



# Better Rights for Retirement Living

Funded by



*Right Where You Live* is a collaborative program established with Queensland Government Department of Housing and Public Works funding awarded to Council on the Ageing (COTA) Queensland, Association of Residents of Queensland Retirement Villages (ARQRV), Associated Residential Parks Queensland (ARPQ), Tenants Queensland (TQ) and National Seniors Australia (NSA). The Right Where You Live Steering Committee includes representatives of the five organisations, alongside representatives of the Department and the Queensland Retirement Village and Park Advice Service (QRVPAS) - formerly known as Caxton Legal's Park and Village Information Link (PAVIL).

### **Right Where You Live aims to assist those who are:**

- considering their retirement living options and who want to access important information about relevant laws and recent changes to help make informed decisions and understand their rights.
- currently living in residential services, retirement villages, manufactured homes in residential parks and who want to understand the laws, recent amendments to legislation covering these types of housing and to represent their interests to village, park and service operators.

### **About Council on the Ageing (COTA) Queensland:**

COTA Queensland is a Statewide not-for-profit organisation advancing the rights, interests and futures of people as we age.

For 60 years COTA Queensland has worked with older Queenslanders to enable their futures to be filled with opportunity and possibility.

- We promote older people's rights and advocate to Government on the issues that affect us all as we age. Our work supports older Queenslanders to influence decision making to create positive social change.
- We provide free education to the community to help people be empowered to make informed decisions.
- We promote and partner in research that addresses the big issues for older people.
- We work collaboratively with organisations providing services to older Queenslanders who are experiencing injustice, discrimination, disadvantage or disability.

*Disclaimer: Information in this booklet has been drawn from various sources, including the Queensland Government Department of Housing and Public Works, COTA Victoria, Retirement Living Council and Right Where You Live partner organisation materials. While every effort was made to ensure this information was correct at the time of printing (March 2019) it is provided as general information only. It is not to be construed in any way as legal advice. Individuals are encouraged that when seeking advice, they ascertain it is from an appropriately qualified practitioner with experience and understanding of the relevant legislation and issues encountered by consumers.*

## **Explanatory note:**

This booklet is produced to accompany attendance at one of COTA Queensland's Right Where You Live community information sessions for those considering retirement living options that include living in a retirement village or manufactured home in a residential park. These sessions are conducted by COTA peer educators who are seniors themselves, are fully trained and who are volunteering their time to help talk you through the information in a way that is easy to understand. (Contact details for organisations that can provide additional information or support can be found on Page 16.) A range of other resources is available at information sessions or can be downloaded from [rightwherelyoulive.org.au](http://rightwherelyoulive.org.au)

*Individuals are encouraged when seeking advice to ascertain it is from an appropriately qualified practitioner with experience and understanding of the relevant legislation and issues that consumers are encountering.*

Also note there are a range of other forms of retirement living. Housing laws covering forms of aged rental accommodation and boarding or rooming house tenancies also are changing or have changed to include more protections for residents. (For help in these areas, contact Tenants Qld and the Queensland Department of Housing and Public Works – see Page 16.)

### **Background:**

*The Housing Legislation (Building Better Futures) Amendment Act (2017)*

*On 25 October 2017, the Queensland Parliament passed new legislation to amend:*

- *The Retirement Villages Act (1999)*
- *The Manufactured Homes (Residential Parks) Act 2003*
- *The Residential Services (Accreditation) Act 2002*

*This amended legislation and associated implementation phase aims to:*

- *Create a fair regulatory system for consumers and operators*
- *Empower consumers to understand their rights and have safe and secure housing options*
- *Provide appropriate forums for consultation to guide future legislative approaches*

**It should be noted that while sections of the amended legislation came into effect on the date that the Act received Royal Assent, other sections will take effect in stages estimated (at March 2019) to be up until the end of 2019/early 2020.**

## **Considering your options for retirement living:**

(Use this space for your own notes about the choices you might make.)

Would you want to:

**Stay** in your own home (and seek a My Aged Care Assessment to access support services if needed)? \_\_\_\_\_

**Downsize** to a smaller house or private unit/apartment/villa? \_\_\_\_\_

**Share** your home with someone else (& have a formal written agreement)? \_\_\_\_\_

**Move** in with **family** or into a "**Granny flat**" (and have a formal written agreement)? \_\_\_\_\_

Choose a **retirement village or manufactured home?** \_\_\_\_\_

Choose **another option?** \_\_\_\_\_

Why might I choose to move or stay? \_\_\_\_\_

**Remember:**

*If you are planning retirement living options with your partner, it is also important to consider the impact on your chosen option if one of you is no longer there.*



## **What does your preferred lifestyle look like?**

Whatever your choice, there will likely be 'pros and cons'. As part of your decision making, consider how your choices will support the lifestyle you want (for example, think of the personal, family, social and community, geographical or neighbourhood environments you might leave or move to) and what will be the financial implications (for example, think of the income you need to cover your costs, and the impact on cost of living, access to Centrelink benefits and any other plans to factor in, such as travel or access to aged care services).

**Here are some questions to consider:**

- Why do you want to leave where you are? How might your Centrelink entitlements be impacted?
  - Have you considered the extent to which safety, security and personal issues could be resolved by making modifications to your existing home?
  - Do you want to be near your current home, close to family and friends or are you looking for a complete change? Have you discussed your lifestyle wishes with them?
  - Is convenience to transport and services a must? What sort of services is it important for you to be nearby (e.g. doctors, allied health, pharmacy, social activities and groups, bus or train routes)?
  - Is accommodation involving an amount of communal living for you? Is it important to live in a place where residence is restricted to seniors only?
  - What onsite facilities/amenities are important? (eg, gardens, pool, BBQ, gym, community room)? Can you have visitors staying on? Are pets allowed?
  - What happens if or when you need to access Aged Care support services (eg, if moving into residential aged care – could you do that onsite when you need to, or would you move elsewhere? If utilising home-help services, how do you do that?)
  - What financial range would you be seeking ('high end' or general)? What form of ownership or tenure is important to you?
  - Do you understand the differences between a retirement village and a manufactured home in a residential park and the components around moving in and out of these, as well as the ongoing costs payable?

## **Notes:**



## Retirement Villages:

It is important to note that there are considerable variations in the style of villages available and the types of contracts, fee structures and conditions. Villages covered by the Retirement Villages Act 1999 and registered with the Department of Housing and Public Works however share these characteristics:

- You sign a contract that provides you with a **secure** long lease or '**right to reside**' however you do not own your unit, except if you hold freehold title. (You cannot access Federal Government rent assistance).
- You pay an entry cost (an **ingoing contribution**), typically similar to the cost to buy a home at market rate (ie, cost can vary significantly).
- You pay a **General Service Charge (GSC)** eg, for rates, water, insurance, Village staff wages, facilities, etc. The amount varies but typical outlay averages \$120-\$180 per week (structure/frequency of payments varies).
- You pay a **Maintenance Reserve Fund** contribution (towards maintaining capital and communal facilities). This is usually included in your General Service Charges.

- You might pay for '**reinstatement**' costs to your home on exit (cost of returning it to a marketable condition).
- You pay either as a share of overall or individually for **utility** costs, eg, electricity, gas, water. Check if any issues choosing your own phone and internet provider.
- You pay an **exit fee**, typically 25-40% of your entry fee (or the new entry fee) and might have to share capital gain (or loss) with operator.
- You might have to pay the **GSC** for a period after exit or until unit transfers to new occupier, plus selling costs (advertising, legal fees).
- The village operator pays a regular contribution into a Capital Replacement Fund.

## Manufactured Homes in Residential Parks:

It is important to note that there can be considerable variations in the style of Manufactured Homes in Residential Parks and the wording of contracts, site agreements, fee structures and conditions. Parks covered by the Manufactured Homes (Residential Parks) Act 2003 and registered with the Department of Housing and Public Works however share these characteristics:

- You **own the home** but **pay rent on the site** and sign a **site agreement**. (It is possible to get rent assistance if you are eligible).
- You pay the **purchase cost of home** (typically at market rate). (ie, cost can vary significantly). The Act does not cover this – seek general contract or property law advice for this step.
- You pay a weekly site rent typically \$120 to \$180 per week.
- You pay for your own **home maintenance** and the Park Owner usually is responsible for park maintenance costs.
- You pay **utility** costs, eg, electricity, water, gas (either as a share of overall or individually metered). Check if any issues choosing your own phone and internet provider.
- If or when you are selling your home, you must pay site **rent until the home is either sold or removed** from the site.

*\*Wherever you live, you are entitled to access information on aged care and support services through 'My Aged Care' (see Pg16 for contact details). Remember - you have a choice of providers - you do not have to accept what your operator might offer. When considering moving into a village or park ensure you ask for clear information about this. Note that 'My Aged Care' is the Federal Government listing of providers but there are also other private providers and comparison websites out there - do your research. Be aware that villages offering onsite residential aged care might not have a place for you when you require it, so you could face having to move although you did not expect to do so.*



## **Other useful steps to help decide if moving into a retirement village or residential park is for you:**

- **Talk** to friends who live in a Retirement Village or Residential Park (check which of these it is).
  - **Check** internet listings of retirement living options (the Department of Housing and Public Works has a list of all complexes covered by the two legislative Acts) - but note commercially operated listings might require a fee to be listed or have reviews included.
  - **Visit** some Villages and Parks as there are often Open Days or opportunities to arrange an inspection. Take a friend along.
  - Take along a **checklist of questions** highlighting what's important for you to find out about each place you inspect.
  - **Chat** with residents onsite if possible.
  - **Observe** the general condition and cleanliness of the shared areas and facilities.
  - **Listen** for respect and friendliness among staff and residents.
  - **Obtain** information and advice about both the *legal* and *financial* implications of any option you are considering. See list on Page 16 for places to help provide or refer you to further information or advice.

**Tip:** Consider any costs you incur in obtaining advice as an investment in financial safety and security.

After doing your research, if you decide a retirement village or residential park is for you - there is a range of specific information and important steps to know about before you sign formal documents (eg, contracts or site agreements).

## Notes:



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## **Notes:**



**\*Remember:** Individuals are encouraged when seeking advice, to ascertain it is from an appropriately qualified practitioner with experience and understanding of the relevant legislation and specific issues that you as a consumer might encounter.

There have been significant changes to the legislation covering Retirement Villages and Manufactured Homes in Residential Parks.

Some changes took effect in *November 2017* and some are coming into effect over a *staged timeline - September 2018 until the end of 2019*.

Some changes are retrospective and some impact those on existing contracts, leases or site agreements while others do not.

Again – it is important to understand before you sign anything. Get advice specific to you. Do not feel rushed into a decision. Be aware of any cooling off periods that might apply.

# **Summary of key areas to note and changes to the Retirement Villages Act 1999**

## **When moving in:**

- **Under the new laws, the Public Information Document (PID) containing details on the village and your unit has (from February 1, 2019, for contracts negotiated from then onwards) been replaced by 2 documents – a 'Village Comparison Document' and a 'Prospective Costs Document'.** You must be given these.
- There is a **14-day 'cooling off period'** - Note that the advent of new laws has prompted operators to begin offering a range of varied contract conditions, so seek appropriate advice to understand what you sign.
- Understand what type of 'ownership' you are signing up for (eg, leasehold, freehold).

## **Fees & Charges:**

As detailed on Page 8, there is a range of fees and charges to understand.

Recent changes to the law include:

- Shortening the period (to 18 months) in which you or your estate should be paid your '**exit entitlement**' by the operator upon leaving a Village.
- Costs you might have to pay related to '**Reinstatement**' of your unit if you or your estate is terminating your contract.

## **Rights & Obligations:**

Changes in this area seek to improve consumer protections and increase transparency in the relationships between village operators and residents.

- Residents must not interfere with the peace, comfort and privacy of other residents and must not interact with a village operator and staff in a way that negatively impacts their occupational health and safety.
- Village operators must not interfere with the peace, comfort or privacy of other residents (or allow others to) and must not

restrict residents' rights to autonomy in personal, financial or other affairs.

- Village operators must use best efforts to ensure residents are free from harassment and intimidation and must respond to written correspondence from residents or their representatives within designated timeframes.

## **Dispute Resolution:**

The Act sets out a three-step resolution process:

- Attempt internal negotiation or resolution
- Seek mediation
- If first two stages are unsuccessful, an application to resolve the dispute can be made to the Queensland Civil and Administrative Tribunal (QCAT). An application fee is charged (waiver or reduction can be sought in special circumstances).
- Residents in dispute with another resident however should refer to the Queensland Neighbourhood Disputes processes. Information and advice on this is available from Queensland Community Legal Centres Inc.

## **Moving Out:**

Be aware of these matters related to moving out and check your Public Information Document, contract or other official documentation:

- Notice period/s
- 'Resale' price negotiations
- Unit 'Reinstatement' requirements
- Repairs (who pays)
- Conditions under which a village operator can terminate your contract
- Exit fees
- General Services Charge payment for a period after contract terminates
- Exit entitlement – (**See 'Fees & Charges'**)

## **Redevelopment, closure or winding down of a Retirement Village:**

Proposed redevelopment or closure plan/s must be approved by residents. Residents can ask QCAT to review if opposed to any plan approval given by the Department of Housing.



# **Summary of key areas to note and changes to the Manufactured Homes (Residential Parks) Act 2003**

## **When moving in:**

- Purchase of your home is not covered under the Act – seek legal advice from someone with experience in general contract or property law – but who knows about homes in residential parks.
- You enter into a site agreement for the land your home is on. You must receive a Home Owners Information Document plus two copies of the Site Agreement and a copy of the Park Rules and the Site Rent to be charged. (See next page re cooling off periods).

## **Fees & Charges:**

As detailed on Page 9, there is a range of fees and charges to understand.

Recent changes to the law include:

- Any general increase to site rent is to be limited to once a year and it must be clear on what basis the increase is set (eg, CPI or market review-based calculation). Other rules apply to special increases.
- Utilities fees - no additional fees can be charged by the Park Owner outside the cost they pay to the supplier.

## **Rights & Obligations:**

Changes in this area seek to improve consumer protections and increase transparency in the relationships between park owners and home owners.

### **Park owner obligations:**

- Ensure home owner/tenant access to their site and common areas
- Keep communal facilities in a fit state
- Be contactable at reasonable times
- Ensure utilities supply
- No threatening or coercive behaviour regarding site rent increases.
- Ensure emergency access
- No interference in home owner participation in Home Owner Committee
- Maintain park noticeboard, trees in common areas, ensure reasonable mail facilities and not enter home owner sites unless special circumstances
- No interference with (or allowing others to interfere with) home owner peace, comfort and privacy
- Ensure an environment free of harassment and intimidation
- No restriction of home owner rights to independent control in personal matters

- Give a complete response within 21 days of receiving written correspondence from home owner (unless the issue was raised and dealt with in the past).

### **Home owner obligations:**

- Maintain home, not make visible from the outside alterations or additions without consent.
- No renting to a tenant unless allowed under site agreement
- Might be required to pay for separate use of utilities
- Must use site only as residence – no use of site or common areas for illegal purposes
- Must not interfere with peace, comfort or privacy of other residents or damage or destroy communal facilities.

## **Dispute Resolution:**

- All disputes should be documented in writing and followed with a written ‘dispute negotiation notice’. If, after attempting a mediation process, the issue is still not resolved you can make an application to the Queensland Civil and Administrative Tribunal (QCAT). (Fee payable but can apply to waiver or reduce in special circumstances).

## **Moving Out:**

- Site agreements can only be terminated (whether by home owner, park owner or by mutual agreement) in certain ways.
- Park owner is not obligated to buy your home & you are liable for rent until it sells
- Check what is outlined in your Home Owner Information Document
- Park Owner must not interfere with a sale and you can place a ‘for sale’ sign if allowed in your site agreement
- Park Owner must give good reason if seeking to refuse consent to a sale – you can challenge this in QCAT
- You can enlist your Park Owner to sell your home – must sign a selling authority

## **Other Changes:**

A new regulation now lists a range of ‘Prohibited Special Terms’ that can no longer be included in any current or future site agreements. There are also changes covering emergency plans, pre-contractual disclosure and cooling off periods.

## Contacts and useful links list:

**Right Where You Live website**  
<https://rightwherelyoulive.org.au>

**Qld Government 'Seniors Living' video series** - <https://www.qld.gov.au/housing> (search for 'senior living videos')

**Regulatory Services**  
Qld Dept of Housing and Public Works - Ph: (07) 3008 3450  
Email: ResidentialServices@hpd.qld.gov.au

**Qld Retirement Village & Park Advice Service**  
(formerly Park and Village Information Link – PAVIL)  
Caxton Legal Centre Inc.  
Ph: (07) 3214 6333  
[www.caxton.org.au](http://www.caxton.org.au)

**Association of Residents of Qld Retirement Villages (ARQRV)**  
Ph: 0437 906 074  
[www.arqrv.org.au](http://www.arqrv.org.au)

**Associated Residential Parks Qld (ARPQ)** - Ph: (07) 3040 2344  
[www.arpq.org.au](http://www.arpq.org.au)

**Tenants Qld**  
Ph: (07) 3832 9447  
[www.tenantsqld.org.au](http://www.tenantsqld.org.au)

**Qld Law Society**  
Ph: (07) 3842 5842  
[www qls com au](http://www qls com au)

**Queensland Neighbourhood Disputes**  
[www qldneighbourhoods com](http://www qldneighbourhoods com)  
via Queensland Community Legal Centres Qld  
Ph: (07) 3392 0092  
[www communitylegalqld org au](http://www communitylegalqld org au)

**My Aged Care**  
Australian Government funded aged care services  
Ph: 1800 200 422  
[www myagedcare gov au](http://www myagedcare gov au)

**Financial Planning Association of Australia**  
Ph: 1300 337 301  
[www fpa com au](http://www fpa com au)

**Centrelink Financial Information Service (FIS)**  
Ph: 132 300  
<https://www.humanservices.gov.au> (search financial information service)

**Australian Securities & Investments Commission (ASIC)**  
Retirement income planning calculator - <https://www.moneysmart.gov.au> (search 'retirement calculator')

## List of Commonly Used Terms:

**Retirement Village:** A premises where older members of the community reside in independent living or serviced units under a Retirement Village scheme and share common facilities and amenities. Retirement Village schemes take various forms such as resort-style complexes, medium-density housing, townhouses or high-rise apartments. They can be:

- **leasehold** - the resident's right to reside is secured by a lease registered on the title to the retirement village land
- **licence schemes** - the residence contract is not registered on the title and must be registered with the Office of Fair Trading.
- **freehold** - the resident holds freehold title to the unit

*\*In some villages there is overlap between requirements of the Retirement Villages Act 1999 & the Body Corporate & Community Management Act 1997.*

**Residence contract/agreement:** To live in a registered Retirement Village a resident must enter into a contract (with a Retirement Village operator) that gives a right to reside, use communal facilities and details resident rights and obligations.

**Right to Reside:** A common term describing the form of 'ownership' that a Retirement Village resident holds in relation to their unit if they do not hold a freehold interest in the unit.

**Ingoing Contribution/Entry fee:** The amount paid by Retirement Village residents for the 'right to reside' in the unit in which they reside when they move into the village.

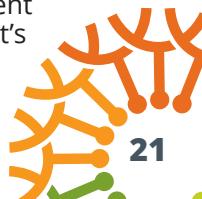
**Capital gains/Capital loss:** The amount gained or lost upon the selling of a lease or 'right to reside' in a retirement village unit.

**General Services charge:** Fees paid by Retirement Village residents that typically covers costs such as rates, water, insurance, Village staff wages, etc.

**Maintenance Reserve Fund:** Fees paid by Retirement Village residents towards costs for maintaining Village capital and communal facilities.

**Exit Fee/Deferred Management Fee:** An amount that Retirement Villages residents pay to the Village operator when they stop living in the Village.

**Exit entitlement:** An amount payable to a Retirement Village resident (or their estate) by the Village operator after they leave the village or when payment for the sale of the resident's 'right to reside' is received by the Operator.



**Reinstatement costs:** An amount payable by a Retirement Village resident to return their unit to a marketable condition.

**Public Information Document (PID):** A document required by law to be given to Retirement Village residents alongside their contract. Once the law comes in, the PID is to be replaced by the following two documents (Village Comparison and Prospective Costs documents).

**Village Comparison Document:** New document required to be given to residents before moving into a Retirement Village.

**Prospective Costs Document:** New document required to be given to residents before moving into a Retirement Village.

**Home Owner Information Document:** A document required by law to be given to a Manufactured Home owner upon moving into a residential park (alongside a copy of park rules and any proposed rule changes, two copies of a proposed site agreement or a copy of the existing site agreement with the home owner, and a document detailing site rent to be charged).

**Manufactured Home:** a home that has the character of a house but is designed so it can be moved from one position to another and so is

not permanently attached to the ground. (Note that a caravan is not a manufactured home).

**Residential Park:** An area that includes sites for manufactured homes and common areas and facilities for the shared use of home owners. These are often advertised as an 'over 50s lifestyle resort' and also sometimes include other types of shorter and long term accommodation such as caravan parks and tourist cabins.

**Park owner:** The owner of a park where manufactured homes are situated.

**Home owner:** Someone who owns a manufactured home on or to be located on a site in a residential park and who holds or will hold a site agreement. It does not include someone renting a manufactured home.

**Site Agreement:** The agreement between a Park owner and a home owner of a Manufactured Home in a Residential Park that a home owner signs for the site their home occupies in a Residential Park.

**Queensland Civil and Administrative Tribunal (QCAT):** An independent tribunal that is part of the justice services division of Queensland Department of Justice and Attorney-General.



## Contact us:

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[info@cotaqld.org.au](mailto:info@cotaqld.org.au)

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