

Housing Legislation Amendment Bill 2022

Department of Communities, Housing and Digital
Economy briefing for the Community Support and
Services Committee

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Queensland
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Context – Queensland Housing Strategy 2017-2027

The *Queensland Housing Strategy 2017-2027* (Housing Strategy) is a 10-year framework driving key reforms and targeted investment across the housing continuum to ensure Queenslanders have access to safe, secure, and affordable housing.

The Housing Strategy aims to ensure confidence in housing markets, improve protections and certainty for consumers and industry by reforming and modernising the housing legislative framework.

On 27 October 2022, the Queensland Government introduced the Housing Legislation Amendment Bill 2022 (HLA Bill) into the Legislative Assembly to amend the *Housing Act 2003* (Housing Act), the *Housing Regulation 2015* (Housing Regulation) and the *Retirement Villages Act 1999* (RV Act).

The HLA Bill helps deliver objectives of the Housing Strategy by:

- assisting to boost the supply of social and affordable housing and increase private sector investment into the Queensland economy through enabling the Homes for Homes donation deed model in Queensland; and
- maintaining public confidence in the retirement village industry by increasing consumer protections and reforming the legislative framework for improved transparency, accountability, and consistency of financial reporting in retirement villages.

The *Queensland Housing and Homelessness Action Plan 2021-2025* (Action Plan) at Action 17 commits the Government to finalise implementation of retirement village reforms to village financial statements. The RV Act amendments in the HLA Bill, a subsequent Retirement Villages Amendment Regulation, and published guidance material for retirement village scheme operators will constitute finalising the financial reporting reforms under *Queensland Housing and Homelessness Action Plan 2021-25*.

This briefing provides information about the policy context and drivers, current legislative arrangements and proposed legislative arrangements and implementation to inform the Community Support and Services Committee's consideration of the HLA Bill. Part 1 focuses on the new donation deed model under the Housing Act and Part 2 on the retirement village financial reporting reforms under the RV Act.

Part 1 – Housing Act Amendments

Background

Homes for Homes is an independent, not-for-profit social enterprise established in Australia by The Big Issue magazine (a street magazine sold by people experiencing homelessness). It aims to generate private sector revenue for investment with experienced housing providers, to build affordable and social housing projects.

The initiative operates in other jurisdictions, including New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory. The Australian Government contributed \$6 million of seed funding to Homes for Homes over 2017-18 to 2020-21.

Homes for Homes advise that they have distributed grant funding of over \$1.28 million since 2017 for 13 social housing and affordable housing projects across Australia. In March 2022, Homes for Homes announced Queensland funding of \$68,479 for City Ventures in Townsville and Coast2Bay Housing Group in Nambour.

Under the Homes for Homes model, home owners and property developers can voluntarily enter into a 'donation deed' to make a tax-deductible donation of 0.1 per cent of the sale price of their property at the time of sale.

A key feature of the Homes for Homes model in other jurisdictions is the use of a permissive caveat on the land title to secure the equitable interest in the property which is given to Homes for Homes through the donation deed. The caveat reminds the selling owner of the existence of the voluntary donation under the deed and will remain on the title at the time of transfer with the agreement of the purchaser so that each time the property is sold in future, 0.1 per cent of the sale price of the property is donated to Homes for Homes Limited.

The donation deed indicates that an owner, buyer or future owner can withdraw the land from the initiative and terminate the donation deed at their discretion.

Homes for Homes has sought to expand the initiative into Queensland however, Queensland's land titling law does not support the use of caveats in a way that would enable the Homes for Homes model to operate as it does in other jurisdictions. While the equitable charge created over the owner's lot under the donation deed would be sufficient interest to support lodgement of a caveat, in Queensland, an equitable mortgagee can only lodge a caveat susceptible to lapsing after three months under section 126 of the *Land Title Act 1994*.

As an alternative approach, an Administrative Advice may be recorded on a land title, indicating that the property was subject to a Homes for Homes donation deed. The Housing Act would need to be amended to enable the Homes for Homes fund-raising model to operate in Queensland in this way.

Policy objectives/drivers

A key policy objective of the HLA Bill is to provide a mechanism to enable the operation of the Homes for Homes donation deed model in Queensland, similar to other states and territories.

Enabling the Homes for Homes donation deed model in Queensland in turn supports the Queensland Government policy objectives of increasing the supply of social and affordable housing and increasing private sector investment in the Queensland economy.

Current legislative arrangement

The Registrar of Titles can record an Administrative Advice on a land title record as permitted either by the *Land Title Act 1994* or another Act under section 29 of the *Land Title Act 1994*. For example, section 92 of the *Mineral and Energy Resources (Common Provisions) Resources Act 2014*, provides for the Registrar to record in the register the existence of a conduct and compensation agreement and an opt-out agreement made under that Act.

Fees for recording or removing an Administrative Advice are outlined in the *Queensland Future Fund (Titles Registry) Act 2021*.

There is currently no provision under the *Land Title Act 1994* or any other Act that would allow the recording of an Administrative Advice noting a donation deed in relation to a land title.

Proposed legislative arrangement

The HLA Bill will amend the Housing Act by introducing a new Division 2C “Charitable donation deeds” into Part 8 of the Housing Act.

This Division permits a non-profit organisation which is party to a charitable donation deed, using the appropriate form, to require the Registrar of Titles to record an Administrative Advice noting the existence of a charitable donation deed, on a land title record.

A charitable donation deed is defined as a deed (a) entered into by a non-profit organisation and the registered owner of the lot, (b) under which the owner of the lot has agreed to a donation from the proceeds of the sale of a lot to the non-profit organisation, which agrees to only use the proceeds to provide or to assist an entity to provide, a social housing service or to otherwise increase the supply of social and affordable housing in Queensland. This provision ensures that funds raised by Homes for Homes in Queensland are directed to increasing the supply of social and affordable housing in Queensland.

A non-profit organisation is defined as an organisation registered or taken to be registered as a charity under the *Collections Act 1966* and prescribed under the Housing Regulation. The HLA Bill amends the Housing Regulation to prescribe Homes for Homes Limited as a non-profit organisation for the purposes of the new provisions.

While an Administrative Advice does not operate in the same way as a permissive caveat does in other States, due to the way the Homes for Homes donation deed is drafted (it does not prevent the registration of dealings with the land over which a caveat is lodged), in practice the Administrative Advice will deliver the same outcome in serving as a reminder of the donation at the point of sale and notifying a purchaser that the property is subject to a donation deed with Homes for Homes. Homes for Homes has indicated that this will be sufficient to enable operation of the model in Queensland.

As an intended and key part of the Homes for Homes model, unless removed, an Administrative Advice will remain on the freehold land register when there is a change of ownership and will apply to new lots created under a subdivision of land. This provides an opportunity for the voluntary transfer of a donation deed connected to the title from owner to owner, as occurs in other jurisdictions.

The Administrative Advice also does not impose obligations on the seller or the buyer. The commitment to donate is in the donation deed, not the Administrative Advice. Under the Homes for Homes initiative, an owner, buyer or future owner who chooses to participate can withdraw the land from the initiative and terminate the donation deed at any time at their discretion. The HLA Bill provides that either party to the donation deed can remove an Administrative Advice.

A fee (currently \$29) for recording or removing an Administrative Advice will be charged by Titles Queensland, consistent with fees for lodgement of other Administrative Advices. The fee will be paid by whomever lodges the form to register or remove the Administrative Advice.

Future funding allocations from funds raised in Queensland will be determined by a Queensland advisory group who will advise on priority housing needs and assess funding applications. The advisory group established for Queensland includes the Director of the National Housing Finance and Investment Corporation, the Chief Executive Officer of Queensland Shelter, and former Chief Executive Officers of Access Housing and Housing NSW.

Implementation

No significant implementation issues or risks in relation to the proposed amendments to the Housing Act are anticipated.

Titles Queensland was consulted on the proposed approach and the draft legislation and support the proposed amendments. Titles Queensland advised that commencing the legislation three months from the date of assent would allow sufficient time for forms and procedural manuals to be prepared or updated.

The Department of Communities, Housing and Digital Economy (DCHDE) will, in the course of communicating to the public about the purpose of the Housing Act amendments, develop appropriate messaging for home owners who may wish to sign up to the initiative.

The Homes for Homes initiative has operated interstate without any reported detrimental impact on the value of homes or the property market. This is evidenced by the willingness of some property developers to include properties in their development in the scheme and to sell them subject to the caveat held by Homes for Homes. However, if a seller had any concern about the impact of an Administrative Advice on the marketability or value of their property, they would be able to remove it prior to sale or on transfer of the property.

While the proposed approach to the definition of 'non-profit organisation' effectively limits the application of the new provisions to Homes for Homes, in the future a different non-profit organisation wishing to operate a similar scheme could make a case and seek support from government to be similarly prescribed in the regulation.

However, the likelihood of this is considered low. As Homes for Homes has invested significant work in establishing governance and management structures to support the Homes for Homes model, including for example, establishing a Board of Directors, an Investment Advisory Group and Housing Advisory Groups in those states and territories where Homes for Homes operates, it would seem unlikely that another non-profit organisation would seek to replicate this structure.

Part 2 – Retirement villages financial reporting reforms

Background

Retirement villages

In Queensland, retirement villages are regulated under the RV Act and the Retirement Villages Regulation 2018 which set out the rights and obligations of residents and retirement village scheme operators.

As of 31 October 2022, there were 329 retirement village schemes registered in Queensland, comprising 32,753 units of accommodation, which are home to an estimated 45,500 senior residents. Scheme operators range from small to large not-for-profit organisations and privately owned or for-profit businesses and corporations, including some publicly listed companies.

Under the retirement village model, residents make a significant initial financial investment to move into a village and then pay ongoing fees for the operation and maintenance of the village. A residence contract with an operator secures a resident's "right to reside" in their accommodation unit and to use the village communal facilities. Contracts vary across villages and within a village and may be based on leasehold, loan/licence or freehold tenure of the unit. Residents pay an ingoing contribution (similar to the purchase price of residential property and often referred to as a purchase or sale price) to the operator for units with leasehold or loan/licence tenure. For freehold units, residents will pay the purchase price to the former resident or to the operator if it owns the unit.

Residents pay ongoing costs to reside in the village, which cover the cost of the general services supplied or available to residents in running the village, including for example, administration costs, staff wages, council rates, recreation facilities (a general services charge); and to maintain the village capital items (a maintenance reserve fund contribution). The levying of these ongoing fees is on a cost-recovery basis, with the scheme operator's profit taken when the resident departs in the form of an 'exit fee' and any capital gain on the sale of the unit (as provided in the residence contract). The cost of replacement of capital items is generally the responsibility of the operator, or body corporate where applicable. The operator's capital replacement fund contribution may be funded entirely or in part from the residents' ingoing contributions paid to the operator.

The *Body Corporate and Community Management Act 1997* will apply to freehold tenure villages and units in a community title scheme, although the RV Act will prevail to the extent of any inconsistency between the Acts. An administrative fee and sinking fund contributions will apply for body corporates.

When a resident leaves a retirement village, they usually pay an exit fee (also known as a deferred management fee) to the operator. Exit fees typically range from 10 per cent to 45 per cent of the ingoing contribution or purchase price. Exit fees generally increase the longer the resident stays in their unit and rise to a capped limit or maximum number of years, as provided for in the residence contract. Once a resident has terminated their right to reside in the village, they must permanently leave the village. Residents are responsible for reinstating their unit to its original condition at the start of their occupancy, apart from fair wear and tear and any agreed renovations or changes. Residents who share in the capital gain on the sale of their unit will proportionately share any unit renovation costs with the operator.

Former residents of lease and license tenure units receive an exit entitlement from the operator, generally being the amount of the ingoing contribution, less exit fee, sales costs, legal fees, and reinstatement costs. Capital gains sharing between the operator and former resident may also apply under a residence contract.

The exit entitlement is usually paid when a right to reside is resold, however the operator must pay the exit entitlement or buyback a freehold unit from a former resident at 18 months after termination of the residence contract even if the right to reside or freehold unit is not sold, unless the Queensland Civil and Administrative Tribunal has ordered an alternative payment time, due to scheme operator financial hardship.

Financial reporting

The RV Act imposes obligations on operators for the keeping of village funds for general services, maintenance, and capital replacement, and for fund budgets and related quantity surveyor reports, quarterly financial statements and audited annual financial statements and audit reports.

The RV Act also prescribes the rights of residents and residents committees in relation to the budget process and financial reporting of the village and access to financial statements. The financial reporting requirements are elaborated on below under 'Current legislative arrangement' and in Appendix 1.

Policy objectives/drivers

A key policy objective of the HLA Bill is to improve the transparency, accountability and consistency of financial reporting in retirement villages.

To achieve this objective the HLA Bill will amend the RV Act to:

- create a new regulation-making power for financial documents specifically named in the RV Act and clarify and strengthen existing provisions related to financial reporting
- increase access to particular village financial documents for village residents, the chief executive of the administering department (DCHDE), and the public register for retirement villages
- insert a new object into the RV Act to strengthen financial transparency and accountability to maintain public confidence in the retirement village industry.

These amendments build on reforms introduced in the *Housing Legislation (Building Better Futures) Amendment Act 2017* to improve consumer protections and ensure fairness and transparency in the relationship between retirement village scheme operators and their residents. This has resulted in improved pre-contractual disclosure, increased access to village operational documents for residents and prospective residents, fairer requirements for unit reinstatement and renovation, mandatory timeframes for payment of exit entitlements and buybacks for unsold units, plans for village redevelopment, closure and change of scheme operator, and provisions for residence contract reforms. Financial reporting changes, which commenced in November 2019, included requirements for operators to keep separate accounts for the general services charge fund and maintenance reserve fund and allowed for approved forms for budgets and financial statements.

A key driver for pursuing financial transparency reforms is the high volume of resident complaints to DCHDE, compliance work with operators, and disputes brought under the RV Act regarding financial reporting. The consistency and standard of financial reporting varies across villages and operators, and while many operators will already meet many of the proposed new requirements, a clearer more standardised regulatory framework will drive improved performance across the whole industry.

The RV Act amendments are expected to improve compliance by operators resulting in fewer resident complaints and earlier resolution of complaints that do arise, due to a clearer regulatory framework. Issues are more likely to be dealt with at village level or through DCHDE advice or compliance action owing to clearer regulatory requirements.

The key users of the village budgets and financial statements are residents (whose ongoing fees in effect fund the operation of the village), and DCHDE to ensure compliance with the RV Act. It is important that budgets and financial statements contain relevant information and disclosure for residents and residents committees and for DCHDE to assess compliance and enable early intervention with non-compliant or at-risk operators. This in turn also benefits vulnerable seniors and their investment in their homes and villages.

Higher levels of disclosure and accountability in budget setting and financial reporting are necessary to ensure the proper setting and use of residents' fees and to ensure appropriate allocation and provision for current and future maintenance and replacement of village capital items. This is particularly relevant given the growth of large multi-village operators and campus-style and high-rise villages with shared facilities, functions or staff, as well as for smaller villages or stand-alone operators and villages with ageing units and facilities. There is potential improvement in the viability of

retirement villages by supporting improved financial practices of some village operators and managers in relation to budgets and financial reporting.

Current legislative arrangement

Since the 2000 commencement of the 1999 RV Act, operators have had obligations regarding village funds, budgets and financial statements.

The RV Act at Part 5 Divisions 3 to 9 prescribe the current responsibilities and requirements for village funds, budgets and financial accounts and statements. A general overview of the current financial reporting under the RV Act is provided at Appendix 1. Broadly, this comprises requirements for an operator to:

- hold separate accounts and operate three village funds: a capital replacement fund (section 91), a maintenance reserve fund (section 97) and a general services charges fund (section 102AA). The capital replacement fund and maintenance reserve funds are trust funds for the benefit of residents and must hold appropriate reserve amounts for future expenditure
- obtain independent quantity surveyor written reports for expected capital replacement costs and expected maintenance and repair costs for the village for the current financial year and next 9 years, prior to preparing the budgets for the capital replacement fund and maintenance reserve fund (sections 92 and 98)
- prepare and adopt budgets, including fixing yearly contribution amounts as set out for the capital replacement fund (section 93), the maintenance reserve fund (section 99) and the general services charges fund (sections 102A, 106, 107)
- provide a quarterly financial statement as set out in section 112, as requested, and
- provide an audited annual financial statement and audit report as set out in section 113.

The RV Act prescribes certain rights of village residents and residents committees for involvement with the financial operations of the village. The function of a residents committee is to deal with the operator on behalf of residents about the day-to-day running of the village and any complaints or proposals raised by residents. Some villages have a financial sub-committee of the residents committee to specifically deal with budgets, financial statements and related matters.

However not all villages have a residents committee, which can limit the involvement of interested residents in the financial operations of the village. Currently under the RV Act, neither residents committees nor residents have rights to access the quantity surveyor reports, although some operators do provide these reports for residents committees. Quantity surveyor reports are key documents for scrutinising the capital replacement fund and maintenance reserve fund budgets and the funds' performance, and for monitoring compliance with the RV Act.

Residents committees have rights to:

- request draft budgets provided by the operator for each of the three funds (sections 93(3), 99(4), 102A(4)); and discuss these with the operator (section 129B)
- request, as residents, the quarterly and annual financial statements provided by the operator (sections 112 and 113) and review these as part of their committee function
- request a written explanation from the operator for any increase in the expenditure involved in providing a general service that varies from the expected expenditure in the general services charge budget (section 112A).

All residents have rights to involvement in certain financial matters, including:

- voting in a special resolution at a residents' meeting to agree to a total general services charge increase above CPI percentage increase (section 106)
- voting in a special resolution at a residents' meeting to approve a new service added to the budget (section 108)
- to request the operator to provide them with a maintenance reserve fund draft budget and quarterly and annual financial statements (sections 99(4), 112 and 113).

The current RV Act contains a general regulation-making power at section 228 but does not contain specific regulation making powers for financial reporting. An exception is a regulation making power for model classification rules for expenditure under section 113A; however a regulation has not been made under this provision, as industry-developed expenditure guidelines exist for classifying capital and maintenance expenses.

In 2021, development of, and consultation on, a draft Retirement Villages (Annual Financial Statements and Other Matters) Amendment Regulation 2021 (draft Amendment Regulation) identified limitations in the general regulation-making power and other provisions in the RV Act to deliver on the policy objective of more transparent, accountable and consistent financial reporting.

The RV Act has provision for budgets and financial statements to be in the approved form (sections 93, 99, 102A, 112 and 113), unless an approved form does not exist (section 227AA(2)). Approved forms have not been developed to date, as the policy objective and preferred legislative arrangement is for a financial documents regulation-making power as provided for in the HLA Bill, and for a subsequent RV Amendment Regulation to prescribe the more detailed requirements for financial documents. This enables operators to adapt their existing financial reporting systems to meet these requirements in the RV Act and regulation. This approach is more cost-effective for operators and minimises costs passed on to residents than alternative approaches to achieve greater transparency, such as relying on approved forms.

Proposed legislative arrangement

The key proposed legislative changes for retirement villages contained in the HLA Bill are set out at Appendix 2. This table refers to the key HLA Bill clauses, amended RV Act sections and outlines the purpose and benefit of each reform.

To achieve the policy objectives, a key reform is a new head of power for financial documents which will allow for increased transparency, disclosure and standardisation of budgets and financial statements. Clause 23 of the HLA Bill prescribes a new section 113AA specific regulation-making power for the form and content of village 'financial documents', which may apply to the budgets for the capital replacement fund, maintenance reserve fund and general services charge, quarterly financial statements, annual financial statement and audit report, and the quantity surveyor written reports. While the required details for the form and content of financial documents will be contained in the regulation, the HLA Bill outlines, by way of examples, particular information that may be prescribed by regulation. These examples are described in more detail in Appendix 2 and the Explanatory Notes to the HLA Bill.

The HLA Bill retains the existing RV Act provisions allowing for 'approved forms' for budgets and financial statements, should this be useful as a future complementary approach to improve transparency and consistency of financial reporting.

The Queensland Government's commitment to a financially transparent and accountable retirement village industry that the public can have confidence in, is strengthened by the inclusion of a new object to this effect in the RV Act. This new object aligns and supports other RV Act objects regarding consumer protection, fair trading, industry growth and viability, industry best practice and resident participation.

A provision in the HLA Bill for the chief executive to make and publish guidelines supports DCHDE's approach to providing information to industry and residents on the regulator's position on certain matters and to assist operators to comply with the RV Act. This amendment and Explanatory Notes clearly articulate the purpose of guidelines and their status, which does not give legal effect or extend the existing power of the chief executive to make non-binding guidelines. This should address any concerns from industry stakeholders about confusion or uncertainty about the guidelines legal effect.

The HLA Bill also clarifies the intended operation of some existing provisions in the RV Act, such as an operator's obligation to carry forward a prior year surplus or deficit in the general services charge budget before fixing the total general services charge, and how an operator must fix the amount of the capital replacement fund contribution and pay this amount from operator money into the capital replacement fund each financial year. The capital replacement fund is a trust fund with a statutory charge over it for the benefit of residents of the village to ensure operator funds are available for

replacing the village capital items. It is an important consumer protection that this fund is operated as intended and prescribed under the legislation.

Importantly, the HLA Bill better facilitates the engagement of all residents in the financial operations of the village, should they choose to do so. It extends access to the draft budgets for the three funds to all residents, not only resident committees, and for the first time all residents can access the quantity surveyor reports about expected capital and maintenance costs, used to prepare the budgets. The quantity surveyor reports also must be provided to DHCDE annually and be on the public register.

Increasing all residents' access to key financial documents is expected to drive improved operator accountability, performance, and consultation with residents, especially for villages without a resident committee to engage with operators on financial operations matters. Prospective residents also benefit as they can access the annual financial statements and quantity surveyor reports on the public register when comparing and deciding on a village.

The Explanatory Notes to the HLA Bill provide information on the fundamental legislative principles and the consultation process for the proposed RV Act amendments.

Implementation

The RV Act amendments commence on assent, ensuring residents and residents committees increased access to financial documents. While the new regulation-making power for financial documents commences on assent, the detailed new requirements for budgets and financial statements will be in the amendment regulation and so take effect on the making of that regulation. Subject to parliamentary and approval processes, these new requirements will apply for the financial year 2023–24 onwards, acknowledging that industry has advised that operators need six months to implement changes.

The proposed amendments and regulation aim to take account of the differing size, management structure, and accounting systems and services provided by operators, based on operator feedback. Some operators and financial reports may already meet several of the new requirements, though currently there is no legislative obligation to do so.

For some operators, there may be negligible costs depending on the current state of their budget and financial reporting process and outputs. The provision of guidance material and non-mandatory templates will help ensure smaller operators have the support they need to improve compliance and move towards best practice. Any costs of moving to the new reporting requirements are likely to be one-off establishment costs in the first year.

Of the 329 retirement villages in Queensland, seven are considered to be “resident-operated retirement villages” representing approximately two per cent of accommodation units in Queensland. Impacts for freehold resident-operated villages are expected to be minimal as the *Body Corporate and Community Management Act 1997* applies to the individual unit holders and any village facilities owned by the body corporate, rather than the village operator. Resident-operated retirement villages generally do not need to hold capital and maintenance reserve funds under the RV Act as the village assets are all owned by the body corporate and residents. In addition, these villages usually offer very limited general services, so there are minimal compliance requirements for general services fund budgets and reporting under the RV Act.

Improved financial reporting will provide benefits for retirement villages and residents across the State, including the approximately 28 per cent of villages operating in rural and regional Queensland (outside of the larger Brisbane, Sunshine Coast and Gold Coast regions). Villages are concentrated in regional centres of Toowoomba, Mackay, Bundaberg, Townsville, Rockhampton and Cairns, with some smaller, usually single, villages operating in rural areas. The financial guidance material and DCHDE advice for operators on implementation and compliance will particularly assist smaller and single-village operators.

Implementation of the RV Act amendments and any pursuant amendment regulation and guidance material for operators will require DCHDE to work with industry and residents to implement the changes. DCHDE will work closely with the Housing Legislation Consultative Group to facilitate implementation. Consultative Group members include the Association of Residents of Queensland Retirement Villages (ARQRV), Council on the Ageing Queensland, National Seniors Australia, the







Property Council of Australia, Aged and Community Care Providers Association (formerly Leading Age Services Australia), Urban Development Institute of Australia, the Caxton Legal Centre's Queensland Retirement Village and Park Advice Service and Queensland Law Society.

DCHDE will take a supportive and capacity building approach to implementation by industry, working closely with them to implement and understand new obligations.

DCHDE funds the ARQRV to support retirement village residents with advocacy and implementation of reforms to the RV Act. DCHDE also funds the Queensland Retirement Village and Park Advice Service to provide free legal information, education and advice to residents and prospective residents about their rights and obligations under the RV Act.

Appendix 1 – General overview of current retirement village financial reporting under the *Retirement Villages Act 1999*

The table below is for general guidance purposes only, is not to be interpreted nor used as legal advice and is not a complete statement of the applicable law.

Fund	Purpose	Contributions – who pays	Budgets (current)	Financial statements (current)
 <p>Capital Replacement Fund (CRF)</p>	<p>CRF used only for replacing village’s capital items, paying quantity surveyor fees for a report, and tax on money paid into the CRF.</p> <p>Statutory charge over CRF created for benefit of residents to ensure availability of funds. Charge must be maintained until village closes and all former residents are paid their exit entitlements.</p>	<ul style="list-style-type: none"> Operator contributions - paid each FY. Contribution calculated with regard to CRF’s purpose and annual quantity surveyor’s report (with provision for future year’s capital replacement). Money received from insurance for destruction of capital items and interest from investment of CRF. 	<ul style="list-style-type: none"> Operator must adopt a CRF budget for each FY. Budget must allow for raising a reasonable capital amount for: <ul style="list-style-type: none"> necessary and reasonable spending from the CRF for FY reserving proportional amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 FYs. Must fix amount to be raised by contribution to cover capital amount for FY. Residents committee may request a copy of the draft CRF budget and meet with operator to discuss. 	<p>Quarterly financial statements</p> <ul style="list-style-type: none"> Resident may ask operator for quarterly financial statements listing income and expenditure for each fund. <p>Annual financial statements</p> <ul style="list-style-type: none"> Operator gives annual financial statement about village’s operation to DCHDE and, on request, to a resident, within 5 months of end of FY showing: <ul style="list-style-type: none"> income and expenditure of each fund amounts received for insurance claims for year interests, mortgages and other charges affecting village property at end of year assets and liabilities relating to village at end of year. Operator must ensure statement is audited and an audit report issued under Australian Auditing Standards. Every year, operator must call a meeting of residents after annual financial statements for each fund are available and present these to the meeting. If asked, operator must give residents committee a written explanation about an increase in expenditure in providing general services that varies from the GSC budget.
 <p>Maintenance Reserve Fund (MRF)</p>	<p>MRF is a trust fund to be used only for maintenance and repair of village capital items, paying quantity surveyor fees for a report, or paying tax on amounts paid into the MRF.</p> <p>Trust fund is irrevocable and continues until village closes and all former residents are paid their exit entitlements.</p>	<ul style="list-style-type: none"> Resident-funded contributions, as set by annual budget. Operator contributes proportionately under certain circumstances (e.g. unsold units). Funds generally levied to residents weekly/ fortnightly, with operators paying their proportionate share into MRF. Contribution calculated having regard to the annual quantity surveyor’s report (with provision for future year’s maintenance). Residents continue to pay for a specified period after they leave a village. 	<ul style="list-style-type: none"> An operator must adopt MRF budget for each FY consistent with, and implement any recommendations in, quantity surveyor’s report, unless residents otherwise agreed by special resolution. Budget must raise reasonable amount for maintenance/ repairs to: <ul style="list-style-type: none"> provide necessary spending from the MRF for the FY reserve appropriate proportional share to be accumulated anticipated expenditure over at least the next 9 FYs. Must fix amount to be raised by contribution to cover estimated recurrent expenditure. Any surplus or deficit at end of FY must be carried forward and taken into account in adopting budget for next FY. Resident or residents committee may request copy of draft MRF budget and residents committee may meet with operator to discuss. 	
    <p>General Services Charges Fund (GSCF)</p>	<p>GSCF must only be used to provide general services.</p> <p>General services are services supplied or made available to all residents in a village, for example, management and administration, gardening and general maintenance, a shop, or a service or facility for the recreation or entertainment of residents.</p>	<ul style="list-style-type: none"> Resident-funded contributions set by annual budget and as set out in contract. Operator contributes proportionately under certain circumstances (e.g. unsold units). Funds paid by residents weekly/ fortnightly, and operators paying their share into GSCF. Operates on cost-recovery basis only (no profit for operator) and aims for zero surplus or deficit each FY. Residents continue to pay for specified period after they leave a village. 	<ul style="list-style-type: none"> Operator must adopt general services charge budget each FY for GSCF. Must raise reasonable amount to provide general services for FY and fix amount of contributions to cover this. Increase in total general services charge limited to CPI increase, with certain allowable exceptions (e.g. increases in rates or taxes, salaries or wages under an award/ certified agreement/ industrial instrument, or insurance premiums) or has been agreed to by residents by special resolution at a residents meeting. Surplus or deficit at end of FY carried forward and taken into account in adopting budget for next FY. Residents committee may request copy of draft general services charge budget and meet with operator to discuss. 	

FY = financial year

Appendix 2 – Summary of HLA Bill key clauses (only) for retirement villages financial reporting reforms

Bill Clause RV Act section	Amendment	Purpose and benefit of reform
Clause 2 Commencement	The RV Act amendments commence on assent	New regulation-making power commences on assent (expected early 2023) which allows an amendment regulation to be made as soon as possible after this date Regulation will prescribe commencement of the detailed financial requirements. Proposed to apply for budgets and financial statements from 2023-24 financial year.
Clause 9 Amends s3 Object of Act	New object “to maintain public confidence in the retirement village industry by enhancing (i) the financial transparency of the operations of retirement villages and (ii) the accountability of scheme operators”	Strengthen the RV Act’s purpose and commitment to Queensland having a financially transparent and accountable retirement village industry Helps statutory interpretation and decision-making Supports other RV Act objects of consumer protection, fair trading, industry growth and viability
Clause 11 Amends s35 Retirement village scheme register	New subsection Independent quantity surveyor written report given to the chief executive each year goes on the public register	Increases transparency about expected maintenance and capital replacement costs of the village Prospective residents and public can access the register to assist with deciding on a village
Clause 15 Amends s93 Capital replacement fund budget	Amends section Operator must have regard to the quantity surveyor report, comply with the regulation and fix a reasonable amount for the capital replacement fund contribution to cover capital replacement costs for the year and accumulate a proportionate share for the next 9 years. <i>New penalty applies.</i> Operator may use all or part of a resident’s ingoing contribution to pay the contribution but must not otherwise raise or attempt to raise the contribution from residents.	Addresses ambiguity and clarifies the existing policy position and obligations on operators to accumulate money in the capital replacement fund (a trust fund for the benefit of residents to protect the village’s capital items) <i>Amends the definition of capital replacement fund contribution</i> Enables DCHDE to enforce compliance across all villages. A proportion of operators, including larger ones, currently do not meet their obligations to contribute and accumulate appropriate amounts into the fund.
Clause 16 Amends s94 Payments into capital replacement fund	Amends section Operator must pay the yearly capital replacement fund contribution into the fund each financial year. <i>Existing penalty applies</i>	Makes clearer the existing requirement for the operator to pay into the fund annually, and assists DCHDE to enforce the existing penalty

Bill Clause RV Act section	Amendment	Purpose and benefit of reform
<p>Clause 17 Amends s98</p> <p>Amount of maintenance reserve fund</p>	<p>Amends section Operator must ensure the yearly quantity surveyor written report complies with a regulation under s113AA <i>Existing penalty applies.</i></p> <p>Operator must give the chief executive the yearly quantity surveyor report for maintenance costs within 5 months after the end of the financial year <i>New penalty applies</i></p>	<p>Enables improved quality and consistency of quality surveyor reports to meet requirements in the RV Act</p> <p>Assists DCHDE with compliance regarding the report and budgets</p>
<p>Clause 18 Amends s99</p> <p>Maintenance reserve fund budget</p>	<p>Amends section Maintenance reserve fund budget must comply with the requirements for the budget at section 99(3) and comply with a regulation made under section 113AA <i>Existing penalty applies.</i></p>	<p>Increases transparency and consistency of budgets relating to accumulation of funds for, and expenditure on, maintenance of the village</p> <p>Strengthens DCHDE compliance oversight</p>
<p>Clause 19 Amends s102A</p> <p>General services charge budget</p>	<p>Amends section General services charge budget must comply with existing requirements to raise a reasonable amount to provide for general services and fix the contribution amount; and comply with a regulation made under new section 113AA. <i>New penalty applies.</i></p> <p>Clarifies ambiguity in existing s102A, that operator is to carry forward a surplus or deficit into next year's budget before fixing the next year's total general services charge for residents.</p>	<p>Similar penalty provisions will apply to all three fund budgets (capital replacement, maintenance reserve, general services charge), as currently penalty only applies to maintenance reserve fund budget</p> <p>Assists DCHDE with compliance action</p> <p>Clarifies subsection of RV Act. Operators currently apply this inconsistently and this is the subject of complaints and disputes.</p>
<p>Clause 21 Amends s112</p> <p>Quarterly financial statements</p>	<p>Amends section Quarterly financial statement must comply with a regulation made under new section 113AA <i>Existing penalty applies</i></p>	<p>Creates consistency of form for quarterly financial statements and increases accountability and transparency, as currently operators need only list income and expenditure</p>
<p>Clause 22 Amends s113</p> <p>Annual financial statements</p>	<p>Amends section Annual financial statement must comply with a regulation made under new section 113AA <i>Existing penalty applies</i></p> <p>Audit report for the annual financial statement must comply with a regulation made under the new section 113AA. Australian Auditing Standards will be prescribed by regulation, but if at any time during a financial year no standards are prescribed by the regulation the</p>	<p>Improves consistency, transparency and accountability of financial reporting</p> <p>Relocating audit report requirements to the regulation allows for all financial reporting requirements to be detailed in one place making it easier for operators and auditors to see the audit report requirements.</p>

Bill Clause RV Act section	Amendment	Purpose and benefit of reform
	<p>Australian Auditing Standards still apply, as required currently under s113.</p> <p>Clause 27 transitional provision at new section 237X allows the former section 113 to continue to apply to the 2022-23 annual financial statements.</p>	
<p>Clause 23</p> <p>New Part 5 Division 9A</p> <p>Requirements for financial documents</p> <p>New section 113AA</p> <p>Form and content of financial documents</p>	<p>New section</p> <p>New regulation-making power to prescribe the form and content of financial documents (applies to budgets, quarterly and annual financial statements, audit report and quantity surveyor reports) including:</p> <ul style="list-style-type: none"> - standards or principles (e.g., accounting principles, auditing standards) - types and presentation of information (e.g., classes of income and expenditure, shared expenses) - operator statement, - disclosure notes (e.g., how resident charges are fixed; operator related party transactions; operator liabilities to former residents) - explanations for matters (e.g., surplus and deficits) 	<p>Improves consistency, transparency and accountability of financial reporting</p> <p>Addresses limitations identified by stakeholders in consultation on 2021 draft amendment regulation, and existing RV Act's limited general regulation-making power</p> <p>Reduces source of resident complaints and disputes</p> <p>Reduces likelihood of operator fraud, kickbacks, purported control</p> <p>Provides transparency of information about operator viability and compliance relevant to former residents, residents and DCHDE</p> <p>Better signals operator financial issues and need for DCHDE action</p>
<p>Clause 23</p> <p>New section 113AB</p> <p>Requirement to provide draft budgets and quantity surveyor reports</p>	<p>New section</p> <p>Operator must give a copy of draft budget and related quantity surveyor report to a resident or residents committee</p> <p><i>New penalty applies</i></p>	<p>Increases accountability and resident scrutiny of budgets, in particular maintenance reserve fund and capital replacement fund budgets</p> <p>Strengthens DCHDE compliance oversight</p>
<p>Clause 26</p> <p>New section 226</p> <p>Chief executive may make guidelines</p>	<p>New section</p> <p>Chief executive may make and publish guidelines, not inconsistent with the RV Act, about how the chief executive administers the Act or the attitude they are likely to adopt on a particular matter, or to help persons comply with their obligations and responsibilities, or lawfully and appropriately exercise powers under the Act.</p>	<p>Does not give legal effect to guidelines, but provides clarity for operators and residents; assists implementation and earlier resolution of disputes</p>
<p>Clause 27</p> <p>Transitional provisions</p>	<p>Continued application of certain former sections</p>	<p>Transitional provisions apply primarily so compliance action and offences for former sections can still be enforced</p>

Bill Clause RV Act section	Amendment	Purpose and benefit of reform
<p>Clause 28 Schedule Dictionary</p>	<p>New definitions Key definitions include:</p> <p><i>Capital replacement fund contribution</i> - refers to section 93(2)(b)</p> <p><i>Quantity surveyor</i> - member or fellow grade member of Australian Institute of Quantity Surveyors</p>	<p>New definition of capital replacement fund contribution clarifies ambiguity in RV Act</p> <p>Ensures that an industry code of conduct and professional standards apply to quantity surveyors employed by operators to prepare reports</p>