

# HOUSING AND ACCOMMODATION

Dealing with laws and by-laws and rights and responsibilities of different housing and accommodation options can be difficult. This part will address the laws and rights you should be aware of in regard to housing and accommodation.

## Summary of what will be covered in this section

Subject	Act	Inclusions	Costs	Aliases	Requirements
<b>Renting</b>	Covered by the Residential Tenancies Act 1987.	Includes private rentals including through real estate agents/property managers and social housing (public and community housing).	Tenants pay rent and utilities usage for exclusive occupation of the premises.	A residential tenancy agreement gives either a fixed or periodic term and sets out the conditions of the tenancy.	Residential tenancy agreements must be in the form required by the Act. Bonds must be held by the Bond Administrator.
<b>Strata Title and Community Title</b>	Covered by the Strata Titles Act 1985 and the Community Titles Act 2018	Includes strata schemes for the over 55s. Strata units in Retirement Villages are also subject to the Retirement Villages Act 1992.	Can purchase or lease property. Usual council and water rates. Strata levies are set by each scheme and payable annually or quarterly.	A number of individual ownership/common property scenarios exist.	
<b>Retirement Village</b>	Covered by the Retirement Villages Act 1992, Retirement Villages Regulations 1992 and Retirement Villages Code 2022.	Includes units and apartments for 55s and over, retired and spouse and/or partner. May have common village facilities.	Can purchase a lease or licence to occupy, rent premises or buy a strata unit. Recurrent charges are payable for common services.	May use many names, including 'lifestyle village', 'lease for life', 'independent living units', 'lifestyle agreement'.	Rights and responsibilities depend on individual village agreements.
<b>Residential Park</b>	Covered by Residential Parks (Long-stay Tenants) Act 2006.	Includes mixed-use parks and lifestyle villages for over 45s.	Can rent the park home, but the underlying land is always leased.	May use many names, including 'lifestyle village'.	Structure (i.e. the park home) must be relocatable.

Subject	Act	Inclusions	Costs	Aliases	Requirements
<b>Residential Aged Care</b>	Covered by the Aged Care Act 1997 (Cth)	Includes hostels, lodges and nursing homes with high or low care.	Refundable accommodation deposit payable upon entry or rental-style daily accommodation payment. Other daily fees, care fees and fees for service payable.	May receive Australian Government subsidy called refundable accommodation contribution or rental-style daily accommodation contribution.	May require means (income + assets) assessment to determine eligibility for Australian Government subsidy.
<b>Boarding and Lodging</b>	Covered by Common Law on contracts. Not covered by Residential Tenancies Act 1987.	Includes licensed lodging houses and private arrangements. Excludes holiday accommodation.	Rent may include meals and other services or just a room.	May have exclusive occupancy of own room and share common areas.	Rights and responsibilities depend upon individual agreements.



# Renting a Property

## Tenants' Rights and Laws

As a tenant, you have rights and duties under the *Residential Tenancies Act 1987*. All Residential Tenancy Agreements must be in the form required by the Act. Commercial property managers may have 'standard' additional terms, which you do not have to agree to. Residential tenancy agreements must not be inconsistent with the Act (i.e. you cannot contract out of the Act). The Act also applies to residential tenancy agreements made verbally (e.g. handshake deals).



The rights and duties contained within the Act may not be written into your residential tenancy agreement, but they will automatically apply to your tenancy regardless.

### What Issue is the Legislation Addressing?

More seniors are reaching the age of retirement without owning a home and the number of seniors involved in the rental market is increasing.

Short leases, fixed incomes, the lack of affordable rental options and the limited ability to modify a rental property has resulted in many older tenants encountering tenure insecurity.

The *Residential Tenancies Act 1987* aims to strike a balance between landlord and tenants' rights and regulates tenure security.

### Why should you be aware of the Legislation?

It is important for seniors to be aware of the *Residential Tenancies Act 1987* in order to understand their rights and obligations as a tenant.

## Overview of Rights and Obligations

### Rights

- You do not have to pay more than 2 weeks' rent in advance
- You do not have to pay more than 4 weeks' rent for bond

- You cannot be evicted without an attempt by the landlord to resolve the matter informally before eventually obtaining a Court order
- You do not have to pay more than \$260 for a pet bond; you do not have to pay a pet bond for an assistance dog

### **You have the right to**

- Be given 30 days' written notice of the lessor wanting to end a fixed term agreement
- Be given 60 days' written notice to end a periodic tenancy agreement
- Be given a copy of the residential tenancy agreement and a property condition report completed by the lessor within 7 days of occupying the premises
- Be given 60 days' notice of a rent increase
- Be given rent receipts within 3 days of the lessor receiving the rent
- Be provided with reasonably secure premises
- Instal safety fittings
- Not be discriminated against
- Have reasonably clean premises at the start of your rental
- Have quiet enjoyment of the property
- Have repairs and maintenance done
- Apply to the Magistrates Court for orders if the lessor has broken the residential tenancy agreement
- Refuse the lessor access except in certain circumstances and with proper notice (e.g. for inspections)

### **Obligations**

As a tenant you have responsibilities under the Act, including:

- Check and return the property condition report to your lessor within 7 days
- Pay rent on time
- Care for the premises
- Pay for any damage caused by you or your guests

- Report the need for any maintenance and repairs
- Not to make alterations or additions without the lessor's permission except for installing safety fittings
- Not to alter, remove or add a lock or security device without the lessor's consent except in the case of domestic violence:
  - After a perpetrator's interest in a tenancy agreement is terminated
  - If necessary, to prevent family violence that the tenant suspects is likely to be committed against them or their dependents
- Not to use or permit the premises to be used for an illegal purpose
- Not to cause or permit a nuisance
- Not to interfere with the peace, comfort or privacy of neighbours
- To give correct written notice when you leave
- To leave property in a similar condition to when you rented it, aside from normal fair wear and tear

## Starting a Tenancy

Most landlords will require you to fill in a rental application form.

## Making an Application

Please make sure you read and understand the form before you sign it. If you have any questions or concerns, you can ask the landlord for assistance.

The application will usually allow the landlord to perform a creditor reference check on you.

Once you have signed a residential tenancy agreement, its terms are binding on you. For example, by signing, you have accepted the property as it is and therefore the landlord does not have to provide you with any additional fixtures or alterations.

## Discrimination

According to the *Equal Opportunity Act 1984*, a prospective applicant for a tenancy has the right to not be discriminated against based on the following grounds:

- Age
- Sex

- Disability
- Race
- Marital Status
- Pregnancy
- Sexual Orientation
- Family Responsibility or Family Status
- Religious or Political Conviction
- Impairment

This makes it unlawful for a real estate agent or landlord to decline an application for tenancy or treat someone less favourably based on these grounds. For example, if you have reason to believe that your tenancy application has been declined because of your age, this is discrimination, and you should contact the Equal Opportunity Commission for assistance.

Keep in mind, you may need to provide evidence if you are making a complaint so ensure you keep any evidence or supporting material and make a written record of all correspondence with the landlord. In order to lodge a complaint with the Equal Opportunity Commission you must make the complaint within 12 months of the discrimination taking place.

For more information contact:

**Equal Opportunity Commission**

T: 08 9216 3900

W: [www.equalopportunity.wa.gov.au](http://www.equalopportunity.wa.gov.au)

## Cost of Renting a Property

A landlord can require you to pay the following:

- Agreed rent amount
- A maximum of two (2) weeks rent in advance after the first two (2) weeks of the tenancy
- One security bond (maximum of four (4) weeks rent)
- A maximum of \$260 for a pet bond (if applicable)
- Option fee



It is important to get and keep a receipt for any money you pay.

### **What is an Option Fee?**

A landlord may charge an option fee when a potential tenant makes an application to rent a property.

The option fee is capped at \$50 or \$100 depending on the rent and location of the property.

If your application is successful and you decide to go ahead with tenancy, the landlord will either repay the fee to you or use it towards your rent.

If your application is successful but you decide not to go ahead, the landlord is permitted to keep the fee.

If your application is unsuccessful this fee must be refunded to you.

### **What is a Residential Tenancy Agreement?**

A residential tenancy agreement is a legally binding contract between you and the landlord.

The residential tenancy agreement set outs the terms of your tenancy such as:

- How much rent you have to pay and how often you have to pay your rent
- Whether you or your landlord will maintain the garden
- Fixed term (e.g. 12 months) or is a periodic tenancy (e.g. month to month)
- There is no law regarding the specific number of people residing at the property, however, a landlord has the power to request the names of all people residing in the property in the agreement
  - It is unlawful to falsely provide your name to your landlord

### **Fixed versus Periodic Agreements**

Periodic Tenancy: A tenancy for an indefinite amount of time on a rolling basis (e.g. monthly, quarterly).

Fixed Term Tenancy: A tenancy for a definite amount of time, e.g., for 12 months

When discussing how long you want the lease to last, keep in mind that breaking a fixed term agreement earlier than agreed may make you liable for costs and could entail additional rent payments.

## Written versus Verbal Agreements

A tenancy agreement can be written or verbal.

Written Agreement: A written agreement must be in the prescribed form (Form 1AA).

Prescribed Form 1AA can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtagreeform1aa.pdf>

This form contains the terms applicable to all residential tenancy agreements.

Verbal Agreement: A verbal residential tenancy agreement can be made. It is advisable not to use this type of agreement as they are hard to prove in court if there is a disagreement.

If a verbal contract is entered into, the landlord must provide you with the prescribed form (Form 1AD).

Prescribed Form 1AD can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtaform1ad.pdf>

## Importance of the Agreement

The Residential Tenancy Agreement sets out yours and your landlord's responsibilities and rights.

You should be given a copy of the agreement fourteen (14) days before you sign it. If you are unsure, seek advice before you sign it.

This is important, as there are significant consequences for breaching the agreement.

## What you must be given at the Start of your Tenancy

Documentation received at the start of your tenancy includes:

- Copy of the signed agreement (Form1AA) within fourteen (14) days of moving in
- A copy of 'Information for Tenant' (Form1AC) if it is a written agreement

Prescribed Form 1AC can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/1actenantinfo.pdf>



- A copy of the information for you with a non-written residential tenancy agreement (Form 1AD) within fourteen (14) days of moving in, if it is a verbal agreement

Prescribed Form 1AD can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtaform1ad.pdf>

- Two copies of the property condition report within seven (7) days of moving in
- A bond lodgement form which you must sign
- The name and address of the landlord

## During the Tenancy

Your residential tenancy agreement will contain a clause specifying the amount of rent you must pay.

## Rent Increases

Rent increases may occur during your tenancy. The process differs depending on whether you have a fixed term tenancy or a periodic tenancy.

### Fixed Term

The rent can only be increased during the fixed term if the increased amount or method of calculating the increase, is stated in your residential tenancy agreement (e.g. 3% increase).

Your landlord must give you sixty (60) days' notice of the rent increase.

### Periodic Agreement

Rent cannot be increased more than once every six months and your landlord must give you sixty (60) days' notice of the rent increase.

Notice must be given by 'Notice of Rent Increase' Form 10 or 'Notice of Rent Increase Calculated by Tenant's Income' Form 11.

Prescribed Forms 10 and 11 can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/nottotenrentinexcprentcalbytenincform10.pdf>

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/notoftenantrentincreaseform11.pdf>

## Excessive Rent Increases

It is important to remember that a landlord is prohibited from increasing your rent excessively.

However, there are limited circumstances where you may be able to argue that the increase is excessive.

If you believe your rent has been increased excessively, you can either:

- A. Negotiate with your landlord
- B. Apply to the Magistrate's Court within 30 days of receiving the rent increase notice

The court will consider the following factors to decide whether the increase is excessive:

- Rent for similar premises
- Estimated capital value of the premises
- Costs of services provided by lessor or tenant under the agreement
- Value of furnishings, fixtures and facilities provided to tenants
- General condition of the property
- Any other relevant matter

If you make an application to court, it is important that you bring evidence about each of these factors in order to make a successful claim.

## Right to Repairs

You and your landlord both have responsibilities for maintaining the rental property under the *Residential Tenancies Act*.

## Landlord Responsibilities

The Landlord must:

- Provide the property to you in a reasonable state of cleanliness and repair. If you are not satisfied with the state of the property, contact your landlord as soon as practicable and ensure you get any agreement for cleaning or repairs in writing
- Maintain property in a reasonable state of repair
- Comply with health and safety laws
- Conduct any repairs in a timely manner when repairs are needed

- Repair fixtures and chattels provided with the property such as lights, swimming pool, white goods and furniture; however, the landlord is not responsible to repair any fixture that you were told was not working prior to your agreement

## Tenant Responsibilities

You are not responsible for general wear and tear which refers to deterioration that occurs over time through ordinary activities such as the carpet being worn or curtains fading.

The tenant must:

- Keep property in reasonable state of cleanliness
- Advise the landlord of damages that occur as soon as practicable
- Not negligently or intentionally damage the property

If repairs are required, due to damage you have caused, you must inform the landlord and discuss the repairs needed.

Do not undertake your own repairs without landlord consent as you may be held liable for poor repairs. Importantly, the repairs must be undertaken at a reasonable price.

## Undertaking Repairs

1. In writing, inform the landlord of the issue and ask them to repair it.
2. If the landlord fails to respond to the request, you can issue them with a 'Notice to Lessor of Breach of Agreement' (Form 23).

Prescribed Form 23 can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/nottolessorbreachofagreementform23.pdf>

3. If the landlord fails to respond, you can make an application to the magistrate's court. This can be done by completing the 'Application for Court Order' (Form 12).

Prescribed Form 12 can be found at:

[https://www.magistratescourt.wa.gov.au/files/RT\\_Form\\_12\\_Court\\_Order.pdf](https://www.magistratescourt.wa.gov.au/files/RT_Form_12_Court_Order.pdf)

4. If the landlord continues to fail to repair the damage within a reasonable time, a rent reduction can be sought.

Importantly, do not withhold rent payments as this will be in breach of the residential tenancy agreement.

## **Urgent Repairs**

There are two (2) categories of urgent repairs:

1. Essential services such as water, electricity, gas, etc.
2. Other repairs that are necessary to avoid the property being exposed to damage, cause a person to be at risk or cause of potential injury or causing hardship to the tenant.

If the repair is urgent, contact the landlord as soon as possible, or if it is after hours, contact the after-hours number. If the landlord does not respond within 24 hours for an urgent repair of essential services, you can authorise an essential repair. You can authorise any other urgent repair if the landlord does not respond within 48 hours.

## **Tenant Right to Privacy**

As a tenant, you have a right to privacy of the property. The landlord, or anyone else, is not allowed to enter the property unless you have been given correct notice prior to their arrival (see below).

## **When can a Landlord Enter the Tenant Property?**

The landlord can enter the property in the following circumstances.

<b>Purpose</b>	<b>When the Landlord can Enter the Premises</b>
<b>In an Emergency</b>	Anytime.
<b>Conducting Routine Inspections</b>	At a reasonable time after giving the Tenant a minimum of seven (7) days' written notice.
<b>Landlord suspects the Tenant has abandoned the property</b>	Twenty-four (24) hours after giving the Tenant written notice.
<b>Necessary Maintenance and Repairs</b>	Seventy-two (72) hours after giving the Tenant written notice.

Purpose	When the Landlord can Enter the Premises
To show the property to prospective Tenants	Can only occur in the final twenty-one (21) days of the residential tenancy agreement.  At a reasonable time after giving the Tenant written notice.
To show the property to prospective Buyers	At a reasonable time after giving the Tenant written notice.

A written notice must state the proposed date of entry and whether the entry will be prior to, or after 12:00pm.

The landlord must make reasonable attempts to discuss a day and time of entry that suits you.

### What can a Tenant do if the Landlord does not Respect Tenant Privacy?

If the landlord enters the premises without notice you can:

1. Write to the landlord and inform them that tenant privacy has been breached, requesting written notice to access the property be given in the future.
2. Apply to the Magistrate's Court for an order to stop the landlord from entering your property.
3. Report the landlord to the police for trespassing.

### How to end a Residential Tenancy Agreement

#### Periodic Tenancy

A periodic tenancy agreement has no fixed end date. To end a periodic tenancy agreement, you must give the landlord twenty-one (21) days' written notice.

#### Fixed Term Tenancy

A fixed term tenancy agreement has a fixed end date. The fixed term tenancy agreement will come to an end at the date decided on when signing the agreement. However, the landlord must give you thirty (30) days' written notice of the end of the tenancy. If the landlord does not give notice, the tenancy agreement will automatically convert to a periodic tenancy agreement at the end of the fixed term.

## Breaking a Residential Tenancy Agreement

Breaking a residential tenancy agreement before the set end date for a fixed term agreement or without giving twenty-one (21) days' notice for a periodic tenancy agreement is a breach of the residential tenancy agreement and you may be held liable to pay compensation to the landlord.

### Can the tenant break a Residential Tenancy Agreement if the landlord is breaching the Agreement?

You can seek an order from the Magistrates Court to end a fixed-term agreement if the lessor has not kept to any one of the terms in the agreement and refuses to fix the problem. You can end the agreement with two (2) days' notice if the premises is destroyed, compulsorily acquired by law, or becomes uninhabitable. You can also end the tenancy by mutual agreement.

### Facing Hardship?

If staying in the residential tenancy agreement will result in your facing undue hardship you may be able to apply to the Magistrates Court to terminate the lease.

Undue hardship may apply to you if you are facing serious medical or safety issues. However, you may still be ordered to pay some compensation.

Before applying to the Magistrates Court, we recommend you talk to your landlord about the issues you are facing, and you may reach a mutual agreement to terminate the residential tenancy agreement.

## Eviction

### Periodic Tenancy Agreement

Landlords can issue a **no grounds termination**. They are not required to provide a reason for terminating the periodic tenancy agreement. However, they must provide you with sixty (60) days' written notice.

### Fixed Term Lease Agreement

Landlords must provide thirty (30) days' notice of termination in writing prior to the end date of the residential tenancy agreement.

However, if the landlord ends the tenancy early without consent you may be able to claim compensation for any reasonable losses you suffer such as inconvenience and removalist costs.

## Breach of Agreement

If you breach the residential tenancy agreement the landlord can give you a **Breach Notice** that outlines the problems and gives you fourteen (14) days to fix the problem.

If you fail to fix the problem, the landlord can issue a **Notice of Termination** which gives you seven (7) days to leave the property.

If you fail to vacate, the landlord can apply to the Magistrates Court to end the tenancy and seek an order for possession.

At a court hearing, you may show that you have fixed the breach or taken steps to do so, in which case the court may decide to not end the residential tenancy agreement.

If the Magistrates Court makes an order to terminate the residential tenancy agreement, you may be able to ask the court to suspend the order for thirty (30) days by showing that you will suffer hardship by the termination.

## **Retaliatory Eviction**

If the landlord attempts to end a residential tenancy agreement after you have enforced your legal rights, such as requesting a repair, this may be deemed retaliatory eviction. In this case, the court can declare a Notice of Termination given to you by the landlord to be invalid.

**If you suspect that your landlord is evicting you in retaliation for your exercising your legal rights, contact Circle Green Community Legal Centre (previously Tenancy WA) on 08 6148 3636.**





## Recovering your Rental Bond

**To maximise your chances of receiving your Bond back, you should:**

- Go through the Property Condition Report carefully at the beginning of the tenancy and note any issues on it
- Take photos of the property at the beginning and end of the tenancy
- Read all documents carefully
- Repair and maintain the premises during your occupation and report issues to the landlord as they arise
- Keep copies of all rent receipts
- Leave the property clean and in the same condition as when you moved into the property (including the garden)
- Keep receipts if you paid for cleaning, gardening or repairs, etc.
- Provide a forwarding address to the landlord

**The Rental Bond should be returned to you unless:**

- You owe money for outstanding rent payments
- You are responsible for property damage
- You have outstanding utility bills, e.g., water, electricity, etc.

## What if the rental bond is withheld from you?

You may need to apply to the Magistrate's Court if:

- You cannot get your rental bond money back
- You have not been able to reach an agreement with the landlord about how much bond you should get back

You can make an 'Application for Disposal of Bond Money' (Form 6) to the Magistrates Court.

Prescribed Form 6 can be found at:

[https://www.magistratescourt.wa.gov.au/files/RT\\_Form\\_6\\_Bond\\_Money.pdf](https://www.magistratescourt.wa.gov.au/files/RT_Form_6_Bond_Money.pdf)

## Is the tenant responsible for wear and tear of the property?

You are responsible for negligent damage. However, a property is likely to suffer fair wear and tear over time, for which you are not responsible.

Fair wear and tear, refers to deterioration caused by ordinary use.

Fair Wear and Tear to Rental Property	Negligent Damage to Rental Property
Cracking windowpanes due to old window frames.	Cracked window due to tenant slamming the window shut.
Curtains fading from sun exposure.	Curtains torn by tenant pet/s.
Paint fading over time.	Paint discoloration from candle smoke.
Worn carpets from ordinary use.	Scratches on kitchen benchtops due to cutting food or scratches on wood floors due to dragging furniture

If your landlord is holding you responsible for damage that is fair wear and tear, you should refer to the **Property Condition Report** and photographs to compare the condition of the property when you first moved into the property.

## Tenant Advice and Advocacy Services

For more information, or assistance tailored to your specific situation please contact the services listed below:

**Circle Green Community Legal Centre (previously Tenancy WA) provides state-wide telephone advice services and referrals.**

Metro T: 08 6148 3636

W: <https://circlegreen.org.au/tenancy/>

Department of Commerce

T: 1300 304 054

W: <https://www.commerce.wa.gov.au/>

<b>Metropolitan Community Legal Centres</b>
<b>Fremantle Community Legal Centre</b> Level 1, Suite 31 Fremantle Mall, 35 William St, Fremantle WA 6160 T: 08 9432 9790 W: <a href="http://www.fremantle.wa.gov.au/fclc">http://www.fremantle.wa.gov.au/fclc</a>
<b>Gosnells Community Legal Centre</b> Gosnells Community Lotteries House, Suite 1 2232 Albany Hwy Gosnells WA 6110 T: 08 9398 1455 W: <a href="http://www.goscllc.com.au">http://www.goscllc.com.au</a>
<b>Midland Information Debt &amp; Legal Advocacy Service</b> 8-12 Stafford St, Midland WA 6056T: 08 9250 2123 W: <a href="http://www.midlas.org.au">http://www.midlas.org.au</a>
<b>Northern Suburbs Community Legal Centre (Joondalup)</b> Building 1, Edith Cowan University, 270 Joondalup Drive Joondalup WA 6027 T: 08 9440 1663 W: <a href="http://www.nsclegal.org.au/">http://www.nsclegal.org.au/</a>
<b>Northern Suburbs Community Legal Centre (Mirrabooka)</b> 10 Cobbler Place Mirrabooka WA 6061 T: 08 9440 1663 W: <a href="http://www.nsclegal.org.au/">http://www.nsclegal.org.au/</a>
<b>Southern Communities Advocacy &amp; Legal Education Services (SCALES)</b> Suite 3 St Nicholas Community Centre, 14 Council Ave Rockingham WA 6168 T: 08 9550 0400 W: <a href="http://www.murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES">http://www.murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES</a>
<b>Subiaco Justice Centre Inc.</b> 325 Barker Road Subiaco WA 6008 T: 08 6500 0227 W: <a href="https://subiaco.legal/">https://subiaco.legal/</a>
<b>Sussex Street Community Law Service Inc.</b> 29 Sussex Street East Victoria Park WA 6008 T: 08 6253 9500 W: <a href="http://www.sscls.asn.au/">http://www.sscls.asn.au/</a>
<b>Welfare Rights &amp; Advocacy Service</b> 98 Edward Street Perth WA 6000 T: 08 9328 1751 W: <a href="http://www.wraswa.org.au/">http://www.wraswa.org.au/</a>

## Regional Community Legal Centres

### Albany Community Legal Centre

4/15 Peels Place Albany WA 6330

T: 08 9842 8566

W: <http://www.albanyclc.com.au>

### South West Community Legal Centre

14 Plaza Street South Bunbury WA 6230

T: 08 9791 3206 | 1800 999 727 (Free Call)

W: <http://https://www.swclc.org.au/>

### Regional Alliance West

1/114 Sanford Street Geraldton WA 6530

T: 08 9938 0600

W: <https://raw.org.au/>

### Goldfields Community Legal Centre

Suite 4-6/37 Brookman St, Kalgoorlie WA 6430

T: 08 9021 1888 | 1300 139 188 (if outside Kalgoorlie-Boulder)

### Kimberley Community Legal Services

4 Papuana Street Kununurra WA 6743

T: 08 9169 3100

W: <http://www.kcls.org.au/>

### Peel Community Legal Services

61B Pinjarra Road Mandurah WA 6210

T: 08 9581 4511

W: <http://www.peelcls.com.au/>

### Pilbara Community Legal Service (Karratha)

Karratha Business Centre, Unit 52-54 5/15 Sharpe Ave, Karratha WA 6714

T: 08 9185 5899

W: <http://www.pcls.net.au/>

## Regional Community Legal Centres (continued)

### Pilbara Community Legal Service (Newman)

Newman House, 4/46 Iron Ore Parade Newman WA 6753

T: 08 9175 0148

W: <http://www.pcls.net.au/>

### Pilbara Community Legal Service (Roebourne)

2 Padbury Street Roebourne WA 6718

T: 08 9185 5899

W: <http://www.pcls.net.au/>

### Pilbara Community Legal Service (South Hedland)

South Hedland Lotteries House, 9/2 Leake Street South Hedland WA 6722

T: 08 9140 1613

W: <http://www.pcls.net.au/>

### Wheatbelt Community Legal Services

327 Fitzgerald Street E Northam WA 6401

T: 08 9622 5200

W: <http://www.wheatbelt.com.au/>



## Strata Titles and Community Titles

A strata title is a form of ownership for a lot and a share in the common property in a strata scheme.

Strata titled properties are a good choice for those who prefer small and easily maintained properties that are often close to well established facilities (e.g. villas, units, apartments). It is a form of community-based living. Community title is another form of ownership similar to strata titles, but it has only recently been introduced and is therefore not currently common in Western Australia.

Strata titled properties are governed by the *Strata Titles Act 1985* which provides information on:

- Rights and obligations of owners
- Insurance issues
- Renovation or additions to the property
- Standard by-laws

The *Act* dictates what you own and what is 'Common Property' shared by all of the strata owners. Common Property can include a courtyard, lift, swimming pool, etc.

## Strata-Titled Properties

Ensure you are familiar with all aspects of strata titles if you are contemplating purchasing such a property.

### Duties and Responsibilities of the Strata Title Owner

If you own a strata titled property, it is important you are aware of your owner responsibilities.

You have several duties, including:

- Becoming a member of the strata company entitling you to a vote in respect of its management
- Abiding by the by-laws of the strata scheme (i.e. the strata rules)
- Paying strata levies such as for insurance, repair and maintenance of common property and possibly a reserve fund for capital expenditure
- Attending meetings to discuss issues and vote on issues pertaining to expenses, improvement repairs and management of the complex

## **What are Scheme By-laws?**

By-laws are the 'rules' and define what you can and cannot do in the strata scheme. Standard by-laws are in the Act. However, a strata scheme may have different or special by-laws contained in a management statement. You can obtain a copy of the management statement from the strata company or strata manager.

## **What do I own?**

You own your lot and a share in the common property. In a multi-tier strata scheme (e.g. high-rise apartment complex or two storey building with lots on the first and second floor) you do not own the external walls as that is common property.

## **What obligations apply to people who are on Common Property?**

Refer to the By-laws for initial guidance. If you are still unsure, raise the matter at a strata company meeting or ask the strata manager.

## **Can an owner participate in decisions about how the Strata Scheme operates?**

Yes, as a member of the strata company an owner can participate in meetings and vote on the issues affecting the scheme by-laws. You will automatically become a member of the strata company when you buy your lot. Your vote will be weighted according to the unit entitlement of your lot in the strata scheme (i.e. everyone's vote may not be equal).

## **What if an owner has an issue with another lot owner or the Strata Company?**

Some actions an owner can take include:

- Consulting the strata scheme by-laws
- Raising the issue with the strata manager or other owners who are officers of the strata company (Strata Council).
- Applying to the State Administrative Tribunal

## **What if an owner has an issue with the Strata Manager?**

Raise the issue with the Strata Council at a strata company meeting so the council can take up the matter with the Strata Manager.

If the issue remains unresolved, the strata company can take steps to try and settle the dispute.



## Information the Strata Title property buyer must be given

When you are buying a strata titled property the seller must give you a 'Pre-Contractual Disclosure Statement to the Buyer' which includes:

- A copy of the Strata Plan which shows the Strata Lot being sold and its unit entitlement
- A copy of the Standard and any Non-Standard By-laws (which may be in a document entitled 'Management Statement') and which will include any exclusive use by-laws
- The strata levies you must pay
- Details of any debt owed by the seller to the strata company
- Minutes of the most recent annual general meeting of the strata company and any extraordinary general meetings and the latest statement of accounts
- Larger strata schemes (6 lots or more) employ a strata manager to keep records on behalf of the strata company. For more information, you can ask the strata manager
- Owners in smaller strata schemes may find it difficult to access information as minutes of meetings may not need to be kept or may be held by other owners



## Where to Access More Information

### Landgate

For general strata inquiries:

T: 08 9273 7373

Regional Australia T: 1300 365 288

E: [customerservice@landgate.wa.gov.au](mailto:customerservice@landgate.wa.gov.au)

W: <https://www0.landgate.wa.gov.au/>

### **Legal information and Advice**

#### Law Society of WA

T: 08 9324 8600

W: <https://lawsocietywa.asn.au/>

#### Strata Community Association

T: 08 9381 7084

Note: this number cannot be called for general strata advice.

W: <https://www.wa.strata.community/>

#### The Citizens Advice Bureau of WA

T: 08 9221 5711

W: <https://cabwa.com.au/>

## Retirement Villages

A retirement village is a community of seniors who live in individual premises and share common facilities and amenities. The villages are managed and administered by a village operator and may be run by commercial companies, local government or non-profit organisations.

Moving into a retirement village is a major financial decision so it is extremely important to take the time to be aware of your legal rights and obligations before entering into a contract.

**Legal rights and obligations for contracting to reside in a retirement village can be found in the:**

- *Retirement Villages Act 1992*
- *Retirement Villages Regulations 1992*
- *Fair Trading (Retirement Villages Code) Regulations 2022*

### What to do prior to signing a Contract to reside in a Retirement Village

Before moving into a village, the buyer will be given a lengthy contract.

It is important to be aware that contracts are legally binding documents, and it is vital you understand the information provided to you prior to signing any contract.

It is highly recommended the buyer engages a lawyer to provide advice regarding the contract and to highlight any potential costs and terms and conditions of the contract. Before signing a contract, make sure you are familiar with the information provided at the end of this Section of this Guide.



## Information the retirement village property buyer must be given

The administering body of the retirement village must provide you with:

- The Code of Practice for Retirement Villages
- A copy of the final contract
- A copy of the residents' rules of the village
- A pre-contractual statement with accurate information about matters including fees and charges payable (contained in Schedule 1 of the Retirement Villages Regulations 1992)
- A notice that informs you about your rights
- A list of commonly asked questions with answers
- Details regarding:
  - All costs payable
  - All ongoing charges and fees and methods of variation for all charges and fees
  - Optional services provided
  - Costs associated with moving into the village
  - The refund entitlement for buyer regarding termination of the contract
  - Rules of the village such as those relating to parking, gardening, pets, visitors, etc.

Additionally, the retirement village administering body is required to answer any questions from the buyer relating to the village.

**The administering body of the retirement village must disclose the above information at least ten (10) working days before you sign the contract.**

## What if you change your mind after signing a contract of sale?

After the last person signs the contract, there is a seven (7) working day cooling-off period. The contract will only be binding following the seven (7) working day cooling-off period. During this period, you can change your mind without incurring any associated costs but if you decide not to go ahead with the contract, you must give **notice in writing** to all other parties of the contract.

## What are the costs associated with the signing of the contract of sale?

The costs associated with entering a retirement village contract can include:

- An entry price also known as a 'premium' which is a one-off, up-front payment
- Recurrent charges which are often monthly payments that the resident pays while living at the village, covering operating costs and services of common areas and amenities
- Departure fees which are charged when the resident exits the village. These fees can be high which is why it is important to read and understand the contract

Other fees: The resident of the village (or their estate) may have to continue to pay fees after the resident leaves the village, while the operator finds another buyer to take over the lease or to buy the retirement village property. It is important that you consider these potential costs when you enter into a retirement village contract.

## What are the legal rights of a spouse or partner in the contract of sale?

The buyer of a retirement village property must ensure the names of all parties, spouse, partner, etc. are included on any title or lease.

Failure to do so may result in the other parties to the contract being required to move out if the buyer of the retirement village property passes away or moves into a residential aged care facility.

## What 'matters' must and must not be included in a contract of sale?

Matters that **must** be included in a contract of sale:

- An undertaking that any communal amenity (e.g., swimming pool) cannot be removed or changed unless the residents consent
- A warranty that the residential premises will be in a reasonable condition when the resident takes possession
- A provision that the resident may apply to the administering body for approval to add or remove a fixture and the administering body of the retirement village must not unreasonably withhold approval of the alteration
- Provision for the resident to arrange for urgent repairs at the cost of the retirement village

Matters that **must not** be included in a contract of sale:

- Provisions that require a resident to give a Power of Attorney to another person, except under very limited circumstances
- Provisions which do not calculate exit fees on a daily pro rata basis
- Provisions that allow the contract to be varied without consent
- Provisions which require a resident to contribute to the costs for maintenance or renovation that would exceed what is reasonable

### **What are the general rights of the Retirement Village resident?**

The code of practice supplements the *Retirement Villages Act 1992*. The objective of the code is to promote fairness and respect of mutual rights.

To view the *Retirement Villages Act 1992* go to:

[https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_a697.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a697.html)

To view the Code of Practice go to:

[https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_s53502.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s53502.html)

**Listed below are some of the important clauses in the Code to be aware of:**

#### **Schedule 1 Division 1 Clause 3:**

- The well-being and interests of residents and the rights of administering bodies must be given due consideration
- Residents must be treated fairly and must not be subject to abuse or exploitation

**Schedule 1 Division 1 Clause 5** provides residents with the right to:

- Privacy
- Quiet enjoyment of the premises and communal amenities
- Complete autonomy over the resident's property and personal and financial affairs

### **What are the resolution rights of the Retirement Village resident in the case of disputes?**

The *Retirement Villages Act 1992* includes an important dispute resolution process.



## Dispute Resolution Process Steps

### Step 1

Approach the other persons and/or parties to the dispute to try to resolve the issue amicably.

### Step 2

If Step 1 is unsuccessful, a resident can invoke an **In-Village Dispute Resolution** process. The code of practice which contains the rights and responsibilities of residents and administering bodies outlines this process in Division 6.

The administering body of the village will nominate a suitable person or body to deal with the dispute who is acceptable to all parties.

The Dispute Resolution process is as follows:

1. The complainant must give notice in writing to the other party stating the matters in dispute and calling on them to settle these matters.
2. The other party must respond within ten (10) working days of receipt of the written notice and give reasons in writing if they reject any of the dispute matters.
3. The parties and the person appointed to deal with the dispute will then meet within twenty (20) working days of the written notice.
4. If the matter is not resolved by this process, the administering body must advise the parties of available avenues for further review of the matters that are still in dispute.

### Breaches of the code of practice by the administering body

If there is a breach of the code by the retirement village administering body, a formal complaint can be lodged with the Consumer Protection Division of the Department of Mines, Industrial Relation and Safety (DMIRS).

**The complaint can be lodged online or the applicable form can be downloaded from the DMIRS Website at:**

<https://forms.commerce.wa.gov.au/consumer-protection/complaint>



## Where to Access More Information or Assistance

**For advice about your rights under the *Retirement Villages Act 1992* and the Code of Practice for Retirement Villages.**

Department of Mines, Industry Regulation and Safety (DMIRS)

T: 1300 304 054 (Local call costs apply)

National Relay Service

T: 133 677 (for the hearing impaired)

W: [www.dmirs.wa.gov.au](http://www.dmirs.wa.gov.au)

E: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

**Copies of the Act, Regulations and code can be obtained from the State Law Publisher.**

T: 08 6552 6000

W: [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)

**For details about the information and services available for seniors.**

Seniors Information Service

T: 08 6551 8800

Country callers: 1800 671 233

Carer Gateway

T: 1800 422 737

**For information about retirement villages which are members of the Retirement Living Council of the Property Council.**

Retirement Living Council

T: + 61 7 3225 3000

**For information about retirement village accommodation provided by members of Aged & Community Care Providers Association (ACCPA).**

T: 1300 222 721

**For information about the availability of retirement villages in a certain locality, call your Local Council.**

## Longstay Tenure in Residential Parks

Residential Parks are governed under the *Residential Parks (Long Stay Tenants) Act 2006* (*Residential Parks (Long Stay Tenants) Act*) and *Residential Parks (Long Stay Tenants) Regulations 2007* (*Residential Parks (Long Stay Tenants) Regulations*). They are not governed by the *Retirement Villages Act 1992*.

In Western Australia selected caravan parks provide sites for rent on which a caravan or park home can be placed. Tenants who intend to stay at a park for longer than three (3) months need to ensure their site is classified as a 'long-stay' site which can be occupied for three (3) months or longer.

Purpose of the *Residential Parks (Long Stay Tenants) Act*: To regulate the tenancy agreement between the park operator and you and to balance both tenants' and park operator's interests.

Application: Applies to tenancy agreements within a long-stay residential park that are for a fixed term of three (3) months or more or periodic agreement that continues for three (3) months or more. Does not apply to agreements entered into for the purpose of a holiday or which confer a right to occupy a site for an employer or agent of the park operator.

It is important to bear in mind that a 'lifestyle village' may include both long-stay sites and retirement village homes, with different rules applying to the different types of homes.

### Changes to the Residential Parks (Long Stay Tenants) Act

Changes to the *Residential Parks (Long Stay Tenants) Act* and *Residential Parks (Long Stay Tenants) Regulations* commenced on 31 January 2022. The changes were introduced to improve the security of long-stay tenancy agreements and promote fair and transparent arrangements between park operators and tenants.

Details regarding the changes can be reviewed at:

<https://www.commerce.wa.gov.au/consumer-protection/changes-residential-parks-long-stay-tenants-act-2006>

A short summary of the changes can also be found at:

<https://www.commerce.wa.gov.au/consumer-protection/changes-residential-parks-long-stay-tenants-act-2006>

## **The *Residential Parks (Long Stay Tenants) Act* requires among other things that:**

- All agreements are in writing
- Park operators provide disclosure material to assist prospective long-stay tenants in deciding if park living is suitable for their needs
- A minimum five (5) working days' cooling off period applies to site-only agreements
- A minimum of one hundred eighty (180) days' notice must be given for a park operator to terminate a periodic 'site only' tenancy agreement
- A minimum sixty (60) days' notice must be given for a park operator to terminate a periodic 'on-site' home agreement
- Parks with a minimum of twenty (20) long-stay sites must establish a park liaison committee
- Compensation must be paid if a fixed-term agreement is terminated early for reasons other than a breach of agreement
- The State Administrative Tribunal determines disputes between parties

### **What to do before signing a Tenancy Agreement when renting a site and/or a dwelling in a residential park**

Before signing a long-stay tenancy agreement to live in a park, be aware that even if you own the caravan or park home that you reside in, you are only renting the site on which it is located. In some instances, you may also be purchasing the relocatable home in addition to renting the site so you need to carefully consider what you are paying for under the tenancy agreement.

You do not have ownership related rights over the greater land in the park where your park home or caravan is located.

You should also be aware that park living may not be a permanent living arrangement as the park owner may decide to sell, in which case you may be required to move the relocatable home to another location.

### **What type of Tenancy Agreement can be offered to live in a residential park?**

#### Fixed Term Agreement

A Fixed Term Agreement specifies a period of time that you can rent the premises or the site. The period of time can be any length of time provided that it is 3 years or more.

## Periodic Agreement

A Periodic Agreement does not specify the period of time you can rent the premises or the site. Either the Park operator or you can give notice to leave in accordance with requirements under the *Residential Parks (Long Stay Tenants) Act*.

With either a fixed term or periodic agreement, there are restrictions on the alterations or additions you can make to your park site or to your caravan and/or park home.

### **What are the parties rights and obligations in respect of Residential Park Living?**

<b>Tenants' Rights and Obligations</b>	
<b>Right or Obligation</b>	<b>Description</b>
<b>Vacant Possession</b>	Vacant possession of the premises to be given on commencement of long-stay agreement.
<b>Responsibility for cleanliness</b>	You must keep the premises clean.
<b>Responsibility for damage</b>	You must not intentionally or negligently cause any damage and must notify the park operator of any damage.
<b>The conduct of tenants when on Park premises</b>	You must not cause or permit a nuisance or use the premises for illegal purposes.
<b>Tenants' vicarious responsibility for Breach of Agreement</b>	You are responsible for acts or conduct of guests.

<b>Park Operator Rights and Obligations</b>	
<b>Right or obligation</b>	<b>Description</b>
<b>Responsibility for cleanliness and repairs</b>	The Park operator must provide and maintain the park in a reasonable state of cleanliness and repair. They must also comply with health and safety laws.
<b>Compensation where tenant seeks to repair</b>	The Park operator must compensate you for reasonable expenses incurred in making urgent repairs.
<b>Locks</b>	The Park operator must provide locks for on-site homes. There can be no change or removal of any locks without consent and notification to you.

Right or obligation	Description
<b>Right of Entry for Park Operator</b>	The Park operator may enter premises with consent and/or in an emergency for inspection and maintenance.
<b>All rates, taxes and charges are paid by the Park Operator</b>	The Park operator will bear the costs of all rates, taxes and water charges.

### **What must be provided to the prospective Tenant prior to signing an Agreement to reside in a Residential Park?**

Before moving into a Residential Park, the Park Operator must provide to the Tenant:

- A copy of the proposed agreement, including an explanation of how and when the rent may be varied; all long-stay agreements must be in a standard form as described in the *Residential Parks (Long Stay Tenants) Act* and Residential Parks (Long Stay Tenants) Regulations
- A copy of the information booklet on park living prepared by the Commissioner (this sets out key information about a person's rights and obligations under the *Residential Parks (Long Stay Tenants) Act*)
- A written schedule of fees and charges currently payable by a long-stay tenant to the park operator
- A property condition report
- A copy of the Park rules
- Information about the membership and functions of the Park Liaison Committee (if any)
- A copy of the prescribed information sheet (which sets out specific information in relation to your particular long-stay agreement)
- Particulars of any restrictions or conditions imposed directly or indirectly under a written law that could affect:
  - The sale of the prospective tenant's relocatable home on site
  - Any proposed assignment of the prospective tenant's rights under the long-stay agreement

It is important to be aware that contracts are legally binding documents, and it is vital you understand the information provided by the Park operator prior to signing any contract.

## What are the termination grounds for of the Residential Park Agreement?

The long-stay agreement may be terminated on the following grounds:

- Non-payment of rent
- Using the premises for an illegal purpose
- Damage to property
- Violent behaviour
- A breach of a term of the long-stay agreement

## What is 'Termination without Grounds' of the Residential Park Agreement?

The *Residential Parks (Long Stay Tenants) Act* also provides that party to a long-stay agreement may give a notice of termination to the other to terminate a periodic long-stay agreement without grounds before the end of the term.

The notice of termination by you must be given at least twenty-one (21) days before vacating.

The notice of termination by a park operator must not require vacant possession before sixty (60) days have passed for renters or one hundred eighty (180) days for homeowners. If the agreement is for a fixed term, the notice cannot require possession before the end of the fixed term.

Some safeguards do exist for tenants in relation to termination without grounds. A notice of termination without grounds must be justified and park operators cannot terminate on a mere whim.

Tenants on fixed term agreements cannot end the agreement before the end of the term.



## Where to Access More Information or Assistance

The information in this section may be out of date as the Western Australian Government implements law reform and policy changes. For current information, visit the following websites that have additional materials and fact sheets.

### Seniors Housing Advisory Centre

T: 1300 367 057

### Park Living Information Booklet

W: [www.dmirs.wa.gov.au/consumer-protection](http://www.dmirs.wa.gov.au/consumer-protection)

### Park Home Owners Association WA

W: <https://www.parkhomeownerswa.com.au/>

## **Government of Western Australia**

### Department of Mines, Industry Regulation and Safety Consumer Protection

Contact Centre 1300 304 054 (for the cost of a local call state-wide) 8.30am-4.30pm Monday to Friday

A: Gordon Stephenson House Level 2/140 William Street Perth WA 6000

W: <https://www.commerce.wa.gov.au>

E: [consumer@dmirs.wa.gov.au](mailto:consumer@dmirs.wa.gov.au)

P: Locked Bag 100 East Perth WA 6892

### Regional Offices

Goldfields/Esperance T: 08 9021 9494

Great Southern T: 08 9842 8366

Kimberley T: 08 9191 8400

Mid-West T: 08 9920 9800

North-West T: 08 9185 0900

South-West T: 08 9722 288



## Residential Aged Care

Residential Aged Care is provided for people who are not able to live independently and safely in an independent residence and who require ongoing help with everyday tasks or health care.

There are other forms of care that enable you to stay in your home (e.g. home care, flexible care and short-term restorative care).

### **Residential Aged Care is governed under the *Aged Care Act 1997 (Cth)*.**

The *Aged Care Act 1997 (Cth)* is the overarching legislation that outlines the obligations and responsibilities that aged care providers must follow to receive subsidies from the Australian Government. Aged care is the responsibility of the Australian Government, not the Western Australian Government.

The *Aged Care Act 1997 (Cth)* sets out rules for issues like funding, regulation, approval of providers, quality of care and the rights of people receiving care. Laws on diversity and discrimination, including elder abuse, also apply to aged care. There have been and will be significant legal and policy changes to the aged care sector following recommendations of the Royal Commission into Aged Care Quality and Safety published in March 2021. These changes include that the *Aged Care Act 1997* will be replaced by a new *Act*. This is expected to come into force in late 2023.

The information in this section on Residential Aged Care may be out of date as the Australian Government implements law reform and policy changes. For current information, visit the following websites that have excellent materials and fact sheets:

- [Aged Care Quality and Safety Commission](#)

The Commission regulates aged care services and safeguards the welfare and rights of consumers. It also resolves complaints about services.

T: 1800 951 822

W: <https://www.agedcarequality.gov.au/>

- [MyAgedCare](#)

This is the government's comprehensive service which details the types of services available and the procedures required to access the services.

T: 1800 200 422

W: <https://www.myagedcare.gov.au/>

## Eligibility to receive Residential Aged Care

You are eligible to receive residential care if you have physical, medical, social or psychological needs that require the provision of care and those needs can be met appropriately through residential care services.

Eligibility for a subsidised place is based on need, determined through an assessment.

To be eligible, you must be unable to live independently at home and can be either:

- An older person
- A younger person with a disability, dementia or other special care needs not met through other specialist services

Your financial situation does not affect your eligibility to live in a government-subsidised aged care home. It will impact the amount you may have to pay.

To qualify for assessment, you must meet some needs and age requirements. You can quickly find out if you meet the requirements for an assessment by using the eligibility checker on the MyAgedCare website or, if you are ready to get assessed, you can apply online on the MyAgedCare website for an assessment straight away. A trained assessor will visit you at home to carry out an assessment. They will talk to you about your circumstances and needs and work with you to identify what services might suit you best.

## The Charter of Aged Care Rights

The Charter of Aged Care Rights describes your rights as a consumer of Government funded aged care services.

The Charter of Aged Care Rights is made under the *Aged Care Act 1997* and can be found at:

W: <https://www.agedcarequality.gov.au/consumers/consumer-rights#charter-of-aged-care-rights>

## Under this charter you have the right to:

1. Safe and high-quality care and services.
2. Be treated with dignity and respect.
3. Have your identity, culture and diversity valued and supported.
4. Live without abuse and neglect.
5. Be informed about your care and services in a way you understand.

6. Access all information about yourself, including information about your rights, care and services.
7. Have control over and make choices about your care, and personal and social life, including where the choices involve personal risk.
8. Have control over, and make decisions about, the personal aspects of your daily life, financial affairs and possessions.
9. Your independence.
10. Be listened to and understood.
11. Have a person of your choice, including an aged care advocate, support you or speak on your behalf.
12. Complain free from reprisal, and to have your complaints dealt with fairly and promptly.
13. Personal privacy and to have your personal information protected.
14. Exercise your rights without it adversely affecting the way you are treated.

‘Duty of Care’ in aged care relates to the responsibility not to cause harm or injury to another person that could be reasonably foreseen. In an aged care setting, this requires capable staff, safe premises and quality clinical care.

Approved providers must protect the care recipient's privacy and comply with all applicable laws relating to the use of personal information and implement security safeguards to protect care recipients' personal information against loss or misuse.

## **Code of Conduct**

From 1 December 2022, a National Code of Conduct was introduced in aged care services to improve safety and wellbeing for aged care residents.

The Code applies to:

- Approved providers
- Their governing persons (e.g. CEO, Board members)
- Aged Care Workers

The Code will describe how aged care providers and the workers (i.e. the people who provide your care) must behave and treat aged care residents. Aged care residents should always be treated well and feel safe. Aged care providers and the people who provide care must act in a way that is respectful, kind and consistent with the behaviours set out in the Code.

If you are concerned about the way your aged care provider or the people providing your care are behaving:

- You can raise your concern, give feedback or make a complaint to your aged care provider
- If you feel uncomfortable speaking up or you would like some support, you could ask a friend or family member to help you raise a concern directly with the provider or you can get help from an independent advocate, at no cost; you can call the Older Person Advocacy Network (OPAN) on 1800 700 600 to be connected to a local, independent advocate who can help you to raise your issue with your provider
- If you are not comfortable raising a concern directly with your provider or are not happy with their response, you can contact the Aged Care Quality and Safety Commission for information and to work with you and your provider to resolve the concern; the Commission has a range of compliance and enforcement actions to respond to different situations

### Other Rights when you are receiving Aged Care Services

When you are receiving aged care services, you have the **same legal rights as all Australians**.

For example, you have rights to privacy, consumer rights and the right to be free from discrimination under relevant laws.

For more information on your rights, other than talking to your aged care provider, contact:

- Older Persons Advocacy Network (OPAN)

This is a network of independent not for profit organisations which provides advice and support to older people about their aged care rights.

T: 1800 700 600

W: <https://opan.org.au/support/support-for-older-people/your-aged-care-rights/>

- Department of Health

This website can be a starting point for all information about aged care including types of government-funded services.

W: <https://www.health.gov.au/health-topics/aged-care>

- Aged Care Quality and Safety Commission

The Commission regulates aged care services and safeguards the welfare and rights of consumers. It also resolves complaints about services.

T: 1800 951 822

W: <https://www.agedcarequality.gov.au/>

- MyAgedCare

This is the government's comprehensive service which details the types of services available and the procedures required to access the services.

T: 1800 200 422

W: <https://www.myagedcare.gov.au/>

- Services Australia (previously known as Department of Human Services)

This Government Department provides information about payments and services for people retiring or accessing aged care, including carers.

T: 1800 227 475

W: <https://www.servicesaustralia.gov.au/>



## What are the costs involved for Aged Care?

Aged care facilities may be run by commercial companies or non-profit organisations. Most aged care services receive funding from the Australian Government. However, residents are required to pay some fees and charges.

If you are moving into an aged care home, you may have to pay a means tested care fee and accommodation costs. A means assessment determines if you need to pay the means tested care fee and if the Australian Government will contribute to your accommodation costs. Everyone who moves into an aged care home negotiates a room price before moving in. The means assessment determines if you will have to pay the agreed room price.

The following information relates to aged care fees and costs after 1 July 2014. On that date the way fees were worked out for aged care homes changed. If you moved into an aged care home before 1 July 2014, the below fee arrangements that started on 1 July 2014 do not apply to you. You keep paying the fees that you were already paying before 1 July 2014.

### Basic Daily Fee

Everyone pays the basic daily fee. This fee is for day-to-day services (e.g. meals, cleaning, and laundry and facilities management). The basic daily fee is set at 85% of the single person rate of the basic age pension.

### Means-Tested Care Fee

The means tested care fee is an extra contribution that some people pay, as determined through a means assessment. It is an ongoing fee towards the cost of your personal and clinical care. This fee is different for everyone and not everyone has to pay it.

The means tested care fee can change over time. But there are annual and lifetime caps that apply to the means tested care fee. Once you reach a cap, you cannot be asked to pay any more in means tested care fees.

### Refundable Accommodation Deposit (RAD)

Most providers require a Refundable Accommodation Deposit (RAD). This is like a no-interest loan to an aged care home and is refundable (less deductions) when you leave. These fees vary as does the amount you pay, which is dependent on your assets.

### Extra Service Fees

For the provision of additional services outside the basic service such as specialised menus.



## Supported Residents

If you are unable to pay the fees and charges there are hardship provisions that may reduce the costs. In calculating your fees, your income and assets will be assessed.

Most aged care providers have rooms available for 'supported residents'. No person is excluded from residential aged care. Provisions are made for people with few or limited assets. Aged care is available to everyone regardless of their assets.

## Accommodation Costs

Everyone entering an aged care home needs to agree on a room price in writing with their provider before entering care. Whether or not you need to pay the agreed amount will depend on your means assessment.

Whether you are eligible for government assistance or not, there are different options for how to pay your accommodation costs in an aged care home. The three options are:

- Pay a refundable lump sum: this is called either a Refundable Accommodation Deposit (RAD) when you pay the full amount yourself, or a Refundable Accommodation Contribution (RAC) if you receive government assistance
- Rental-style daily payments: this is a daily accommodation charge which is called either a Daily Accommodation Payment (DAP) when you pay the full amount yourself, or a Daily Accommodation Contribution (DAC) if you receive government assistance
- A combination of the above: for example, for an agreed room price of \$400,000, you could choose to pay \$100,000 as a refundable lump sum, and pay a reduced non-refundable daily payment

In practice, most aged care providers require residents to pay a refundable lump sum in the form of a Refundable Accommodation Deposit (RAD). This is like a no-interest loan to an aged care home and the balance is refundable (less deductions to pay daily accommodation payments and other aged care costs) when you leave.

## Additional Service Fees and Extra Service Fees

Some aged care homes offer a higher standard of additional or extra services (e.g. specialised menus, higher quality linen, particular room décor, pay TV or hairdressing service). These aged care homes can charge additional service fees or an extra service fee which they set and are not subsidised by the Australian Government. The resident pays the full costs.

## Legal Agreements

When you enter aged care, there are two (2) or three (3) contracts that cover all the details. They may be separate documents or combined into one. They are:

- Resident Agreement: sets out the care and services the aged care home will provide and how much you will be asked to help pay for them. The resident agreement sets out the care costs, broken down into basic daily fees, means tested care fees (if applicable), fees for any additional services and how fees are calculated.

The Resident Agreement sets out your rights and responsibilities as a resident, and the aged care provider's obligations to you. It covers how the aged care home will continue to support you as your care needs change, when you can be asked to leave, how to exit the agreement, and how to move to another aged care home. It also covers the process for dealing with concerns and complaints.

- Accommodation Agreement: sets out what room you are taking, the room price you have agreed to pay and how you have agreed to pay it (e.g. refundable lump sum). The accommodation agreement also contains the requirements for refunding the lump-sum deposit and other accommodation conditions (e.g. room changes).
- Extra Services Agreement: only applies if the aged care home provides extra services, and you are entering an extra service room.

There is no standard or Australian Government-approved form for these agreements. Every aged care provider's documents will be different. They are binding contracts that together cover your right to live in a room in residential aged care, to use common amenities and to ancillary care services. Entering aged care can be a large personal and financial commitment. You should obtain specialist financial and legal advice in respect of your personal financial situation and the legal agreements of the relevant aged care home.

