approved limit which may be included in the residents constitution, without prior reference to or authority from a meeting of residents.

To summarise the above, a residents committee:

1. undertakes its functions on behalf of all residents in the village and is responsible to all residents
2. may take action only if it is authorised by the RV Act or if residents have authorised them to do so
3. may negotiate on behalf of residents with the scheme operator only if authorised by residents.

To improve accountability and transparency, a residents constitution may allow and actively encourage residents to attend residents committee meetings as observers, and if the committee agrees, to participate in the discussion.

6.1.1 Residents committee procedures

The RV Act allows the residents committee to decide its own procedures but only subject to the procedures provided in the residents constitution. You will note s 127(3)(a) states –

The residents committee may, subject to section 128 – decide its own procedures...

Section 128(3) further reinforces the proviso in the above section by stating –

...the committee must conform with the (residents) constitution.

The above two provisions authorise the residents constitution to contain procedures relevant to the residents committee operation which residents consider important to them. Inclusion of such procedures in the residents constitution would have the residents committee operating, how residents want then to operate (to the degree provided in the constitution), while also providing a level of continuity in the operation of different committees.

[See annexure 15 – Model residents constitution with explanatory notes](#)

6.1.2 Members of residents committee not to act independently

The residents committee must be accountable to residents as stated in part 6.1 of this manual, and committee members must always function collaboratively on every matter.

No office bearer, including the chairperson, nor ordinary member should act independently. That is, no action should be taken on any matter in the name of the residents committee, unless:

- the matter was tabled and fully discussed at a residents committee meeting; or
- the action was authorised by a vote at a meeting of residents.

Even where matters are considered urgent, they should still be approached in the appropriate manner as the RV Act providing an express provision (s 132(2)) to address urgent matters by allowing for the calling a meeting of residents with a minimum of two days notice.

There is no restriction on any resident, including those who are a residents committee member, to contact the scheme operator in their own capacity.

6.2 Functions of office bearers and ordinary members of residents committee

6.2.1 Chairperson of residents committee

The functions of the chairperson are to:

- chair meetings of the residents committee
- chair residents meetings
- ensure responsibilities of office bearers of the residents committee are met
- rule on any procedural matters raised at meetings of the residents committee, or make enquiries as to the meaning of these rules
- ensure liaison takes place with subcommittees to avoid possible conflict between different proposals and plans of subcommittees
- ensure residents meetings are planned and conducted in accordance with the provisions of the RV Act and the residents constitution
- ensure the village manager is informed of all decisions made by residents
- ensure the operation of the residents committee and committee meetings are in accordance with RV Act, the residents constitution and committee procedures
- ensure matters are dealt with in an orderly and efficient manner
- address conflict within the residents committee
- maintain impartially and objectivity at meetings
- represent the residents committee at functions.

The chairperson does not hold any additional authority other than that understood to be the general role of a chairperson of any volunteer committee, unless it is granted by a vote of residents or the residents constitution.

6.2.2 Deputy chairperson of residents committee

The deputy chairperson (or vice-president) takes on the role of the chairperson when that person is not available and assists the chairperson in their ongoing duties.

6.2.3 Secretary of residents committee

As with the secretary of any committee, the secretary of the residents committee provides administrative support to the committee to ensure its smooth operation as well as ensuring meetings are well organised and minuted, records are effectively maintained, including ingoing and outgoing correspondence and any other documentation of the residents committee.

Section 129A of the RV Act provides the following relating to residents committee meeting minutes:

- the minimum requirements of particulars to be included
- they be presented for confirmation and if confirmed signed by a member of the residents committee
- they be kept by the residents committee
- at the request of a resident give them access to or a copy of the minutes.

It would be reasonable to expect that these legislative requirements would be met by the secretary.

Specific functions of the secretary are to:

- prepare agendas in consultation with the chairperson and receive items from residents and committee members for residents committee meetings and all meetings of residents
- circulate agendas and supporting papers in good time
- check that a quorum is present at all meetings
- keep full and accurate minutes of residents committee meetings including at least the following particulars:
 - the date, time and place of the meeting
 - the names of persons present and details of the capacity in which they attended the meeting
 - issues discussed and how each issue was decided or dealt with
 - details of all correspondence, all reports, all notices or all other documents tabled.

The residents committee has no authority nor discretion whatsoever to exclude any matter from the minutes – the RV Act requires full and accurate minutes must be kept.

- circulate the draft minutes to all residents committee members and give residents who have requested it, access to or a copy of the minutes
- ensure that residents committee minutes are presented for confirmation at the next meeting and signed by a residents committee member as provided for in s 129A(3) of the RV Act
- oversee the preparation and ongoing maintenance of any reference documentation including but not limited to residents committee procedures and subcommittee procedures
- prepare the timetable, provide notices and agenda for the election of the new residents committee
- maintain a file of minutes of all residents committee meetings (it would be judicious to keep with the minutes all documentation tabled or associated with each meeting)
- keep full and accurate minutes of residents meetings (the RV Act does not have any requirements for this – however, it would be prudent to record minutes along the same lines as for the residents committee but also include the results of all voting on matters other than elections)
- maintain a file of other documentation (including procedures, agendas, correspondence and reports for all other meetings of subcommittees and meetings of residents)
- pass on to next residents committee all minutes of previous meetings and other relevant documents.

6.2.4 Keeping accurate minutes of residents committee meetings and residents meetings

Accurate minutes will assist in preventing disputes by providing a record of what was discussed and/or was agreed to at a meeting.

Minutes do not need to include a word-for-word recount of what was discussed at a meeting. However, they should include a summary of any discussions that occurred.

The minutes should be factual and only provide information about what has happened at the meeting. Editorialising should be avoided.

Any follow up actions arising from the meeting should be included along with who will carry out the action and the timeframe in which it will occur.

Residents should also be provided with information about how to provide feedback on the minutes, if needed.

[See part 13.1 – Minutes of residents committee meeting](#)

[See part 14.5 – Minutes of residents meeting](#)

6.2.5 Drafting minutes of difficult meeting

Sometimes a meeting will become heated and the participants may resort to personal attacks, walk-outs or inappropriate remarks.

It may not be appropriate or necessary to record all these instances and the chairperson may require remarks to be withdrawn (therefore, the remarks are not recorded). In other cases, it may be sufficient to record that 'a vigorous discussion ensued' rather than a blow-by-blow account within the minutes. Including such detail within the minutes is not appropriate or helpful in the event of a disagreement.

It is inevitable that within a retirement village community there will be differing opinions and perspectives however a concerted effort should be made by all parties to ensure their behaviour remains professional.

6.2.6 Treasurer of residents committee

In general terms, the role of the treasurer is to take an integral part in safeguarding residents funds, maintaining accounting records and overseeing examination of and discussions about financial accounts, financial statements and proposed village budgets.

There are various legislative provisions in the RV Act which allow the residents committee to request discussions with and in some cases explanations from the scheme operator. These provisions do not make these functions mandatory. However; where they are acted upon, it would be reasonable to expect that they would be part of the treasurers functions.

Due to the complexity and importance of village budgets, it may be advantageous to form an advisory panel of residents who otherwise do not wish to be members of the residents committee, but have expertise or an interest in financial matters.

Notwithstanding the treasurer (and any advisory panel set up for such a purpose) would be expected to take an integral role in discussions about the village budget, all members of the residents committee must also be part of discussions.

[See part 8 – Advisory panels](#)

[See part 9 – Village budget and financial statements](#)

6.2.7 Ordinary members of residents committee

Ordinary members may be responsible for specific tasks or projects depending on the needs of the village. They also may be part of an advisory panel that relates to any expertise or interest they possess.

6.3 Residents committee to keep residents informed

The RV Act provides or infers that the residents committee must keep residents informed about the workings of the committee. No aspect of a residents committee functions or operation must be kept confidential from residents. To enforce this, s 129A of the RV Act provides that the residents committee:

- must ensure accurate minutes are taken of the residents committee meetings and include relevant details
- must give a resident access to or a copy of the minutes of the residents committee meeting, if requested
- must keep the minutes.

It would also be prudent for a residents committee to undertake further dissemination of information to residents – for example:

- by providing a printed copy of the minutes on a community notice board available for such a purpose or if reasonable in the circumstances, to each accommodation unit
- by hosting the minutes on the community's web site
- by keeping a printed copy of the minutes in a folder in an easily accessible communal space (library, computer room etc)
- by distributing printed notices/flyers on important or special matters or by inclusion of information in a community's newsletter
- by calling periodic meetings of residents (monthly, bi-monthly or quarterly) where the committee provides a report.

In villages where numerous residents have difficulty attending meetings, for whatever reason, then residents can be informed by means of a periodic residents committee newsletter. While this does not allow for questions to be asked and answered, it does have the advantage of reaching every resident, whereas the meeting arrangement can only inform those who attend.

Even though s 129A of the RV Act is somewhat minimal as to the expressed requirements of the way residents are to be kept informed, it would be reasonable to expect that for the residents committee to function properly in accordance with the provisions of s 129 it is necessary, for notices to residents issued by the residents committee, to be placed on community notice boards. Note – in *Gilbert vs Jodaway* August 2005 – August 2006 QCCTRV 2 (8 August 2006), the Tribunal found that a residents committee may place on a village notice board a notice which relates to business of the committee without first obtaining the scheme operators consent.

6.4 Relationship of residents committee with village manager / scheme operator

Where a residents committee and village operator or manager work well together it can foster a positive and productive village culture and community.

However, the residents committee members must remain at arms-length and not become an extension of village management by becoming involved in village operation or for individual members being considered as management favourites.

Maintaining strong and healthy professional relationships can take consistent effort from all parties. Below are some suggestions on how the village manager or scheme operator and the residents committee can work together with a mind to maintaining a healthy ongoing relationship:

- Providing an invitation to the village manager to attend residents committee meetings (or parts of meetings that are relevant)
- Provision of a copy of correspondence such as residents committee newsletters, minutes, memos etc. to the village manager
- Establish a formalised process of communication –when working with the scheme operator or manager, it is good practice to confirm any verbal conversations in writing. Where the residents committee is writing to the operator with a specific query, it is recommended that the letter or email include a requested response date.
- Write a list of topics or even a script to keep the meeting with a scheme operator or manager on track and ensure that issues are not forgotten and will assist parties to communicate their thoughts more clearly.

It is important to remember that disputes and conflicts are part of everyday village life. It is expected that there may be differing opinions within a village community and effort should be made to ensure that all actions taken aim to prevent disputes or assist in their smooth resolution.

6.4.1 Disagreements between residents committee and scheme operator / village manager

In most situations, issues that arise between scheme operators and the residents committee can be resolved quickly and effectively if clear communication lines are established. The best way to avoid a dispute is to deal with the disagreement at an early stage before it escalates into a major issue.

However, if a dispute occurs and cannot be resolved easily a residents committee should refer to the village dispute resolution policy.

6.5 Casual vacancies on residents committee

A casual vacancy on the residents committee is created when:

- a) a member of the residents committee ceases to be a resident during their term of appointment;
- b) a member of the residents committee resigns by notice in writing to the secretary;
- c) a member is removed by special resolution under s 127 (2)(b) of the RV Act; or

6.5.1 Position holders

Where members of a residents committee elect position holders for the committee, casual vacancies for positions that arise during the term of the residents committee may be filled by way of an election among the remaining members of the committee.

Other methods of filling vacancies may be addressed by the residents constitution.

6.5.2 Ordinary members

Where there are vacancies of ordinary members on the residents committee but still sufficient members to form a quorum, the following paragraph provides one option to address the situation provided the residents constitution has clauses to give effect to the procedure.

The remaining members of the committee may fill vacancies by co-opting new members by calling for expressions of interest. New members join the committee immediately, may take part in discussions but are not permitted to vote until their membership is ratified at the next residents meeting.

7 Subcommittees of resident committee

7.1.1 Formation of subcommittee

Where a residents committee is established in a village, it is highly desirable that other groups in the village (e.g. social groups, sports groups etc), where appropriate be subcommittees of the residents committee – however, it is not compulsory to do so. Even though the former is desirable, the residents committee and residents generally must remain open-minded and flexible to allow groups to develop and operate in a way that is most suitable when considering the circumstances in their village. Further, the residents committee has no legislative authority to insist that new or existing non-subcommittee groups within the village become a subcommittee of the residents committee. Where it is considered appropriate to do so, residents may address these matters through the residents constitution, provided it is achieved without difficulty. For example, include in the constitution a clause similar to the following:

Any group within the village, that has annual income raised from residents of more than (\$XX), or requires payments of more than (\$XX/month) from the account held for residents funds, must be established as a subcommittee of the residents committee.

Section 127(3) of the RV Act provides authority for a residents committee to form subcommittees:

The residents committee may, subject to section 128 form subcommittees and decide a subcommittee's procedures.

Notwithstanding it is the residents committee which forms subcommittees and decides their procedures, s 128 of the RV Act requires that the residents committee must conform with the residents constitution when doing so. It follows that, the residents committee may only decide procedures other than those procedures already included in the residents constitution. It would be prudent to include appropriate clauses in the residents constitution which provide an environment of inclusiveness for all residents for the general operation of subcommittees.

Notwithstanding, the RV Act authorises the residents committee to decide procedures, it would be prudent for others (e.g. members of a subcommittee) to be also involved to some degree in the deciding of those procedures. There is nothing to prevent a residents committee from deciding that a subcommittee constitution is the appropriate way to implement procedures. However, this is considered an overly complicated option.

Unless there is very good reason otherwise, one model that works is as follows. Every resident in the village is taken to be a member of each subcommittee just by being a resident, whether they participate or not. However, where they do participate, they are taken to be ordinary members, if they are not elected to an executive position, within the subcommittee.

Section 127(3)(b) of the RV Act does not appear to strictly limit membership of a subcommittee to only persons who are defined by ss 9 and 10 of the RVA, as residents of the village. Therefore, it would be an advantage for persons living long-term in a village, with residents under a scheme operator approved arrangement, or as rental tenants, being included in the social affairs of the village by inclusion in relevant subcommittees. This may be implemented by one of the following:

- the residents committee deciding appropriate procedures; or
- the residents constitution including suitable provisions; or
- residents passing a suitable resolution at a residents meeting. (see Part 1.4).

A properly formed subcommittee may be named as the residents or the residents committee sees as appropriate – for example, a subcommittee for social functions may be named “social club” or “social group”.

The residents committee may instigate the formation of a subcommittee, or a group of residents with similar interests may put forward a proposal to the residents committee, and the residents committee agrees to, and arranges such formation.

A subcommittee is formed by the residents committee calling a meeting of residents who are interested in such formation where there is a need within the community of a village. It is envisaged that a meeting for this purpose be simpler than a full meeting of residents as the RV Act is silent on the matter. However, these matters may be provided for in the residents constitution or procedures set down by the residents committee.

As it is the residents committee that forms a subcommittee, it would be expected for the chairperson or another member of the residents committee to participate, at the least, in the meeting for the election of position holders. These matters may be included in the residents constitution or decided by the residents committee and included in the procedures set out for the subcommittee.

The RV Act has no provision for the scheme operator to be involved in the establishment or operation of subcommittees.

[See part 20.3 – Independent committees/groups](#)

7.1.2 Role of subcommittee

It is the role of a subcommittee to work for the benefit of all residents even though all residents may not participate in the subcommittee or the functions/activities organised by the subcommittee.

A residents committee may form a subcommittee for any purpose. It is the community and number of interested residents within the village that dictates what is required. Some examples of subcommittees may include:

- social (this may organise both large functions and smaller activities)
- sports / lawn bowls / golf / fishing
- bar operation
- craft
- workshop

There is nothing to prevent a subcommittee being formed for non-social activities, one such example is it may be formed to analyse the village budget where the residents committee consider that this is the appropriate way to approach this matter. Notwithstanding there is nothing preventing such formation, it is the view of ARQRV this is not the best way to approach having a group to analyse the budget. It is suggested that a working party or an advisory panel be established instead. In this way there is better control on who may be involved in the group.

7.1.3 Operation of subcommittee

The residents committee may delegate responsibilities it considers appropriate to a subcommittee; however, it would be prudent to gain the approval of residents for some matters.

Similarly to a residents committee, a subcommittee has no authority to make certain decisions on behalf of residents – for example, it is acceptable for a social subcommittee to decide which professional entertainers to hire for a function but, if expenditure from residents funds is required, residents must approve the expenditure (see below).

A subcommittee is not authorised to expend residents funds except that which has been approved by a majority of residents. This may be by way of:

- an approval for a single expenditure; or
- a budgeted amount has been approved for a certain period; or
- an ongoing working float which has been pre-approved. This would be included in the subcommittees procedures.

The subcommittee is responsible to the residents committee who are responsible to residents. They must adhere to the residents constitution and the subcommittee procedures that have been decided.

7.1.4 Content of procedures of subcommittee

The following are some ideas about what information may be contained in the procedures decided by the residents committee or set out in the residents constitution, for a subcommittee:

- a brief paragraph about the subcommittee, including:
 - the purpose/objectives of the subcommittee
 - the subcommittee is formed under the provisions of the RV Act
 - the subcommittee is formed by and reports to the residents committee
 - the subcommittee works for the collective benefit of all residents whether residents participate or not
 - membership of the subcommittee is open to all residents.
- the name and the role of the subcommittee

- composition and term of position bearers and handling of vacancies
- procedures for election of position bearers
- meeting procedures – for example, frequency of meetings, taking of and distributing minutes
- method of communication with scheme operator – for example, through the residents committee
- financial procedures – for example, a statement regarding residents funds belong to all residents collectively and must not be used solely for the benefits of some residents, financial reporting, handling of float and other money, banking, approval of expenditure and reimbursement of costs
- what other specific roles are within the group and how the role is established
- specialised procedures and possible responsibility to the scheme operator where the operation of the subcommittee is impacted by village policy or legislation other than the RV Act or– for example, a residents workshop or a village kitchen where residents assist is subject to WPH&S legislation and village WPH&S policy – therefore, relevant matters must be included in workshop procedures.

8 Advisory panels or working groups

An advisory panel or working group may be formed for any matter that is considered appropriate by either the residents committee or where desirable by residents who approve it at a residents meeting.

An advisory panel or working group is not a subcommittee contemplated by the RV Act and may be operated on a less formal basis but would still be subject to the procedures or terms of reference decided by the residents committee, the residents constitution or as decided by residents.

Establishment of an advisory panel or working group may be for a specific matter which will allow the panel to be disbanded after the matter has been addressed or it may be for an ongoing matter – for example, village budgetary functions of the residents committee.

An advisory panel or working group is responsible to residents and the residents committee. Therefore, the following is relevant:

- members of an advisory panel or working group are not permanent even though an advisory panel has been established for an ongoing purpose
- an advisory panel or working group should provide reports to residents and the residents committee within its terms of reference.

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9 Village budget and financial statements

The RV Act gives authority to a residents committee to undertake various financial functions relating to the operation of the village by the scheme operator where there is a need and the residents committee decides to do so.

Put simply, the residents committee are authorised to:

- ask for and be given copies of draft village budgets so that they may be scrutinised for compliance with the RV Act (s 93(3) & (4), s 99(5) & (5) and s 102A(4) & (5)
- ask for and be given a document that explains expenditure for providing each general service and any increase above the expected expenditure (s 112(1) to (4))
- require the scheme operator to attend a meeting of the residents committee held before the start of the financial year to discuss the draft village budgets (s 129B).

Requests made by a residents committee under the above provisions are at the discretion of the residents committee. It would be prudent for procedures be included in the residents constitution which ensure that the above functions are undertaken by the residents committee.

Notwithstanding, a subcommittee, an advisory panel or a working group (advisory group) has been established to analyse draft village budgets etc., the relevant provisions of the RV Act require the following:

- Draft budgets are requested by and given to the residents committee, this means given to all members of the residents committee; and
- The discussion with the scheme operator is conducted only at a residents committee meeting with all members of the committee invited (members of the advisory group may be invited to attend).

It is an advantage for one or more members of the residents committee to also be members of the financial advisory group. This provides authority to the advisory group to make requests provided under the RV Act, of the scheme operator.

The RV Act does not provide authority for the residents committee to delegate the matters above.

It would be prudent for all members of the residents committee at least to be advised and briefed by the advisory group of outcomes and advisory group discussions well before the meeting with the scheme operator. Better still, would be for all members of the residents committee to be invited to attend meetings of financial advisory groups.

ARQRV will provide assistance to residents committees relating to budgetary matters including scrutinising draft budgets for compliance with relevant sections of the RV Act.

The following resources, to assist residents committees undertake their discretionary financial functions provided by the RV Act, are available on the ARQRV web site

www.arqrv.org.au/information/for-residents-committees. If you do not have access to the internet or a printer you may contact the ARQRV office for a printed copy.

- Village financials

This document, in relation to village financials, aims to:

Section A – *assist residents better understand:*

- a) their rights; and*
- b) the obligations of scheme operators; and*
- c) the rights of residents committees; and*
- d) the application of the RV Act.*

Section B – *provide a practical guide for residents committees reviewing draft village budgets and financial statements.*

- *Financial statements and village budget timelines

This sets out the scheme operators' obligations and residents' entitlements in respect of having budgets and financial statements provided.

- *Running cost deficit

Discusses the special case when developing a retirement village where some general service charges are paid by the scheme operator and when the limitation to annual general service charge increases under the RV Act may not apply.

- Guidelines — Classification of expenditure

Gives detailed guidance to allocating costs between operational, maintenance, capital and scheme operator expenditure.

- General services charge compliance check spreadsheet and explanation video.

Provides a format for determining whether or not an annual budget complies with the CPI limitation to increased general service charges under s106 of the RV Act.

The resources mentioned above and marked with '*' are in the annexures at the end of this manual.

[See annexure 12 – Financial statements and village budget timelines](#)

[See annexure 13 – Notes about running cost deficit in developing village](#)

The printed Guidelines — Classification of expenditure are distributed, as a separate document, with this manual.

10 Residents funds

10.1 Expenditure of residents funds and residents committee to safeguard funds

Residents funds are all monies raised in any manner through activities organised by the residents committee or a subcommittee formed by the residents committee.

Residents funds belong collectively to all residents and not just those residents who raised the funds nor the residents committee.

Funds must not be used for the sole benefit of members of the residents committee, members of subcommittees or individual residents. All funds raised by the residents committee or subcommittee should be deposited into the collective residents fund bank account and then spent in accordance with a majority decision of residents or, the residents constitution where appropriate clauses provide to the residents committee, a predetermined allowance of spending. The limit may be adjusted from time-to time by a majority vote at a residents meeting.

Monies may be raised in various ways including through the operation of a bar, selling of raffle tickets, fairs or other social activities.

It is the responsibility of the residents committee to ensure that these residents funds are safeguarded and expended only in accordance with the wishes of the majority of residents as authorised by a vote at a meeting of residents.

The residents committee may, with the approval of residents, delegate the handling of some funds to a subcommittee by way of a float, always with the proviso that the residents committee remains fully accountable.

An item purchased with residents funds may be gifted to the scheme operator, if residents approve the gift at a residents meeting and the scheme operator accepts it. It would be prudent to minute the decision and seek written confirmation from the scheme operator that the item is accepted and is now the responsibility of the scheme operator for insurance and repair matters.

A majority of residents entitled to vote, and who vote may agree to expend residents funds for capital improvements to a community facility if the works are approved by the scheme operator even though expenditure on capital items or improvements of the village is the responsibility of the scheme operator (s 90B).

To clarify the above paragraphs:

- the residents committee is the administrator of the residents fund account
- residents funds are not residents committee funds
- expenditure of residents funds is not authorised by the residents committee, but rather by the residents by a majority vote or by relevant clauses in the residents constitution.

10.2 Ways of safeguarding residents funds

Ways of ensuring that proper financial records and procedures are maintained in relation to safeguarding residents funds may include:

- including financial practices in the documented procedures decided by the residents committee for its operation
- adopting, for residents funds, a recognised accounting system which is maintained in an appropriately safe method
- ensuring recognised financial procedures are drafted and adhered to for all subcommittees
- presentation of written financial reports to the residents committee
- presentation of written financial reports to meetings of residents on a regular basis
- undertaking regular stock takes where required – for example, bar stock
- ensuring there is no conflict between the financial activities of the village, and the residents constitution.

10.3 Donations of residents funds

A residents committee or social subcommittee raising money for a worthwhile charity is a splendid idea. However, it must be accomplished in an appropriate manner.

Fund raising on the one hand is a noble venture. On the other hand funds raised by residents working collectively under the name of a residents committee or a subcommittee, would be residents funds and should solely be used for the benefit of all residents.

Therefore, before activities of these sort are conducted, support and approval must first be given by residents for residents funds to be donated.

11 Village insurance guidelines for residents committee

ARQRV has prepared Insurance guidelines for residents committees and residents that provides general information about various insurance matters, including:

- material damage
- fidelity insurance
- voluntary workers
- public liability
- policy excess

It would be prudent for a residents committee or a working party, to make enquiries about insurance the scheme operator arranges, and investigate where necessary possible additional cover for residents who undertake voluntary work for the village. Residents must consider and decide whether or not to purchase additional cover.

[See Annexure 10 – Insurance guidelines for residents committees.](#)

ARQRV has also prepared some notes about volunteer work cover in the village.

[See Annexure 14 – Notes about volunteer work cover in the village.](#)

Both of the above documents are available from the ARQRV web site
www.arqrv.org.au/information/for-residents-committees/resident-committee-manual.

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12 Volunteer workplace health and safety for residents committee

The residents committee must always take steps to ensure activities of residents organised or overseen by the residents committee or subcommittees are in line with the village workplace health and safety policy or do not contravene associated laws – for example, it would be prudent, where there is a subcommittee for a residents workshop, that the residents committee, when deciding the subcommittees procedures, ensure WPH&S for the workshop is specifically addressed, even though the village may have an overall village policy in place.

Safe Work Australia has produced a guide on how work health and safety laws apply to volunteers, their rights and obligations. It outlines ways volunteers can meet their work health and safety duties and explains what volunteers can expect from the organisations they volunteer for.

Refer to The Essential Guide to Work Health and Safety for Volunteers on Safe Work Australia web site www.safeworkaustralia.gov.au.

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13 Residents committee meetings

13.1 Minutes of residents committee meetings

The following extract from the RV Act (s 129A) provides the minimum requirements for minutes of meetings of the residents committee and must be used as a basis:

129A Minutes of meetings

- (1) The residents committee must ensure full and accurate minutes are taken of each meeting of the residents committee.*
- (2) For subsection (1), the minutes must include at least the following particulars—*
 - (a) the date, time and place of the meeting;*
 - (b) the names of persons present and details of the capacity in which they attended the meeting;*
 - (c) issues discussed and how each issue was decided or dealt with;*
 - (d) details of correspondence, reports, notices or other documents tabled.*
- (3) The minutes must be presented at the next residents committee meeting for confirmation, and if confirmed, a member of the residents committee must sign the minutes as accurate.*
- (4) At the request of a resident, the residents committee must give the resident access to, or a copy of, the minutes of a residents committee meeting.*
- (5) The minutes of a residents committee meeting are to be kept by the residents committee for the retirement village and, if there is no residents committee for the retirement village, the scheme operator.*

Notwithstanding the RV Act provides a resident must be given access to or be given a copy of the minutes upon request, it would be prudent for the minutes to be provided in some way to all residents without a request.

[See parts 6.2.3, 6.2.4 and 6.2.5 regarding minutes](#)

[See part 6.3 – Residents committee to keep residents fully informed](#)

[See annexure 6 – Example contents of minutes of residents committee meeting](#)

13.2 Attendance by scheme operator / village manager at committee meetings

As dealing with the scheme operator / village manager is the main role of the residents committee ss 127 (4) and (5) of the RV Act provides the following about the scheme operator attending a meeting of the residents committee:

127 Residents committee

(4) If invited by the residents committee, the scheme operator may attend a residents committee meeting and address the members at the meeting.

(5) If the scheme operator attends a residents committee meeting, the scheme operator must leave the meeting after the scheme operator has addressed the members, or been given a reasonable opportunity to address the members, unless the residents committee invites the scheme operator to remain.

This is an ideal way for the scheme operator / manager to present a village report, be informed of any proposed residents functions, and to discuss issues or proposal raised by residents. These items would then be part of the minutes of the meeting.

13.3 Voting by residents committee members

Notwithstanding that a residents committee is not entitled to and does not make decision on behalf of residents, there will be instances where other decisions by voting are required by the committee – for example, voting on expenditure of residents funds where the residents committee has been granted authority to decide such expenditure by the residents constitution or by a vote of residents. In these cases, there must not be a restriction on any member of the residents committee to vote except in the case where a member has a conflict of interest.

[See part 5.6 – No restriction on nomination for election or voting by committee member](#)

14 Residents meetings

14.1 Annual meeting of residents called by the scheme operator

Section 131 of the RV Act provides:

(1) In each year, a scheme operator must call an annual meeting of residents ... as soon as reasonably practicable after the annual financial statements ...are available.

(2) However, the scheme operator must give each resident at least 21 days written notice to each resident.

(3) The annual meeting must not be held simultaneously with a meeting that must be held under another Act

Example – a meeting required under the Body Corporate and Community Management Act 1997

(4) The scheme operator must present the statements to the meeting.

There are penalties for a scheme operator that does not comply with the above provisions of the RV Act.

14.2 Other meetings of residents

14.2.1 Calling of meeting of residents

For meetings other than the annual meeting called by the scheme operator, s 132(1) of the RV Act provides that a scheme operator or a residents committee may call a meeting of residents by giving 14 days written notice to each resident.

There is nothing to prevent the holding of a residents meeting called by the residents committee (including a meeting to elect new members of the residents committee) immediately before or after a meeting called by the scheme operator to present the financial statements.

Where there are urgent circumstances s 132(2) of the RV Act provides the scheme operator or the residents committee may call a meeting of residents by giving each resident written notice of the meeting that is reasonable in the circumstances but not less than 2 days. Under the RV Act, **urgent circumstances** means circumstances in which it is not prudent to wait for the usual 14 days written notice of a meeting to be given.

When preparing the notice for a meeting of all residents you should consider the following points:

- when the notice must be given
- what will the notice contain
- how will the notice be provided to all residents
- what agenda items should be included on the notice

- ensure all other relevant information is included
- are there any other requirements of the residents constitution that need to be considered when writing the notice
- what action is proposed for the meeting (such as including relevant attachments)
- use plain language and an appropriate font so the notice is sufficiently clear to the resident
- include details so that any ordinary person without knowledge of a raised issue, can understand.

14.2.2 Agenda of residents meeting

Forming an accurate and clear agenda for meetings and including it as part of the notice will assist in providing residents with a better understanding of the purpose of the meeting and ensure the meeting is run effectively. An agenda for a meeting of all residents may include:

- approval of previous minutes by a formal motion
- chairperson's report
- treasurer's report
- an update on the activities of the residents committee
- reports of subcommittees
- discussion and update on the village's finances (including any money the residents committee may have collected from subcommittees) and/or spent (where they were approved to do so)
- moving of motions for the residents committee to undertake certain actions or projects
- any other business or general business (where residents are provided with an opportunity to ask questions, and raise and discuss issues).

It is an advantage to encourage residents to submit any questions in writing before the meeting to ensure that any information required to answer the question can be gathered prior to the meeting.

14.3 Proceedings at a residents meeting

14.3.1 Overview

The authority to call a meeting never includes entitlement to chair. A meeting of residents is a **residents meeting** for the purposes of the RV Act, whether called by the residents committee or the scheme operator, and whatever its purpose. This includes meetings called under s 131 of the RV Act to receive financial statements, and other meetings called under s 132 for whatever reason, either of which may be called by the scheme operator.

Consequently, all these meetings should be chaired by a resident and all counting and scrutiny of votes should be conducted by scrutineers appointed by the meeting chairperson. Any appropriate resident may chair a meeting of residents however, it is not unreasonable to expect the chairperson of the residents committee would undertake this function. Notwithstanding the previous statements regarding chairing of residents meetings, there are no restrictions under the RV Act which would prevent the scheme operator from chairing a meeting where the scheme operator has called the meeting and there is no resident willing to act as chair.

The person who chairs the meeting must oversee the orderly and courteous running of the meeting. The chairperson must ensure all residents are given an opportunity to express their views while at the same time keeping speakers on topic and from becoming too enthusiastic. The chairperson must be impartial and not exceed their authority—for example, a chairperson must not express strong views about a matter and must not participate too frequently in a debate. This obviously, would demonstrate their lack of impartiality.

Where a chairperson is personally involved or wishes to voice a particular view in a matter under discussion, the person must temporarily step down from the chair and only speak from the floor. In these cases, the vice chairperson would chair that part of the meeting.

Provided requirements of the residents constitution or the RV Act are met, the chairperson may run the meeting in as relaxed or formal a style as they consider appropriate.

It is important to regularly review the residents constitution, to ensure meetings are conducted correctly—for example, the number of residents which constitute a quorum to conduct a valid meeting.

14.3.2 Scheme operator at residents meeting

Under ss 132 (3), (4) and (5) of the RV Act, reproduced below, the scheme operator may attend and address a residents meeting under the in the following circumstances and under the stated conditions:

132 Other meetings

(3) The scheme operator may attend a residents meeting and address the residents at the meeting—

(a) if the residents meeting is called by the scheme operator; or

(b) if the residents meeting is called by the residents committee to vote on a special resolution; or

(c) if invited by the residents committee.

(4) If the scheme operator attends a residents meeting called to vote on a special resolution, the scheme operator must leave the meeting after the scheme operator has addressed the meeting, or been given a reasonable opportunity to address the meeting, and the special resolution has been voted on, unless the residents committee invites the scheme operator to remain.

(5) If the scheme operator attends a residents meeting at the residents committee's invitation, the scheme operator must leave the meeting after the scheme operator has addressed the meeting, or been given a reasonable opportunity to address the meeting, unless the residents committee invites the scheme operator to remain.

14.3.3 How to run an effective meeting

Good meetings generally come from planning, preparation and communication. Below is a list of considerations that may be of assistance when planning and holding residents meetings.

- set dates for meetings in advance
- choose a convenient and accessible location to meet
- send out reminders for meetings
- distribute the agenda with any supporting documents
- start on time
- finish on time
- follow the agenda and focus on the discussion
- keep the meeting in order
- allow all residents to express their views
- ensure there is enough time to discuss agenda items before making decisions.

14.4 Voting by residents

See part 16 – Special resolutions

14.4.1 Persons entitled to vote at a residents meeting

Section 133(1) of the RV Act expressly provides who may vote at a meeting of residents. This provision protects the rights of single occupants and aligns with the way fees and charges are collected (per accommodation unit). Below is an extract from the RV Act which provides requirements of who may vote.

133 Voting

(1) The following persons are entitled to vote at a meeting of the residents of a retirement village—

(a) either—

(i) 1 resident of each accommodation unit in the retirement village; or

(ii) if the residents have, by special resolution, agreed that each resident of the retirement village should be entitled to vote—each resident of the retirement village;

(b) while a former resident of an accommodation unit is required under section 104 to pay the whole or a proportion of the general services charges—1 former resident of the accommodation unit.

To clarify, each accommodation unit is entitled to only a single vote unless a special resolution has been approved by a vote of residents to allow each resident to vote. A simple explanation that supports one vote per accommodation unit is:

One ingoing contribution, one residence contract, one payment for total of general service charges, one reinstatement cost, one exit fee EQUALS one vote.

Note – only 1 former resident of an accommodation unit may vote while general services charges are being paid.

Below is an extract from the RV Act Dictionary which provides the meaning of *former resident*.

Former resident includes—

(a) a person who, personally or for someone else, entered into a residence contract to secure the person's or other person's right to reside in a retirement village; and

(b) (b) the former resident's personal representative.

14.4.2 Casting of resident's vote

The RV Act at ss 133(2) to (8) has provisions about how votes at a meeting of residents may be cast. The section is reproduced below:

133 Voting

(2) The resident's vote may be cast by—

(a) the resident; or

(b) a person who the resident has appointed by power of attorney; or

(c) any other person, other than the scheme operator, who the resident has appointed by signed notice to vote by way of proxy vote at a particular meeting stated in the notice.

(3) A signed notice under subsection (2)(c) appointing another person to vote by way of proxy vote must not relate to more than 1 meeting.

(4) A person may not hold more than 2 proxy votes for the meeting.

(5) A resident of a retirement village may cast a vote (postal vote) for a residents meeting by placing the resident's written vote in a container provided by the

scheme operator for the purpose in the common area of the village at least 24 hours before the time when the meeting is to be held.

(6) The scheme operator must provide a secure locked container for postal votes in the common area at least 24 hours before the time the meeting is to be held.

*(7) *The scheme operator must not open, or allow to be opened, the container before it is delivered to the chairperson of the meeting.*

(8) The scheme operator must deliver the container to the chairperson of the meeting immediately before the chairperson opens the meeting.

*Please contact ARQRV directly for further instructions about this procedure as it is difficult to achieve.

Before a vote may be taken at a meeting the quorum must be reached where a residents constitution has this provision.

Correct management of voting is essential. (Refer to the ARQRV model residents constitution, including the clauses regarding Attendance and Voting Register).

At the commencement of a meeting the chair or secretary must determine the number of votes entitled to be cast – that is, the aggregate of those residents present **and** entitled to vote, plus those voting by proxy, power of attorney and by postal ballot.

The one vote per accommodation unit clause in s 133 of the RV Act requires extra vigilance during vote counting.

Note, neither abstentions nor informal votes are taken into account in any part of the voting count because neither indicates a Yes or No. Therefore, when determining the number of votes required for a simple majority the calculation is based on the number of formal votes cast, and able to be counted.

Postal voting

A postal vote is where a resident/s cast their vote before the meeting at which the vote would have otherwise been taken. Reasons for postal voting may include:

- a resident being absent from the village for the meeting; or
- it desirable for reason of convenience to conduct the entire vote by postal voting rather than at the meeting.

Postal voting usually requires the ballot box being attended so that voting administration may be addressed – for example:

- ascertaining a person's entitlement to vote – ensuring only one vote per accommodation unit or one vote per resident, as applicable
- recording accommodation units for which a vote was made – resident signs beside their unit number

- checking and collecting proxy forms – authorised person signs beside the unit number of resident giving the proxy
- checking powers of attorney – authorised person signs beside the unit number of resident giving the authority
- residents place their completed ballot paper in the ballot box.

Voting by proxy

A proxy vote is where a resident who is entitled to vote gives written authority to another person.

The following points are relevant to voting by way of a proxy:

- a proxy notice may be given, by a resident who is entitled to vote, to any person (they do not need to be a resident) other than the scheme operator
- each resident of the same villa may be given proxy notices* – this is because the person voting by proxy is not voting under their own entitlement but rather, ‘carrying’ to the meeting, the other resident’s entitlement to vote.
- the authority to vote under a proxy must be given in writing by the resident giving the authority
- the authority to vote under a proxy may be in any written form, provided
 - the authority is signed, and
 - it is clear who is giving the notice; and
 - it is clear who is authorised and to which meeting the authority relates (a preprinted form may be provided but is not compulsory for it to be used)
- a proxy must relate to only one meeting or, where the voting is conducted by only postal voting, the same purpose
- *a person must not hold more than 2 proxies for the same meeting or, where the voting is conducted by only postal voting, the same purpose.

[See annexure 8 – Example Proxy form](#)

Voting under a power of attorney

The RV Act provides that a vote may be cast by a person who the resident has appointed by power of attorney. However, just because a person is authorised as an attorney it does not automatically mean they have the authority to cast a vote.

A power of attorney when relied upon for voting, must be assessed on its content by taking into account the following:

- every power of attorney document is revoked and ceases to operate immediately on the death of the principal

- an enduring power of attorney is not revoked on the impairment of the principal
- a general power of attorney is revoked on the impairment of the principal
- a power of attorney may grant to the attorney either general powers or limited powers
- a power of attorney may be limited as to the circumstances and occasions when it may be used – for example:
 - an enduring power of attorney may specify that the power may be used only when the principal has an impairment
 - a general power of attorney may specify that that the power may be exercised by the attorney only when the principal is overseas
- a properly certified power of attorney may be used as evidence in lieu of the original, that a person is an attorney for the principal

14.4.3 Voting methods at a residents meeting

There are various ways in which votes can be taken at a meeting. The most common methods are voting by a show of hands or by a poll (a vote in writing) conducted, submitted and counted at the meeting.

- **voting by card or paddle** – Each eligible residence (taking into account the 1 vote per unit provision where it is relevant) is provided with a voting card / paddle when they attend a meeting. When a matter is voted on, the eligible resident can use their voting card /paddle to vote for or against the motion. This method is effective in ensuring that only residents who are eligible to do so, are casting a vote.
- **voting by show of hands** – Voting by show of hands can be difficult to administer if there are numerous people voting at the meeting. The chairperson may ask for help (usually from the secretary, a committee member or another independent resident) to count the votes. It may be necessary for the chairperson to make a list of the names of people voting to assist in counting votes. This will ensure only eligible residents place a vote.
- **voting by division of the room into ‘for’ and ‘against’** – This has the advantage of being accurate and straightforward to administer. When considering this option, the chairperson should consider which residents are eligible to vote (taking into account the 1 vote per unit or each resident provision) and if any residents have mobility concerns.
- **voting by poll/ballot** – The advantages of poll/ballot voting include, the votes are made in writing, all people entitled to vote have an opportunity to do so and absentee votes can be counted. It is advisable to adopt this method where the issue is contentious, or the vote is for members of the residents committee.

It is important to remember to check the residents constitution for any reference to correct voting methods and to be open to varying methods should any reasonable concerns be raised by residents.

[See annexure 9 – Example Attendance and voting register](#)

14.4.4 What if a vote of residents at a residents meeting is tied?

Where a vote is tied, it is commonly viewed that the motion is lost. It may be possible that with further discussion and consultation among those present at the meeting, an amended motion could be prepared, and a second vote occur.

It is worthwhile checking the residents constitution to address this circumstance, and where it is not included, it may be beneficial to consider amending the rules to address what happens.

14.5 Minutes of residents meeting

The RV Act has no express provisions about the taking or keeping of minutes of meeting of residents. However, it would be prudent to follow the requirements set out for the minutes of meetings of the residents committee and include additional items where necessary.

It is usually convenient and customary for the secretary of the residents committee to scribe and distribute the draft minutes, as they would have the facilities necessary to do so, but this procedure is not mandatory.

A residents meeting may be recorded electronically rather than being hand scribed during the meeting, provided the residents agree to such recording.

The residents constitution may include clauses which address taking and distribution of minutes of residents meetings including procedures for managing electronic recordings.

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15 Special resolutions

15.1 What is a special resolution

There are instances when the RV Act requires a proposed action to be given prior approval of residents under a special resolution. Section 4 of the RV Act provides the following definition:

special resolution, at a residents meeting, means a resolution passed—

(a) at the meeting of which the residents are given at least 21 days written notice stating the intention to propose the resolution as a special resolution; and

(b) by at least three-quarters of the persons entitled to vote who vote—

(i) personally or by proxy at the meeting; or

(ii) by postal ballot.

To clarify, a special resolution means a resolution where 21 days written notice is given to all residents before the vote and the notice states the resolution is proposed as a special resolution. For the special resolution to be passed, **three-quarters or more of persons entitled to vote and who voted**, must approve the resolution.

A residents constitution must not contain clauses that attempt to change any aspect of voting for special resolutions where that aspect is already provided for under the RV Act. However, where a residents constitution has been adopted and it contains clauses regarding the number of residents required to be present at a residents meeting to form a quorum, this must be taken into account before a vote may be taken.

It is important to note that the percentage of votes required to pass a special resolution is calculated on the total number of residents who vote (i.e. total number of valid votes) and **not** the total number of residents that are entitled to vote. This is because not all residents may want to be involved in village affairs. In a village where less than three-quarters of residents entitled to vote are interested and involved in the affairs of their village, it would be impossible to pass a special resolution.

This is made clear by one of the objects, s 3(2)(c) of the RV Act, relating to residents participation, which states:

...to facilitate participation by residents, who want to be involved, in the affairs of retirement villages

Therefore, the affairs of the village regarding important matters are guided by those residents who are interested, involved and who vote.

To clarify the meaning of ‘by at least three-quarters of the persons’, numerous dictionaries define the phrase ‘at least’ to mean not less than or at the minimum. Therefore, exactly three-quarters is sufficient to approve the proposal. **Note - the RV Act provides for ‘at least three-quarters of persons’, NOT votes to pass a special resolution. Therefore, when the calculation is done, the result of three-quarters of persons must always be rounded up and expressed as a whole number of persons.**

The wording of a motion that is proposed for a special resolution vote must remain unchanged for the full period of notice, that is until voting commences. Where last-minute discussion takes place, for any reason, during the period of notice to improve or clarify the motion, fresh notice of the proposal with the wording of the new motion must be given to all residents.

15.2 When is a special resolution required?

A special resolution is required in the following instances under the RV Act:

- s 40D – Approval of closure plan
- s 90B – Residents jointly responsible for capital improvements requested at residents meeting
- s 106(3) – Increasing charges for general services (above CPI)
- s 108 – New services to be approved by majority of residents
- s 110 – Scheme operator must insure village (increase in insurance excesses)
- s 113F – Approval of redevelopment plan
- s 127(2)(b) – Residents committee (removal of a member)
- s 130(1) – Residents may make, change or revoke by-laws
- s 133(1) – Voting (change of entitlement to vote).

A residents constitution may require that certain actions other than those provided by the RV Act be approved by a special resolution – for example, to make changes to the constitution, if that is what the residents have decided to include in the constitution.

15.3 Procedures for a special resolution

15.3.1 Notice of proposed special resolution to residents

A notice of the resolution must comply with the following:

- the notice must be in writing
- the notice must be given to every resident (as far as reasonably practical – for example, it would be impossible to provide a notice to a resident who is on a cruise)
- the notice must be given 21 days or more before the vote is to be taken (including the date of the meeting)
- the notice must propose the resolution as a special resolution
- the notice must state the full wording of the resolution.

It would be prudent to include with the notice any explanatory memorandum that may be required.

See annexure 2 – Example Notice of meeting for special resolution

15.3.2 Voting on a special resolution

Only persons entitled to vote may vote on a special resolution.

Voting is not compulsory.

Persons entitled to vote may vote on a special resolution in the following manner:

- personally at the meeting
 - by proxy at the meeting:
 - any person, other than the scheme operator, may be appointed by signed notice to vote by proxy on behalf of a resident who is entitled to vote
 - a person must hold no more than two (2) proxy votes for the meeting).
 - by postal ballot
 - the scheme operator must provide a secure locked container for postal votes in the common area at least 24 hours before the time the meeting is to be held
 - *the container must not be opened before it is delivered to the chairperson of the meeting
 - the scheme operator must deliver the container to the meeting chairperson immediately prior to the chairperson opening the meeting.
- *Please contact ARQRV directly for further instructions about this procedure as it is difficult to achieve.
- a person who is an attorney of an entitled person under a valid power of attorney
 - even though the RV Act has not provided expressed authority for an attorney to vote on a special resolution, under law an attorney where authorised by the power of attorney may do anything the principal may legally do.

Note, for a proposal put forward as a special resolution to be approved, **three-quarters or more** of the persons who validly voted must be in favour. To clarify, three-quarters of persons entitled to vote (rounded up to a whole number of persons) who voted with a formal vote for the motion, is sufficient to carry the motion. It does not need to be more than three-quarters of persons.

A ballot paper is taken to be informal and is not included in the tally of the total number of votes, where:

- it completed incorrectly (left blank or the voters intention was not clear); or
- the ballot paper has writing on it that identifies the voter, in the case of a secret ballot

An example voting results calculation sheet is provided to assist with determining the result.

To overcome certain administrative issues associated with undertaking a postal or secret ballot at a residents meeting the following procedures may be adopted:

1. Meeting of residents called to discuss and resolve final wording of the motion put forward as a special resolution – 14 days written notice must be given to each resident unless there are exceptional circumstances and it is not prudent to wait for the usual 14 days (for example, in the case of a special resolution required under s 106(2)(a) of the RV Act for a general services charge that would usually need urgent attention).
2. The residents meeting is held with adequate discussion and wording of motion for the special resolution finalised by a simple majority vote of residents at the meeting.
3. Written notice is given to each resident as provided in part 15.3.1 above. In addition to stating voting will commence in 21 days', the notice must also state
 - a. when the voting will close.
 - b. when the ballot box will be available for voting (reasonable access must be given – for example, provide access for 5 days between 10 am and 1 pm).
 - c. how and when the result of the ballot will be announced (usually by a public announcement by the chairperson of the residents committee immediately following the closing of voting and counting, and by placing a notice on a notice board).
4. Ballot papers and instructions are distributed to residents entitled to vote (these may be distributed with the notice and/or made available by voting officials when the ballot box is accessible to residents).
5. After 21 days from the distribution of the notice, voting commences.
6. Votes are accepted by voting officials and entitlement for each resident who voted is recorded on the voting register.
7. Voting closes and the counting is conducted
8. Results announced.
9. Copy of the voting results is kept with other meeting records.

The above procedure takes somewhat longer to finalise the vote, but the wording of the motion remains fixed, plus the above is far easier to administer.

[See annexure 3 – Example Ballot paper for special resolution](#)

[See annexure 4 – Example Voting results for special resolution motion](#)

[See part 14.4 – Voting by residents at a residents meeting](#)

15.4 Role of scrutineers in voting procedures for a special resolution

[See part 16.2.8 – Role of scrutineers in voting](#)

16 Election of members of subsequent residents committee

16.1 Introduction

Where a residents committee is already established, and fresh committee members are to be elected, it is responsibility of the standing committee to call a meeting of residents for the election process. Section 132(1) of the RV Act provides:

...a residents committee of a retirement village may, by 14 days written notice given to each resident of the village, call a meeting of all the residents.

The chair of the residents meeting may be the chairperson of the residents committee or some other suitable resident.

The administration pertaining to the election may be undertaken by members of the standing committee especially the secretary. Other suitable residents may be called on to assist the secretary where there are large numbers of election papers to be produced.

The meeting to elect members of a new residents committee is conducted as any other residents meeting with the inclusion of procedures for voting for members. If more convenient, the voting may be conducted by postal voting prior to the meeting.

The election of residents committee members may be conducted in conjunction with other meetings including immediately before or after the annual meeting called by the scheme operator under s 131 of the RV Act where the scheme operator presents the financial statements to residents. To clarify, the meeting may be combined with any other meeting of residents provided it is called in accordance with the RV Act and conducted within the requirements of the residents constitution, where adopted.

16.2 Procedures for an election of members of residents committee

Note - Use these procedures as a guide only as some steps will not be relevant to all villages due to various factors including the size of the village and specific operating procedures within the village – for example, a village may not have a residents constitution or the village may only have a small number of residents.

There are various models that may be adopted for an election of a residents committee – two such examples are:

- residents are nominated for a particular position (chairperson, secretary, etc.) and filled by separate voting for each; or
- all members are first elected, and the committee members then vote among themselves to fill the various position.

The information provided in this part deals with the procedures for the latter model as it is a far simpler process to administer. The residents constitution should clearly address the relevant mechanism.

The procedures for a secret ballot to elect residents committee members may be broken down in to the following stages:

- preliminary preparation
- calling of meeting
- preparation of election papers
- voting and counting.

16.2.1 Preliminary preparation for an election of members of residents committee

It would be prudent for the preparation for an election of a residents committee to commence well before the 14 days notice required to call a meeting.

The secretary of the residents committee:

- refers to the residents constitution to confirm relevant procedures or other requirements relating to the election
- determines a timeline, in consultation with the residents committee, in relation to the date that has been set for the residents meeting and which satisfies the requirements of RV Act and the residents constitution
- produces a calling of meeting notice
- commences preparation of election papers, namely:
 - nomination forms for nominees
 - form for recording and displaying nominations
 - ballot papers
 - proxy forms
 - instruction for residents to vote whether personally, by postal vote or by proxy
- arrange appropriate persons (for example, resident JPs) to undertake counting of votes.

16.2.2 Calling of meeting for an election of members of residents committee

Under s 132(1) of the RV Act, the standing residents committee calls a meeting of residents by giving a notice to each resident which:

- is in writing; and
- provides at least 14 days notice of the meeting.

The notice should include all relevant details, including the purpose of the meeting, and how nominations are to be made. It may be an advantage in a large village to request a photo and a short bio to be provided with each nomination for display/distribution with the list of nominations.

The notice may be provided by conducting a letter drop to all residents door to door or via their letter box, or by email where the resident has provided an email address.

As a reminder to residents, it would be an advantageous to also attach a printed notice to a notice board provided for such a purpose.

16.2.3 Nominations for election as member of residents committee

The current secretary should make available, forms to enable nominations. The form must provide the following details:

- an appropriate heading
- name and unit number of resident being nominated
- name and unit of resident making the nomination
- name and unit number of seconder
- places for the various signatures.

Details of all nominations must be made available to all residents for a reasonable period after nominations have closed and prior to the election.

[See annexure 5 – Example Nomination form for member of residents committee](#)

16.2.4 Voting for members of residents committee

Section 133 of the RV Act provides some guidance regarding the procedures for voting at a residents meeting. This includes voting in an election of members of a residents committee.

It would be prudent to conduct the vote as a secret ballot, to offset any controversy, even though there are no legislative requirements to do so.

The procedure for voting must be seen to be as transparent as practical to offset any controversy.

For larger villages it may be a preferred option to accept postal votes in the period leading up to the residents meeting and then providing only the results at the meeting. In this case it would be advisable to cease the voting a couple of hours before the meeting so that the persons counting the votes may complete the tally.

Voting may be only conducted leading up to the meeting provided:

- the required period of notice is met; and
- the date for closing of nominations is on the calling of meeting notice; and
- the commencement of voting is after nominations closed.

[See part 14.4 – Voting by residents](#)

16.2.5 Voting papers for election of members of residents committee

[See annexure 7 – Example Ballot paper for election of member of residents committee](#)

[See annexure 8 –Example Proxy form](#)

16.2.6 How is it decided who is elected as members of the residents committee?

It is recommended that the voting method for residents committee members be as simple as possible. For example—where there are more nominees than the maximum number allowed to form the residents committee, the usual method of determining successful nominees would be, the candidates with the highest number of votes being elected. To clarify:

- the residents committee may consist of a minimum of 5 members and a maximum of eight; but
- there are nine nominees; therefore
- the eight with the most votes would be elected.

A residents constitution may include clauses that provide for different methods of determining the election.

16.2.7 Limited number of nominations

The RV Act is silent on procedures other than a residents committee where established must be established by an election conducted among themselves. Therefore, each member of the residents committee must be elected or approved by some means of voting by residents. In other words, residents cannot simply 'become' a member of the committee.

It would be prudent for a residents constitution to contain clauses that provide simple procedures to address situations where there are limited number of nominations.

One such method that may be considered by a village is provided in the model residents constitution.

[See annexure 15 –Model residents constitution with explanatory notes](#)

16.2.8 Role of scrutineers in voting

To keep the election procedures transparent as practical, it is prudent to:

- arrange JPs or some other small group of independent and reliable residents to be involved in the voting procedures – some persons role would be to count the votes while others would act only as scrutineers of those counting
- adopt tally sheets so residents counting the votes can sign the results with scrutineers countersigning.

16.3 Hand over from previous residents committee

It is advisable for the outgoing residents committee to meet as soon as practical with the incoming committee where necessary, to provide:

- highlight of any notable issues
- *a handover of documentation
- *explanation of any filing or accounting systems

*These matters will require special effort and attention by the secretary and treasurer.

16.4 Election of new position holders of residents committee

To keep procedures simple, the ARQRV suggests that only members of the residents committee and not position holders are elected by residents. Therefore, as soon as practical following the election of members of the residents committee, the new committee should hold its first meeting to among other things, elect position holders. It is preferable for the meeting to be held immediately after the meeting of residents with a simple election process chaired by an impartial resident who leaves the meeting after the election – for example, the outgoing chairperson.

This matter may be covered in the residents constitution.

16.5 Announcement of election results of residents committee

It would be evident to residents at the meeting who has been elected as members of residents committee. However, other residents and the scheme operator / manager must be notified of the new residents committee including position bearers as soon as possible following their election. It would be prudent for the new committee to, without delay, write to the manager to introduce themselves as the new committee. Attaching a notice to a community notice board would be an appropriate method to inform all residents of the full election results.

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17 Residents constitution

17.1 Development of residents constitution

A residents constitution is to complement Part 7 of the RV Act by providing additional and specific direction for the functioning of village bodies and the details for the operation of meetings etc.

Section 128 of the RV Act provides:

(1) The residents of a retirement village may, by a majority vote of the residents at a residents meeting adopt a constitution.

(2) The constitution—

(a) may not be inconsistent with this (RV) Act; and

*(b) must provide for matters prescribed under a regulation.**

(3) The committee must conform with the constitution.

*Note—notwithstanding s 128(2)(b), the Retirement Villages Regulation has no provision which prescribes matters for a residents constitution.

You will note in s 127(3) of the RV Act that, where a residents committee decide its own procedures, form subcommittees or decide subcommittee procedures they do these things subject to the residents constitution. That is, the residents constitution may already provide rules and procedures for the operation of the residents committee which would be complimented by those decided by the residents committee.

The ARQRV considers it prudent for residents to adopt a residents constitution, even though it is not mandatory, as it explains procedures and processes for the large number of matters which would not otherwise be covered by the RV Act – for example, the RV Act makes no mention of the need for a quorum, nor procedures covering the election of the residents committee, or specific preparations for residents meetings of residents, other than the giving of notice.

A constitution applies only to those referred to in the title and who have accepted that constitution by a majority vote. To clarify, some villages have implemented a residents committee constitution—however, such a document only applies to the residents committee, and therefore is of no consequence to the holding of residents meetings and the residents as a whole. Consequently, to be relevant to all residents, a constitution must be titled accordingly and agreed to by a majority of residents who voted.

A residents constitution, once adopted, applies to every resident who participates, from time-to-time and in any way, in the affairs of the villages which are provided for by the RV Act or by the constitution.

The generic content of a residents constitution would include how meetings of residents are conducted and the procedures for electing and voting for a residents committees, possible clarification a residents committee functions, and how the constitution may be amended or rescinded.

In simple terms, a residents constitution may include procedures for matters as residents see fit for their village, provided those procedures are not inconsistent with the RV Act.

Just because a residents constitution is silent on a particular matter, and therefore does not expressly prevent it, it does not automatically mean that conduct or action taken by a residents committee or one of its members is condoned or acceptable – for example, a residents constitution does not need to state that ordinary members and position holders, including the chairperson, have only certain roles as understood by the common rules relating to the operation of committees and therefore, must not act independently of the committee in the name of the committee. However, there is nothing to prevent clauses giving effect to this from being included in a constitution, where considered appropriate by residents.

Development of a residents constitution may be, but not necessarily, initiated by the residents committee. Initiation may also be made by residents or because of discussion at a residents meeting. Development of the constitution may be undertaken by an advisory panel set up for that purpose, and then put to residents for discussion and approval. There is a strong argument for the case that residents, among themselves, draft and adopt a residents constitution before the establishment of the residents committee.

17.1.1 Special note about quorum and voting

It should be noted, when drafting the quorum clause in a residents constitution, the count for a quorum must not include residents who vote by postal vote, under proxy or a power of attorney. To clarify, a quorum can be reached by counting only those present at the meeting and who are specified to be counted in the quorum clause.

17.2 Alteration of residents constitution

There are many and varied reasons why a residents constitution may require a proposal for its amendment. However, whatever the reason, the proposed amendment must be closely scrutinised to ensure it will not contravene the broad objectives and intentions, or expressed provisions of the RV Act.

Procedurally, to amend the constitution it must be done by way of a formal motion so that it may be voted on. To clarify, the voting is conducted on the motion to amend and not just the words of the amendment to the constitution even though the words of the amendment form part of the motion.

Voting procedures for amendment or rescission and replacement of a residents constitution should be included as clauses of the constitution. The procedures should include a long period of notice (e.g. at least 21 days) and, if requested and approved by residents, include an approval by a higher than usual majority.

The following are some notes extracted from “*Guide for meetings and Organisations*” by N E Renton that may be useful:

1. include in the notice of the meeting:
 - a. the wording of the motion to amend the constitution; **and**

- b. the full wording of the amended (both before amendment and after) or new clause; **and**
 - c. any explanatory notes.
2. the motion should be drafted on one of the following lines:
 - a. for an amendment of a clause—That clause (xxx) of the residents constitution be amended by deleting (XXXXXXXXXX) and inserting (XXXXXXXXXX)
 - b. for an insertion of a clause—That new clause 7A be inserted after clause 7
 - c. to adopt a new constitution—That the residents constitution for (XXXXXXXXXX) retirement village be rescinded and replaced by a new constitution, copy of which has been distributed to all residents. It is strongly recommended that in these cases that there be only a single motion to replace an existing constitution with a new constitution.
3. it is best to have a separate motion for each amendment unless they are related or dependent on each other
4. existing clauses in the constitution are not automatically renumbered when clauses are deleted or added unless there is a major alteration of numerous clauses and even then, the preferred manner would be to adopt a new constitution to avoid confusion.

17.3 Example of residents constitution

ARQRV has produced a model residents constitution.

The model constitution is simply somewhere to start for the development of a new constitution or something against which an existing constitution may be measured.

The object has been to include matters which are important in the context of retirement villages and other matters which may be considered optional by some villages.

Residents are welcome and encouraged to modify both the content and the language of the model constitution to suit the specific needs of their village provided no content of the amended constitution is inconsistent with the RV Act.

[See annexure 15 –Model residents constitution with explanatory notes](#)

The model constitution is available in MS Word format from the ARQRV web site www.arqrv.org.au/information/for-residents-committees/resident-committee-manual.

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18 By-laws in village

Section 130 of the RV Act provides residents may make, change or revoke by-laws. The following is an extract from the RV Act:

130 Residents may make, change or revoke by-laws

(1) The residents of a retirement village may, by special resolution at a residents meeting and with the agreement of the scheme operator, make, change or revoke by-laws for the village.

(2) The scheme operator's agreement must not be unreasonably withheld.

*(3) *A by-law may be made about the non-exclusive use and enjoyment of the village.*

(4) If there is an inconsistency between a by-law and a provision of a residence contract for the village, the provision prevails to the extent of the inconsistency.

*(5) **Subsection (3) does not limit the residents' power under another law to make, change or revoke by-laws.*

Notes about s 130 of the RV Act:

- There is nothing in the RV Act to prevent a scheme operator from:
 - making a proposal to residents about a new or existing by-law; or
 - being involved in discussions with residents about the by-law, where invited.
- The scheme operator must not introduce, change or revoke a by-law without approval of residents.
- *A by-law may be made only about the use or enjoyment of a communal facility
- **the RV Act does not restrict a by-law being made under another Act about exclusive use and enjoyment of the village – for example, where a village is also the subject of a community titles scheme under the *Body Corporate and Community Management Act 1997*, by-laws including a by-law which grants exclusive use, may be made under that Act.

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19 Dissolution of residents committee

This part explains procedures to be adopted where a residents committee 'dissolves'.

Notwithstanding the use of the word 'dissolve', the residents committee is an entity without perpetual succession (see part 3.6 – Residents committee as an entity). As such, it does not need to dissolve but rather it simply may not exist at a point in time. As no dissolution is required residents nor the residents committee do not need to take any formal or direct action in relation to 'dissolving'.

To clarify the above, at one point in time a residents committee may exist but at another time for reasons stated below, it may not. Further, there is no need pass a resolution or take similar action to 'dissolve' a residents committee.

Two common instances where a residents committee 'dissolves' are as follows:

- Following the term of the previous residents committee members there is a lack of interest by residents in forming a residents committee as shown by insufficient nominations for the scheduled election of a fresh committee; or
- During the term of a residents committee, for any reason, casual vacancies cannot be filled and overall membership falls permanently below the quorum specified in the residents committee procedures or in the residents constitution. Hence, the committee can no longer function as an entity.

The procedures suggested below are similar to those adopted by some other volunteer committees in caretaker mode.

Residents must make decisions, where relevant, about at the least the following matters:

- how are residents and the scheme operator to be informed
- how to deal with remaining residents funds
- who are to be signatories of residents fund bank account
- how will income of former subcommittees be collected and banked
- how will incoming invoices be paid
- what happens to subcommittees
- compiling and presenting of financial reports to residents meetings
- who will organise the calling of a meeting of residents for the purpose of electing a new committee
- how long before another election will be attempted (interested residents may attempt to establish a residents committee at any time in the future).

All expenditure of residents funds must be approved by a majority of residents at a meeting.

It would be prudent for a residents constitution to address procedures under caretaker mode.

20 Other committees or groups established under other than the RV Act

20.1 Body corporate under the *Body Corporate and Community Management Act 1997*

This part does not detail the role of a body corporate or body corporate committee in a retirement village. It focuses on the role of a residents committee where one has been established in conjunction with a body corporate.

20.1.1 Introduction

In some instances, a retirement village registered under the RV Act is on land which is also a community titles scheme established under the *Body Corporate and Community Management Act 1997* (BCCM Act). In these cases, when the subject land is subdivided and registered under the *Land Title Act 1994*, the legal entity of body corporate for that scheme is established, with all lot owners in the scheme as members. A committee for the body corporate (body corporate committee) must be elected or a body corporate manager is engaged to perform the functions of the body corporate committee. Sections 94 and 100 of the BCCM Act give the body corporate and the body corporate committee authority to deal with specific matters. Additional functions may be given to either of these two bodies under a community management statement.

Notwithstanding such villages have a body corporate and a body corporate committee, residents may also establish a residents committee and subcommittees under the RV Act to address other matters not provided for as a function of a body corporate. The establishment of a residents committee is not mandatory.

It is important for the body corporate committee and for the residents committee, if established, to understand their different roles and also each other's role in a retirement village. Neither committee is subservient to the other.

Section 4 of the RV Act provides:

If there is an inconsistency between this Act (RV Act) and the Body Corporate and Community Management Act 1997 in relation to a person's rights and obligations under a retirement village scheme, this Act (RV Act) prevails to the extent of the inconsistency.

Note – the above provision relates to only a person's rights and obligations under a retirement village scheme. To clarify, the RV Act does not simply prevail in all matters but rather both Acts are to work in conjunction with each other, except for matters relating to a person's rights and obligations under a retirement village scheme.

20.1.2 Role of a body corporate committee (or body corporate manager) in retirement village

Among other things, the BCCM Act expressly requires that the body corporate committee be involved in the development of the budgets for the development and administration of the administrative fund and sinking fund budgets and management of the body corporate insurance.

It is important to note that body corporate responsibilities do not extend to an involvement in the budget for charges for general services.

Residents in a freehold village can be adversely affected financially where the body corporate committee (made up of lot owners (residents)) do not follow the guidelines issued by the Body Corporate and Community Management Office.

Even though scheme operators in some cases may deal with the body corporate committee as a pseudo residents committee about matters on behalf of residents on day-to-day running of the village, there is no legislative requirement for the scheme operator to do so. As such, it is recommended to establish a residents committee because only a residents committee is authorised under law to deal with the scheme operator on behalf of residents.

More information about the role of a body corporate and a body corporate committee may be found on the Body corporate and community management area of the Queensland Government web site.

20.1.3 Role of residents committee where there is a body corporate

In a village where there is a body corporate, a residents committee, where established, would have some of the same roles as a residents committee in village without a body corporate, namely:

- dealing with the scheme operator on behalf of residents about day-to-day running of the village and any complaints or proposals raised by the residents
- calling for and conducting discussions with the scheme operator about the draft general services charge budget and maintenance reserve fund budget which provides funds for the repair and maintenance of capital items on lots owned by the scheme owner and is separate from the sinking fund
- forming subcommittees
- safeguarding residents funds
- calling meetings of all residents for purposes other than those under the BCCM Act, that is, meetings other than that of the body corporate.

As can be seen from the points above, residents in a village which does not establish a residents committee may be significantly disadvantaged both financially and personally even though there is a body corporate committee.

Body corporate funds which comprise the administration fund and the sinking fund and how they are spent are not the business of the residents committee.

Facilities and amenities are nearly always on lots owned by the village owner or operator. It is in respect of those facilities etc. that even freeholders are required to pay, as are leaseholders, a general services charge fund and into a maintenance reserve fund. These payments and funds, and the way in which they are spent, are certainly the business of all residents, including freeholders wearing their residents' hats as distinct from their lot owners' hats. Therefore, they are not the business of the body corporate committee.

20.1.4 Both leasehold and freehold in one village

It is not uncommon for a village to have accommodation units held under both freehold tenure and leasehold tenure, which can lead to confusion. Within these villages there is often conflict, regarding division of responsibilities, between a residents committee, established under s 127 of the RV Act (an elective decision made by residents which represents all residents in the village); and a body corporate committee which is a mandatory requirement under the BCCM Act, and which represents only the freehold lot owners component in the village. In other words, the body corporate or body corporate committee should have no input into matters regarding the leasehold component of the village.

20.2 Incorporated associations

While there are numerous and excellent reasons why it is advisable to establish a residents committee as provided by the RV Act, there is nothing to prevent residents choosing to establish an incorporated association.

The ARQRV strongly advises against incorporation and provide various reasons in the following parts.

20.2.1 Brief comparison of the relevant Acts

The objectives of the two Acts which are relevant to this part namely, the *Associations Incorporation Act 1981* (AI Act), and the RV Act diverge remarkably.

The RV Act

The provisions of the RV Act and subsequent refinements (amendments) have been drafted after significant consultation with the industry, government bodies, peak bodies and residents, specifically for the establishment and operation of retirement villages, including voluntary participation by residents.

The RV Act is one of inclusiveness for all residents shown by one of its objectives:

‘to facilitate participation by residents, who want to be involved, in the affairs of retirement villages’

Inclusiveness of all residents who wish to be involved is considered a significant benefit to the life and welfare of residents in a village.

To make residents involvement in village affairs less onerous, the RV Act was purposely drafted with minimal requirements and in some cases elective procedures.

The RV Act provides authority for the residents committee to deal with the scheme operator on behalf of residents about the day-to-day running of the village and any complaints or proposals raised by the residents.

Further, the RV Act has specific provisions relating to financial matters (formal discussions with the scheme operator about draft budgets and explanations of expenditure for providing general services) that only a residents committee are authorised to undertake.

The above aspects of the village can only be addressed successfully or in some cases even at all by only a residents committee.

Associations Incorporation Act 1981

The AI Act was drafted with an intent of exclusiveness for members. It provides for and promotes a culture of benefit to only members of the association.

The powers of an incorporated association granted by the IA Act promote the conduct of business activities.

The Act has many restrictions, and complex and onerous procedures relating to the establishment and operation of an incorporated association.

In several villages, residents have decided to become an incorporated association, under the AI Act; often because it was thought that some sort of special legal indemnity was bestowed upon the committee by such incorporation. However, the IA may be sued in its corporate name.

Lastly, most functions that may be undertaken by a residents committee are not available to a committee for an incorporated association.

20.2.2 Comparison of specific aspects of incorporated associations and residents committees

Points of consideration	Where an incorporated association (IA) is established under the <i>Associations Incorporation Act 1981</i>	Where a residents committee (RC) is established under the <i>Retirement Villages Act 1999</i>
Establishment	an IA must pay for and undertake the process of incorporation	it is a no cost and simple process to establish a residents committee
Rules	it is mandatory for an IA to have rules	a residents constitution is optional to facilitate simplicity
Roles of position holders of the committee	the AI Act list provides specific and somewhat onerous functions on each position holder	the RV Act allows a RC to decide its own procedures
Membership	membership is not automatic but rather residents must be a member the association may charge membership fees a resident cannot be required to accept an automatic membership	all residents are members of the residents body without anything other than simply being a resident

	<p>of an IA even though the AI may attempt to grant automatic membership to all residents in an attempt to overcome some of the differences between residents entitlements and IA members entitlements</p> <p>in any village which has undergone incorporation and does not enjoy 100% membership (and adequate support) from the resident body, the IA perceived authority is to no effect</p>	
Participation of residents	only association members are entitled be involved in the “business” and activities of the association	all residents are entitled to participate in all aspects of village life and activities
Attendance at meetings	only members of an IA may attend meetings	no resident can be excluded from a meeting of residents called by a RC or be prevented from providing input into issues of relevance to residents
Voting	only members of the IA are entitled to vote	all accommodation units are entitled to vote
General services charges budget and maintenance reserve fund budget	<p>a committee established by the IA Act must not simply call itself the residents committee</p> <p>an IA has no authority to request the scheme operator to attend discussions about village budgets</p>	only a RC has authority to request the scheme operator to attend meetings to discuss village budgets and to request written explanation of expenditure of for providing general services
Monies raised by residents	There is nothing to prevent funds being expended for the benefit of only IA members	<p>all residents may be involved in raising funds from social activities, raffles, etc. which:</p> <p>– may only be used for the benefit of the residents body ie all residents</p>

		<p>– residents funds are safe guarded and overseen by the RC which must keep residents fully informed</p> <p>– a RC must not spend any funds unless authorised by residents.</p>
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20.3 Independent committees/groups

As stated in part 7 of this manual, only a residents committee may form subcommittees that are considered subcommittees for the purposes of the RV Act. However, there is nothing to prevent the formation of other committees or groups (whatever called) within a village community who organise themselves and operate as they consider appropriate.

Formation of independent committees or groups is far from ideal **particularly groups that raise funds from activities involving all residents**, as the following matters may cause dissatisfaction and dissention among the village community:

- their operation may not be transparent or inclusive of all residents
 - residents may consider funds raised by that group from all residents pockets, as being used inappropriately — for example, for the benefit of only a few residents
 - funds raised from all residents through the operation of such groups would not have the safeguards of the financial procedures decided for a properly formed, and residents committee overseen, subcommittee.

Notwithstanding the comments above, the formation of small simple groups within the community would be more than acceptable provided they do not utilise communal facilities for their exclusive benefit or enjoyment — for example, a card or games group is acceptable, but they must not take over the communal coffee shop and exclude others from using it. It would also be prudent for such groups to allow all residents to participate in their activities.

A scheme operator is not required to concede to any requests made by an independent committee/group that a residents committee is authorised to make, as the group does not have any authority under the RV Act.

An independent committee/group must not simply call itself or morph into a pseudo residents committee.

[See part 7 — Subcommittees of residents committee](#)

21 Matters raised by residents to residents committee

21.1 Residents committee to address all matters

Section 129 of the RV Act provides that:

The function of the residents committee is to deal with the scheme operator on behalf of residents about the day to day running of the village and any complaints or proposals raised by the residents.

Every issue, complaint or proposal raised, by a resident or a group of residents, to the residents committee must be addressed by the residents committee and referred to the scheme operator so the matter may be properly addressed with a view to have a resolution or some other action. The residents committee does not have any authority to decide a matter and unreasonably decline to make representation on behalf of a resident or a group of residents, to the scheme operator.

Many matters raised to the residents committee – for example, matters that affect residents as a whole, will require referral to residents at a residents meeting for proper discussion and voting.

Note – residents committee must not become involved with issues between residents.

There is no requirement that issues of, or proposals by, residents must be submitted to the residents committee. Every resident has an entitlement under their contract which allows each resident to individually and directly approach the scheme operator on any matter related to their contract even where a residents committee has been established.

In the absence of a residents committee, the RV Act makes no provision for individual residents having a right to approach the scheme operator on behalf of other residents.

21.2 Difference between complaint by resident and retirement village dispute

To assist with understanding of this part, the following is provided to distinguish between a *complaint* and a *retirement village dispute*.

It is considered a **complaint** would be any problem or issue about any matter, trivial or significant, raised to the scheme operator or the residents committee whether or not the matter is provided for under the residence contract or the RV Act.

The complaint may be escalated by a resident to a **retirement village dispute** (dispute) where the complaint has not been resolved to the satisfaction of the aggrieved resident and the matter is provided for in ss 21 and 134(2) of the RV Act. The resident may peruse the remedies under the provisions of Part 9 of the RV Act. To clarify, a complaint may only become a dispute where it falls under the definition provided by the RV Act – that is, where the complaint is about a parties' (a scheme operator or a resident) rights and obligations under either (a) the residence contract, or (b) the RV Act, including Part 9.

21.3 Residents committee advice to residents with complaints or issues

If a resident or group of residents has a complaint about the village, the following procedure is suggested as a course of action –

1. Firstly, the resident should refer to their residence contract as many issues may be resolved by simply reading those documents.
2. Following that, the resident should deal with the village manager directly by putting the issue or complaint in writing.

The letter or email, should include a statement in the final paragraph that under s 135(2)(f) of the RV Act the operator must respond in full within 21 days (Note – only written correspondence must be replied to in 21 days;

3. Where the residents wishes to further pursue the matter, they may refer it to the residents committee to be dealt with on their behalf with the scheme operator.

Where the residents committee is authorised by a resident to write to the scheme operator as their representative, ss 135(2)(f) and 135(3) of the RV Act obligates the scheme operator to provide a full written reply to the residents committee within 21 days.

Note – the residents committee must not become involved with issues between residents.

4. If the aggrieved resident or residents committee fail to resolve the matter to the satisfaction of the resident utilising the above procedure, and the matter concerns the residents rights and obligations under their residence contract or the RV Act, and if warranted, the resident may adopted the formal disputes procedure provided for by ss 153 to 210 of the RV Act.

Where the resident is a financial member of ARQRV the resident may ask for the association's assistance at any stage.

21.4 Retirement village disputes

In general terms, retirement village disputes are not about the day-to day running of the village but rather about the parties' rights and obligations under the resident's residence contract or the RV Act and has not been resolved to the satisfaction of the aggrieved resident (or residents) or the scheme operator, after perusing other avenues¹, and may be either:

- disputes between residents; or
- disputes between a resident and the scheme operator.

¹ For example, a resident may have already utilised, without success, the neighbourhood mediation service provided without charge by the Queensland Government where they have a dispute with a neighbour.

The RV Act provides the following definitions in the following sections:

Section 21

21 What is a retirement village dispute

(1) A retirement village dispute is a dispute between a scheme operator and a resident of a retirement village about the parties' rights and obligations under the resident's residence contract or this Act.

(2) For subsection (1), a retirement village dispute includes a dispute about compliance by a scheme operator or a resident with this Act, whether or not a particular failure to comply is an offence against this Act.

(3) In this section—

resident includes a former resident.

Note—

In some provisions of this Act there is no means of enforcement apparent on the face of the provision but enforcement by the dispute resolution process is available because of this section.

To clarify the above note – the dispute resolution process is available for various matters in the RV Act even though it may not be stated in the section.

The RV Act does not provide or suggest that a residents committee enter into or attempt resolution of a retirement village dispute. Rather, residents of a village individually or collectively may be parties to a dispute and undertake the dispute resolution procedure.

Of course, the RV Act also gives authority to the scheme operator to utilise the remedies for a retirement village dispute in Part 9 of the RV Act where the scheme operator has a dispute with a resident.

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22 Role of ARQRV committee and ARQRV membership support officers in village

22.1 Role of ARQRV committee

22.1.1 Who is ARQRV

The Association of Residents of Queensland Retirement Villages (ARQRV) was formed in 1992 and is a registered charity under the *Incorporated Associations Act 1981*. Our aim is to represent the interests of residents in retirement villages to governments and village operators. We see a need for a strong consumer protection organisation with a sound knowledge of retirement village legislation, residents' contracts and the retirement living industry. The ARQRV, after more than 25 years, retains a focus on consumer protection, and is an advocate on behalf of residents to examine, advise and/or act upon matters referred to us by any financial member.

22.1.2 What ARQRV does

ARQRV assist and advise members in disputes with the village operator whenever there has been a breach of the RV Act or of their contracts. However, we do not become involved in disagreements between residents or between residents and a residents committee. We try to resolve issues through an informal mediation process and we may assist members by writing a letter or suggesting the best approach to resolve the situation. If an issue is not able to be resolved, we will suggest a formal mediation process and, if necessary, progress to adjudication through the Queensland Civil and Administration Tribunal (QCAT).

ARQRV acts to inform members of their rights as village residents in terms of their contracts and the RV Act and provides ongoing information about issues that are significant to the retirement village lifestyle.

ARQRV acts as an advocate and provides support on issues between members and the village operator in relation to breaches of both the *Retirement Villages Act 1999* and the individual Public Information Document/Residence Contract.

ARQRV will continue to provide support and assistance to the family once a member leaves the village through death or moving to a nursing home. We will work with families on the issue of exit entitlements and reinstatement costs.

22.1.3 How ARQRV works

ARQRV is a not-for-profit organisation, run by volunteers who are themselves residents in a retirement village. A committee is elected annually at a general meeting of members held in Brisbane. ARQRV have members throughout Queensland and our aim is to provide a strong voice for residents in every retirement village in Queensland.

Regular electronic updates (eConnect) are circulated by email and three print newsletters (ARQRV Connect) are distributed annually. ARQRV website, www.arqrv.org.au provides up-to-date information and articles on relevant issues affecting retirement village residents and various fact sheets relating to specific topics.

22.2 ARQRV membership support officer in village

22.2.1 Role of ARQRV membership support officer

ARQRV is represented by a network of membership support officers (MSOs) each based within a retirement village. MSOs are the day to day face of ARQRV assisting with membership and referrals to the ARQRV committee.

The role of an MSO is essentially to raise the profile of ARQRV within their retirement village and to refer members who have an issue with the scheme operator of the retirement village, to the ARQRV committee. MSOs make themselves known to new residents in the village and pass on information about the benefits of being part of an organisation devoted to helping residents in Queensland retirement villages.

The main duties of an MSO are to:

- promote the services of ARQRV to new and existing residents
- assist with new memberships
- assist with existing membership renewals
- provide proper reports of membership monies submitted to the ARQRV office
- refer members who have an issue with the retirement village scheme operator, to the ARQRV committee

22.2.2 ARQRV membership support officer eligibility

The role of an MSO is a voluntary position. Only residents with an email address are eligible to take on this position as all ARQRV communication with MSOs is via email. It follows, therefore, that should you change your email address we would appreciate it if you could advise ARQRV as soon as possible.

Villages with ARQRV members can choose an MSO or one may be recruited by the ARQRV Committee. The person chosen as an MSO must be a resident of the village and must also be a financial member of ARQRV. Village staff are not eligible to be an MSO.

There is no reason why an MSO may not be a member of the residents committee. In fact, there are many villages where the MSO is encouraged to be a member or is invited to attend meetings as a guest.

22.2.3 Membership support officer resources

All resources required to undertake the role of MSO are supplied by ARQRV. This includes, brochures, membership forms, newsletters, laminated poster, list of current village members, MSO badge, receipt book, reply-paid envelopes, personalised introduction letter and an MSO Multiple Payment form.

22.2.4 Referral of issues by liaison officer to ARQRV committee

Residents in a village will often approach the MSO with an issue in the village. If the resident is not a member of ARQRV, suggest they join ARQRV or search the ARQRV website for some helpful information.

Should a member approach an MSO with an issue, the MSO must advise the member to contact the ARQRV Committee direct on 0437 906 074 or by email.

Note – It is not the MSO role to provide advice to members on any issues or disputes within the village on behalf of ARQRV. To do so would be to overstep the requirements of the role and should any legal action occur as a result of this advice it will be the personal responsibility of the MSO to defend themselves. The ARQRV committee has taken out professional indemnity insurance only for ARQRV committee members and have open access to legal advice as well as ongoing input from the Department of Housing and Public Works who implement and oversee the delivery of the RV Act and its amendments.

ARQRV does not deal with issues between residents, or between residents and the residents committee.

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23 Annexures

Annexure 1A – *Example Notice of meeting to establish residents committee

Annexure 1B – *Example Notice of preliminary meeting to establish residents committee

Annexure 2 – *Example Notice of meeting for special resolution

Annexure 3 – *Example Ballot paper for special resolution

Annexure 4 – *Example Voting results for special resolution motion

Annexure 5 – *Example Nomination for election of member of residents committee

Annexure 6 – Example Contents of minutes of residents committee meeting

Annexure 7 – *Example Ballot paper for election of member of residents committee

Annexure 8 – *Example Proxy form

Annexure 9 – *Example Attendance and voting register

Annexure 10 – Insurance guidelines for residents committee

Annexure 11 – Village financials (*removed May 2020*) – *available on the ARQRV web site
www.arqrv.org.au.*

Annexure 12 – Financial statements and village budget timelines

Annexure 13 – Notes about running a cost deficit in developing village

Annexure 14 – Notes about volunteer work cover in the village

Annexure 15 – *Model residents constitution with explanatory notes

Documents marked with '*' are available from the ARQRV web site in MS Word format for modification and use by residents –www.arqrv.org.au/information/for-residents-committees/resident-committee-man

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23.1 Annexures 1A & 1B – Example Notices of meeting to establish residents committee

Annexure 1A – Notice of meeting for election of residents committee (available in MS Word)

[Name of Village]
Notice to residents
Establishment of residents committee
(s 127 Retirement Villages Act 1999)

**All residents are notified of
and
invited to participate in
the election of members of a residents committee**

Venue.....

On at
(day and date) (time)

Purpose – to establish a residents committee by the election of committee members.

Nominations – nomination forms are located in the library (*or wherever nomination forms are located*) – completing the following details and place the form in the box provided:

- name, unit and signature of nominee
- name, unit and signature of the nominator
- name, unit and signature of the resident seconding the nomination

Nominations close –
(day and date)

We, the undersigned residents consider it beneficial that our village **establish a residents committee** to represent village residents in dealings with the scheme operator, as provided for under the *Retirement Villages Act 1999*.

This meeting is called with the express purpose of **establishing a residents committee** under the *Retirement Villages Act 1999* . It is not about deciding whether we want a residents' committee.

Resident 1..... Unit

Resident 2..... Unit

Additional residents details as required.

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Annexure 1B – Notice of preliminary meeting for election of residents committee
(available in MS Word)

[Name of Village]
Notice to residents

All residents are notified of
and
invited to participate
in
discussions and decisions relating to matters
for
establishing a residents committee

Venue.....

On at
(day and date) (time)

Purpose – to discuss and decide at least the following matters with a view to establishing a residents committee.

- **Composition of residents committee**
- **Timeline for the election process**
- **How the election is to be conducted**
- **How nominations are to be made**
- **Allocation of tasks relating to the election**

We, the undersigned residents consider it beneficial that our village **establish a residents committee** to represent village residents in dealings with the scheme operator, as provided for under the *Retirement Villages Act 1999*.

This meeting is called with the express purpose of deciding matters relating to **establishing a residents committee** under the *Retirement Villages Act 1999* . It is not about deciding whether we want a residents committee.

Resident 1..... Unit

Resident 2 Unit

Additional residents details as required.

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23.2 Annexure 2 – Example Notice of meeting for special resolution

(available in MS Word)

<p>[Name of Village] Notice of residents meeting Special resolution</p>
<p>Purpose To discuss and vote on the following motion as a special resolution:</p>
<p><i>That</i></p> <p>.....</p> <p>.....</p> <p style="text-align: center;"><i>(motion in full)</i></p>
<p>Venue</p>
<p>On at</p> <p style="text-align: center;"><i>[Day and date]</i></p> <p>(must be at least 21 days from when this notice is given)</p>
<p>Explanation of motion</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>For a special resolution to be passed at least three-quarters of the persons entitled to vote and who vote must agree to the motion.</p>

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23.3 Annexure 3 – Example Ballot paper for special resolution

(available in MS Word)

<p>[Name of Village] Ballot paper for special resolution</p>	
<p>Motion</p>	
<p><i>That</i></p> <p>.....</p> <p>.....</p>	
<p>An explanatory memorandum regarding the motion is provided on the meeting of residents notice.</p>	
<table border="1"><tr><td><p><u>In favour</u> <i>circle</i> YES</p><p>or</p><p><u>Against</u> <i>circle</i> NO</p></td></tr></table>	<p><u>In favour</u> <i>circle</i> YES</p> <p>or</p> <p><u>Against</u> <i>circle</i> NO</p>
<p><u>In favour</u> <i>circle</i> YES</p> <p>or</p> <p><u>Against</u> <i>circle</i> NO</p>	

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23.4 Annexure 4 – Example Voting results for special resolution motion

(available in MS Word)

Keep this form with the minutes of the meeting

[village name]

Voting results for special resolution motion

Meeting [date]

Motion – That

For background of motion – see attached explanatory memorandum

Summary of vote

Number of persons **entitled** to vote and **present** at the meeting
(note voting entitlement for your village)

Add – (persons who voted by postal vote or by proxy or under a power of attorney)

Sub-total (persons entitled to vote)

Subtract – (all invalid votes and number of persons who abstained from voting)

Total persons who voted validly

Three-quarters of total persons who voted validly ($\frac{\text{total valid votes} \times 3}{4}$)

(This must be rounded up to a whole number as the RV Act provides for the number of persons)

A

Persons in favour **B**

Persons against

Motion is approved where persons in favour (B) are equal to or more than three-quarters of total valid votes (A)

Motion approved **YES** **NO**
Circle relevant

Counted by Name Signature

Counted by Name Signature

Scrutineer Name Signature

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23.5 Annexure 5 – Example Nomination for election of member of residents committee

(available in MS Word)

[Name of Village]		
Nomination for election as member of residents committee		
Resident being nominated	Name (print):	Unit No:
	Signature (your indicates acceptance of nomination)	
Resident nominating	Name (print):	Unit No:
	Signature:	
Resident <u>seconding</u> the nomination	Name (print):	Unit No:
	Signature:	

Instructions
Place completed forms inbefore
[day, date & time]

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23.6 Annexure 6 – Example Contents of minutes of residents committee meeting

Heading – [village name] Residents committee meeting minutes

1. Details of meeting*

- date
- time
- place.

2. Attendance

- *names of persons present
- *include details of the capacity in which each attended the meeting
- Apologies.

3. Welcome

4. Confirmation of previous minutes

- moved by and seconded by
- *include place for signing by a member of the committee where confirmed (inc. date of signing).

5. Business arising from previous meeting*

- list each item
- make notation against each item completed or carried forward to Other business.

6. Correspondence*

- IN – list each piece of correspondence and its details
- OUT – list each piece of correspondence and its details.

7. Other documents tabled*

- list notices
- list other documents / reports
- include any action to be taken for each.

8. Treasurers Report*

- moved by and seconded by.

9. Subcommittee reports*

- list each subcommittee report
- include discussion on each report
- include any action to be taken.

10. Scheme operator / village manager

(insert into meeting schedule where appropriate)

- *list each item
- *include discussion taken place for each
- include copy of the village report, if provided.

11. Other business*

- list each item carried forward from previous meeting
- list each new item
- include items from correspondence
- include any items from scheme operator / village manager discussed further
- include details of action for every item
- include who is the actioning officer and the timeframe.

12. Next meeting

- day
- date
- time
- place.

13. Meeting closed

- time.

Note 1 – under the provisions of s 129A of the RV Act, items marked ‘’ must be included. Where a heading is marked ‘*’, all points must be included.*

Note 2 – include with the minutes, all documents mentioned therein

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23.7 Annexure 7 – Example Ballot paper for election of members of residents committee

(available in MS Word)

Ballot paper for election of residents committee members

Instructions

Voting entitlement – There is one vote [per unit or one vote per resident].

Marking the ballot paper – Place a tick (✓) in the squares opposite the candidates you choose, up to a maximum of [XX] candidates.

Name	Unit	Name	Unit
<input type="checkbox"/> Donald Trumpeter	39	<input type="checkbox"/> Joelle Rollo-Koster	19
<input type="checkbox"/> Hillary Clintonnoff	6	<input type="checkbox"/> Tahra Dactyl	111
<input type="checkbox"/> Jean Poole	47	<input type="checkbox"/> Filet Minyon	17
<input type="checkbox"/> Arnold Swartz-egger	78	<input type="checkbox"/> Annie Howe	167
<input type="checkbox"/> Bud Light	66	<input type="checkbox"/> Bea Major	3
<input type="checkbox"/> Herb Farmer	9	<input type="checkbox"/> Chris Cross	59
<input type="checkbox"/> Chris P. Bacon	24	<input type="checkbox"/> Sue Flay	130
<input type="checkbox"/> Earle E. Bird	85	<input type="checkbox"/> Penny Lane	125

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23.8 Annexure 8 – Example Proxy form

(available in MS Word)

[Name of Village]	
PROXY	
Residents meeting [or state purpose]	
<i>(date)</i>	
I	of Unit
<i>(name of resident giving the proxy)</i>	
appoint	of Unit.....
<i>(name of person being given the proxy)</i>	
<i>(if applicable)</i>	
to vote on my behalf.	
Signed	Date
<i>(signature of resident giving proxy)</i>	
Instructions	
1. This proxy notice relates to the meeting or, where voting is conducted by postal votes only, the purpose, stated above	
2. A proxy vote may be given to <u>any</u> person, whether a resident or not, but must not be given to the scheme operator.	
3. Each resident in an accommodation unit may be given up to 2 proxy votes for the 1 meeting.	
4. The completed proxy vote notice must be given to the person acting as your proxy.	
5. The proxy vote holder must hand this proxy notice in at the meeting to which it relates or when voting.	

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23.9 Annexure 9 – Example Attendance and voting register

(available in MS Word)

[Village name]. Attendance and voting register for meeting							
		Attendees		Voting entitlement (tick)			
Unit	Surname	Signature	Signature	Present	Proxy	PoA	Postal
Totals							

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23.10 Annexure 10 – Insurance guidelines for residents committees

1

Insurance Guidelines for Resident Committees

This is broken down into the Scheme Operator's responsibility and the responsibilities of the individual resident

Material Damage

Material Damage is the physical loss or damage to an item such as a building and its contents. After a fire, flood, burglary, earthquake or other such event, there is obvious destruction, loss or damage to buildings and its contents. A building includes improvements and fixtures forming part of the building. Contents are the items that are moveable such as household and personal effects. [N.B: Loss from wear and tear or from breakdown of age are not covered]

Designation	Scheme Operator	Resident	Comments
Village Community Buildings	A scheme operator must insure and keep insured, to full replacement value, the retirement village, including the accommodation units (other than accommodation units owned by residents), and the communal facilities.	Not applicable	All village assets are required to be covered under Section 110 of RV Act. Premium for cover is paid from Village GSF account
All fixtures and Fittings of Village Community Buildings	Scheme operator must insure	Not applicable	Premium for cover is paid from village GSF account
Residential Units/Buildings	Scheme operator must insure	Not applicable	Premium for cover is paid from village GSF account
Carpets	In most villages carpet is fitted [fixture that comes with the unit]. This must be insured by scheme operator	Such item can be insured by both scheme operator and/or resident under their contents cover	Recommended all insurance claims fall to scheme operator insurance cover where carpet is provided by the village

Solar Installation/s	A fixture to the building, and should be covered under scheme operator's insurance cover	Such item can be insured by both scheme operator and resident under the contents cover	Recommended all insurance claims fall to scheme operator insurance cover.
Fixtures and improvements agreed and approved by Scheme Operator but paid independently by the resident	Where item is a fixture to the building, and indeterminate whether removal is required at termination of lease, it should be covered by scheme operator	Such item can be insured by both scheme operator and resident under their contents cover	If indeterminate, then recommended insurance claim/s fall to scheme operator's insurance cover.

Fidelity Insurance

An agreement whereby, for a designated sum of money, one party agrees to guarantee the loyalty and honesty of an agent, officer, or employee of an employer by promising to compensate the employer for losses incurred as a result of the disloyalty or dishonesty of such individuals.

Most villages will from time to time run social and festive events of some sort. To run an event will likely incur the collection of money. Irrespective of who handles that money, the village must stand the risk of potential misappropriation of that money.

In many cases a social committee may collect the money, run a bar or whatever, and in most cases the money is likely to be handed to the village receptionist/Manager for safe keeping. Therefore all persons actually handling money [irrespective of that role] have a responsibility of care and trust to the party who effectively own the money.....the residents and/or their committee

Designation	Scheme Operator	Resident	Comments
Village Management	Likely to handle village money and have a duty of care, therefore should hold insurance cover	Not applicable	Recommended where money is involved fidelity insurance be effected in the name of the village and extended to include all members of resident committee/s
Resident's Committee	Likely to handle money and have a duty of care. Negotiate with village management for insurance cover by village	Not applicable	Recommended fidelity insurance be effected by scheme operator and extended to include all members of resident committee/s

Voluntary Workers

This is a designated insurance cover arranged by the village for the benefit of that resident, who have accepted doing [unpaid] work/task within the village. The task may be simply assisting with some office work, or, maybe assisting with the moving of chairs and the like.

Because volunteers may not be eligible for cover under workers compensation, their income or medical expenses may not be covered if they are hurt while working. So it's important that any voluntary workers in the village are protected against the potential financial loss that injuries can bring them.

Gardening in the common area of the village can be a relaxing and worthwhile pastime, but this particular task, unless requested by scheme operator &/or managers, may not be covered

Designation	Scheme Operator	Resident	Comments
Office Work / Reception	Scheme operator &/or Village Manager/s responsibility.	Needs to be given written confirmation they are covered by village insurance	It is usual to have a capped age limit for insurance. This will vary, so written confirmation would be advisable
Cleaning the Bowls Green	Scheme operator &/or Village Manager/s responsibility.	Needs to be given written confirmation they are covered by village insurance	Check on capped age limit
Shifting furniture for social event	Scheme operator &/or Village Manager/s responsibility.	Needs to be given written confirmation they are covered by village insurance	Check on capped age limit
Shifting furniture around the pool or BBQ	Scheme operator &/or Village Manager/s responsibility.	Needs to be given written confirmation they are covered by village insurance	Check on capped age limit

Gardening in common area of village	Scheme operator &/or Village Manager/s responsibility.	Needs to be given written confirmation they are covered by village insurance	Check on capped age limit
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Public Liability

Under Section 110 of the Retirement Villages Act 1999 a Scheme Operator must ensure that Public Liability Insurance is taken out for the business of a retirement village.

Public Liability Insurance will pay all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or damage as a result of an Occurrence in connection with the Insured's Business.

Every person who enters a retirement village has the potential to injure or damage property belonging to the retirement village

Every person who enters a retirement village has the potential to suffer injury or damage to their property whilst on the premises of the retirement village

Designation	Scheme Operator	Resident	Comments
Ownership of village thus the scheme operator	Required by RV Act to take out insurance	Not applicable	Resident/s who have taken out contents insurance need to check their cover contains public liability [called personal liability] for their own protection
Management of village	Required by RV Act to take out insurance for all activities of the village. Villages where food is prepared and/or sold may also require their public liability cover extended to include Products Liability	Not applicable	The scheme operator's cover should be extended to include each resident. Villages where food is prepared and/or sold may also require their public liability cover extended to include Products Liability

Policy Excess

Most insurance policies provide for the payment of an excess by the insured in the event of a claim being made. It might therefore be expected that when the insured is the scheme operator that they should pay the policy excess.

Instances have arisen in the past where the scheme operator/management has sought to pass the insurance excess to the resident of the unit concerned.

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23.11 Annexure 11 – Village financials (removed)

This document is available on the ARQRV web site www.arqrv.org.au.

If you do not have access to the internet or a printer you may contact the ARQRV office for a printed copy.

23.12 Annexure 12 – Financial statements and village budget timelines

1

Village financial statements and draft budget timelines

Presentation of annual financial statements by scheme operator

Scheme operator must call a meeting of residents to present the annual financial statements.

Audited annual financial statements	Notice to residents	Presentation of statements to meeting of residents	RV Act
Annual audited financial statements incl. items listed in s 113	Scheme operator must give each resident at least 21 days notice of the meeting	Meeting held as soon as reasonably practicable after the annual financial statements are available but within 5 months after the end of each financial year	ss 113 and 131

There are penalties under the RV Act for a scheme operator who does not comply with the presentation of and requirements of statements.

Request by resident to be given annual financial statements

A resident may request an annual financial statement.

Audited annual financial statement	Request to scheme operator	Providing statements to a resident	RV Act
Annual audited financial statements incl. items listed in s 113	Resident may request annual statements	Scheme operator to give statements within 5 months after the end of each financial year	s 113

There are penalties under the RV Act for a scheme operator who does not comply with the request for and requirements of statements.

Draft budgets

Only the residents committee may request meetings and be given a copy of all three draft village budgets.

Individual residents may also request a copy of the draft MRF budget in the same manner as the residents committee. However, there no legislative authority for residents as individuals to require the scheme operator attend a meeting about the draft budget.

Draft budgets	Notice to scheme operator	Provided to residents committee	RV Act
Capital Replacement Fund Maintenance Reserve Fund General Services Charges	Written notice from residents committee at least 28 days before the beginning of the financial year	Scheme operator must provide draft budgets at least 14 days before the beginning of the financial year	CRF - 93(3) and (4) MRF - 99(4) and (5) GSC - 102A(4) and (5) Meeting - 129B

There are penalties under the RV Act for a scheme operator who does not comply with the notice.

Items in draft general services charges budget requiring special resolution

New service

A new service for which a general service charge will apply may be introduced by the scheme operator at any time residents agree to it by special resolution.

Draft GSC budget	Notice to residents (inc wording of motion)	Meeting of residents to vote	RV Act
Charge for new service	Scheme operator must give at least 21 days notice of the meeting (Res Comm may also distribute explanatory memorandum)	Before the new service is supplied	s 108 and definition of <i>special resolution</i> in Dictionary ss 132 and 133

A new service may be introduced at any time but must not be charged for until supplied.

Charge for service increased more than CPI

A general service charge may be increased by more than CPI provided residents agree to it by special resolution

Draft GSC budget	Notice to residents (inc wording of motion)	Meeting of residents to vote	RV Act
Charge for service increased more than CPI (other than charges mentioned in s 107)	*Scheme operator must give 21 days notice of the meeting	As soon as practical and if possible before the beginning of the financial year	s 106 and definition of <i>special resolution</i> in Dictionary ss 132 and 133

*The RV Act is silent about who must give the notice of a meeting to discuss and vote on a special resolution relating to a charge for a general service increased by more than CPI, however as not every village has a residents committee, it is reasonable to expect that it is the responsibility in all cases for the scheme operator to do so.

If timings are suitable, the discussion and vote for the special resolution may be conducted at the residents meeting called by the scheme operator to present the previous year's financial statement.

There are penalties under the RV Act for a scheme operator implementing a budget which includes a charge increased by more than CPI and residents have not approved the increase by a special resolution.

Quarterly financial statements

Request by resident

A resident (including any member of the residents committee for use by the committee) may request from the scheme operator a quarterly statement that lists income of and expenditure from the CRF, the MRF and the GSCF.

This statement is only a statement of income and expenditure and does not need to be accompanied by a document from the scheme operator which explains variations of expenditure.

Quarters	Request to scheme operator	Provided to resident	RV Act
1 Jul – 30 Sept 1 Oct – 31 Dec 1 Jan – 31 Mar 1 Apr – 30 Jun	At any time	Within 28 days of scheme operator receiving the request	s 112(1) to (3)

There are penalties provided under the RV Act for a scheme operator who does not comply with a request to provide quarterly financial statements within the stated timeframe.

Request by residents committee

In addition to the quarterly statements, a residents committee may request from the scheme operator a document that explains any increase above the expected expenditure for a general service in the budget. The statement and explanation may be provided as one combined document.

Quarters	Request to scheme operator	Provided to residents committee	RV Act
1 Jul – 30 Sept 1 Oct – 31 Dec 1 Jan – 31 Mar 1 Apr – 30 Jun	At any time	*Accompanied by quarterly statement and within 28 days of scheme operator receiving the request	s 112A

*The RV Act is silent on the timeframe for providing the explanatory document, but it may be assumed it would accompany a quarterly statement and therefore, those timeframes would also apply.

There are penalties provided under the RV Act for a scheme operator who does not comply with a request to provide appropriate explanatory statements.

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23.13 Annexure 13 – Notes about running cost deficit in developing village

Running Cost Deficit

THE ARQRV SOUGHT LEGAL ADVICE ON THE FOLLOWING QUESTION.

Can you advise whether to your knowledge there is an industry standard procedure that is followed when constructing a new village?

In order to attract residents a developer will erect the community centre and communal facilities first as well as engaging a manager plus maybe staff. As the accommodation units are built and occupied a few at a time their contributions by way of monthly fees will likely be insufficient to meet the full cost of operating the communal facilities which have been designed for the use of the completed village.

The question here then is:

How do scheme operators make good the deficit between the cost of running the community centre and facilities created when contributions received from occupied units is insufficient?

RESPONSE FROM OUR ARQRV LEGAL ADVISOR

I don't think there is any binding industry standard. Village operators seem to just subsidise the general services charges to the extent they think is necessary to make the service fees for their units competitive as compared to completed villages in the market (ie if an incomplete village passed the full cost of the community facilities on to the early buyers, the service fees would be so high as to repel buyers).

This issue was at the heart of the (*name withheld*) case (which we won in the QCAT appeal tribunal but lost when the operator appealed to the Supreme Court's Court of Appeal). That case involved an incomplete village where the total budget for the GSC did not comply with the CPI cap in s 106 but the proportion of the costs passed on to the residents did comply. We argued that s106 should apply to the total budget rather than the proportion passed on to residents, as the total costs will eventually be passed on to the resident body when the village is completed (and therefore need to be restrained at a reasonable level). However, the village successfully argued that s106 only applied to the proportion of the budget passed on to residents. The Court accepted this even though it meant residents could not check whether a budget complied with s106 (because the proportion of each line item passed on to residents was not disclosed) and even though it meant operators were free to 'overspend' on services in order to attract residents to unsold units and later could withdraw their subsidy once the village was fully built and sold, forcing residents to accept a reduction in the services that lured them in.

Again, this needs to be addressed in the legislation but I haven't seen any signs that this is likely to happen.

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23.14 Annexure 14 – Notes about volunteer work cover in the village

Volunteer work cover in the village

Voluntary work by residents is a great source of assistance to many retirement villages; however as voluntary workers do not receive wages, they are not covered by Workers Compensation Insurance. This being the case, your scheme operator / management should seek to protect their residents from injuries that may occur whilst helping out. This can be done through Voluntary Workers Insurance.

Who needs Volunteer Workers Insurance? All villages that utilise volunteers should certainly consider taking out Volunteer Workers Insurance. Consider the possibility of any task resulting in injury; it may be simply assisting with some office work, or maybe assisting with the moving of chairs and the like.

Because residents volunteer their time, they may not be eligible for cover under workers compensation: their income, additional domestic assistance costs, or medical expenses may not be covered if they are hurt while working. So it's important that any voluntary workers in the village are insured against the potential financial burden that injuries can bring them. At the end of the day this responsibility lies with the scheme operator, as they have a duty of care with regard to voluntary work for the village.

Some important Tips:

Check with your scheme operator / management that the village insurance portfolio covers all residents who do voluntary work in the village.

Residents are entitled to inspect or take a copy of the village insurance policies and certificates of currency free of charge. You need to make the request in writing to the scheme operator and they must comply with the date stated in your request, which must be at least 7 days after your request is given.

Age limits are always noted on the schedule of insurance. If any residents are outside these limits ask your scheme operator / management to have these reviewed. The ARQRV is aware that cover is available in Australia up to the age of 90 years

Always keep good documentation of accidents or incidents that may become a claim. Some claims do not manifest themselves for years after the event, so it is important to request witnesses to provide an incident report to be filed with the scheme operator / management and the incident report be filed in the [injured] resident's personnel file.

The policy is only as good as the limits arranged. Check that the benefits are sufficient

Clearly, there will be various differing circumstances, village to village, regarding the insurance cover held; however, if any member of the ARQRV experiences any difficulty in reaching agreement with their village management, they should refer the matter to the ARQRV, as there should be a simple solution.

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23.15 Annexures 15 – Model residents constitution with explanatory notes

(Available in MS Word)

The model constitution includes matters which are important in the context of retirement villages and other matters which may be considered optional by some villages.

Residents are welcome and encouraged to modify both the content and the language of the model constitution to suit the specific needs of their village provided no content of the amended constitution is inconsistent with the RV Act.

[Name of Village]
RESIDENTS
CONSTITUTION

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1 The Constitution

1.1 Name of the Constitution

This constitution is known as the ***Constitution of the Residents of ABC Retirement Village*** (the Constitution).

The RV Act provides residents may, by a majority vote at a meeting of residents, adopt a constitution (s 128(1)).

The name of the constitution must identify the persons to which it applies. To clarify, it applies to the residents and not just the residents committee.

1.2 The Constitution and the law

- i. The Constitution is subject to the provisions of the *Retirement Villages Act 1999* (the RV Act) and the current Retirement Villages Regulation (the RV Regulation).
- ii. If any part of the Constitution is inadvertently inconsistent with the Act or the Regulation, the provisions of the RV Act or the RV Regulation prevail.

When drafting a constitution, the provisions of Part 7 and relevant definitions of the RV Act must be used as a basis.

The RV Act requires the constitution must not include any matter, procedure or rule inconsistent with the Act. The constitution must provide for matters prescribed under a regulation (s 128).

Note – currently there are no matters specified under a regulation.

1.3 To whom does the Constitution relate

The Constitution applies to every resident of ABC Retirement Village (the residents) singularly or collectively, who from time-to-time, participate in the affairs of the village specified in the RV Act or the Constitution.

This clause clarifies that the constitution applies only to residents when they participate in the affairs of the village, and when they do participate, must conform with the constitution when it is relevant.

Affairs of the village include, but are not limited to:

- *any aspect of attending or organising meetings, or voting on any matter*
- *the business of the residents committee or subcommittees*
- *organising activities or functions for residents on behalf of the residents committee or a subcommittee*
- *handling residents funds.*

A resident who simply partakes of a provided activity or attends a village function is not considered participating in village affairs. The ‘affairs of the village’ means the business of the village community.

To clarify, the constitution has no bearing on residents who do not attend meetings, do not vote, do not become part of the residents committee nor a subcommittee, nor organise activities or functions.

You will note the name of the collective body of residents of the village is stated as ‘the

[Name of village] RESIDENTS CONSTITUTION

residents of ABC Retirement Village'. The RV does not provide nor suggest that residents have to do something before they are referred to or act as a collective entity – for example, there is no suggestion that residents must 'incorporate' in any manner (the word 'incorporate' is used in a general sense and means 'to form a discrete entity', and does not mean nor must it be confused with the action of establishing an incorporated association).

A collective body already exists by having in the village, more than 1 resident. The group is simply 'the residents of ABC Retirement Village' and there is no need to do anything further nor add any word/s to further describe the body.

In addition, every resident is already part of the collective body simply by being a resident and nothing further has to be done for inclusion. It is then the choice of each resident, if and when and from time-to-time, they wish to participate.

Notwithstanding the above reasoning, there is nothing to prevent the residents of a village from being known differently.

1.4 Purpose of the Constitution

- i. The Constitution clarifies and reinforces:
 - a. procedures specified in the RV Act or the RV Regulation for participation of residents in the affairs of the village; and
 - b. the function and the operation of the residents committee.
- ii. The Constitution also provides:
 - a. procedures additional to those specified in the RV Act or Regulation to decide and take actions and/or conduct activities by and on behalf of residents, necessary to protect and improve the financial, social and general aspects of village life to the benefit of ALL residents
 - b. a formal framework to hold residents meetings and elect a residents committee to give effect to the above objectives.

The list of purposes in the above clause may be, as residents see fit, added to or amended. Note – this clause describes only the purpose of the residents constitution.

An additional clause 'Aims of residents' may be added but is not considered necessary in a constitution where it is intended subcommittees will be formed and the aims/objectives of each subcommittee are included in their respective procedures.

1.5 Changes to the Constitution

- i. Where procedures in the Constitution are considered inadequate, a motion may be put forward at a residents meeting to consider changes to the Constitution.

The RV Act provides no specific procedures as to who drives changes to a residents constitution, however, as it is a residents constitution it is reasonable to expect it is residents who drive change. (s 128(1)). Notwithstanding the previous statements, there is nothing to prevent the residents committee from proposing a change.

The motion would be similar to – 'That a working party, of [3] residents and [2] representatives of the residents committee, be formed to research, draft and submit appropriate changes to residents, for discussion and approval in relation to [XXXXXXXXXXXXXX] of the ABC village residents constitution.

Note – the motion is not about the change but rather, to form the working party and

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draft the change for discussion and possible approval.

- ii. At least [XX] days written notice of the meeting and the wording of the proposed change must be given to each resident, by the residents committee.

Once the working party has drafted the proposed change the residents committee must give a long period of notice of the meeting and provide the exact wording of the change. ARQRV considers 14 days appropriate even though the RV Act is silent on this matter.

If the wording of the amendment is not agreed to by the residents at the residents meeting, any amendment thereto must be the subject of fresh resolution with proper period of notice being given.

Obviously, the notice cannot be given where a resident is not easily contactable.

- iii. At least [XXXXXXXXXX]% of residents at a meeting who are entitled to vote and who vote must approve an amendment to the constitution.

Even though under the RV Act only a simple majority is required to adopt the complete residents constitution, it is customary in other bodies for a higher than usual majority to be required to approve a change to a constitution.

ARQRV suggest a three-fifths majority as after all it only required a simple majority to adopt the original clauses of the constitution and the requirements of a special resolution are too far removed from those requirements.

Notwithstanding, the above reasoning, there is nothing to prevent residents from adopting a residents constitution which requires a special resolution to amend the constitution. Note though, it takes less than the requirements of a special resolution to amend the Constitution of Australia.

- iv. If the entire constitution is to be revised a vote must be taken on a single resolution to rescind the existing constitution and adopt the revised constitution, as submitted to the meeting.

This clause provides a single-vote process for rescission and adoption so there is no possibility of rescinding an existing constitution and not approving adoption of a new constitution which may come about under a 2-vote process.

1.6 Keeping of and access to the Constitution

- i. The residents committee is responsible for maintaining and storing the master copy of the residents constitution.

As the residents committee has the facilities for document maintenance and ongoing storage, it is reasonable to expect they would also look after the constitution.

- ii. A copy of the Constitution, for residents reference, must be kept in [XXXXXXXXXX].

A copy of the constitution must be kept in a place that is easily accessible to residents – for example, a library or a multi purpose room.

- iii. A resident may ask and must be given a current copy of the Constitution by the secretary of the residents committee.

2 Residents meetings

2.1 Quorum at a residents meeting

- i. The following clauses apply to every meeting of residents called for any purpose.
- ii. A quorum at a residents meeting will be [XXXXXXXXXX]% of the total number of residents who are entitled to vote.

The RV Act does not provide guidance as to numbers that would form a quorum at a residents meeting due to the vastly different communities in villages across the state. Therefore, It is entirely up to residents to decide the number for a quorum by taking into factors relating to the community in their village.

ARQRV advises one third of residents who are entitled to vote is a common proportion to be a quorum at a residents meeting.

- iii. Residents who have given a proxy are not counted as part of the quorum.

Residents must be present to be included in the quorum, as a quorum is a mechanism to ensure reasonable and adequate discussion takes place on business matters at the meeting.

- iv. The quorum must be reached and confirmed by the chairperson at the time the residents meeting commences.

2.2 Conduct of residents meetings

- i. Clause 2.2 of the Constitution applies to every residents meeting no for matter what purpose the meeting was called.
- ii. Residents meetings will be conducted under customary meeting procedure rules. Any disagreement about meeting protocol will be determined by reference to [XXXXXXXXXX XXXXXXXXXXX XXXXXX]

It is important that meetings are conducted within a set of recognised rules. ARQRV suggest 'Guide for Meetings & Organisations' Volume 2 by N E. Renton]. This book is very comprehensive but, like all books is not geared or tailored for the less complex meetings of residents and residents committees. There may be simpler reference books that could be used.

- iii. A meeting of residents will be chaired by the chairperson or vice chairperson of the residents committee. In the absence of the chairperson and vice chairperson the residents committee will nominate one of their members to act as chairperson.

It is well known that the authority to call a meeting never includes the authority to chair the meeting.

It is not the role of the scheme operator or their representative to chair a meeting of residents irrespective who calls the meeting.

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The RV Act provides, without expressly mentioning specific words to this effect, the scheme operator or their representative should not chair a residents meeting. This is supported by the provisions that allow a scheme operator to attend a residents meeting in specific circumstances and then in most cases for only part of the meeting. Therefore, it is reasonable to conclude the scheme operator cannot and does not chair a general meeting, special meeting or annual general meeting of residents (not to be confused with the meeting called annually by the scheme operator to present the financial statements) (ss 132(4) and (5)).

- iv. The chairperson at a residents meeting has authority to address a person's unreasonable behaviour (including protracted and/or valueless monologues) by, asking meeting attendees to decide if it is in order for the person to continue or to end the behaviour.

This clause provides a useful mechanism that demonstrates, to a disruptive person, whether or not other residents wish the behaviour to end. It also averts any possible one-on-one conflict between the person and the chairperson but moves the responsibility of control of the meeting to all attendees.

- v. Full and accurate minutes must be taken at every residents meeting and must be made available to all residents by placing the draft minutes [XXXXXXXXXXXXXXXXXX] within 14 days of the meeting. The draft minutes must be presented for confirmation at the next residents meeting.

The RV Act has no requirement to take or keep minutes of residents meetings. However, it would be prudent to do so and make them available on a notice board in a common area.

Regardless of the purpose of the meeting (general, AGM or special), the draft minutes should be confirmed as soon as practical.

- vi. The secretary of the residents committee, if given a written request, must within a reasonable time provide to a resident:
 - a. a report to be presented at the meeting
 - b. a copy of the draft minutes from the previous meeting.

The RV Act is silent on this matter, but it is prudent to provide these items if requested, so residents may properly consider the details therein before the meeting.

2.3 General residents meetings

- i. Clause 2.2 of the Constitution applies to general residents meetings.
- ii. General residents meeting, are meetings, which:
 - a. are held regularly; and
 - b. are called by the residents committee; and
 - c. conduct the general business for the affairs of the village as provided in clause 2.3.vi.

This clause clarifies which residents meetings are general meetings.

- iii. General residents meetings will be held at least once every quarter.

The RV Act is silent on frequency of residents meetings. However, it is considered reasonable that residents should meet at least every quarter.

Where residents meetings are held less frequently it is advisable for the residents

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committee to keep residents informed of village affairs (matters other than social matters) by newsletters or other means.

The constitution may further specify particular months and/or days of the week when general meetings will be held.

- iv. The residents committee will call and arrange general residents meetings.

The RV Act provides express authority for the residents committee to call residents meetings (s 132(1)).

- v. The date, time and venue for each general residents meeting will be set at the previous meeting.

- vi. If it is necessary to change the date of a general residents meeting, the secretary of the residents committee, following a decision by the majority of the residents committee members, will arrange such a meeting.

- vii. Written notice of a residents meeting must be given to each residents at least 14 days before the date of the meeting.

The RV Act requires that the residents committee must give each resident 14 days written notice of meetings (s 132(i)). Obviously, the notice cannot be given where a resident is not easily contactable.

- viii. A notice of a general residents meeting must include:

- a. date, time and venue
- b. an agenda which includes the matters to be discussed and motions to be decided.

The RV Act is silent on the contents of the notice but without the items listed above, the notice is of no value.

- vii. Business to be conducted at a general residents meeting will include at least the following items:

- a. Confirmation of the draft minutes from the previous residents meeting
- b. Calling for additional items from the residents, for discussion
- c. Receipt of reports from the residents committee and all relevant subcommittees
- d. Discussion and vote relating to items raised in the above reports
- e. Receipt of treasurer's report regarding residents funds
- f. Discussion and vote to expend residents funds
- g. Items provided prior to the meeting under clause 2.3.vii
- h. Items raised from the floor

- viii. Additional agenda items must be given in writing to the secretary of the residents committee at least 7 days before the date of the residents meeting.

Last minutes items not printed on or added to the agenda may be called for verbally at the commencement of the meeting and carried over to later in the meeting. This give some opportunity for residents to consider the item prior to discussion.

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2.4 Special or urgent residents meeting

- i. Clause 2.2 of the Constitution applies to special or urgent meetings.
- ii. A meeting of residents, for a purpose other than a general residents meeting, may be called by the residents committee (*special residents meeting*).
The RV Act provides express authority for the residents committee to call residents meetings for any purpose (s 132(1)).
- iii. Residents may request the residents committee to call a residents meeting for any purpose (*special residents meeting*) by giving the secretary of the residents committee a written request stating the purpose of the meeting and the request is signed by at least [XXXXXX]% of residents who are entitled to vote.
The RV Act is silent on the matter of allowing or preventing residents requesting the residents committee to call a meeting of residents. As such, it is prudent to include the above clause which allows the calling of special residents meeting in circumstances considered extraordinary by residents.
ARQRV suggest one-tenth of resident who are entitled to vote for this clause.
- iv. Where a request by residents to call a special residents meeting has been given to the secretary of the residents committee, a notice of special residents meeting must be given to each resident within 1 week from when the request was given to the secretary.
As the meeting would be being called only in extraordinary and serious circumstances, this clause ensures the meeting is called and held within a reasonable time frame.
- v. Notice of a special residents meeting must be given to each residents 14 days before the date of the meeting except in the case mentioned in clause 2.4(viii).
The RV Act requires the residents committee give a written notice to each resident at least 14 days before a meeting of residents (s 132(1)). The 14 day period is the minimum time required for a notice. Obviously, if a resident is absent from the village the notice cannot be given.
- vi. Where circumstances are considered urgent by the residents committee or by the residents giving a request to the residents committee to call a residents meeting under clause 2.4(ii), the period of notice may be reduced to a period reasonable in the circumstances but not less than 2 days (*urgent residents meeting*).
The RV Act provides in urgent circumstances the residents committee may call a residents meeting. 'Urgent circumstances' means circumstances in which it is not prudent to wait the usual 14 days for the written notice to be given (s 132(3) and (6)).
- vii. A notice of a special or urgent residents meeting must include:
 - a. date, time and venue
 - b. the purpose of the special residents meeting or the urgent residents meeting.*It is prudent that all residents be properly informed of the purpose of the special or urgent residents meeting before the meeting is held.*
- viii. Where a residents meetings is convened in urgent circumstances or for a special purpose only the business specified in the notice of the meeting may be conducted at the meeting.
It is prudent to keep special or urgent meetings short as practical and focused on only the subject matter.

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2.5 Annual general meeting of Residents

- i. Clause 2.2 of the Constitution applies to annual general meetings of residents.
- ii. The annual general meeting of residents will be convened each year within 1 year from the previous annual general meeting, and will include the following matters:
 - a) Confirmation of draft minutes not already confirmed at a previous residents meeting
 - b) the election of the residents committee
 - c) reports from each subcommittee, where subcommittees exist
 - d) review of monthly nominated amount for expenditure by the residents committee
 - e) general business items
 - f) additional topics provided by residents when called for by the chairperson at the commencement of the meeting.

The annual general meeting of residents must not be confused with the meeting called each year by the scheme operator to present the financial statements.

The RV Act does not mention an annual general meeting of residents but it is reasonable to expect that a residents meeting be held annually for the above purposes.

Ideally, the meeting must be held within 1 year of the previous meeting (election of the residents committee). Where the meeting is held after this term there would be no lawful residents committee as the 1-year term of the members of the residents committee has already ended (s 127(2)(a)).

Last minutes items ((f) above) not printed on or added to the agenda may be called for verbally at the commencement of the meeting and carried over to later in the meeting. This give some opportunity for residents to consider the item prior to discussion.

- iii. The annual general meeting of residents will be held at such times and place as decided by the residents from one annual general meeting to the next.

It is common for the annual general meeting to be held in August to provide time for end of financial year reports to be prepared.

Residents may decide to be more specific in the above clause by nominating a particular month, week and day – for example, the last Wednesday in August each year.

Notwithstanding this constitution provides for an annual general meeting to be held as a meeting separate to a general meeting, there is nothing to prevent residents to adopt a residents constitution where the annual general meeting is held in place of one of the general meetings.

- iv. Written notice of an annual general residents meeting must be given to each residents at least 14 days before the date of the meeting.

The RV Act requires that the residents committee must give each resident 14 days written notice of residents meetings (s 132(i)). Obviously, if a resident is absent from the village the notice cannot be given.

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- v. A notice of an annual general meeting must include:
- a. date, time and venue
 - b. an agenda which includes voting for members of the residents committee, the matters to be discussed and motions to be decided
 - c. the names of each nomination for election to the residents committee

The RV Act is silent on the contents of the notice but without the items listed above, the notice is of no value.

- vi. Additional agenda items must be given in writing to the secretary of the residents committee at least 7 days before the date of the residents meeting.

Last minutes items not printed on the agenda may be provided verbally at the commencement of the meeting and carried over to later in the meeting. This give some opportunity for residents to consider the item prior to discussion.

2.6 Special resolution

- i. Where a resolution is proposed as a special resolution, resident must be given at least 21 days prior written notice which:
- a. states the intention to propose the resolution as a special resolution; and
 - b. provides the exact wording of the special resolution; and
 - c. includes an impartial explanatory memorandum for both the 'yes' vote and the 'no' vote.

Clause 3.5(i)(a) is paraphrasing of the definition of 'special resolution' provided in the RV Act.

Residents must be properly informed about the exact wording of the special resolution and be given impartial explanations of the for and against cases.

Where a special resolution is not agreed to at a residents meeting, but an amendment is proposed, the amended wording must be treated as a new special resolution and proper notice be given etc.

- ii. For a special resolution to be passed, it must be agreed to by at least three-quarters of the persons entitled to vote and who vote.

The above clause is paraphrasing of the definition of 'special resolution' provided in the RV Act.

Refer to the Residents Committee Manual published by ARQRV for further reading about voting on special resolutions.

- iii. Voting may be:
- a. personally, by proxy or under a power of attorney at the meeting or
 - b. by postal vote.

Most of clause 3.5(iii) is paraphrasing of the definition of 'special resolution' provided in the RV Act.

Notwithstanding an attorney is not expressly mentioned in this provision, a person if they are authorised under a power of attorney may vote, as they are authorised to the extent provided in the power of attorney, to do anything legally the principal may do.

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- iv. A special resolution may be voted on at any residents meeting (other than a special or urgent residents meeting called for a purpose other than the special resolution) provided proper notice of the special resolution has been given to each resident.

This clause clarifies special resolutions do not need to be voted on only at a residents meeting called for the special resolution.

3 Voting by residents

3.1 Residents voting entitlement

The following residents, as provided by the RV Act, are entitled to vote at a residents meeting:

- a) 1 resident of each accommodation unit
- b) 1 former resident of an accommodation unit while paying the whole or part of the general services charges.

A constitution must, for all matters, provide only 1 entitlement for voting by residents. To clarify, there cannot be a case where all residents are entitled to vote for one matter but for other matters, only 1 resident for each resident of an accommodation unit is entitled.

The RV Act provides 1 vote only for each accommodation unit unless residents have, by special resolution, agreed to each resident voting (s 133(1)(a)).

The above clause provides for the most reasonable entitlement of the two options provided by the RV Act, as demonstrated by – 1 residence contract, 1 ingoing contribution, 1 accommodation unit, 1 general services charge = 1 vote.

Note – the RV Act allows only 1 former residents of an accommodation unit to vote even though there is more than 1 former residents paying the whole or part of the general service charge regardless of which entitlement is adopted or agreed to by the residents of the village (s 133(1)(b)).

3.2 Voting generally

- i. Voting will be by a show of hands, except for the following:
 - c) the election of the residents committee (subject to clause 4.5(i) and special resolutions, which will be by secret ballot
 - d) where a postal vote has been cast
 - e) where a majority of residents at the meeting and who are entitled to vote request a secret ballot

The RV Act is silent on the method of casting votes by residents. However, it is prudent to keep casting of votes by residents as simple as possible considering the circumstances – for example, special resolutions and elections may be considered contentious so it is advisable to hold secret ballots in these instances but use show of hands for other cases, unless residents decide otherwise.

- ii. For a motion to be passed (other than a special resolution) it must be carried by a simple majority of residents who are entitled to vote and who voted in an affirmative manner, for the motion.

The RV Act is silent on the matter, so this clause clarifies how motions are agreed to, that is, it only needs to be a simple majority of residents entitled to vote and who voted.

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- iii. In the event of a tied vote the motion will lapse.

The RV Act is silent on this matter. However, this clause puts the proposal 'to bed' as it is obviously contentious due to the tied vote. Maybe a revised motion can be put forward that might be more agreeable to resident.

3.3 Voting by proxy

- i. A resident who is entitled to vote may, under the following provisions, appoint another person to cast a proxy vote:
- the appointed person must not be the scheme operator or their representative
 - the appointment of a proxy must be in writing and signed by the resident giving the proxy
 - a proxy is valid for only the 1 meeting (or the purpose) stated in the notice
 - a person may not hold more than 2 proxies for a meeting
 - a proxy form must be sighted by the secretary of the residents committee or their agent prior to the commencement of the meeting or vote being cast.

The RV Act provides very specific requirements for a vote cast by a proxy (s 133(2)(c) and 133(3) and (4)).

The provisions are paraphrased above with some minor additions for further procedural matters.

The person appointed to cast a proxy vote does not need to be a resident.

- ii. A resident who is entitled to vote may cast their vote by a proxy vote for any purpose and at any residents meeting.

It should be noted, where a spontaneous vote takes place on a topic first raised at the meeting for which a proxy has been given by a resident, the resident would not be aware of the goings on, and would have to simply rely on the proxy's judgement.

3.4 Voting by postal vote

- i. A resident may cast a postal vote by placing the residents written vote in the sealed ballot box provided by the scheme operator.

The RV Act provides a resident may cast a post vote by placing the residents written vote in the container provided (s133(5)).

The RV Act requires the scheme operator to provide a locked ballot box for voting (s 133(6)).

- ii. Postal votes will be conducted as a secret ballot, and may only be used for:
- motions, which remain unamended since proposed and, for which the period of notice has been given
 - motions to amendment the Constitution
 - special resolutions
 - the election of members of the residents committee.

The clause above provides procedures, additional to those in the RV Act to clarify postal voting.

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Clause 3(4)(ii) states a postal vote will be a secret vote. The clause also restricts when a postal vote may be cast to only the 4 instances when resident have been properly informed prior to voting, of the matters requiring decisions. It is only reasonable that a resident should not cast a vote for matters and motions that may be amended after their vote has been cast, by further discussion at a residents meeting.

- iii. A resident may obtain a ballot paper for a postal vote from the secretary of the residents committee or the voting officials attending the ballot box.
- iv. The ballot box and 2 voting officials (1 must be a member of the residents committee), will be available in [XXXXXXXXXXXX] to record details of each resident voting and the residents entitlement to vote.

The RV Act requires the ballot box to be located in a common area (s 133(6)).

- v. The residents committee may decide when the ballot box is available for voting but the ballot box must be available for or at least [XXX] hours on at least [XXXX] days before the meeting.

The RV Act requires the ballot box is available at least 24 hours before the resident meeting (s 133(5) and (6)). Residents may decide the minimum availability of the ballot box.

- vi. The times the ballot box is available for voting and where a postal vote may be obtained must be provided in the notice of meeting given to each resident.

3.5 Voting under a power of attorney

- i. A person who is so authorised under a power of attorney of a resident who is entitled to vote, may vote on his/her behalf.
- ii. The attorney must show the power of attorney or a certified copy to the secretary of the residents committee or their agent prior to commencement of the meeting or before casting a vote.

The RV Act provides a person appointed by a power of attorney by a resident who is entitled to vote, may vote on their behalf. Note– there is no restriction on who is the appointed person. To clarify, they do not need to be a resident.

It is important that the power of attorney authorises the person to act in the matter of casting a vote. Powers of attorney are not generic and as such may not provide the appropriate authority. Therefore, the power of attorney must be checked for such authority.

A copy of the power of attorney requires proper certification by a qualified witness (Justice of the Peace, Commissioner of Declarations or salicitor, etc).

3.6 Counting of votes

- i. The counting of votes will include all valid proxies and valid postal votes
- ii. Prior to each meeting, when required, the residents committee will appoint [XXXX] scrutineers to conduct a count of votes cast by ballot papers
- iii. Scrutineers will preferably be Justices of the Peace and residents of the village
- iv. All postal votes, ballot papers and proxy forms completed for a meeting must be destroyed at the conclusion of the meeting under the supervision of a scrutineer

The RV Act is silent on the above matters, but the procedures provided are customary

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and reasonable.

ARQRV suggest 2 or 3 scrutineers – 1 or 2 to count (depending on the number of votes to be counted) and 1 to oversee.

4 Residents committee

4.1 Residents committee structure

The residents committee will comprise a minimum of [XX] and a maximum of [XX] members, and include at least the following positions:

- a. Chairperson
- b. Deputy Chairperson
- c. Secretary
- d. Treasurer

The RV Act is silent on the above matters, but this clause clarifies the size and offices of the residents committee.

ARQRV suggest a minimum and maximum number of members. It also recommends in a developing village to increase the number of members to suit the ongoing development. To clarify, do not specify a high number of members too early as vacancies may be difficult to fill.

The numbers of members and offices may be determined by residents in the constitution.

4.2 Term of members of residents committee

- i. Each member of the residents committee holds office until, the earlier of:
 - a. 1 year; or
 - b. the next annual general residents meeting.
- ii. A former member of the residents committee may re-nominate for re-election.

The RV Act provides the maximum term of residents committee members as 'not more than 1 year' and that they are available for re-election (s 127(2)(a)). Note – the term is not fixed at 1 year but rather the term is provided as a maximum of 1 year.
- iii. Where a resident, under clause 4.6, became a member of the residents committee after the date of the last annual general meeting of residents, such member's term will expire simultaneously with members elected at the previous annual general residents meeting.

This clause clarifies that no matter when a resident became a member of the residents committee, the term of all committee members ends simultaneously.

To keep matters simple, it is prudent to conduct a single election as provided for in clause 4.4.
- iv. No member of the residents committee may be elected to the same office for more than [XXX] consecutive years and is not eligible to be re-elected to that office for a period of [XXX] years.

The RV does not restrict a resident from being re-elected to the residents committee. However, it is silent on further matters – for example, election to specific offices.

This clause provides some reasonable limits as to the length of time a resident may hold

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certain offices. This provides residents some level of choice; encourages residents from becoming blasé about elections and may also prevent small factions from 'running the village'.

4.3 Functions of the residents committee

- i. The residents committee is subject to the provisions of the Act and the Regulation, the Constitution, and to any resolution passed by residents.

This clause clarifies and reinforces the following matters:

- *the residents committee must conform with relevant provisions of the RV Act, including those relating to the functions of the residents committee; and*
- *the RV Act gives authority to the residents to adopt a residents constitution that provides for matters to which the residents committee must conform (s 128(3)); and*
- *it is customary that all committees are subject to resolutions passed by the persons who elected them.*

- ii. The function of the residents committee, as provided by the RV Act, is to deal with the scheme operator on behalf of residents, about day-to-day running of the village and every complaint or proposal raised by residents. This will be achieved by:
- a. Referring to the scheme operator every complaint and proposal raised by residents, and endeavoring to resolve complaints and implement proposals where approved by residents, and advise residents as to progress or outcomes of the referral.
 - b. Discussing with and as necessary, seeking clarification from the scheme operator of draft village budgets, accounts and the financial statements of income and expenditure.
 - c. Keeping residents fully informed, in a timely manner, of all matters being dealt with by the residents committee and of all communication with the scheme operator including displaying, in a prominent place, a copy of each draft village budget.
- iii. The residents committee must facilitate any actions or activities required by resolutions of residents at residents meetings and keep residents informed of their progress.

Clauses 4.3ii and iii clarify the role of the residents committee as intended by the RV Act ((ss 93(3) & (4), 99(3) & (4), 102A(3), 112(1) to (4), 129 and 129B)).

These clauses clarify the general legislative functions of the residents committee while reinforcing that residents must be kept informed of all matters. It also provides that residents are to be informed as to the contents of draft village budgets.

Note – every complaint and proposal must, in conjunction the scheme operator, be dealt with by the residents committee. The residents committee does not have any discretionary authority in this regard.

- iv. The residents committee must undertake the general administration of residents funds subject to the rules and procedures of the Constitution, and resolutions of residents made at residents meetings.

The RV Act is silent on the above matter but it is reasonable to expect this is the appropriate mechanism for such a task.

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- v. The residents committee may arrange activities of interest and social or sporting functions, and encourage active involvement by residents, where subcommittees for such a purpose have not been formed.

This clause provides authority, in addition to other functions, for the residents committee to arrange activities and functions where appropriate subcommittees have not been formed. This scenario may be relevant in a small village.

- vi. The residents committee has no authority:

- a. to make decisions binding on 1 or more residents on any matter except where clear authority has been approved by way of a resolution by residents at a residents meeting; or
- b. to make decisions that may in any way influence or change the lifestyle or finances of 1 or more residents.

- vii. The residents committee must remain impartial in all matters dealt with by the residents committee.

- viii. The residents committee must not become involved in issues between residents.

The above three clauses reinforce that a residents committee, even though they work on behalf of residents, is not a decision-making body unless the committee is authorised by a resolution by a majority of residents entitled to vote, who voted, to make those decisions.

Although the residents committee may recommend a course of action, it must not promote a view about a matter, but rather clearly set out all options to residents. To clarify, the residents committee role is to facilitate actions and further the view of, or position taken, by residents made clear by resolution.

The residents committee must not attempt to resolve issues between residents but rather these issues must be referred directly to the scheme operator. This procedure will keep the residents committee impartial and not alienate residents.

- ix. The residents committee may decide their own procedures, but subject to the Constitution.

The RV Act expressly allows the residents committee to decide its own procedures but subject to the procedures in the residents constitution (s 127(3)(a) and 128(3)). As such, there is no restriction on a residents constitution from providing some additional procedures.

4.4 Residents committee elections

The election of members of the residents committee will be conducted in the following manner:

- a) Each nomination for election to the residents committee will be a nomination for ordinary membership only

There are other and more complex arrangements for nomination and election – for example, nomination and voting for specific office holder. Residents may pursue these methods, if they choose and amend this constitution accordingly.

- b) Nominations for election to be a member of the residents committee will be called by the current secretary of the residents committee at least [XXXXX] weeks prior to the annual general meeting.

There needs to be a lengthy period of notice for residents to consider nominations and

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give them to the secretary of the residents committee.

It is considered that nominations should be called at least 4 clear weeks prior to the election is required. This would then allow 2 weeks for accepting nominations followed by 2 weeks-notice prior to the election (such notice would include the names of nominees). Where postal votes will be accepted in the time leading up to the meeting, the times must be adjusted accordingly.

- c) Nominations must be in writing, on the prescribed form signed by the proposer, the seconder and the nominee, who must all be residents, and must be given to the secretary of the residents committee at least 17 days prior to the earlier of the commencement of voting or the annual general meeting.

Residents may choose to also include a short bio of nominees as part of the nomination procedures.

- d) The secretary of the residents committee will place each completed nomination form on the notice board as they are received.

This clause ensures residents are informed of each nomination as soon as practical.

- e) A final list of nominees must be included as part of the notice for the annual general meeting, which must be given to all residents at least 14 days before voting commences.

This clause ensures residents are fully informed of all nominations well prior to the meeting.

- f) Where more than [XX] (the maximum number allowed on the committee) written nominations are received, an election will be held by secret ballot

The RV Act requires a residents committee may only be established by an election conducted among residents.

- g) Each member of the residents will be decided on a first passed the post system only.

The RV Act is silent on this matter but it is prudent to keep voting simple. There are other methods which residents may pursue and include in the residents constitution.

- h) Casting of votes in the election of members of the residents committee will be conducted under the procedures stated in clauses 3 of the Constitution.

Conducting a postal vote before the residents meeting will allow plenty of time for residents to cast a vote where they could not attend a meeting while giving scrutineers time to tally votes before the meeting.

- i) The names of residents elected as members of the residents committee will be announced at the annual general meeting of residents.

- j) The new residents committee must, as soon as practical following election, hold the first meeting at which the members of the residents committee will elect office bearers, by election conducted among themselves

The RV Act is silent on the matter of election of office holder.

This clause provides the method which is the simplest for the election for each office holder. There are other methods – for example, having each office holder to be elected by residents. This method is more involved and may be difficult to

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administer

Residents may decide to adopt a method as they see appropriate.

- k) Written notice of the full particulars of the residents committee will be given to the scheme operator and be placed on the community notice board within 3 days of the first meeting of the residents committee.

This clause ensures residents and the scheme operator are informed of the results of the election.

4.5 Procedures for minimal number of nominations

i. Less than maximum number of written nominations—

- a) Where the number of written nominations received is more than the minimum but equal to or less than maximum number of members specified for the committee, a written ballot need not be held.
- b) Each nominee may be declared elected provided each declaration is approved by a simple majority of residents who are entitled to vote, who vote, by a show of hands at the meeting.
- c) Remaining vacancies may be filled from nominations called from the floor provided each nomination and subsequent declaration of election is approved by a simple majority of residents by a show of hands at the meeting.

The RV Act provides that an election of some type must be held to establish a residents committee (s 127(1)). However, it is silent as to the details of the election. Therefore, there is no particular way this must be accomplished.

Notwithstanding this constitution provides for a secret ballot by placing a ballot paper in a ballot box, there is nothing to prevent the election of members of the residents committee by a simple show of hands by residents. To this end, it is suggested that in the case where the number nominated is the same as or less than the total number of members but equal to or more than the minimum required, that each nominee be declared elected by agreement of residents. This is still an election as it gives residents the opportunity to vote for or against each nominee but without the effort of a paper ballot.

ii. Less than minimum number of nominations—

- a) Where the total number of written and verbal nominations is less than the minimum number specified to form a committee, a residents committee cannot be formed.
- b) Three members of the previous residents committee may act in a caretaker mode by:
 - 1) remaining as signatories to the residents fund account and authorising payment of incoming invoices
 - 2) authorising the topping-up of sub-committees working floats, if any
 - 3) preparing and making available to residents each month, financial reports relating to the residents fund account
 - 4) arranging and conducting within [XXXX] months, a new election
 - 5) residents who originally nominated for election will assist the caretakers with the new election and may re-nominate

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- 6) conducting no other business other than that stated above.
- c) Where there are insufficient members of the previous residents willing to carry out caretaker functions, residents must approve, by a show of hands at the annual general meeting, a maximum of 3 residents to do so.
- d) If sufficient interest and numbers are still not received to form a residents committee, residents will need to make decisions about any existing money held in its accounts and decide a strategy for the formation of a new residents committee in the future.

The above clauses provide guidance as to procedures which need to be adopted where too few nominations occur and a new residents committee cannot be established.

It is suggested the new election is called in around 3 months.

Notwithstanding the RV Act provides the scheme operator calls meetings of residents, there is nothing in law or otherwise to prevent interested residents from calling a meeting of residents where there is no residents committee.

Refer to the relevant part of the Residents Committee Manual – Establishment of first residents committee.

4.6 Residents committee casual vacancies

- i. The residents committee may co-opt additional committee members to fill a casual vacancy on the committee.
- ii. Appointments to casual vacancies must be endorsed or otherwise at the next residents general meeting.

The above clauses provide procedures which are considered customary, for casual vacancies.

4.7 Removal or resignation of member from residents committee

- i. A member of the residents committee may resign at any time by giving the secretary of the residents committee a written notice of resignation.
- ii. A member of the residents committee may be removed at any time by special resolution at a residents meeting. The member must be given prior opportunity to fully present their case at the residents meeting.

Clause 4.7ii provides an avenue for residents to remove member of the residents committee under the provisions of the RV Act (s 127(2)(b)).

- iii. A member of the residents committee will cease to hold office where they are absent from 3 consecutive residents committee meetings without prior committee approval. Acceptance of an apology will be considered approval for the absence.
- iv. The secretary of the residents committee must within 14 days, give a written notice about cessation of membership under clause 4.7(ii) or 4.7(iii), to the former member.

The above 2 clauses provide an additional procedure to automatically terminate the office of a member of the residents committee where they, for any reason, no longer participate in meetings.

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4.8 Residents committee meetings

- i. The residents committee must meet at least [XXXXXXXXXXXXXX].
The RV Act is silent on this matter, but it is suggested to meet each month or no less than every second month.
- ii. Where it is necessary to call a special meeting of the residents committee, the secretary, with the agreement of the chairperson, will call the meeting.
This clause provides a procedure for calling extraordinary meetings of the residents committee.
- iii. Meetings of the residents committee must be conducted at the village.
This clause restricts the location of residents committee meetings to the village.
- iv. A quorum at a residents committee meeting, will be at least one half of all current members, which must include:
 - i. either the chairperson or vice chairperson of the residents committee; and
 - ii. either the treasurer or the secretary of the residents committee.
- v. Where a quorum is not present within [XXX] minutes of the starting time for the residents committee meeting, the meeting will lapse.
The RV Act is silent on the matter dealt with in clause 4.8(iv) and (v)above, but the quorum as specified gives assurance to residents that there is adequate representation to protect their interests and conduct proper discussion when the residents committee is dealing with the scheme operator. A quorum will be at least half of the current total number of the members and include 2 office holders as specified.
- vi. The agenda for a residents committee meeting must include a standing item to extend an invitation to the scheme operator to attend for at least that part of the meeting.
The RV Act provides the residents committee may invite the scheme operator to attend a residents committee meeting and given a reasonable opportunity to address the meeting. The scheme operator must leave the meeting after they have addressed the meeting, unless the residents committee invites the scheme operator to remain (s 127(4) and (5)).
It would be an ideal time for the scheme operator to provide a verbal or written village report or give answer to residents verbal enquiries, proposal or complaints.
This clause provides a procedure which provides some level of formal interaction between the residents committee and the scheme operator, where the scheme operator chooses to attend.
- vii. Where approval has been given to the residents committee by the Constitution or by a resolution of the majority of residents at a residents meeting to make a decision on behalf of residents the following will apply:
 - a. each member of the residents committee has 1 vote
 - b. voting will be by a show of hands and based on a simple majority
 - c. where a vote is tied, the proposal or motion lapses
 - d. any lapsed or failed proposal at a meeting of the residents committee may be put forward by a resident at a residents meeting.

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The above clause specifies for members of the residents committee, voting entitlement and that residents may always raise matters again at a residents meeting. For example, a residents or subcommittee proposal for expenditure that is within the residents committee limit may not be approved. The proposal may still be raised by a resident or a member of the subcommittee at a residents meeting]for discussion and decision by residents.

To clarify, the only decision that is final is a decision by residents.

- viii. A maximum of 2 residents, who are not members of the residents committee, may attend a residents committee meeting as observers at any meeting. Each resident must give the secretary at least 7 days written notice before the meeting. The observers may only enter into discussion at the residents committee meeting, if invited by the chairperson to do so.

The above clause provides a procedure which promotes residents interest in the workings of the residents committee while also providing a level of transparency of operation.

- ix. Full and accurate minutes of each meeting must be taken of each meeting of the residents committee. The minutes must include at least the following particulars:
- a. the date, time and place of the meeting
 - b. the names of the person present and details of the capacity in which they attended the meeting
 - c. all issues discussed and how each issue was decided or dealt with
 - d. details of all correspondence, reports, notices or other documents tabled.

The RV Act provides the above particulars must be included in the minutes of every meeting of the residents committee (s 129A(1) and (2)).

Note – there cannot be a matter that is confidential as the law requires at the minimum the following is included in the minutes:

- every issue discussed and details how it was dealt with or decided
- every report and every notice or other document tabled
- every piece of incoming or outgoing correspondence to any party.

As such everything must be documented in the minutes of each meeting. If it worthy of proper 'discussion' it is worthy of being included in the minutes.

- x. Minutes of meetings of the residents committee must be presented at the next residents committee meeting to be confirmed and signed by a member of the residents committee. The minutes must be stored permanently by the residents committee.

The RV Act requires the minutes of residents committees are properly confirmed as a full and accurate record of the meeting (s 129A(3)).

- xi. The minutes, including all incoming and outgoing correspondence, must be made available to all residents in [name of appropriate place].

Section 129A(4) of the RV Act requires, at the request of a resident, the residents committee must give the resident:

- access to the minutes; or
- a copy of the minutes.

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The clause above provides a procedure which fully complies with s 129A(3) by simply giving access to the minutes of residents committee meetings in a communal place. The residents committee only has to make the minutes available in one of the two ways provided in the Act.

Residents committee may decide to provide both methods of distribution, but residents may not demand both. Bear in mind it would be a very costly and extensive exercise to provide copies of the full minutes and correspondence to all residents in larger villages.

- xii. If considered appropriate by the residents committee, the minutes may also be made available to individual residents by email or by hard copy.

The above clause provides an additional procedure to give discretion to the residents committee to provide minutes of residents committee meetings where it is considered appropriate – for example, a resident may request to be sent an email where they are travelling for an extended period, or a resident may have limited mobility and the minutes are delivered to their unit.

4.9 Residents committee unable to reach meeting quorum

Where the number of residents committee members permanently fall below the minimum required to achieve a quorum (relating to the minimum number of members) and additional members cannot be co-opted within 1 month, the remaining members of the resident committee must act only in a caretaker mode as stated in clause 4.5(ii)(b) of the Constitution.

The RV Act is silent on this matter, but it is customary for a voluntary committee to adopt a caretaker mode where membership of the committee permanently falls below a quorum.

To explain further, if the minimum membership of the committee under the residents constitution is 7 (this should include required elected positions) and states the quorum to be at least 50% of all members and must include either the chairperson or vice chairperson, and either the treasurer or secretary. To reach the quorum, 4 members must be present – 2 of which would be those stated, plus 2 ordinary members.

5 Residents funds

The RV Act is silent on all matters concerning 'residents funds'.

- i. There must not be any subscription or levy imposed on residents by the residents committee.
- ii. All income or profit raised from activities organised by the residents committee or by subcommittees will be funds of all residents (*resident funds*)

The above clause explains funds raised by either the residents committee or a subcommittee of the residents committee are communal residents funds.

- iii. Residents funds must be used solely for the benefit of all residents to further the objectives and undertake the functions stated in the Constitution.

This clause provides residents funds are for the benefit of ALL residents and not only for residents who raised those funds.

- iv. No portion of residents funds will be distributed directly or indirectly to individual residents, members of the residents committee or members of subcommittees except as a bone fide compensation for pre-approved expenses incurred.
- v. Residents funds must be held in a bank account under the name 'Residents of ABC

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- vi. The residents committee may invest residents funds in the way that residents decide by resolution at residents meetings.

This clause provides a procedure where there is a significant surplus of residents funds.

- vii. The residents committee will have the continuing authority to spend a monthly nominated amount from residents funds for any activity or purchase (including topping up subcommittee floats) which complies the Constitution, without seeking prior approval of the residents. This amount is to be reviewed by residents at each annual general meeting.

This clause provides a simple procedure where some specified amount of residents funds may be expended by the residents committee for the benefit of residents without having to be granted approval for each. The amount of expenditure is reviewed at each annual general meeting of residents.

- viii. Where an amount above the monthly pre-approved amount is proposed to be spent from resident funds the proposal must be agreed to by residents by way of a resolution at a residents meeting before the amount is spent.

This clause reinforces that residents funds belong to residents and not the residents committee and expenditure must always be approved by a majority of residents who are entitled to vote at a residents meeting.

- ix. The residents committee must implement sound financial systems and procedures for the administration and handling of residents funds, including adequate controls over payments. The residents committee remain accountable for residents funds.

This clause provides financial systems and procedures implemented by the residents committee must provide a level of protection commensurate with the value of resident funds and that the residents committee is wholly responsible for those funds.

- x. Residents may approve, by a resolution at a residents meeting, for the provision of working floats from residents funds to subcommittees.

This clause allows subcommittees to get on with their business to some extent without having to wait for approval of expenditure of funds by residents.

- xi. The treasurer of the residents committee must report on the financial position of residents funds at each residents committee meeting and provide a full report and financial statements at each residents meeting.

- xii. The financial records for residents funds will be available for perusal by any resident upon written request.

The above 2 clauses provide a degree of transparency for the administration by the residents committee, of residents funds.

6 Subcommittees

- i. Subcommittees, as intended by the Act, may be formed for any purpose for the benefit of residents, by the residents committee.
- ii. Any group within the village, that has annual income raised from residents of more than (\$XX), or requires payments of more than (\$XX/month) from the account held for residents funds, must be established as a subcommittee of the residents committee.
- iii. In addition to the procedures in this constitution, each subcommittee will operate under

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guidelines and procedures developed by the residents committee in conjunction with representatives of the subcommittee.

- iv. Procedures and guidelines for the subcommittee must include, where applicable, requirements for presentation of financial reports, and activity reports to each regular residents committee meeting and to residents at each general residents meeting.
- v. Subcommittees must not expend residents funds other than allocated working floats unless prior approval has been given by a resolution at a residents meeting.
- vi. Subcommittees may be referred to as a club or group.
- vii. A person living long-term in the village with a resident under a scheme operator approved arrangement or as a rental tenant, may be an ordinary member of a subcommittee.

The RV Act provides the residents committee, subject to the residents constitution, may form subcommittees and decide a subcommittees procedures 127(3)(b) and 128(3).

It is prudent to draft procedures and guidelines so that residents, the residents committee and the subcommittee have a clear picture of what is expected of the subcommittee. One set of general guidelines may be prepared which will apply to all subcommittees. Each subcommittee will then have specific procedures that would be relatively short.

It is not essential to include resident committee members in a subcommittee. However, it is suggested to include the following matters in each subcommittee procedures:

- *office holders of each subcommittee hold office until the next annual general residents meeting*
- *office holders of each subcommittee are elected by interested residents who are present at a meeting for the purpose of the election*
- *the chairperson of the residents committee will chair each initial subcommittee meeting for the election of office holders of the subcommittee*

The use of the words 'club' or 'group' merely simplifies terminology for day to day use.

Section 127(3)(b) of the RV Act does not appear to strictly limit membership of a subcommittee to only persons who are defined by ss 9 and 10 of the RVA, as residents of the village. Therefore, it would be an advantage for persons living long-term in a village, with residents under a scheme operator approved arrangement, or as rental tenants, being included in the social affairs of the village by inclusion in relevant subcommittees.

The above explanations are provided only as suggestions. Residents committees and residents may decide other procedures.

7 Working groups

- i. Working groups, with a working brief, may be set up by the residents committee, as required for a special purpose.
- ii. The residents committee, in conjunction with members of the working group, will draft the working brief.
- iii. On presentation of their final report to the residents committee and residents, the working group is to be disbanded.

The RV Act has no expressed provision for the formation of working groups however, it is

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a prudent move to include such procedures in a residents constitution. Reasons for working groups may include, but not limited to – providing assistance to residents when amending the residents constitution, or analysing draft budgets and financial statements.

It is prudent to draft a working brief so that residents, the residents committee and the working group have a clear picture of what is expected of the working party.

The above explanations are provided only as suggestions. Residents committees and participating residents may decide other procedures.

8 Village by-laws

- i. The procedures in this clause relate to by-laws made under the RV Act about non-exclusive use and enjoyment of the village.
- ii. The residents, by special resolution at a residents meeting and with the agreement of the scheme operator, may make, change or revoke by-laws.
- iii. Where there is an inconsistency between a by-law and a provision of a residence contract, the provision of the contract prevails to the extent of the inconsistency.

The above clauses provide procedures which are a paraphrased extract from the RV Act (s 130)).

By-laws made under s 130 of the RV Act may only be made about non-exclusive use and enjoyment of the village and are separate to by-laws made under another Act – for example, the Body Corporate and Community Management Act 1997, under which by-laws may be made about exclusive use and enjoyment of parts of the village.

9 DEFINITIONS

9.1 General definitions

Scheme operator

The term scheme operator includes the manager of the village or another representative who is employed by the scheme operator.

Casual vacancy

Casual vacancies can arise by death, by resignation or by removal from office.

[Name of village] RESIDENTS CONSTITUTION

9.2 Definitions under the *Retirement Villages Act 1999*

Section 9 – Who is a resident

A resident of a retirement village is a person who has a right to reside in the retirement village and a right to receive 1 or more services in relation to the retirement village under a residence contract.

Special resolution

The following matters under the *Retirement Villages Act 1999* require Special Resolution voting:

- Section 40D Approval of closure plan
- Section 90B Capital Improvements requested by residents
- Section 106 (3) Increases above CPI may be approved by residents
- Section 108 New service to be approved by residents
- Section 110 Increase in insurance premium excesses
- Section 113F Approval of redevelopment plan
- Section 127 (2)(b) Removal of a member of the Residents Committee
- Section 130 (1) Residents may make, change or revoke By-laws
- Section 133 (1) Change of voting entitlement

This constitution was adopted by a majority vote of the residents of [name of village] at a residents meeting.

The RV Act expressly provides the residents constitution must be adopted by a majority of residents entitled to vote and who voted (s128(1)).

Dated of meeting:

Signed:

Chairperson of the residents committee

Signed:

Secretary of residents committee
