

Community Support and Services Committee inquiry into the Housing Legislation Amendment Bill 2022

Department of Communities, Housing and Digital
Economy response to issues raised in submissions

November 2022



Queensland
Government

Purpose of briefing

The Department of Communities, Housing and Digital Economy (DCHDE) provides this briefing to respond to issues raised in the submissions to the Community Support and Services Committee inquiry into the Housing Legislation Amendment Bill 2022 (HLA Bill).

DCHDE provided a fuller written briefing to the Committee on 11 November 2022 covering the background, policy objectives / drivers, legislative proposals and implementation for the HLA Bill.

Overview of HLA Bill 2022

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. To achieve this objective the HLA Bill amends the *Housing Act 2003* (Housing Act) and Housing Regulation 2015 (Housing Regulation).

A second key policy objective of the HLA Bill is to improve the transparency, accountability and consistency of financial reporting in retirement villages. This refers to the obligations on village 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.

To achieve this objective the HLA Bill amends the *Retirement Villages Act 1999* (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.

Consultation Summary

Homes for Homes has sought expansion of the Homes for Homes model into Queensland for some time and proposed the use of administrative advices as an alternative to the permissive caveats used in other jurisdictions to remind a selling home owner of the donation deed and the commitment to make a donation upon sale. Homes for Homes was consulted on a consultation draft of the proposed amendments to the Housing Act and the Housing Regulation.

The Housing Legislation Consultative Group, comprising representative groups for residents, seniors, operators and legal groups, has been consulted over recent years on proposals to improve financial transparency in retirement villages, including for the 2019 Findex Report, the 2021 draft Amendment Regulation, and in April 2022 on the need for the proposed RV Act amendments prior to progressing with an amendment regulation. In August 2022, the Consultative Group was consulted on a Consultation Draft of the Bill.

Following the August 2022 consultation and stakeholder feedback, further development of the Bill was undertaken, particularly with respect to inclusion of the new object in the Bill which strengthens the RV Act's purposes of financial transparency and operator accountability, and other amendments to provide greater clarity in the RV Act, including for the capital replacement fund contribution.

The Consultative Group will be consulted on drafting of the proposed amendment regulation concurrently with consideration of the Bill.

Consultative Group members include the Association of Residents of Queensland Retirement Villages (ARQRV), Council on the Ageing Queensland, National Seniors Australia, 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 (Caxton/QRVPAS) and Queensland Law Society (QLS).

The Australian Institute of Quantity Surveyors (AIQS) was consulted regarding the proposed requirement for quantity surveyors to be members of AIQS.

Advice on issues raised in submission to Committee

DCHDE notes that the Committee has published eight written submissions to its inquiry into the HLAB 2022. This includes submissions from seven interested organisations comprising: the not-for-profit organisation operating the donation deed model, industry representative groups for retirement villages and for real estate sector, peak professional bodies for legal practitioners and for quantity surveyors, a consumer legal centre funded to provide advice to retirement village residents and prospective residents, and one submission from an interested individual.

Submissions on the amendments to the Housing Act include:

- Submission 2 – Homes for Homes
- Submission 3 – Real Estate Institute of Queensland (REIQ)
- Submission 5 – Jim McCoombes
- Submission 7 – Queensland Law Society (QLS)
- Submission 8 – Urban Development Institute of Australia (UDIA Queensland)

Submissions on the amendments to the RV Act include:

- Submission 1 – Property Council of Australia
- Submission 4 – Caxton Legal Centre Inc (operators of QRVPAS)
- Submission 5 – Australian Institute of Quantity Surveyors (AIQS)
- Submission 8 – Urban Development Institute of Australia (UDIA Queensland)

The following section provides a high-level summary and discussion of the main issues raised in these submissions, with commentary to provide the context of the policy intent of the amendments.

Appendix 1 provides a more detailed response to issues on specific clauses in the HLA Bill raised in the submissions.

Summary of main issues raised about amendments to the *Housing Act 2003*

There were five submissions on the amendments to the Housing Act. The submissions from Homes for Homes, REIQ and the UDIA Queensland were all supportive of the amendments or supportive in principle, and did not raise any questions or concerns about specific clauses in the HLA Bill.

The submission from Mr Jim McCoombes includes a range of concerns about the amendments including:

- That Homes for Homes may be a front organisation for an international banking cartel involving Goldman Sachs with the potential implication that funds collected through donations to Homes for Homes may be diverted to purposes other than social and affordable housing projects in Queensland.
- The worthiness and effectiveness of the Homes for Homes model in terms of the value of funds raised in the context of the challenge of social housing needs.

- Potential unintended consequences of the Bill such as vulnerable people being required to commit to a donation deed of 0.1%, debt collection agencies putting administrative advices on debtor's houses, or the program becoming mandatory in future.

DCHDE notes that the commitment to donate is voluntary and will always remain voluntary, and that the administrative advice itself does not impose an obligation to make a donation. Donations are received by Homes for Homes which is a not-for-profit company limited by guarantee and a charity registered under the Queensland *Collections Act 1966*, and with the Australian Charities and Not for Profits Commission. Registration with the Australian Charities and Not for Profits Commission requires Homes for Homes to report annually and comply with governance standards.

The submission from the QLS concerns the mechanics of who can lodge or remove an administrative advice, and related implementation, including evidentiary requirements. A core concern of the QLS is that the removal of an administrative advice is limited to a "party to the donation deed" and Homes for Homes, and not specifically the registered owner of the land. The QLS concerns and DCHDE's response are addressed in the clause by clause table below.

Summary of main issues raised about amendments to the *Retirement Villages Act 1999*

There were four submissions on the amendments to the RV Act.

The Caxton Legal Centre, which operates the QRVPAS, supports the HLA Bill and its objectives. The submission notes that increased transparency and consistency in the presentation of financial information will reduce opportunities to hide inappropriate financial practices, assist operators to respond to queries and requests for information, and assist legal and non-legal representatives to provide advice and attempt to resolve disputes at an early stage of the process.

The QRVPAS is funded by DCHDE and provides free legal advice, information, community legal education and referral services to residents and prospective residents of retirement villages. The submission notes that residents' concerns about the three mandated funds being managed correctly, and budget increases and the appropriateness and necessity for corresponding increases in general services charges paid by residents are a common motivator for residents to seek advice from QRVPAS and are a cause of considerable anxiety for residents.

Caxton supported the amendments in the HLA Bill aimed at increasing clarity as to the meaning and interpretation of the legislation, noting that these support an interpretation which is fair and protects the interests of residents. These amendments include the requirements for the operator capital replacement fund contribution under sections 93 and 94 (clauses 15 and 16); and the bringing forward of a surplus or deficit under section 102A before fixing the total general services charge in the general services charge budget (clause 19).

Industry groups, the Property Council of Australia and the UDIA raised similar issues regarding increased operator obligations and compliance costs and the impacts of increased costs on residents. The Property Council considers that the HLA Bill is substantially similar to the consultation draft of the HLA Bill that it provided feedback on in August 2022, and submitted this previous feedback dated 26 August 2022 with its submission to the Committee. Aspects of this feedback relates to the contents of the proposed regulation, rather than the HLA Bill itself.

The AIQS submission focused on the quantity surveyor components of the HLA Bill and the experience of its members with respect to the work they do for retirement villages.

An overview of the main issues raised in the four submissions is provided below. Issues in relation to specific clauses in the HLA Bill are addressed in the clause by clause table below.

Balancing transparency with increased operator obligations and compliance costs passed onto residents

Industry groups, while generally indicating support for the principle of increased transparency, expressed concern about the likely negative consequences of prescribing high levels of detail in the regulation, including increased length and complexity of financial documents, operator administrative

burden and excessive compliance costs which will need to be recovered from residents via the relevant budgets and increase their costs of living.

Caxton noted it is important that financial forms or documents are useful and easy to read and understand, but that this does not necessarily equate with providing less information. In Caxton's experience, transparency is often reduced by including a large number of items under a cost centre or heading such as 'garden maintenance' and 'salaries'. This makes it difficult for residents to understand what is included in the proposed expenditure.

DCHDE notes the need to balance the concerns of operators and residents in prescribing the detailed requirements under the regulation to meet the objective of increased transparency, consistency and accountability for financial reporting and village operations. Consultation on a draft Amendment Regulation will aim to ensure that new requirements are administratively efficient and workable across villages, while implementing the policy objectives.

Safeguards in the RV Act mean that the residents total general services charge cannot increase above the CPI increase unless residents agree to the increase by special resolution vote, or it is an allowable increase under section 107 of the RV Act. Therefore, to the extent that the new reporting requirements may contribute to increased audit, accounting costs or administration costs in some villages, any cost impacts for residents can be scrutinised and raised with an operator in the budget process.

There are also potential cost savings to residents by having more accountable budgets and financial statements, as incorrect allocation of costs or even instances of fraud should be more easily identifiable. This will be particularly relevant where costs are shared across a co-located business in the retirement village. Such co-located business may include an aged care facility, the village operator corporate head office or other retirement villages in the corporate group. The regulation would require budgets and financial statements to disclose shared expenses, including the method used to apportion the cost between the village and a co-located entity or head office.

Smaller village operators

Industry groups raised concerns about increased administrative and compliance costs for smaller operators, including that they may have to engage external accounting services, with these costs passed onto residents. One submission proposed that Government should consider exempting smaller villages or operators from requirements that are likely to be more onerous or complex, as is the case in New South Wales.

The RV Act or the HLA Bill does not set different financial reporting requirements based on the size of the village or the operator, as it is important that all operators are accountable for the proper management and reporting of funds. Residents who live in smaller villages or who have smaller, stand-alone operators should not be afforded any less consumer protection than residents of larger villages and operators.

In response to complaints, DCHDE has been addressing budgeting and financial reporting issues with small regional retirement villages since 2018 with a targeted compliance and education program. Issues have included operators having a limited understanding of the RV Act; misunderstanding how the three compulsory funds should be operated; a lack of communication or relationship with residents; and village residents having little or no knowledge of the RV Act or the scheme operator's responsibilities, budget processes, the role of the residents committee or their right to seek information from the scheme operator.

This had resulted in operators in some cases raising their general service charges above the Consumer Price Index; adding budget line items without consultation or special resolution votes; residents paying into the capital replacement fund and paying for operator expenses.

The improvements to the regulatory framework to be provided by the HLA Bill and subsequent amendment regulation, in conjunction with the financial guidance material and ongoing DCHDE work with small and regional operators will improve outcomes for residents and in many cases the viability of these operators. For less sophisticated operators there may be establishment costs for accountants and auditors to address gaps, however these costs will likely be offset going forward through the standardisation and efficiencies created.

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

Impacts for the small number of freehold resident-operated retirement 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.

Transitional provisions and implementation time frame

Industry groups raised issues with the transitional provisions in the HLA Bill, and that the Bill should clearly indicate when each obligation commences, including for regulations under section 113AA, to avoid confusion for operators and residents.

DCHDE notes the HLA Bill is proposed to commence on assent and relevant transitional provisions are set out at clause 27. The regulation-making power under section 113AA will commence on assent, however any new requirements for operators prescribed in the regulation will be commenced by the same regulation.

Industry groups sought assurance that the regulations will not commence before 1 July 2023 and that operators are given sufficient time to prepare documents to achieve compliance.

The Community Consultation section of the HLA Bill Explanatory Notes and the DCHDE brief to the Committee discuss these implementation matters, including that DCHDE will continue to consult with stakeholders on implementation timeframes for the regulation amendments, including first-year transitional provisions that may be necessary for moving to some new requirements and approaches for managing any significant timeframe changes. DCHDE will also take a supportive and capacity-building approach with operators regarding compliance with new reporting requirements.

Quantity surveyor written reports

The AIQS supports the HLA Bill provisions and notes its awareness of resident concerns (across Australia) with lack of transparency and accountability about financial operations of villages, particularly aspects impacting residents. The AIQS submission gives further details about technical matters, explanations and distinctions that should be included in quantity surveyor reports for capital replacement and maintenance and repair, and proposes to work with DCHDE on guidelines to this effect. The UDIA noted the need for reasonable consultation with advisors and the sector to ensure the regulations about quantity surveyor reports are suitable and practical for use by quantity surveyors.

DCHDE proposes to work with AIQS on development of guidelines for quantity surveyor reports in conjunction with industry and resident groups. DCHDE will consult with stakeholders on requirements under regulation for quantity surveyor reports. Other issues noted by stakeholders in relation quantity surveyor reports are contained in the clause by clause table.

Clause number and issue (represents a compilation of issues raised in the submissions)	DCHDE comment on issues (with reference to policy and recommendation)	Ways issues can be addressed
Part 2 -- Amendment of <i>Housing Act 2003</i>		
<p>Clause 4 – insert section 94J (When existence of charitable donation deeds must be recorded on titles)</p> <p>Issue: Clarification was sought on whether, before an administrative advice is entered by the registrar, evidence of the existence of a deed or some other assurance or declaration will be required from the lodging party.</p> <p>Relevant submission: 7 QLS</p>	<p>The HLA Bill allows a non-profit organisation (at the present time this is only Homes for Homes) to give a notice to the registrar of the existence of the deed in the appropriate form, and the registrar must record the existence of the deed in the freehold land register as an administrative advice.</p> <p>As the administrative advice does not create any obligation on a property owner or prevent any dealings on the title, there is no value to Homes for Homes in lodging an administrative advice where a donation deed does not exist. Evidence of the deed is therefore considered unnecessary.</p> <p>DCHDE has consulted with Titles Queensland which has advised that they will not seek a copy of the deed as part of the notification process. If any evidence were to be required from Homes for Homes, or from another non-profit prescribed under the regulation in future, the relevant requirements would be outlined in the Land Title Practice Manual.</p>	<p>Evidentiary requirements, if any, will be outlined as needed in the Land Title Practice Manual.</p>
<p>Clause 4 – insert section 94K (when records of existence of charitable donation deeds must be removed from titles)</p> <p>Issue: Will a requesting party need to prove they are party to the deed?</p> <p>Relevant submission: 7 QLS</p>	<p>The HLA Bill allows a party to the deed to request that the registrar of titles remove the record of the existence of the deed from the freehold land register.</p> <p>The party to the deed will either be Homes for Homes or the registered owner of the land. If the administrative advice exists on the title this will be sufficient evidence of the existence of the deed, and the policy intent, consistent with the voluntary nature of the</p>	<p>Evidentiary requirements, if needed will be outlined in the Land Title Practice Manual.</p>

Clause number and issue (represents a compilation of issues raised in the submissions)	DCHDE comment on issues (with reference to policy and recommendation)	Ways issues can be addressed
	<p>agreement, is that an owner can request the administrative advice is removed at any time. However, should any evidentiary requirements be considered necessary these would be outlined in the Land Title Practice Manual.</p>	
<p>Clause 4 – insert section 94K (when records of existence of charitable donation deeds must be removed from titles)</p> <p>Issue: Clarity about whether a request to remove the administrative advice can be lodged even if the deed is on foot.</p> <p>Relevant submission: 7 QLS</p>	<p>The intention of the HLA Bill is to reflect the voluntary nature of the donation deed and therefore it is considered appropriate that a home owner is able to remove the administrative advice at their discretion, whether or not the deed is on foot or whether they have advised Homes for Homes of their intention to withdraw from the donation deed.</p>	<p>DCHDE will seek to ensure that the communication materials to support commencement of the changes to the Housing Act will clearly explain how the process of entering a donation deed and recording and removing an administrative advice, will work.</p>
<p>Clause 4 – insert section 94J (When existence of charitable donation deeds must be recorded on titles)</p> <p>Issue: Whether there is a conflict between the provisions of section 29A of the Land Titles Act allowing the registrar to remove an administrative advice, and the unrestricted right in section 94K for a party to request a removal of the advice, and whether this has the potential to create uncertainty about the process for removing an administrative advice under section 94K.</p> <p>Relevant submission: 7 QLS</p>	<p>DCHDE does not consider there is any conflict between the provisions in the <i>Land Title Act 1994</i> and the HLA Bill. Section 94J (3) provides that an administrative advice will remain on a title until it is removed by either of the following two methods:</p> <ol style="list-style-type: none"> 1. By request of a party to the deed under s. 94K, and 2. By the Registrar under section 29A of the <i>Land Title Act 1994</i>. <p>While 29 A of the <i>Land Title Act 1994</i> would apply regardless of the reference to it in s. 94J(3), its inclusion is intended to provide a full picture of the ways an administrative advice can be removed.</p>	<p>DCHDE will seek to ensure that its communication materials to support commencement of the changes to the Housing Act will clearly explain how the process of entering a donation deed and recording and removing an administrative advice, will work.</p>

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<p>Clause 4 – insert section 94J (When existence of charitable donation deeds must be recorded on titles)</p> <p>Issue: QLS suggests it is unclear how section 94J(2) which states the registrar must record if a request is lodged, might be reflected in the requirements of the Land Title Practice Manual.</p> <p>(note: the QLS submission appears to refer incorrectly to section 94K(2))</p> <p>Relevant Submission: 7 QLS</p>	<p>DCHDE is unclear about the precise issue being raised by QLS in relation to section 94J and the Land Title Practice Manual. Directions relating to the administrative advice created under amendments to the Housing Act will be included in the relevant sections of Part 52 of the Land Title Practice Manual which deals with administrative advices.</p>	<p>DCHDE will seek to ensure that its communication materials to support commencement of the changes to the Housing Act will clearly explain how the process of entering a donation deed and recording and removing an administrative advice, will work.</p>
<p>Clause 4 – insert section 94I (Definitions for the division)</p> <p>Issue: Concern that a newly registered owner of a property with an administrative advice on title will be able to remove the administrative advice, if the charitable donation deed has not been assigned to them.</p> <p>Relevant submission: 7 QLS</p>	<p>Section 94K allows a ‘party to the deed’ to request that the registrar of titles remove the record of the existence of the deed from the freehold land register.</p> <p>Section 94I defines ‘party to a charitable donation’ as including “the successors and assigns of a party to the deed who are bound by the deed”.</p> <p>In practice a purchaser who did not wish to participate in Homes for Homes would seek to have the administrative advice removed by the home owner (and party to the deed) during the conveyancing process. If this did not occur before title to the property transferred, and the new home owner was not considered to be a party to the deed, then Homes for Homes could remove the administrative advice.</p>	<p>DCHDE will carefully consider concerns about ensuring a registered owner of a property can remove an administrative advice, noting that while a ‘party’ other than Homes for Homes will always be the registered owner, there may be circumstances in which the converse may not be true. I.e., a registered owner is not a ‘party’ to a donation deed.</p>
<p>No specific clause – general comment</p>	<p>Proposed section 94J (3) provides that unless removed by one of the two methods, an administrative advice will remain on a title despite a change in ownership. The policy intent is that the administrative advice remains</p>	<p>DCHDE will carefully consider concerns about ensuring a registered owner of a property can remove an administrative advice, noting that while a ‘party’ other</p>

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<p>Issue: QLS suggests consideration be given to requiring the registrar to remove the administrative advice on the registration of a transfer.</p> <p>Relevant submission: 7 QLS</p>	<p>on the title, allowing for the possibility that the new owner will agree to continue to participate in the Homes for Homes initiative. Retention of properties in the initiative is a key feature of the model, and Homes for Homes have indicated that approximately 80% of homes in the scheme remain in the scheme after a sale thus generating a sustainable funding source. In practice the administrative advice will either be removed prior to the transfer of title, or it will remain with the agreement of the buyer and the assignment of the donation deed. It would likely impose financial costs for Homes for Homes, if an administrative advice was automatically removed on the transfer of a title. Homes for Homes would need to lodge forms for, and pay the fee for, a new administrative advice each time a purchaser agreed to keep the property in the scheme.</p>	<p>than Homes for Homes will always be the registered owner, there may be circumstances in which the converse may not be true. I.e., a registered owner is not a 'party' to a donation deed.</p>
Part 4 -- Amendment of <i>Retirement Villages Act 1999</i>		
<p>Clause 11 – amends section 35(2)(c) (include quantity surveyor reports on retirement village scheme register)</p> <p>Clause 14 – amends section 92(8) (provide quantity surveyor report for capital replacement fund to chief executive within 5 months of end of financial year)</p> <p>Clause 19 – amends section 98(8) (provide quantity surveyor report for maintenance reserve fund to chief executive within 5 months of end of financial year)</p>	<p>The RV Act existing sections 92(1) and (2) and 98(1) and (2) require an operator to obtain independent quantity surveyor written reports about the expected capital replacement costs and maintenance repair costs for the village for the next 10 years before deciding the respective budgets for the capital replacement fund and maintenance reserve fund.</p> <p>The quantity surveyor reports are key documents for scrutinising the capital replacement fund and maintenance reserve fund budgets and annual financial statements, and for DCHDE for monitoring compliance</p>	<p>The HLA Bill provisions for increasing access to the quantity surveyor reports for residents and DCHDE and including these on the public register are consistent with the policy objectives of increased transparency and accountability for village funds and financial operations.</p>

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<p>Issue: Caxton/QRVPAS supports the increased access to the quantity surveyor reports for residents and DCHDE and including these on the register.</p> <p>The Property Council is generally supportive of these amendments, however, noted that the objective is not clear for the chief executive receiving the quantity surveyor reports and placing them on the retirement villages register or the benefits of accessing historical quantity surveyor reports on an ongoing basis.</p> <p>For new retirement village schemes where improvements are under construction, the quantity surveyor reports may be indicative for budgeting and disclosure purposes only until practical completion of the improvements is reached and the quantity surveyor can more accurately report on expected costs. Obtaining updated reports during construction only for the purpose of complying with these proposed new provisions will only add to administration and compliance costs for operators.</p> <p>As an alternative to annual lodgement, Schedule 5 of the Retirement Villages Regulation 2018 should be amended to prescribe the quantity surveyor reports for the last 3 financial years as 'operational documents' that a resident or prospective resident is able to inspect under section 85 of the RV Act.</p> <p>Relevant Submission: 1 Property Council; 4 Caxton/QRVPAS</p>	<p>with the RV Act, notably fund expenditure and reserve amounts.</p> <p>Under section 35, the retirement village register comprises key records for each registered retirement village scheme in Queensland, including the registration certificate, village comparison document, and annual financial statements. Records are to be kept on the register for at least 10 years.</p> <p>Including the quantity surveyor reports on the public register means that prospective residents and the public may access these key documents, including to assist prospective residents deciding on a village.</p> <p>Under section 27 of the RV Act and the Retirement Villages Regulation 2018, an application for registration of a new retirement village must include a copy of the quantity surveyor reports and the first budget for the capital replacement fund, maintenance reserve fund and general services charge fund. An application for registration can be submitted at any point in the construction schedule of a new village, but a village must be registered before advertising units for sale or accepting ingoing contributions. Depending on the timeframe between registration of the retirement village scheme and practical completion and units being advertised for sale, new budgets for all 3 funds may be required to set the resident charges and contributions as this is required precontractual information. The existing RV Act requires a quantity surveyor report before deciding the budgets for the capital replacement and maintenance reserve funds. The HLA Bill will require these updated quantity surveyor reports to be</p>	

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	<p>given to the chief executive and included on the register.</p> <p>The consultation draft Amendment Regulation 2021 provided to stakeholders proposed prescribing the quantity surveyor reports as operational documents under section 85 that a resident or prospective resident may access by request, and this will be considered as an additional means of access in the proposed new Amendment Regulation.</p>	
<p>Clause 21 – amends section 112 (Quarterly financial statements)</p> <p>Issue: It is unlikely that an operator will be able to deliver within 28 days quarterly financial statements that have been audited in SPFR format. Additionally, there would be significant cost implications of undertaking an audit on a quarterly basis.</p> <p>Relevant submissions: 1 Property Council</p>	<p>It is an existing requirement under section 112 that an operator must give a quarterly financial statement to a resident within 28 days if requested, and that the statement must be audited or capable of being audited. The HLA Bill does not change this and does not require an operator to undertake an audit on a quarterly basis. Previous years' quarterly financial statements would have formed part of previous years' annual financial statements, and annual financial statements must be audited.</p>	<p>The HLA Bill does not change the existing section 112 requirement for a quarterly financial statement given to a resident within 28 days to be audited or capable of being audited.</p> <p>Stakeholders will be consulted on a proposed Amendment Regulation including any requirements prescribed for quarterly financial statements under new section 113AA.</p>
<p>Clause 23 – inserts new section 113AB(2)(b) (Requirements to provide draft budgets and quantity surveyor's written reports)</p> <p>Issue: The effect of this provision will be that for residents will have the right to request the budget 28 days prior to the start of the new financial year. The operator then has 14 days to produce the budget (and quantity surveyor report). However, there are some items which will not be known at this time. In addition, as there are already consultation requirements this provision may unnecessarily duplicate operator</p>	<p>Clause 23 consolidates existing requirements and timeframes in the RV Act for access to draft budgets (refer sections 93(3) to 95), 99(4) to (6) and 102A(4) to (6), and extends this to give all residents, and not only resident committees, access to all three draft budgets, and to quantity surveyor reports the operator had regard to for preparation of the budget.</p> <p>Following stakeholder consultation on the draft HLA Bill, a new definition of 'draft budget' in the dictionary at Clause 28 directly addresses the Property Council's feedback. The definition of a draft budget clarifies that</p>	<p>A new definition of 'draft budget' in the HLA Bill addresses feedback provided by the Property Council in August 2022.</p> <p>Increased access to draft budgets and quantity surveyor reports supports the policy objectives of the HLA Bill and existing objects in the RV Act to facilitate participation by residents, who want to be involved, in the affairs of retirement villages. Likewise operators may proactively give access to draft</p>

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<p>obligations. Ideally, the provision would expressly allow for the draft to be both completed and compliant with section 113AA 'as far as practicable'.</p> <p>As operators may now receive any number of requests from individual residents, provision should be made for operators to comply with such requests by providing the requested draft budgets in a communal area or another method of mass distribution (e.g. provision to the residents committee). This will allow the operator to comply with the section without requiring individual communication and provision to each resident who requests a copy, which could cause significant administrative issues.</p> <p>Furthermore, the transitional provisions should clarify whether the draft budgets for the first intended financial year for the reforms (2023-24).</p> <p>Relevant submissions: 1 Property Council</p>	<p>the draft budget must, as far as practicable, comply with the requirements relating to the respective fund budget under the relevant sections of the RV Act.</p> <p>Operators may take a proactive approach for distribution of the draft budget and quantity surveyor reports to residents by placing them in communal areas or providing access to the resident committees without a request under the new section 113AB. Some operators already adopt best practice by making quantity surveyor reports available to the residents committee although is not a requirement under the RV Act.</p> <p>New section 113AB will take effect on commencement of the HLA Act 2022.</p>	<p>budgets and quantity surveyor reports to resident committees and interested individuals.</p>
<p>Clause 23 – inserts new section 113AA(1)(c)</p> <p>Issue: Referencing compliance with the Australian Accounting Standards could trigger reporting obligations for operators, which creates unnecessary burden.</p> <p>Relevant Submission: 1 Property Council</p>	<p>The HLA Bill does not prescribe compliance with Australian Accounting Standards for village financial reports.</p> <p>New section 113AA(1)(c) refers to accounting standards or principles as an example of standards or principles that may be prescribed by regulation under new section 113AA(1)(c). This issue will be considered in development of the amendment regulation, noting that retirement village financial statements are specific purpose financial statements required under the RV Act. Many operators' annual financial statements currently note Australian Accounting Standards used for preparing the specific purpose financial statements,</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA for accounting standards and principles.</p>

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	which is useful disclosure for users of the reports as to the basis for preparation of the statements.	
<p>Clause 23 – inserts new section 113AA(2)(e) (explanation of a surplus or deficit stated in a financial document)</p> <p>Issue: The reporting requirements associated with compliance with this provision will be unduly onerous for operators. Rather, the Regulations should allow this information to be provided in the form of a summary or opinion, as there will (by necessity) be many 'explanations' for a surplus or deficit in practice. For example, any item of expenditure that is greater or less than the budgeted amount will technically form part of the explanation and it will not be practical to list all of these. The explanation will also necessarily involve an element of opinion or 'point of view' by the operator, which makes a summary or opinion format appropriate.</p> <p>The UDIA also noted the likely negative consequences of prescribing unreasonably granular details for section 113AA(1) and (2) including increased length and complexity of documents, administrative burden and excessive compliance costs.</p> <p>Relevant Submissions: 1 Property Council, 8 UDIA</p>	<p>Explanations for a surplus or deficit in a financial statement is intended to provide relevant information material to an understanding of the budget or financial statement for the users, and not necessarily an explanation for each item of expenditure that is technically greater or less than the budgeted amount.</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA for an explanation of a surplus or deficit.</p>
<p>Clause 23 – inserts new section 113AA(2)(d) (disclosure notes about any matter)</p> <p>Issue: This provision will result in operators' budgets having pages of Notes to the accounts. The corporate</p>	<p>The purpose of disclosure notes is to increase the transparency and accountability of financial reporting and compliance under the RV Act. Stakeholder consultation on the proposed Amendment Regulation will consider the applicability and workability of new</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements</p>

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<p>structure of some operators means that more transactions involve funds flowing through entities, which will add significant complexity to the accounts.</p> <p>Relevant Submission: 1 Property Council</p>	<p>disclosure requirements given the different corporate structures of retirement villages, and the objects of the RV Act.</p>	<p>under new section 113AA for disclosure notes.</p>
<p>Clause 26 – inserts new section 226 (Chief executive may make guidelines)</p> <p>Issue: Submissions offered differing views on the need for and benefit of chief executive guidelines. Caxton/QRVPAS support the guideline provision, noting that the guidelines, while non-legislative, will provide clarity for operators and residents as to their respective obligations under the RV Act, promote consistency of interpretation and can be anticipated to reduce the need for costly disputes.</p> <p>The Property Council reiterated their concerns that the RV Act is likely to give the impression that guidelines have the status of legislation or are legally binding on operators/residents. In fact, such guidelines merely represent the chief executive's viewpoints on the interpretation of the legislation or the way it is to be applied, and do not have the force of law. The existence of statutorily endorsed guidelines risks causing confusion for operators and residents about their rights and obligations under the RV Act and creates a risk of non-compliance by operators where they are relied on but are ultimately determined to be incorrect.</p> <p>Relevant submissions: 4 Caxton/QRVPAS, 1 Property Council</p>	<p>The Explanatory Notes to the HLA Bill set out the purpose of the guidelines and notes the consultation feedback from stakeholders in support of, and concerns with, this provision.</p> <p>The HLA Bill contains a provision that the 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 RV Act. A similar provision is contained in the <i>Residential Services (Accreditation Act) 2002</i>. While this does not create legal effect or extend the existing power of the chief executive to make non-binding guidelines, the amendment clearly articulates the purpose of guidelines and their status. Such guidelines can provide important information to industry on the department's position on certain matters and assist operators to comply with the RV Act.</p> <p>Stakeholders held differing views on the inclusion of the chief executive guideline provision in the Bill. The QLS supports the chief executive guidelines clause suggesting it could prevent a significant number of disputes if effectively used, while noting that it is preferable to address any ambiguity in the relevant legislation. The Bill will amend certain sections in the</p>	<p>The purpose and status of the guidelines would be stated in any guidelines made and published by the chief executive.</p> <p>Stakeholders will be consulted on the financial guidance material for the RV Act and subsequent Amendment Regulation.</p>

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	RV Act to reduce ambiguity and make operator obligations clearer. Industry groups noted that there is no legal need to amend the RV Act to enable guidelines to be issued, and raised concerns that the chief executive guideline amendment will create confusion and uncertainty about the guidelines' legal effect and should not be in the Bill.	
<p>Clause 23– inserts new section 113(1)(a) and (b) (form and content of financial documents)</p> <p>Issue: Concerns about ambiguity and duplications, as paragraph (a) refers to an 'approved form', and paragraph (b) refers to a 'prescribed form', which appears to be a duplication. If 'approved form' and 'prescribed form' are intended to be different things, the provision should be amended for clarity. However, no approved form has been made available, which makes it difficult to comment</p> <p>Relevant submissions: 1 Property Council</p>	<p>Potential ambiguity or misunderstanding with this section was considered during drafting of the HLA Bill.</p> <p>The HLA Bill is drafted to be clear and avoid ambiguity. In this instance the terms 'approved form' as well as the concept of approval of forms and prescription by regulation have accepted legal meanings and the way in which the provisions are currently drafted is standard legislative drafting practice.</p> <p>The meaning of 'approved form' is determined by the schedule definition and section 227 of the RV Act. Approval of forms is also dealt with in the <i>Acts Interpretation Act 1954</i>, sections 48 and 48A. Similarly, "prescribed" has a defined legal meaning under <i>Acts Interpretation Act 1954</i>, schedule 1, definition <i>prescribed</i>.</p> <p>The two paragraphs have definite and distinct effects. Paragraph (a) is referring to a form approved by the chief executive for use under the Act (section 227). Whereas paragraph (b) is referring to the form prescribed under a regulation made under the RV Act. For paragraph (b), the term form would adopt its ordinary meaning. The requirement under paragraph (a) will only apply if there is an approved form. Similarly, the requirement under paragraph (b) will only</p>	<p>DHCDE will ensure that the financial guidance material accompanying the RV Act and Amendment Regulation provides additional information on how these sections apply and whether approved forms exist.</p> <p>DCHDE does not intend to issue approved forms for the financial documents, and instead any new requirements in the regulation would be incorporated into operators' existing reporting. Non-mandatory pro-forma templates will be included in the guidance material to assist operators, which may benefit smaller operators,</p>

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	apply if regulations are prescribed for that paragraph. Any approved form approved by the chief executive would need to be consistent with the relevant provisions of the regulation.	
<p>Clause 23 – Inserts new section 113AA(2) (regulation may prescribe the following for financial documents)</p> <p>Issue: Industry groups have expressed concern about the level of detail intended to be prescribed for financial documents. The groups note that this should be limited to those that are absolutely necessary for transparency, consistency and accountability and will not cause financial documents to become overly long, detailed or complex, or require operators to duplicate information. The Government should consider exempting smaller villages or operators from requirements that are likely to be more onerous or complex, as is the case in New South Wales.</p> <p>Caxton/QRVPAS noted it is important that financial forms or documents are useful and easy to read and understand, but that this does not necessarily equate with providing less information. In Caxton’s experience, transparency is often reduced by including a large number of items under a cost centre or heading such as ‘garden maintenance’ and ‘salaries’. This makes it difficult for residents to understand what is included in the proposed expenditure.</p> <p>Relevant submissions: 1 Property Council, 4 Caxton/QRVPAS, 8 UDIA</p>	<p>The level of prescription of information under the regulation is to meet the policy objectives of improved transparency, consistency and accountability of financial reporting. Financial reporting requirements will take into consideration the users of the document, the materiality of information and disclosure, as well as the different sizes and structures of villages and operators.</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA.</p>

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<p>Clause 23 – Inserts new section 113AA(2)(a) (audit reports)</p> <p>Issue: Concern that this provision should be limited to information or statements that can in practice be included in an audit report or signed off by an auditor, such as statements of the auditor's appointment, qualifications or independence and statements about the correctness of the annual financial statement. It should not require the auditor to state any particular matters that would require specialist knowledge or expertise of the RV Act or retirement villages generally (such as warranties that the scheme operator has complied with all requirements of the RV Act) so as not to limit the available pool of auditors to service the retirement villages in Queensland.</p> <p>Relevant submission: 1 Property Council</p>	<p>The quality and information contained in audit reports to annual financial statements currently provided to residents and the chief executive varies considerably. The HLA Bill prescribes audit reports as financial documents under the regulation which allows for a regulation to prescribe additional requirements for transparency, accountability and consistency of audit reports, noting that an audit report must be issued under Australian Auditing Standards.</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA relating to audit reports.</p>
<p>Clause 23 – Insert new section 113AA2(b) (users of document)</p> <p>Issue: This provision should be removed or amended for clarity. For example, the reference to 'using' the document could be removed. Alternatively, if the Government has a particular way it would like the information to be presented, this should be taken into consideration when preparing the 'approved form' to be prescribed under sub-section (1)(a).</p> <p>Relevant submission: 1 Property Council</p>	<p>Refer to comments above for Clause 23 - inserts new s113(1)(a) and (b) (form and content of financial documents).</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA relating to the way in which information must be presented in a financial document.</p>
<p>Clause 23 – Inserts new section 113AA2(c) (operator statements or declarations)</p>	<p>Currently annual financial statements often include operator statements on particular matters. Stakeholders</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements</p>

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<p>Issue: For documents prepared by a scheme operator, the proposed statements or declarations should be appropriate and limited to matters that are within the knowledge of the operator. For example, the prescribed form of Prospective Costs Document provides a simple statement and date of certification in the first section.</p> <p>Relevant submissions: 1 Property Council</p>	<p>will be consulted on the content and form of operator statements or declarations under the regulation.</p>	<p>under new section 113AA relating to operator statements or declarations.</p> <p>The financial guidance material would provide additional guidance on operator statements or declarations.</p>
<p>Clause 23 – Inserts new section 113AA(2)(d) (disclosure notes)</p> <p>Issue: It is not clear whether the proposed 'disclosure notes' will be fixed statements of text to educate the reader about the relevant matter (similar to prescribed text appearing in the Village Comparison Document or Prospective Costs Document), or bespoke details to be reported for the particular village. The examples of 'disclosure notes' given in the draft provisions suggest the latter. The nature of the proposed 'disclosure notes' should be clarified.</p> <p>Relevant submissions: 1 Property Council</p>	<p>The HLA Bill allows a regulation to prescribe disclosure notes for financial documents, and provides by way of example, matters that may be covered by disclosure notes. Further prescription and clarification for disclosure notes will be contained in the regulation.</p>	<p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA relating to disclosure notes.</p> <p>The financial guidance material will provide additional guidance on disclosure notes.</p>
<p>Clause 28 – Schedule (dictionary) inserts new definition for quantity surveyor</p> <p>Issue: The AIQS submission supports the provisions in the HLA Bill for quantity surveyor reports, noting that guidelines could be developed to ensure quantity surveyors are providing professional and transparent reports.</p> <p>The Property Council expressed concern with (the earlier consultation draft) definition of 'quantity</p>	<p>The HLA Bill prescribes a quantity surveyor report as a financial document allowing a regulation to prescribe the form and content of the report.</p> <p>The HLA Bill definition of a quantity surveyor means a person who holds a member grade, or a fellow grade, membership of the Australian Institute of Quantity Surveyors, or an equivalent grade of membership with an organisation that is a successor to the Australian Institute of Quantity Surveyors.</p>	<p>DCHDE proposes to work with the AIQS and operator and resident groups in relation to guidelines for quantity surveyor reports under the RV Act.</p> <p>Stakeholders will be consulted on a proposed Amendment Regulation including any proposed requirements under new section 113AA relating to quantity surveyor reports.</p>

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<p>surveyor' which includes a component that says the report must be prepared by a surveyor who must not 'have a direct or indirect interests that conflicts or could conflict, with the appropriate preparation of the report'. This definition is extraordinarily broad as surveyors could easily have interests that could conflict – i.e., the mere act of receiving payment from one party could be a conflict. However, as professionals they follow professional guidelines and obligations. If the intention is that a quantity surveyor does not have any prior knowledge of the particular village, this appears counterproductive and unnecessarily expensive. This is exacerbated by the fact that there are only a limited number of quantity surveyors to are sufficiently experienced in the field of retirement villages. The UDIA also noted a similar concern.</p> <p>Relevant submissions: 1 Property Council; 6 AIQS, 8 UDIA</p>	<p>The definition does not include reference to direct or indirect conflicts of the quantity surveyor, which addresses the Property Council's concerns about the breadth of this provision.</p> <p>However, quantity surveyors as members of the AIQS must adhere to the AIQS code of conduct, which contains detailed provisions relating to conflict of interest and how these are to be managed. This should ensure professional standards for quantity surveyors are adhered to and any complaints or breaches in relation to this can be dealt with by the professional body.</p>	
<p>Clause 28 – Schedule (dictionary) definition of financial year</p> <p>Issue: Whilst not proposed in the Draft Bill, a definition of 'financial year' could be inserted, directing the reader to the meaning given to that term in Schedule 1 of the <i>Acts Interpretation Act 1954</i> (Qld) (being 'a period of 1 year beginning on 1 July'). Currently there is no definition of 'financial year' in the RV Act, meaning that it is not immediately obvious on reading the RV Act whether a particular financial year is prescribed for retirement villages in Queensland or whether operators can select their own. Directing the</p>	<p>The HLA Bill conforms with current legislative drafting practice which is to not insert terms defined in the <i>Acts Interpretation Act 1954</i> (AIA Act) into other legislation. The AIA definition of financial year already applies to the RV Act by virtue of AIA, section 36(1).</p> <p>However given the central importance of the term 'financial year' to the operation of the RV Act, and noting the Property Council's concerns, information and requirements about 'financial year' will be included in the financial guidance material for operators. DCHDE will also work with the small number of operators who do not conform to a financial year commencing 1 July,</p>	<p>DCHDE will ensure that the financial guidance material provides information on the application of the term 'financial year' under the RV Act.</p>

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<p>reader to the definition in other legislation will confirm that each retirement village in Queensland must have a financial year of 1 July to 30 June, increasing clarity for residents, operators and other stakeholders in relation to financial documents and reporting for retirement villages in line with the objectives of the Draft Bill.</p> <p>Relevant submission: 1 Property Council</p>	<p>to bring their budgeting and financial reporting into line with the RV Act.</p>	