

COVID-19 and retirement villages and residential parks

You may be aware that the Australian Government has implemented a number of restrictions to support the social distancing measures already in place to protect the community from the spread of COVID-19 through close contact. The government has released substantial guidance on social distancing and our responsibilities at this time.

Social distancing rules are particularly important to protect older people over the age of 60 years, or 50 for Aboriginal and Torres Strait Islander people. The government has published some COVID-19 information specific for [older Australians](#).

WHAT DO THESE MEASURES MEAN FOR RESIDENTS OF RESIDENTIAL PARKS AND RETIREMENT VILLAGES?

Residential park owners and retirement village operators throughout Queensland will be making adjustments to the way residents access communal facilities and amenities to comply with the Australian Government's health response to COVID-19 and public health orders issued by the Queensland Government.

You may have noticed your park or village has taken precautions such as:

- closed or restricted access to the community hall, library, barbeque area, swimming pool or other communal area
- cancelled various activities and social gatherings
- put restrictions on the size of group gatherings
- asked you to cancel your residents committee meetings
- limited visitors to the park or village.

This [Australian Government publication](#) gives an overview of what these changes mean in a village. These changes are likely to be comparable to those in a residential park.

CAN I COMPLAIN ABOUT THE WITHDRAWAL OF FACILITIES OR SERVICES IN MY RESIDENTIAL PARK OR RETIREMENT VILLAGE?

Ordinarily, restricting your access to community facilities, and limiting social gatherings and contact by visitors may be a breach of the *Manufactured Homes (Residential Parks) Act 2003* (Qld) [Manufactured Homes Act] or *Retirement Villages Act 1999* (Qld) [Retirement Villages Act], or your contractual documents, giving you recourse against the park or village.

Both the Manufactured Homes Act and Retirement Villages Act also safeguard your rights to reasonable peace, comfort and privacy, and to autonomy and self-reliance.

Under normal circumstances, a home owner in a residential park may have grounds for a residential park dispute including an application for a site rent reduction where a park withdraws communal services or facilities.

There is no similar, explicit right to a fee reduction under the Retirement Villages Act, however, residents in a village may be able to bring a retirement village dispute and argue that, in failing to provide facilities or services promised in a residence contract, the village was in breach of that contract.

In the absence of a decision by the Queensland Civil and Administrative Tribunal (QCAT) directly relevant to this issue brought by a home owner or resident, it is uncertain how your rights under the Manufactured Homes Act or Retirement Villages Act will intersect with the current public health orders by the Australian and Queensland governments.

However, where the park or village is complying with the Australian Government's public health response and public health orders issued by the Queensland Government, we think it would be difficult for a resident to substantiate a claim that a park or village was breaching an agreement or should be penalised for acting to withdraw services or facilities, provided this was properly undertaken in response to COVID-19 public health orders.

This is bearing in mind that a park or village that failed to withdraw services or facilities in compliance with Australian and Queensland Government public health orders would be committing an offence, given that these precautions are being taken to reduce the risk of COVID-19 spreading among homeowners and residents and considering the obligations of the Park or Village towards the workplace health and safety of their own employees.

If you are of the view that the park or village is overstepping the government's public health response to COVID-19, you should obtain legal advice about your specific circumstances.

Otherwise, if you are minded to commence dispute negotiations in relation to this issue, you can refer to the Queensland Retirement Village and Park Advice Service's *Disputes and Complaints Regarding Parks* or *Disputes and Complaints in Retirement Villages* for general guidance on the steps to take. You should then consider obtaining legal advice before taking the third step in the formal dispute resolution process, which is an application to QCAT for a hearing.

SHOULD I STOP PAYING MY RESIDENTIAL PARK SITE FEES OR RETIREMENT VILLAGE CHARGES IN RESPONSE TO THE WITHDRAWAL OF SERVICES OR FACILITIES?

No. If you cease to pay or pay a reduced amount of your residential park site fees or retirement village charges in response to the withdrawal of services or facilities, you will be in breach of your agreement, and may risk having your right to reside in the park or village terminated.

HOW LONG WILL THESE RESTRICTIONS BE IN PLACE?

Although it is unclear how long these restrictions will be required, the government has advised Australians to expect that these social distancing measures may be in place for at least six months. We suggest you visit the [Department of Health website](#) for regular and reliable updates.

MY PARK OR VILLAGE IS NOT DOING ENOUGH TO SUPPORT THE SOCIAL DISTANCING RULES, AND I AM WORRIED FOR MY HEALTH

What can I do to make sure my village or park complies with social distancing rules?

This is understandably worrying for many residents of parks and villages.

As a starting point, the current recommendation is that people over the age of 70, or 65 for those with pre-existing health conditions, or 50 for Aboriginal or Torres Strait Islander people should be self-quarantining. If you fall into these age brackets you should be avoiding contact with people as much as possible. You can read more about social distancing on this [Queensland Government webpage](#).

Your park or village also has an obligation to support social distancing, including by closing non-essential services within the village or park. On 1 April 2020, the Department of Housing and Public Works Regulatory Services contacted all registered parks and villages in Queensland and reminded them of their obligations in relation to social distancing. This communiqué asked parks and villages to comply with COVID-19 restrictions on non-essential services and group activities by:

- closing outdoor areas such as public barbecue facilities
- closing shared facilities such as dining halls, swimming pools, tennis courts, gyms, libraries, games rooms, common sitting areas, places of worship and beauty salons
- introducing a delivery service or takeaway for meal services
- limiting the number of people in a home owner's or resident's room or bathroom facilities to two people at any time
- hosting meetings held by the resident committees, residents and operators via video or teleconferencing
- making phone or video calls accessible to enable regular communication with family members. Family and friends should be encouraged to maintain contact with residents by phone and other social communication applications, as appropriate.

As the public health orders in relation to COVID-19 are changing frequently, this list is not exhaustive and may be subject to change. The Department of Housing and Public Works can be contacted for up-to-date information on (07) 3008 3450 or email regulatoryservices@hpw.qld.gov.au.

If you have concerns that your village or park is not complying with these guidelines, or is making it difficult for you to socially distance or self-quarantine, we suggest you contact Queensland Health (13 43 25 84), the Police Link (13 14 44) or the Department of Housing and Public Works to discuss your concerns.

WHAT IF I WISH TO COMMENCE DISPUTE RESOLUTION IN RELATION TO ANOTHER LEGAL ISSUE?

It is possible that you will experience other, unrelated legal issues during COVID-19. For example, you may wish to dispute a site rent increase notice issued in your residential park.

It is important to ensure that you do not delay the dispute resolution process and that you continue to comply with all the required timeframes under the Acts. For instance, if you wish to dispute a site rent increase under the Manufactured Homes Act, you should still issue the park with a dispute negotiation notice within the 28-day timeframe required under the Act.

Where possible, you should suggest to the park or village that dispute resolution steps occur over the phone or via Zoom or Skype.

WHAT IF I HAVE ALREADY COMMENCED PROCEEDINGS IN QCAT?

If you have already started legal proceedings, you may find they have been postponed.

QCAT has advised all non-urgent civil matters are to be adjourned until further notice. This may include disputes under the Manufactured Homes Act or Retirement Villages Act.

HOW DO RESIDENTS' ASSOCIATIONS COMPLY WITH THEIR OBLIGATIONS UNDER THE ASSOCIATIONS INCORPORATIONS ACT WHEN WE ARE UNABLE TO MEET?

Under normal circumstances, the Associations Incorporations Act 1081 (Qld) requires that an annual general meeting be held within six months of the end of the association's financial year. However, the Office of Fair Trading will allow associations a further six months

grace, if required to hold its AGM. A six-month grace period is provided without the need for an association to make a written application.

Accordingly, this may result in the term of the management committee being longer than what is provided for in the Rules and under the Manufactured Homes Act or Retirement Villages Act.

Residents associations are encouraged to consider whether they can conduct their meeting remotely via phone, Zoom or Skype. Residents associations should continue to engage with their members and keep them informed of the evolving situation.

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