

## Developing a residents constitution using the Model Residents Constitution

When developing a draft residents constitution, the following points are relevant.

1. The model constitution includes various matters which are important in the context of retirement villages. It also includes other matters which may be considered optional by some villages.
2. 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 their final constitution is inconsistent with the RV Act.
3. **Extreme consideration must be given to including items in a constitution which may upset the equilibrium and harmony of the village community.**
4. Establish a small working party of interested residents (inc. some committee members if interested and appropriate in the circumstances), who:
  - understand that the constitution belongs to all residents of the village
  - maintain open and clear communication to all residents about the purpose of a residents constitution and the work of the working party
  - involve as many interested residents as possible through a proper consultation process.
5. Proper written notice must be given to each resident 14 days before the draft is presented voting by residents.
6. A simple majority of voting residents is sufficient to adopt a residents constitution. Other requirements may be necessary to comply with clauses if rescinding an existing constitution.
7. Using this document:
  - The first page (this page) should be deleted
  - the text below many clauses are solely explanations to assist in the development of your draft. They do not form part of a constitution and should be deleted.
  - it is suggested that the preliminary notes remain as an introduction to the finalised constitution to assist residents in the future
  - no clause may be inconsistent with The Act
  - clauses of the model may be amended freely or even omitted, except for clauses marked 'Λ'. In these cases, the relevant provision of the Act must be taken into account for drafting the clause.
  - the watermark 'DRAFT' must be removed, and the table of contents should be updated on completion.
8. A basic project plan and other documents that will assist working parties are available to subscribers to the Residents Committee Support Desk by contacting the ARQRV office.



# *Residents Constitution*

XXXXXXXXXXXXXX

DRAFT



## Preliminary notes

### Disclaimer

The Model Residents Constitution is provided as guidance only and not as legal advice. When developing a residents constitution, residents must consider circumstances within their village and, if necessary, seek independent advice.

### What is a residents constitution?

Section 128 of the *Retirement Villages Act 1999* (the Act) provides that the residents of a village may, by a majority vote of residents at a residents meeting, adopt a residents constitution.

A residents constitution is unlike a constitution for another group, body or organisation, even though there are some general similarities. A residents constitution is simply a set of procedures for the \*participation by residents in the affairs of the village – for example, it should cover matters such as:

- meetings of and voting by residents
- the establishment and operation of the residents committee and subcommittees
- amendment of an adopted constitution
- establishment of working parties for a specific purpose and advisory panels (e.g. a financial advisory panel for village budgets)
- administration and use of monies in the residents fund account.

\*Read more about the above matters in the web article *Residents participation in the affairs of the village*.

A residents constitution must not include anything which would affect the lifestyle or the financial standing of any resident; or the running of a village. That is, it must not contain rules about residents' lifestyle or their general behaviour; or for the use of common facilities as these matters are the subject of residence contracts, village by-laws or scheme operator provided rules. These matters should be addressed elsewhere.

Neither the Act nor the Regulation, specify matters which are to be included in a residents constitution but, the Act does prescribe that a constitution must not be inconsistent with the Act.

Put simply, a residents constitution should:

- reiterate various procedures prescribed by the Act; and
- provide additional procedures which are relevant to residents participation in the affairs of their village, not inconsistent with the Act, and a majority of voting residents consider appropriate.

### Why is a comprehensive residents constitution needed?

The Act provides little or, in some cases, no direction for procedures relating to some relevant matters. This is intentional as legislators recognised that residents in each village have different needs and views on how things are to be conducted. It is therefore up to the residents of a village to put together a comprehensive residents constitution which meets their specific needs. As such, a comprehensive constitution will provide precise, transparent and consistent procedures which satisfy a majority of voting residents.

Do not be put off by the length of a comprehensive constitution as it is only referred to on an as needs basis.

### **Residents constitution and the residents committee**

A residents constitution is not a residents committee constitution hence, it is not 'owned' by the committee nor is its content controlled by the committee. This applies even though procedures relating to the residents committee may be included within the document (ss 127(3) & 128(3) of the Act). It is intended that a residents constitution is developed by residents for residents. It may include procedures for any appropriate matter relating to the affairs of the village provided those procedures are not inconsistent with the Act.

You will note in s 127(3) of the Act that, a residents committee may decide its own procedures, form subcommittees or decide subcommittee procedures but they do these things subject to the residents constitution. You will also note in s 128(3) that a residents committee must conform to the residents constitution.

Given the above, it is evident that the Act intends and encourages residents to include in their residents constitution as many procedures relevant to their residents committee, subcommittees and the like, as they see fit.

A residents constitution once adopted does not terminate on dissolution of an established residents committee nor when a new committee cannot be formed.

A village does not need a residents committee before a residents constitution is drafted, discussed and adopted. There simply needs to be a group of interested residents who wish to organise this enterprise. Interestingly, it is desirable that a constitution be adopted before a residents committee is established. A residents constitution once adopted would prevail over procedures previously decided by a resident committee (s 128(3) of the Act).

### **Amending a residents constitution**

The Act does not specify procedures for amending a residents constitution even though a constitution must always be relevant to the needs of a village and remain so even when there are changes of circumstance or where there are shortcomings in the current version. It is therefore up to residents to decide these procedures in their constitution.

However, these procedures must not be overly obstructive as it may be impossible to make changes even when required. For example, it may not be prudent to provide that amendments may only be made by a special resolution. This is apparent because legislators saw fit to not include a law that requires a special resolution for such a purpose even though one is required for many other matters.

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## 1 The Constitution

### 1.1 Name of the Constitution

This constitution is known as the **Constitution of the Residents of [XXXXXXXXXX]** (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 Purpose of the Constitution

The Constitution clarifies and reinforces procedures specified in the *Retirement Villages Act 1999* (RV Act) (or Retirement Villages Regulation) (the RV Regulation), and provides additional procedures for the consistent, transparent and harmonious participation of residents in the affairs of the village; namely:

- a. keeping and amending the Constitution
- b. holding residents meetings
- c. voting by residents
- d. establishing and operating a residents committee
- e. establishing and operating a residents fund
- f. establishing and operating sub committees
- g. forming working groups and advisory panels
- h. making, changing or rescinding village by-laws.

*It is pointless adding airy fairy statements re residents aims etc. unless there are actual procedures which will meet the stated objectives.*

*The 'affairs of the village' means the business undertaken by residents in the village community and is listed above. Read more about this in the web article 'Residents participation in the affairs of the village'.*

### 1.3 The Constitution and the law

- i. The Constitution is subject to the provisions of the RV Act and the current RV Regulation.
- ii. ^If any part of the Constitution is inconsistent with the Act or the Regulation, the provisions of the RV Act or the RV Regulation prevail (s 128(2)).

^Relevant provision/s of the RV Act must be taken into account.

*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.*

#### 1.4 To whom does the Constitution relate

- i. ^Every resident of [**name of village**] (the residents), who wants to be involved, may participate in the affairs of the village (s 3(2)(d)).
- ii. The Constitution applies to every resident singularly or collectively, who from time-to-time, participate in the affairs of the village specified in the RV Act or the Constitution.
- iii. ^Members of the residents committee must, individually and collectively, conform with the Constitution (s 128(3)).

^Relevant provision/s of the RV Act must be taken into account.

*This clause clarifies that residents participation is optional and that they must not be excluded.*

*It also clarifies that the constitution applies only to those that participate in the affairs of the village, and when they do take part, must conform with the constitution where it is relevant. A resident who simply participates in an activity or attends a village function is not considered participating in village affairs.*

*Even though the constitution does not apply to those residents who do not participate in the affairs of the village, decisions made by participating residents apply to or affect the entire community.*

*You will note the name of the collective body of residents of the village is stated as ‘the 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 body – 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 body or 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 needs be done for inclusion. It is then the choice of each resident, if and when, they wish to participate.*

*Notwithstanding the above reasoning, there is nothing to prevent the residents of a village from being known differently – for example, using the word ‘association’. However, this term is not ideal as it implies that all residents share common interests or have a common purpose such as community groups etc. where each and every person of the group have made a conscious decision and effort to ‘associate (join the group)’ so they can share a common interest or work for a common purpose. Even though there may be some groups with common interests and common goals in a retirement village, overall residents are simply living in the same community. The term also implies that all residents are part of the association even though they never participate or wish to be included in the affairs of the village (but one day they just might participate). All residents of a village are much less cohesive and organised than suggested by the term ‘association’.*

*Regardless of what name is used, a resident still retains their rights and entitlements provided by the RV Act to participate, at any time they wish, in the affairs of a village. It is simply best to use the term 'residents'.*

### 1.5 Changes to the Constitution

- i. Where procedures in the Constitution are considered inadequate, a working party of [XX] residents and at least one member of the residents committee, may be established to develop constitutional changes in consultation with all residents.
- ii. At least [XX] days written notice of the vote, and the wording of the proposed change, must be given to each resident by the working party.
- iii. At least [XX]% of residents at a meeting who are entitled to vote, and who vote, must approve an amendment to the constitution.
- 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.
- v. Typographical errors which do not affect the content of the Constitution may be made without complying with the above procedures.
- vi. A concise record of all amendments and corrections must be annexed 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 statement, there is nothing to prevent the residents committee from proposing a change.*

*The first 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, consultation and consideration in relation to [XXXXXXXXXXXXXXXX] of the residents constitution.*

*Note – the motion is not about the change but rather, to form the working party and draft the change for discussion, consultation and consideration by residents.*

### 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 the [XXXXXXX].  
*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 for 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. Clause 2.1 applies to every residents meeting regardless its purpose.
- ii. A quorum at a residents meeting is [XX]% of the total number of residents, who are entitled to vote, and attend in person.

*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 account factors relating to their village.*

*ARQRV suggest one third (or less) of residents who are entitled to vote is a common proportion to be a quorum at a residents meeting. However, this may be too high in a village with an older demographic so it should be adjusted accordingly for your village.*

*In many cases, it is usual for persons to 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. However, it is entirely up to each village whether proxies are counted as part of a quorum. It depends on how hard it is to reach the required number.*

- iii. The quorum must be confirmed by the chairperson at the commencement of the meeting.
- iv. Where the quorum is not achieved within [XX] minutes of the meeting time, the meeting is postponed, but not for more than [X] weeks.

*It is prudent that a meeting does not simply lapse.*

- v. Where the quorum stated above is not achieved for a meeting, the quorum for the rescheduled meeting only, may be reduced to [XX]% of the total number of residents who are entitled to vote and attend in person.

*This may be relevant in a village with an older demographic.*

*A temporary reduction in the number to reach a quorum will improve chances of a meeting being held where there are special circumstances. Remember, participation by residents is entirely optional.*

### 2.2 Conducting residents meetings

- i. Clause 2.2 applies to every residents meeting regardless its purpose.
- ii. No business or discussion relating to the body corporate matters may be undertaken at a residents meeting.

*This clause is retained only for villages that are freehold.*

- 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 at the meeting will decide a person to act as chairperson for that meeting.

*As it is a residents meeting called by residents, the meeting should be chaired by a resident. It is customary that the meeting is chaired by the chairperson of the residents committee.*

- iv. At a meeting of residents, the chairperson must allow and ensure each speaker is

provided a reasonable time for addressing the meeting without being subject to bullying, harassing, or disrupting behaviour.

*This clause assists with providing a comfortable environment for all present.*

- v. At a residents meeting the chairperson must address any person's unreasonable behaviour (including protracted and/or valueless monologues) and ask those present to decide if it is in order for the person to continue or, to end such 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.*

- vi. Full and accurate minutes must be taken by the secretary of the residents committee at every residents meeting and must be made available to all residents by placing the draft minutes on the notice board in the [XXXXXXX] within [X] days after the meeting.
- vii. The draft minutes must be presented for confirmation at the next residents meeting.
- viii. Following an appropriate announcement by the chairperson, the secretary may take an electronic recording of a meeting which must be retained until the minutes are confirmed.

*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 communal area. Recording of meetings has become common practice in many areas to ensure accuracy of the minutes.*

*Regardless of the purpose of the meeting (general, AGM or special), the draft minutes should be confirmed as soon as practical while memories are still fresh.*

- ix. The secretary of the residents committee must keep:
  - a. the minutes of residents meetings; and
  - b. a register with details of significant resolutions made by residents (e.g. changing of residents voting entitlements).
- x. The secretary of the residents committee, if given a written request, must, within a reasonable time, provide the following to a resident:
  - a. a copy of the draft or the confirmed minutes from a previous meeting; or
  - b. a report to be presented at the next 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 at any time.*

- xi. Where a residents committee has not been established, the Constitution does not prohibit residents from calling residents meetings in the same manner as a residents committee.

*Residents are always entitled to organise themselves to arrange and hold residents meetings. There is no requirement in the RV Act that only a residents committee or a scheme operator can call residents meetings.*

## 2.3 General residents meetings

- i. Clauses 2.1 and 2.2 of the Constitution apply 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.ix.

*This clause clarifies which residents meetings are general meetings.*

- iii. General residents meetings must be held [XXXXXXXXXXXXXXXXXX].

*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 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 resident, by letter box or by email, at least 14 days before the date of the meeting (s 132(1)).

*The RV Act requires that the residents committee must give each resident 14 days written notice of meetings (s 132(i)). The above delivery procedure is sufficient to satisfy the requirement for giving notice even though the notice may not be received by the resident where they are absent from the village.*

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

- a. date, time and venue
- b. statement explaining the quorum and that it must be achieved for the meeting to be held

*This clause may influence residents to attend.*

- c. statement providing the behavioural ground rules for the meeting in 2.2.iv.

*This clause may make residents feel more at ease if they attend the meeting*

- d. an agenda.

*The RV Act is silent on the contents of the notice, but the items listed above are reasonable.*

- ix. Business to be conducted at a general residents meeting will include at least the following items:
  - a. announcement of meeting ground rules stated in clauses 2.2.iv and v
  - b. confirmation of the draft minutes from the previous residents meeting
  - c. calling for additional items from the floor, for discussion and resolution
  - d. reports from the residents committee and all relevant subcommittees
  - e. discussion and vote relating to items raised in the above reports
  - f. treasurer's report regarding residents funds
  - g. discussion and vote to expend residents funds
  - h. review of monthly nominated amount for expenditure by the residents committee
  - i. Village managers reports, including village financial matters, presented on invitation from residents committee (s 132(3)(c))
  - j. additional items.

*This list is merely a suggestion. Each Village will have their own requirements.*

- x. Agenda items, to be included in additional items, may be given in writing to the secretary of the residents committee no less than 24 hours before the residents meeting.

<sup>^</sup>Relevant provision/s of the RV Act must be taken into account.

*This clause may help residents who do not want to personally raise the issue or stand and speak at the meeting.*

## 2.4 Special or urgent residents meeting

- i. Clauses 2.1 and 2.2 of the Constitution apply 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 does not restrict the purpose for which the residents committee calls a residents meetings.*

- 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 no less than [XX] residents entitled to vote.

*Residents are entitled to request the residents committee to call special residents meeting in circumstances considered extraordinary by residents. When deciding the number of residents required for this clause, the quorum and the usual number participating in residents meetings must be considered.*

- 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 [X] days from when the request was given to the secretary.

*As the meeting would only be called in extraordinary and serious circumstances, this clause ensures the meeting is called and held within a reasonable time frame.*

- v. If the meeting requested by residents has not been called by the residents committee within the stipulated time, the requisitioning residents may call the meeting in the same manner as a residents committee.

*Even though residents are automatically entitled, this clause specifies residents can by-pass the residents committee, if the residents committee fails to call the meeting within a reasonable time.*

- vi. Written notice of a special residents meeting must be given to each resident, by letter box or email, 14 days before the date of the meeting except in the case mentioned in clause 2.4.vii.

*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. Where a resident is absent from the village the notice cannot be given.*

- vii. ^Where circumstances are considered urgent by the residents committee, or by [X] residents who are entitled to vote, give a request to the residents committee to call a special residents meeting, the period of notice may be reduced to a period reasonable in the circumstances but, not less than 2 days (*urgent residents meeting*) (s 132(2)).

*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)).*

- viii. 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.*

- ix. Where a residents meeting 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.

^Relevant provision/s of the RV Act must be taken into account.

*It is prudent to keep special or urgent meetings short as practical and focused on only the subject matter.*

## 2.5 Annual general meeting of residents

- i. Clauses 2.1 and 2.2 of the Constitution apply to annual general meetings of residents.
- ii. The annual general meeting of residents\* will be held, immediately following the close of a quarterly general meeting and, within 1 year from the previous annual general meeting.

\*As distinct from the meeting of residents called annually by the scheme operator under s 131 of the RV Act to present the annual 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 purposes mentioned below.*

*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.*

*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 or immediately following a general meetings.*

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

- iii. The annual general meeting must include the following matters:
  - a. confirmation of draft minutes not already confirmed at a previous residents meeting
  - b. annual reports from each subcommittee
  - c. discussion and resolution of matters raised from annual reports
  - d. announcing results of the election of members of the residents committee
  - e. hand over to new committee.
- iv. The annual general meeting of residents will be held at such date, time and place as decided by the residents from one annual general meeting to the next.

*Residents may decide to be more specific in the above clause by nominating a particular month, week and day..*

- v. ^Written notice of an annual general residents meeting must be given to each resident, by letter box or by email, at least 14 days before the date of the meeting (s 132(1)).
- vi. The notice of the annual general meeting may be included with the notice of the general meeting of residents by using separate headings for each notice.

*The RV Act requires that the residents committee must give each resident 14 days written notice of residents meetings (s 132(i)). The above delivery procedure is sufficient to satisfy the requirement for giving notice even though the notice may not be received by the resident where they are absent from the village.*

- vii. A notice of an annual general meeting must include:
  - a. date, time and venue
  - b. an agenda.

*The RV Act is silent on the contents of the notice but without the items listed above.*

- viii. The Constitution does not prohibit the annual meeting of residents called by scheme operator under s 131 of the RV Act, to be held at a suitable time within or adjoining the annual general meeting.

^Relevant provision/s of the RV Act must be taken into account.

*It may be convenient to hold the meetings as stated above if the dates coincide.*

### 3 Voting by residents

#### 3.1 Residents voting entitlement

- i. ^The following persons, as provided by the RV Act, are entitled to vote at residents meetings:
  - a. 1 resident of each accommodation unit; and
  - b. 1 former resident of an accommodation unit while paying the whole or part of the general services charges.

(s 133(1))

*The RV Act provides by default, and as the preferred arrangement, that each accommodation unit is entitled to 1 vote (s 133(1)(a)(i)). This is by far the best arrangement because regardless of how many people live in the unit, there is ONLY one ingoing contribution amount, ONLY one residence contract, ONLY one MRF contribution amount and ONLY one GSCF contribution amount. That is costs and fees are NOT based on the number of residents in a unit. Rather they are based on a unit. Hence, ONE vote for each unit.*

- ii. ^Residents, may by special resolution, agree to change residents voting entitlements so that each resident of the village is entitled to vote at residents meetings (s 133(1)(a)(ii)).

*Residents may change this entitlement by special resolution (s 133(1)(a)(ii)). Be warned!! If you do alter the vote the arrangement is likely to be regarded as being s unfair and unreasonable because where there is only one person residing in the unit their single vote will not have the same weight even though they contribute the same amount as a unit with two residents who have two votes.*

- iii. ^ The voting entitlement of residents applies to all instances of resident voting (s 133(1)).

^Relevant provision/s of the RV Act must be taken into account.

*The RVA prescribes that, for all matters, only one arrangement for voting entitlements may be utilised. 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.*

*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:
  - a. the election of the residents committee (subject to clause 4.7(iii)) and special resolutions, which will be by secret ballot
  - b. where a postal vote has been cast
  - c. 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 agreed to by a simple majority (more than 50%) of residents entitled to vote and who voted.

*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.*

- iii. In the event of a tied vote the motion will fail. A failed or lapsed motion, amended or not, may be proposed at a later meeting.

*The RV Act is silent on this matter. However, this clause clarifies the situation. The motion is likely contentious due to the tied vote and, therefore should not be passed. Perhaps the motion or a revised motion can be put forward that might be more agreeable to residents.*

### 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:
  - a. the appointed person must not be the scheme operator or their representative
  - b. the appointment of a proxy must be in writing and signed by the resident giving the proxy (an email from the resident with relevant details is acceptable)
  - c. a proxy is valid for only the 1 meeting (or the purpose) stated in the notice
  - d. a person may not hold more than 2 proxies for a meeting (or purpose)
  - e. a proxy form must be sighted by the secretary of the residents committee or voting officials prior to the commencement of the meeting, or a vote being cast.

(ss 133(2)(c), (3) & (4))

*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 (s133(2)(c)).

^Relevant provision/s of the RV Act must be taken into account.

*The RV Act does not restrict when proxy votes may be used.*

### 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, or by email sent to the secretary where they are absent from the village during the voting period (s 133(5)).

*The RV Act provides a resident may cast a post vote by placing the resident's written vote in the container provided (s 133(5)). There is nothing which prevents residents from voting by email, provided they do not mind the secretary seeing their vote.*

*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 will be used for:
  - a. where a secret ballot has been agreed to by voting residents, a proper period of notice has been given, and the motion is unamended since proposal
  - b. motions to amend the Constitution
  - c. special resolutions
  - d. the election of members of the residents committee.

*The clause above provides procedures, additional to those in the RV Act to clarify postal voting.*

- 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 secretary of the residents committee must arrange for:
  - a. ^the scheme operator to provide a sealed ballot box (s 133(5)); and
  - b. voting officials to take votes.
- v. [X] voting officials (1 should be a member of the residents committee), with the ballot box, will be available in [XXXXXXXXXXXXX] to record details of each resident voting and their voting entitlement.

*The RV Act requires the ballot box to be located in a common area (s 133(6)).*

*The RV Act does not specify that the ballot box needs to be attended or how residents entitlement to vote are recorded but the above is one arrangement.*

- vi. The residents committee may decide when the ballot box is available for voting, but the ballot box must be available on at least [X] days for at least [X] hours on each day 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.*

- vii. The times the ballot box is available for voting and where a postal vote or proxy form may be obtained must be provided in the notice of meeting given to each resident.
- viii. ^The sealed ballot box will be delivered to the chair of the meeting immediately (not more than 3 hours to allow for counting of votes) before the meeting is opened (s 133(8)).

*The RV Act prescribes that the box is delivered unopened to the chairperson immediately before the meeting is opened, but we are unable to see how this can be achieved in practice if there are many votes to count when the meeting has already started.*

- ix. ^The ballot box must not be opened by the scheme operator or any other person before it is delivered to the chairperson to be handed over to the scrutineers for counting (s 133(7)).

^Relevant provision/s of the RV Act must be taken into account.

*If there are not many votes to count, the scrutineers may count the votes at the meeting.*

### 3.5 Voting under a power of attorney

- i. ^A person, who is suitably authorised under a power of attorney of a resident who is entitled to vote, may vote on his/her behalf (s 133(2)(b)).
- 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.

^Relevant provision/s of the RV Act must be taken into account.

*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. Usually, the resident’s power of attorney is a son/daughter or family member.*

*It is important that the power of attorney authorises the attorney 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.*

*You should ask for a copy of the power of attorney to check to make sure the person voting holds the requisite authority. A copy of the power of attorney requires proper certification by a qualified witness (Justice of the Peace, Commissioner of Declarations or solicitor).*

### 3.6 Special resolution

- i. ^Where a resolution is proposed as a special resolution, each 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.

(Schedule 1 of the RV Act)

*Clause 3.6(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.*

*An amendment to a motion, which is the subject of a special resolution vote, must be given the full period of notice before the vote is conducted.*

- 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 (Schedule 1 of the RV Act).

*The above clause paraphrases 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.

(Schedule 1 of the RV Act)

^Relevant provision/s of the RV Act must be taken into account.

*Most of clause 3.6(iii) is paraphrasing of the definition of 'special resolution' provided by 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, providing the power of attorney authorises it.*

### 3.7 Counting of votes

- i. Prior to each meeting, when required, the residents committee will appoint [X] residents as scrutineers to conduct a count of votes cast by ballot papers.
- ii. Scrutineers will preferably be Justices of the Peace and residents of the village.
- iii. Scrutineers, depending on the number of votes, may count the votes before or at the meeting.
- iv. Formal votes only are included to provide the outcome of a vote; with all votes being recorded on a tally sheet for the chairperson.

*Informal votes must not affect the outcome of a vote.*

- v. All postal votes, ballot papers and proxy forms completed for a vote must be destroyed at the conclusion of the meeting under the supervision of [X] scrutineers.

*The RV Act is silent on the above matters, but the procedures provided are customary 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 Establishment of residents committee

^The residents may establish, by election conducted among themselves, a residents committee (s 127).

^Relevant provision/s of the RV Act must be taken into account.

*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.*

## 4.2 Residents committee structure

- i. The residents committee must comprise at least [X] but no more than [X] 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.*

*Where the number of members does not reach the minimum required, a committee is not established.*

*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.*

## 4.3 Term of members of residents committee

- i. ^Each member of the residents committee holds office until, the earlier of:
  - a. 1 year; or
  - b. a new residents committee is established.

(s 127(2)(a))

*The RV Act provides the maximum term of each residents committee member 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.*

*This means that after the expiration of 1 year from the election of the committee simply ceases to exist.*

- ii. Where a resident, under clause 4.7, becomes a member of the residents committee after the date of the last annual general meeting of residents, such member's term will end simultaneously with members elected at the previous annual general residents meeting.

*This clause clarifies that no matter when a resident becomes a member of the residents committee, the term of all committee members ends simultaneously.*

*That is, to keep matters simple, it is prudent to conduct a single election as provided for in clause 4.5.*

- iii. ^A resident is eligible to be re-elected as a member of the residents committee, and:
  - a. may hold the same position for up to [X] consecutive years; but
  - b. is then not eligible to hold that position for a further period of [X] years.

(s 127(2)(a))

^Relevant provision/s of the RV Act must be taken into account.

*The RV Act prescribes that a resident may be 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 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’. It also provides a degree of protection for money being handled as there has to be a new treasurer from time to time.*

#### 4.4 Functions of the residents committee

- i. The residents committee is subject to the provisions of the Act and the Regulation, the Constitution, and to resolutions 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 residents committee must act in good faith in the best interests of residents.
  - iii. ^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 (s 129). This will be achieved by:
    - a. Referring to the scheme operator every complaint and proposal raised by residents, and endeavoring to resolve complaints in conjunction with the scheme operator, implement proposals where approved by residents, and advise residents as to progress or outcomes of referrals.
    - b. ^Discussing with and as necessary, seeking clarification from the scheme operator of draft village budgets, accounts and the financial statements of expenditure (ss 112A(2), 129B)
    - c. Keeping residents fully informed, in a timely manner, of:
      - i. all matters being dealt with by the residents committee; and
      - ii. all communication with the scheme operator, including:
        - displaying a copy of finalised draft village budgets; and
        - ^inviting the village manager to each meeting of residents to provide a village manager’s report; and to present the village budget, quarterly or annual statements of expenditure to meetings at the relevant times (s 132(3)(c)).
    - d. Maintaining a notice board, located [XXXXXXXXXX], for distribution of information relating to the business of the residents committee.



*Clause 4.4iii reinforces and clarifies 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)).*

*And states that residents must be kept informed of all matters including draft village budgets.*

*Note – every complaint and proposal within the functions of the committee identified by the RV Act or the constitution 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 facilitate any actions or activities required by resolutions of residents at residents meetings and keep residents informed of their progress.

*This clause provides that the residents committee must action resolutions made by voting residents and to keep them informed.*

- v. The residents committee must undertake the general administration of the *residents fund* account subject to the rules and procedures of the Constitution, and resolutions of residents made at residents meetings.

*The RV Act is silent on matters relating to funds raised by residents, but the residents committee only administers the account. It does not control expenditure from the account.*

- vi. 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 clarifies that the residents committee has authority, in addition to other functions, to arrange activities and functions where appropriate subcommittees have not been formed.*

- vii. The residents committee has no authority to control the business of residents. That is, it must not:
  - a. make decisions binding for 1 or more residents on any matter except where clear authority has been approved by way of a resolution of residents at a residents meeting; or
  - b. make decisions that may, in any way, influence or change the lifestyle or finances of 1 or more residents.
- viii. The residents committee must remain impartial in all matters dealt with by the residents committee.
- ix. The residents committee must not become involved in contractual matters for individual residents nor 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 voting, 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.*

- x. The residents committee must not involve themselves with body corporate matters.

*This clause is relevant to only freehold villages.*

- xi. ^The residents committee may, subject to the Constitution, decide its own procedures (s 127(3)(a)).

*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)). That means the residents committee may only decide procedures that are not already decided by residents in the Constitution.*

- xii. Subject to residents' agreement to pay the costs of premiums from the residents fund, the residents committee must ensure that, for functions and activities organised by residents, there are appropriate insurances for personal accident for volunteers, and for public liability for all participants, which may be required in addition to the village insurance taken out by the scheme operator.

^Relevant provision/s of the RV Act must be taken into account.

*This clause may be relevant in specific circumstances where an insurance policy is inadequate.*

#### 4.5 Limits on privilege, power and authority of members of residents committee

Individual members of the residents committee, including the chairperson, do not have special privilege, power or authority beyond that of any other resident of the village to decide or control matters of the village, except as provided by the Constitution or by resolutions of voting residents.

*This clause limits the power of individual members of the committee and clarifies that committee members, but especially the chairperson, has no special privilege or powers beyond that provided by the RV Act, the Constitution or a resolution of residents..*

*Being a chairperson or a committee member does not make a resident the 'head' or controller of the village community.*

#### 4.6 Role of office holders of residents committee

- i. Chairperson's role is limited to the following:
  - a. conduct committee meetings and residents meetings without harassment, bullying or intimidation, according to the residents constitution, and ensuring that matters are dealt with in an orderly, efficient manner
  - b. ensure committee meetings and residents meetings are planned effectively
  - c. ensure proper notices of meetings, motions and elections are given to residents
  - d. ensure resolutions of residents are actioned by the committee
  - e. ensure functions and allocated tasks of committee members are completed on time
  - f. all things reasonably associated with the above.
- ii. Secretary's role is as follows:
  - a. organise committee meetings and residents meetings

- b. take and distribute minutes in accordance with the Constitution for committee meetings and residents meetings
  - c. maintain effective records and administration for correspondence, committee meetings and resident meetings
  - d. prepare outward correspondence as approved by the committee
  - e. prepare and giving of notices of meetings and motions to all residents
  - f. conduct administration, where required, for voting by residents
  - g. conduct or oversee the administration of committee elections
  - h. keep up to date copies of the Constitution, the *Residents Committee Manual* and the *Village Financials* guideline
  - i. all things reasonably associated with the above.
- iii. Treasurer's role is as follows:
- a. for monies of the residents fund:
    - ensure the operation of the account is in accord with the Constitution
    - keep an up to date basic manual of inhouse bookkeeping procedures.
  - b. for village financial matters:
    - participate in relevant discussions with, and enquiries to, the scheme operator about draft budgets and expenditure in accordance with the RV Act and the *Village Financials* guideline.
  - c. maintain a register of residents owned assets
  - d. all things reasonably associated with the above.

*The above clauses provide a starting point as how residents see some roles of the mentioned committee offices. In particular, it clarifies that the chairperson has no more authority than what is included in the Constitution.*

#### 4.7 Residents committee elections

##### Refer to Annexure A – Timeline for election of residents committee

- iv. The following principles apply to residents committee elections.
- a. Voting undertaken by residents is to elect members of the residents committee only.
  - b. Each position of the committee is to be decided by members of the residents committee.
  - c. The majority voting system will be used – meaning, successful candidates must first receive more than 50% of valid votes.

*Voting only for committee members and not specific positions provides members a more balanced view of themselves. That is, chairpersons or other positions do not think they are more important than other residents. Of note, a chairperson should simply chair meetings*

*and ensure other positions are performing their designated role.*

*The majority voting system is a fairer system as it ensures that residents who are elected to the committee are 'wanted' by residents, on 'their' committee.*

*The first past the post system does not provide an equal weighting for each vote may have a result where a resident being elected to the committee with only one vote, even though there were 100 residents who did not vote for them.*

*There are other and more complex arrangements for nomination and election – for example, nomination and voting for positions.*

*Residents may contact ARQRV about the above, for further information.*

v. Nomination procedures are as follows.

- a. Every resident of the village is eligible to nominate for election to the residents committee, including residents living in the same unit.

*The RV Act does not restrict who can nominate for election to the committee. There is nothing to prevent both residents from the same unit being re-elected as the voting entitlement provided by s 133 of the RV Act and clause 3.1(i)(a) of the Constitution do not apply to the residents committee as it has no decision-making authority. Decisions are made at a residents meeting not a committee meeting.*

- b. ^A former member of the residents committee may re-nominate for re-election (s 127(2)(a)).
- c. The secretary of the residents committee must call for nominations, and provide the location of nomination forms, [more than 30] days, prior to the annual general meeting.
- d. Nominations will close at [4 pm on the day 7 clear days] after being called.
- e. Nominations must be in writing, signed by the proposer, the seconder and accepted by the nominee, who must all be residents, and must be given to the secretary of the residents committee.
- f. Emails from parties stated above will be accepted in lieu of a signed form where some or all are absent from the village during the nomination period.

*Residents may choose to also include a short bio of nominees as part of the nomination procedures.*

- g. The secretary of the residents committee must place a copy of each nomination on the residents committee notice board as soon as practicable after each is received.

*This clause ensures residents are informed of each nomination as soon as practical.*

vi. Giving of notices procedures are as follows.

- a. A written notice must be given to each resident at least 14 days before voting commences, and must include the following:
  - i. list of nominees and where their nomination forms may be viewed
  - ii. details for voting including, times and place for voting, and availability of ballot papers and proxy forms.

- b. The notice of the annual general meeting and the general meeting may be included with the notice of voting provided the notice is clear by using separate headings for each.

*There needs to be a lengthy period of notice for residents to consider nominations and 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.*

- vii. The election procedures are as follows.
  - a. An election must be held where [X] (minimum number to form a committee) or more nominations are received.
  - b. Names of candidates will be listed on the ballot paper in the order in which their nomination was made.
  - c. Successful candidates, to a maximum of [X], are those who each received:
    - i. more than 50% of valid votes cast, and
    - ii. then the greatest number of votes.
  - d. The names of residents elected as members of the residents committee will be announced at the annual general meeting of residents.
  - e. The new residents committee must, immediately following the annual general meeting, hold the first meeting at which the members of the residents committee will elect positions (office bearers), by election conducted among themselves.

*The RV Act is silent on the matter of election of committee positions.*

*Section 127 of the RV Act prescribes that a residents committee is established by election. This indicates that residents must demonstrate their choice who will be on their residents committee by casting of votes. Therefore, it appears inconsistent with the RV Act where candidates were successful without a vote of residents. That is, it is unlikely that unopposed candidates may be 'declared' elected.*

*This clause provides the method which is the simplest for the election for each position. 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 administer.*

- f. Written notice of the full particulars of the residents committee will be given to the scheme operator and be placed on the residents committee notice board within [X] days of the first meeting of the residents committee.
- g. The retired residents committee must provide, within [X] days, a proper hand over to the new residents committee.

<sup>^</sup>Relevant provision/s of the RV Act must be taken into account.

#### 4.8 Procedures where residents committee cannot be established

- i. This clause applies where, for any reason, a residents committee cannot continue or be established.
- ii. Three retiring members of the residents committee may act in a caretaker mode by:
  - a. remaining as signatories to the residents fund account and authorising payment of incoming invoices
  - b. authorising the topping-up of each sub-committee working floats, if any
  - c. preparing and making available to residents each month, financial reports relating to the residents fund account
  - d. arranging and conducting within [X] months, a new election
  - e. residents who nominated for election may assist the caretakers with the new election and may re-nominate
  - f. conducting no other business other than that provided in this clause.
- iii. Where there are insufficient retiring members of the residents committee willing to carry out caretaker functions, residents must approve, by a show of hands at the annual general meeting, a maximum of [X] residents to do so.
- iv. Caretaker mode operates until a residents committee is established but a caretaker may not act continuously for more than 1 year.
- v. Caretakers must not assume any function of a residents committee, other than as provided in the Constitution.
- vi. New caretakers may be approved by residents at any residents meeting, by a show of hands simple majority vote.
- vii. Caretaker mode does not prevent residents from:
  - a. utilising monies of the residents fund; or
  - b. arranging and conducting social and sporting activities; or
  - c. forming social or sporting groups; or
  - d. forming working parties to arrange and conduct, at any time, an election to establish a residents committee; or
  - e. forming working parties to propose amendments to the Constitution.

*The above clauses provide guidance as to procedures which need to be adopted where a residents committee cannot be established or is unable to continue.*

*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.*

#### **4.9 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 general residents meeting.
- iii. The endorsement must be made by residents entitled to vote and may be by show of hands at the residents meeting.
- iv. The endorsement is only effective if the co-opted member receives more than 50% of the vote.

*The above clauses provide procedures which are considered customary, for casual vacancies.*

#### 4.10 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 (s 127(2)(b)). The member must be given prior opportunity to fully present their case at the residents meeting.

*The above clause provides an mechanism 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 [X] days, give a written notice about cessation of membership under clause 4.8ii or 4.8iii, to the former member.

^Relevant provision/s of the RV Act must be taken into account.

*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 (usually illness), no longer participate in meetings.*

#### 4.11 Residents committee meetings

- i. The residents committee must meet at least [XXXXXXXXXX].

*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 held at the village, but electronic means of communication may be utilised by committee members who are away from 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:
  - a. either the chairperson or vice chairperson of the residents committee; and

- b. either the treasurer or the secretary of the residents committee.

*The RV Act is silent on the matter dealt with in clause 4.9(iv), but the quorum as specified gives assurance to residents that there is adequate representation to protect their interests and conduct proper discussion where the residents committee is dealing with the scheme operator.*

- v. Rules for meetings include that each member must be allowed reasonable time to address the meeting without being subject to bullying, harassing, or disrupting behaviour.

*This clause ensures that there is appropriate behaviour at the meeting by all members and guests.*

- vi. Where a quorum is not present within [X] minutes of the starting time for the residents committee meeting, the meeting may be rescheduled for a day which is as soon as practicable.
- vii. The agenda for each residents committee meeting must include the following standing items:
  - a. a statement of the ground rules provided in clause v above. This statement must be announced by the chairperson at the commencement of each meeting.

*This procedure reinforces the rules of behaviour for the meeting.*

- b. ^an invitation to the scheme operator to attend for at least that part of the meeting, unless it is a special meeting of the residents committee (s 127(4) & (5)).

*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.*

- viii. 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 or motion at a meeting of the residents committee may be put forward by a resident at a residents meeting.

*This clarifies and formalises that the committee must be authorised to make a decision.*

- ix. A maximum of [X] residents, who are not members of the residents committee, may attend a residents committee meeting as observers at any meeting by giving the



secretary written notice before the day of the meeting. Observers must not be prevented from attending the meeting.

*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.*

- x. Observers may contribute to the discussion, provided their behaviour remains non-threatening, harassing, or bullying.

^Relevant provision/s of the RV Act must be taken into account.

#### 4.12 Minutes of residents committee meetings

- i. ^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.

(s 129A)

- ii. An electronic recording may be made of the meeting, which must be:
  - a. kept until confirmed; and
  - b. made available to any residents committee member on request.

*Recording meetings is very common now. It is proper that those present at the meeting are entitled to have access to the recording.*

- iii. ^Draft minutes of each meeting 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 (s 129A(3)). The minutes must be stored permanently by the residents committee (s 129A(5)).

*The RV Act requires the minutes of residents committees are properly confirmed as a full and accurate record of the meeting (s 129A(3)) and must be kept.*

- iv. A copy of each draft minutes, including all incoming and outgoing correspondence, reports, notice or other documents must be made available within [X] days of the meeting, to all residents on the residents committee notice board (associated documents must be made available in a document folder stored near the notice board).
- v. ^Copies of minutes must, on request, be given to a resident by email or by printed copy in their letter box. A residents may make this a standing arrangement (129A(4)).
- vi. Copies of associated documents stated in clause 4.12i(d) are not provided with these copies but are available for viewing.

^Relevant provision/s of the RV Act must be taken into account.

*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.*

*It is prudent for transparency that the minutes are widely distributed or made available without residents having to ask for them.*

#### 4.13 Residents committee unable to continue

Where the number of residents committee members falls below the minimum required by the Constitution and, additional members cannot be co-opted within 2 months, the remaining members of the resident committee may, if interested, act only in a caretaker mode as stated in clause 4.6 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 the minimum number.*

## 5 Residents fund

*The RV Act is silent on all matters concerning 'residents funds'.*

*The model provided in this part is considered best practice. It provides for a single fund to be administered by the residents committee but expenditure is controlled by resolutions of residents.*

*Another model which may be adopted in a constitution may allow for another group (e.g. a social group) to administer the fund but expenditure is controlled by resolutions of residents. Regardless of which model is adopted it is always preferred that there is a single fund for the village, is administered in a transparent manner, and that control of expenditure remains with all voting residents.*

*Extreme consideration must be given to including items in this part which may upset the equilibrium and harmony of the village community.*

*This part should be amended to reflect those procedures which are workable in the circumstances while still remaining acceptable to the majority of residents.*

- i. There must not be any subscription or levy imposed on residents by the residents committee.
- ii. A single **residents fund**, solely for the mutual enjoyment and benefit of all village residents, is to be established.

*The above clause explains funds raised by either the residents committee or a subcommittee of the residents committee are communal residents funds.*

*It also provides that residents funds are for the benefit of ALL residents and not only for residents who raised those funds.*

- iii. The residents fund will operate under the following model.
  - a. All net income or profit, in addition to an amount for an approved float, raised from functions and activities organised by the residents committee or by a subcommittee, must be deposited in the residents fund by the treasurer of the residents committee or the treasurer of the subcommittee.
  - b. Control of expenditure from the residents fund is by voting residents, and the

procedures of the Constitution.

- c. The residents committee, directed by the treasurer of the committee, administers the operation of the residents fund.
- d. The residents committee may use money of the residents fund only in accordance with the Constitution, or to facilitate a decision of voting residents.

*The above clause explains how the residents fund operates.*

- iv. On adoption of the Constitution, any standing balance previously raised from payments by residents for a purchase, or for participation in an activity, overseen by residents must be transferred into the residents fund.

*This clause ensures that all money previously raised will be deposited into the resident fund.*

- v. No portion of residents fund 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.
- vi. The monies of the residents fund must be held in a bank account under the name '[XXXXXXXX XXXX XXXX] Residents Fund'.
- vii. The residents committee may invest surplus amounts of the residents fund in the way that residents decide at a residents meeting.

*This clause provides a procedure where there is a significant surplus of residents funds.*

- viii. The residents committee has continuing authority to spend a total monthly nominated amount from the residents fund for any activity or purchase (including topping up subcommittee floats) which conforms with the Constitution, without seeking prior approval of the residents. This amount may be reviewed and set 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.*

- ix. Where an amount above the monthly pre-approved amount is proposed to be spent from the resident fund, the proposal must be agreed to by residents 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.*

- x. A proposal to spend monies from the residents fund may be put forward to the residents committee or to a residents meeting, by any resident.
- xi. The residents committee must implement sound financial systems and procedures for the administration of the residents fund, including the oversight of all monies of the fund by subcommittees and adequate controls over payments from and to the fund. The following procedures, at least, must be adopted:
  - a. a basic manual of inhouse bookkeeping procedures
  - b. documentation of each transaction such as receipts for revenue and invoices (or receipts) for payments

- c. recording of all transactions in books of account
- d. monthly reconciliation of accounts with the bank statement
- e. monthly preparation of revenue and expenditure statements
- f. at least two persons authorised to operate the bank account
- g. at least two persons to authorise all expenditure.

*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.*

- xii. Residents may, at a residents meeting, approve monies from the residents fund, for subcommittees to be provided:
  - a. working floats; or
  - b. continuing authority to expend a total nominated amount from the residents fund for any activity which conforms with the Constitution, without seeking prior approval of the residents. This amount may be reviewed and set by residents at each general meeting.

*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.*

- xiii. The treasurer of the residents committee must report on the financial position of the residents fund at each residents committee meeting and provide a full report and financial statements at each residents meeting.
- xiv. The financial records for the residents fund will be available for inspection 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**

### **6.1 Forming subcommittees**

- i. ^Subcommittees, as intended by the RV Act, may be formed for any purpose for the benefit of residents, by the residents committee (s 127(3)(b)).

*The RV Act provides the residents committee, may form subcommittees, and subject to the residents constitution decide a subcommittees procedures 127(3)(b) and 128(3).*

- ii. A subcommittee must be formed where:
  - a. residents utilise communal facilities to conduct any regular or ongoing activity or endeavour (e.g. socials or a shop); and
  - b. the activity or endeavour has an income of more than \$100\* a month; or requires expenditure of more than \$50\* a month from the residents fund.

\*This amount may be adjusted from time to time by a vote at a residents meeting.

- iii. Residents may, subject to the Constitution, form groups other than subcommittees (informal residents groups), for any purpose.
- iv. Participation in a subcommittee, including holding designated positions, is open to every interested resident of the village.
- v. Interested persons living with a resident under a long-term scheme operator approved arrangement, or as a rental tenant, may be an ordinary member of a subcommittee.

*Section 127(3)(b) of the RV Act does not appear to 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.*

- vi. Each subcommittee is formed in the following manner.
  - a. formed yearly at a meeting of interested residents as soon as practicable after the annual general meeting of residents.
  - b. All residents are given at least 14 days' written notice of the meeting by the residents committee or other interested residents.
  - c. Meetings to form subcommittees may adopt simple procedures and are not conducted under the rules of residents meetings prescribed by the RVA or the Constitution.
  - d. A formation meeting is chaired by a member of the residents committee.
  - e. Designated positions (at least a coordinator and a treasurer) are decided by a simple show of hands vote conducted among residents at the meeting, with each resident present entitled to a vote personally or by proxy.

*Office holders of each subcommittee are elected by interested residents who are present at a meeting held for the purpose of the election*

*It is not essential to include resident committee members in a subcommittee.*

- f. the residents committee must communicate the names of the designated positions for each subcommittee, to the manager and all residents within a reasonable time.
- vii. Subcommittees may be referred to as a subcommittee, a club or group or another suitable title.

<sup>^</sup>Relevant provision/s of the RV Act must be taken into account.

*The use of the words 'club' or 'group' merely simplifies terminology for day-to-day use.*

*The above explanations are provided only as suggestions. Residents committees and residents may decide other procedures.*

## 6.2 Subcommittee procedures

- i. <sup>^</sup>In addition to the general procedures in the Constitution, each subcommittee must operate under specific procedures developed, where necessary, by the residents committee in conjunction with representatives of the subcommittee (s127(3)(b)).
- ii. Subcommittees must comply with the following general procedures. A subcommittee:

- a. reports to, and must keep the residents committee informed about the business of the subcommittee
- b. must hold a meeting, giving 14 days written notice to all residents, at least once every two months
- c. must take and keep basic minutes for each meeting
- d. must keep good financial records of expenditure (receipts) and income which may be inspected by the residents committee or interested residents
- e. must, within a reasonable time, hand all monies other than working floats, to the residents committee for banking
- f. must give a receipt or similar proof of a payment (e.g. a ticket) for monies proffered to a subcommittee for the sale of goods, or for the offer of services (e.g. a social function)
- g. must, each month, provide to the residents committee meeting:
  - basic reports for their activity and finances; and
  - where relevant for the subcommittee, a basic ongoing plan (e.g. future activities of a social subcommittee)
- h. must not expend any monies other than allocated working floats, or the total amount preauthorised by a resident vote.

^Relevant provision/s of the RV Act must be taken into account.

*Residents may include general guidelines in the residents constitution so that all residents are involved in their preparation or the residents committee may draft general guidelines which will apply to all subcommittees. Each subcommittee will then have specific procedures that would be relatively short.*

*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.*

## **7 Working groups and financial advisory panel**

### **7.1 Working groups**

- i. Working groups may be set up, as required for special purposes, by residents or the residents committee.
- ii. Members of a working group must be canvassed from all residents and be agreed to by voting residents.
- iii. Where the working group is set up by the residents committee, the working brief will be drafted by the residents committee in conjunction with the working group.
- iv. Where the working group is set up by residents, the working brief will be drafted by the working group in conjunction with other interested residents.
- v. On completion of their brief or presentation of their final report to the residents committee or to the residents, as the case may be, the working group is disbanded.

*The RV Act has no expressed provision for the formation of working groups however, it is*

*prudent 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 another special purpose.*

*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 group.*

## 7.2 Financial advisory panel

- i. The residents committee may set up a financial advisory panel (FAP) to assist the residents committee with the committee’s role in village financial matters.
- ii. The FAP must include at least 1 committee member and no more than 3 residents.
- iii. Any resident may, at any time, put their name forward to the residents committee for inclusion in the FAP.
- iv. The FAP function is to review draft village budgets and financial statements of expenditure to ensure compliance with financial requirements of the RVA, and promptly advise the residents committee.
- v. The FAP or the residents committee has no authority to make decisions relating to the village budget that should be the subject of resolutions made by voting residents.

*It is prudent to include clauses to allow the formation of a financial advisory panel, if warranted, which provides advice to the residents committee about village financial matters. There may be residents with proper financial expertise or interest who do not want to be members of the residents committee but are more than happy to undertake this financial function.*

## 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 (s 130(3)).  
\*By-laws made under the RV Act are distinct from by-laws (rules) which are made or adopted by the body corporate under the *Body Corporate and Community Management Act 1997* in a community titles scheme 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 (s 130(1)).
- 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 (s 130(4)).

^Relevant provision/s of the RV Act must be taken into account.

*By-laws are the rules made by a special resolution of residents and are then applicable to all residents.*

*By-laws made by residents under this clause cannot be made to provide, to certain residents or groups of residents, exclusive use or enjoyment 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.

### 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. The residence contract must then fulfil the requirements of s 10 of the RV Act.

Persons living in a village under a rental arrangement may or may not be defined as a resident for the purpose of the matters provided by the RV Act. Their tenure is dependent on the specific terms of their contract. This matter should be referred to the scheme operator for clarification.

#### Special resolutions

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 99(2)	Certain part of the maintenance reserve fund budget
Section 106(3)	Increases in TGSC 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



**10 Adoption of constitution**

This Constitution was originally adopted by a majority vote of the residents of [Name of village].

*The RV Act expressly provides the residents constitution must be adopted by a majority of residents entitled to vote and who voted (s128(1)).*

**Date of meeting:** .....

**Signed:** .....

Residents Committee Member

**Signed:** .....

Residents Committee Member

**Signed:** .....

Resident

**Signed:** .....

Resident

## 11 Annexures

**A – Timeline for election of residents committee**

**B – Amendments to the Constitution**

11.1 Annexure A – Timeline for election of residents committee

		Nomination period		Period of notice for general meeting and AGM			
<b>Action</b>	Call for nominations	Nomination accepted	Nominations close	Prepare & distribute notice for voting, general meeting, and AGM	Period of notice for voting	Voting	Count of votes, general meeting, and AGM
<b>Day</b>	1	2 to 8	9 & 10	11 to 25	25 to 30	31	

11.2 Annexure B – Amendments to the Constitution

Clause	Details of amendment	Date of vote