



# Housing Legislation Amendment Bill 2022

**Report No. 24, 57th Parliament**  
**Community Support and Services Committee**  
**December 2022**

## **Community Support and Services Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

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## Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Housing Legislation Bill 2022.

Queensland is currently experiencing high demand for housing. The Queensland Government initiated the Queensland Housing Strategy 2017-2027, 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 Strategy is addressing Queensland's high demand for housing by building strong partnerships within government and with non-government housing, homelessness, and support services and the private sector. The Bill's proposed reforms are part of the measures to meet the objectives of the Strategy.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and provided evidence at the public hearing. I also thank the Department of Communities, Housing and Digital Economy and our Parliamentary Service staff.

I commend this report to the House.



Mr Chris Whiting MP  
Acting Chair

## Recommendations

<b>Recommendation 1</b>	<b>2</b>
The committee recommends the Housing Legislation Amendment Bill 2022 be passed.	2
<b>Recommendation 2</b>	<b>6</b>
The committee recommends that the Minister for Department of Communities, Housing and Digital Economy consider whether the definition of ‘party’ to a charitable donation needs to be clarified in the Bill, and clarify:	6
<ul style="list-style-type: none"> <li>the evidence that would be required for a non-profit organisation to notify the registrar of titles of the existence of a charitable deed</li> </ul>	6
<ul style="list-style-type: none"> <li>the process surrounding removal of an administrative advice, including the evidence that would be required of a person to remove the record of the existence of the deed from the freehold land register</li> </ul>	6
<ul style="list-style-type: none"> <li>the need for modifications to the requirements of the Land Title Practice Manual.</li> </ul>	6
<b>Recommendation 3</b>	<b>6</b>
That the responsible department (currently the Department of Communities, Housing and Digital Economy) ensure that community messaging and communication materials associated with the donation deed model clearly and simply communicate the voluntary nature of the administrative advice and the process of removing the administrative advice if the registered owner of the land so desires.	6
<b>Recommendation 4</b>	<b>7</b>
That the Minister for Department of Communities, Housing and Digital Economy consider whether there is a need to amend proposed new s 94I, paragraph (b)(ii)(A) of the definition of ‘charitable donation deed’ to include the words ‘in the State’, to ensure that when donated proceeds that are used to provide, or assist an entity to provide, a social housing service are so used only in Queensland.	7
<b>Recommendation 5</b>	<b>13</b>
That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with scheme operators, residents and other key stakeholders when drafting the proposed amending regulation to ensure that financial documents and statements available to scheme operators and residents are clear and appropriate.	13
<b>Recommendation 6</b>	<b>16</b>
That the Minister for Department of Communities, Housing and Digital Economy consider amending the definition of ‘quantity surveyor’ to narrow the likelihood of a conflict of interest where the number of available/qualified quantity surveyors is limited.	16
<b>Recommendation 7</b>	<b>16</b>
That the Minister for Department of Communities, Housing and Digital Economy consider compliance measures to ensure any extra costs associated with the proposed financial reporting requirements are not passed onto retirement village residents.	16
<b>Recommendation 8</b>	<b>21</b>
That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with key stakeholders to ensure that all guidelines created under the <i>Retirement Villages Act 1999</i> are clear and useful for both retirement village scheme operators and residents.	21

**Recommendation 9**

**25**

That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with key stakeholders to ensure the proposed transitional arrangements are clear, appropriate and reasonable.

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## Report Summary

The Bill's stated purpose is to help to meet 2 of the objectives of the Queensland Government's Queensland Housing Strategy 2017-2027, by assisting to boost the supply of social and affordable housing and private sector investment in Queensland through enabling a charitable donation deed model through the Homes for Homes initiative; and by increasing consumer protections and reforming the legislative framework for financial reporting in retirement villages.

The Bill proposes amendment to the *Housing Act 2003* (Housing Act) and Housing Regulation 2015 to allow the recording of an administrative advice noting the existence of a voluntary donation deed on the property title. The donation deed signifies the owner intends to donate a portion of the sale price of their property to Homes for Homes, a non-profit organisation established by The Big Issue, for the purchase of social and affordable houses in Queensland.

The majority of submitters were supportive of the proposed amendments to the Housing Act, with the Queensland Law Society making some specific drafting corrections.

The Bill aims to strengthen public confidence and enhance financial transparency in the retirement village industry. To achieve this objective, the Bill proposes amendment of the *Retirement Villages Act 1999* to create a new regulation-making power to clarify and strengthen existing provisions relating to financial documents under the Act, and increase access to certain financial documents for village residents, the responsible department and the public register for retirement villages. The proposed amendments would improve financial transparency of village operations and facilitate participation by residents in the affairs of the village. The Bill also proposes to add a new object or purpose to the Act, which is to maintain public confidence in the retirement village industry and enhance the financial transparency of retirement villages.

Stakeholder response to the proposed amendments was mixed. Some submitters were supportive of the intended purpose of the Bill and the benefits resulting from financial information presented in a form that is more transparent and consistent. Submitters expressed concern that the cost to operators to address the additional requirements could be passed on to village residents already experiencing financial stress, and the level of detail required would result in more complex financial documents. Submitters also raised concern in regard to the adequacy of the transitional provisions and the potentially limiting requirements relating to recognised qualifications for quantity surveyors. To the proposed provisions enabling the chief executive to make and publish guidelines, submitters both welcomed the reforms and expressed concern that the guidelines would be unclear, inaccurate or misconstrued as binding by law.

The committee identified and considered issues of fundamental legislative principle (FLP) in the Bill and is satisfied that sufficient regard has been given to the rights and liberties of individuals and the institution of parliament.

Having considered the issues raised by submitters and the explanations provided in the statement of compatibility, the committee is satisfied that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

The committee makes 9 recommendations, the first being that the Bill be passed by the Legislative Assembly.



## 1 Introduction

### 1.1 Policy objectives of the Bill

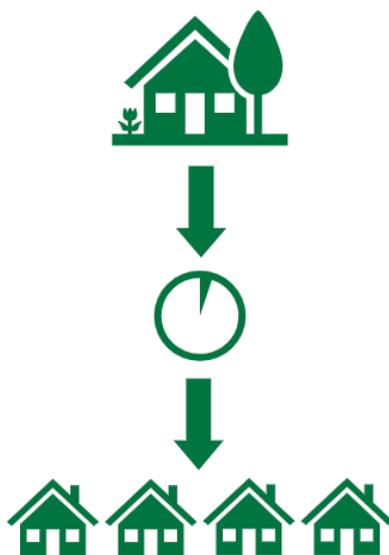
The Queensland Government’s Queensland Housing Strategy 2017-2027 (Housing Strategy) is a 10-year plan to deliver more social and affordable homes for Queenslanders and aims to modernise and reform the housing framework.<sup>1</sup> The objectives of the Bill are to help to meet the objectives of the 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
- 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.<sup>2</sup>

### 1.2 Background

#### 1.2.1 Homes for Homes

Homes for Homes is an independent, not-for-profit company that raises funds to provide social and affordable housing through people making a tax-deductible 0.1 per cent donation from the sale of their property. Established by the social enterprise The Big Issue,<sup>3</sup> Homes for Homes is operational in all Australian states and territories, and has granted over \$1.28 million in funding to 13 projects in Victoria, Queensland, the Northern Territory and the Australian Capital Territory.<sup>4</sup>



People wishing to participate in the program sign a Homes for Homes Donation Deed, after which a caveat is lodged on the property title. On settlement, the donation is made to Homes for Homes as part of the disbursement process. After sale, the property remains registered with Homes for Homes for future donations whenever the property is sold again, unless the new owner has chosen to withdraw from the scheme. Donations from each sale remain in the state or territory in which they were made.<sup>5</sup>

In other states and territories, Homes for Homes uses a permissive caveat on the land title to record that a donation deed exists on the property. However, Queensland’s land titling law does not support the use of caveats in a way that would enable Homes for Homes to operate in Queensland. According to the explanatory notes, a similar outcome to that in other jurisdictions can be achieved in Queensland through use of an ‘administrative advice’ recorded on a land title, indicating that the property is subject to a Homes for Homes donation deed.<sup>6</sup>

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<sup>1</sup> Explanatory notes, p 1; Department of Communities, Housing and Digital Economy (DCHDE), ‘About the Queensland Housing Strategy 2017-2017’, <https://www.chde.qld.gov.au/about/strategy/housing/about>.

<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> The Big Issue is a street magazine sold by homeless people.

<sup>4</sup> Homes for Homes, ‘Funded projects’, <https://homesforhomes.org.au/funded-projects/>.

<sup>5</sup> Homes for Homes, ‘The process’, <https://homesforhomes.org.au/the-process/>; Homes for Homes, ‘Make an impact’, <https://homesforhomes.org.au/make-an-impact/>.

<sup>6</sup> Explanatory notes, p 2.

### 1.2.2 Proposed amendment of the *Retirement Villages Act 1999*

The policy objectives of the Bill relating to retirement villages include improving transparency, accountability and consistency in financial reporting by proposing a specific regulation-making power to prescribe the form and content of village financial documents.

The Bill would amend the *Retirement Villages Act 1999* (RV Act) to:

- include a new object of the RV Act ‘to maintain public confidence in the retirement village industry by enhancing the financial transparency of the operations of retirement villages and the accountability of scheme operators’<sup>7</sup>
- allow increased access to financial documents for village residents, the department and the public register for retirement villages<sup>8</sup>
- clarify disclosure requirements in exit entitlement statements for former residents so residents are aware of how the exit entitlement was worked out by the scheme operator<sup>9</sup>
- amend penalty provisions for budget and financial statements to rectify inconsistencies and incorporate existing requirements in the RV Act and regulations.<sup>10</sup>

If the Bill were passed, the amendments to the RV Act, a subsequent regulation and published guidance material would constitute the finalisation of the financial reporting reforms under the Queensland Housing and Homelessness Action Plan 2021-25.<sup>11</sup>

The Department of Communities, Housing and Digital Economy (DCHDE or department) states that a key driver of the proposed reforms was the ‘high volume of resident complaints to the DCHDE, compliance work with operators, and disputes brought under the RV Act regarding financial reporting’.<sup>12</sup> If the Bill were passed, the following outcomes would be expected from the proposed amendments:

- improved compliance by operators
- fewer resident complaints
- earlier resolution of complaints that arise, due to a clearer regulatory framework
- more likelihood that issues would be dealt with at retirement village level, through the DCHDE advice or compliance action due to clearer regulatory requirements.<sup>13</sup>

### 1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Housing Legislation Amendment Bill 2022 be passed.

<sup>7</sup> Explanatory notes, p 5; Housing Legislation Amendment Bill 2022 (Bill), cl 9.

<sup>8</sup> Explanatory notes, p 2; Bill, cls 11, 13, 14, 17, 23, 28.

<sup>9</sup> Bill, cls 12, 25; Explanatory notes, p 13.

<sup>10</sup> Bill, cls 15, 17, 19, 21, 23.

<sup>11</sup> Explanatory notes, p 3.

<sup>12</sup> DCHDE, correspondence, 11 November 2022, p 8.

<sup>13</sup> DCHDE, correspondence, 11 November 2022, p 8.

## 2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### 2.1 Facilitate the Homes for Homes donation deed model in Queensland

The Bill proposes amendment to the *Housing Act 2003* (Housing Act) and the Housing Regulation 2015 (Housing Regulation). The proposed amendments to the Housing Act would allow a non-profit organisation prescribed under regulation to record the existence of a charitable donation deed on a land titles record. A donation in the form of a portion of the sale price of the property to Homes for Homes would occur at the time the property is sold.

#### 2.1.1 Amendment to the *Housing Act 2003*

The Bill would amend the Housing Act by introducing a new Division 2C 'Charitable donation deeds' into Part 8 of the Housing Act.<sup>14</sup> This Division would permit a non-profit organisation that 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 at Clause 4 of the Bill as a deed that is:

- (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.

The definition prescribes that the organisation agrees to use the donated proceeds only to provide, assist or increase the supply of affordable housing 'in the State', that is, Queensland. Accordingly, the department advises that the definition would require revenue raised by Homes for Homes in Queensland 'to be spent on social and affordable housing in Queensland'.<sup>15</sup>

A key feature of the Homes for Homes model is that unless removed, an administrative advice would remain on the freehold land register when there is a change of ownership and would apply to new lots created under a subdivision of land. The administrative advice would remain on the title of the property regardless of change of ownership, until removed upon request.<sup>16</sup> The removal process would be able to be actioned by a party to the deed, including the successors bound by the deed.<sup>17</sup>

The use of an administrative advice is intended to serve to notify persons dealing with the land that the owner has entered into a voluntary donation deed. The explanatory notes state that it is like a caveat in respect of its notification function.<sup>18</sup> An administrative advice, though serving as a notification, does not create or impose any obligations on a property owner.<sup>19</sup> Instead, it would serve as a reminder to the landowner at the time the land is sold that a Homes for Homes donation deed exists, and that the owner has voluntarily agreed to donate a portion of the sale price to Homes for Homes.<sup>20</sup>

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<sup>14</sup> Bill, cl 4, proposed new s 94I of the *Housing Act 2003* (Housing Act).

<sup>15</sup> Mr Damian Sammon, Director, Legislation and Reform, Housing and Homelessness Services, DCHDE, public briefing transcript, 14 November 2022, p 10.

<sup>16</sup> Bill, cl 4, proposed new s 94J of the Housing Act.

<sup>17</sup> Bill, cl 4, proposed new s 94K of the Housing Act.

<sup>18</sup> Explanatory notes, p 2.

<sup>19</sup> Bill, cl 4, proposed new s 94I of the Housing Act.

<sup>20</sup> Explanatory notes, p 2.

Homes for Homes have set the donation deed to default at 0.1 per cent of the property sale price. Property owners can choose to keep the donation at 0.1 per cent, increase the percentage, make a nominal donation, or no donation.<sup>21</sup>

The department advises that future funding allocations from funds raised in Queensland would be determined by a Queensland advisory group which would advise on priority housing needs and assess funding applications.<sup>22</sup>

*We are not experts in where the housing need is within your state, but the people within your industry are. We do create a housing advisory group in each state and territory, and they guide us on where those funds should be granted.*

Ms Tracy Longo, National Operations Manager, Homes for Homes  
Public hearing transcript, Brisbane, 28 November 2022, p 4.

The Queensland advisory group includes:

- the Director of the National Housing Finance and Investment Corporation
- the Chief Executive Officer of Queensland Shelter
- former Chief Executive Officers of Access Housing and Housing NSW.<sup>23</sup>

The DCHDE advises that a fee (currently \$29) for recording or removing an administrative advice would be charged by Titles Queensland, consistent with fees for lodgement of other administrative advices. The fee would be paid by whomever lodges the form to register or remove the administrative advice.<sup>24</sup>

#### Stakeholder views and department response

Five submissions to the Bill commented specifically on the provisions relating to the Housing Act and Regulation. Of these, Homes for Homes, the Real Estate Institute of Queensland (REIQ) and the Urban Development Institute of Australia Queensland (UDIAQ) were supportive of the Bill's purpose to enable establishment of the Homes for Homes donation deed model in Queensland.

Mr Jim McCoombes questioned the motivations of Homes for Homes' investment advisory group and expressed concern over potential unintended consequences should the Bill be passed, including that the donation deed may be unaffordable to people at the point of title transfer, if house prices continue to fall in the future and their property is sold for less than they paid for it.<sup>25</sup> The DCHDE reiterated 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'.<sup>26</sup>

The Queensland Law Society (QLS) sought clarification on some provisions and offered some drafting corrections to ensure titling registration processes are clear and unambiguous.<sup>27</sup> Their suggestions, and the DCHDE's responses, are summarised below.

<sup>21</sup> Public hearing transcript, Brisbane, 28 November 2022, p 4.

<sup>22</sup> Public briefing transcript, Brisbane, 14 November 2022, p 2.

<sup>23</sup> Public briefing transcript, Brisbane, 14 November 2022, p 2.

<sup>24</sup> DCHDE, correspondence, 11 November 2022, p 5.

<sup>25</sup> Submission 5.

<sup>26</sup> DCHDE, correspondence, 25 November 2022, p 4.

<sup>27</sup> Public hearing transcript, Brisbane, 28 November 2022, p 9.

	Queensland Law Society submission <sup>28</sup>	DCHDE response <sup>29</sup>
	<p><b>Clause 4, new ss 94J and 94K</b></p> <p>Clarification sought on evidence that would be required of a non-profit organisation before an administrative advice is recorded on titles and of a person making a request to remove a charitable deed from the title, and consistency with the Land Title Practice Manual.<sup>30</sup></p>	<p>Evidentiary requirements, if any, will be outlined as needed in the Land Title Practice Manual.</p>
	<p><b>Clause 4, new s 94K</b></p> <p>Clarification sought on whether a request to remove the administrative advice can be lodged even if the deed is on foot.<sup>31</sup></p>	<p>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. The 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><b>Clause 4, new s 94I (Definitions)</b></p> <p>Concern that a newly registered owner of a property, who is not a party to the deed (as defined in the Bill) will not be able to have the administrative advice removed.<sup>32</sup></p>	<p>The 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>

<sup>28</sup> Queensland Law Society (QLS), Submission 7.

<sup>29</sup> DCHDE, correspondence, 25 November 2022.

<sup>30</sup> QLS, Submission 7, pp 1-2.

<sup>31</sup> QLS, Submission 7, p 2.

<sup>32</sup> QLS, Submission 7, p 3.

**Committee comment**

It is important that the Bill provide clarity about who is a party to a charitable deed, the level of evidence required to record a charitable deed on the freehold land register or remove it from the register, and the processes surrounding the removal of the administrative advice.

**Recommendation 2**

The committee recommends that the Minister for Department of Communities, Housing and Digital Economy consider whether the definition of 'party' to a charitable donation needs to be clarified in the Bill, and clarify:

- the evidence that would be required for a non-profit organisation to notify the registrar of titles of the existence of a charitable deed
- the process surrounding removal of an administrative advice, including the evidence that would be required of a person to remove the record of the existence of the deed from the freehold land register
- the need for modifications to the requirements of the Land Title Practice Manual.

**Committee comment**

It is important that no owner of a property, current or future, is locked into a charitable donation deed if they choose to not continue with it. The committee appreciates the departmental advice that the commitment to donate is voluntary and will always be voluntary.

**Committee comment**

It is important that the voluntary nature of the administrative advice and the process of removing an administrative advice from the land title be communicated clearly and in an easy to understand manner. The committee acknowledges the importance of community messaging on this initiative reflecting the voluntary nature of the donation deed in property title transfers.

**Recommendation 3**

That the responsible department (currently the Department of Communities, Housing and Digital Economy) ensure that community messaging and communication materials associated with the donation deed model clearly and simply communicate the voluntary nature of the administrative advice and the process of removing the administrative advice if the registered owner of the land so desires.

The QLS further submitted to the committee that consideration be given to requiring the registrar to remove the administrative advice on the registration of a transfer, effectively removing the perpetual intention of the Homes for Homes donation deed model.<sup>33</sup>

*We ... recommend that consideration be given to an automatic requirement that the administrative advice be removed on the transfer of the title, because this administrative advice is intended to be a reminder to the original owner that they have entered into the donation deed.*

Queensland Law Society  
Public hearing transcript, Brisbane, 28 November 2022, p 11.

<sup>33</sup> QLS, Submission 7, p 3.

### **Committee comment**

The committee acknowledges the concerns raised regarding the proposal that the administrative advice would remain on the title of the property regardless of change of ownership, until it was removed upon request. The committee considers the perpetuation of the participation of the property in the initiative, unless removed by an owner, to be an intrinsic element of the scheme.

Further, noting the Bill's intention is to encourage investment in Queensland's social housing, the QLS questioned the absence of the words 'in the State' in proposed new s 94I, paragraph (b)(ii)(A) of the definition of 'charitable donation deed' and noted those words appear in paragraph (B) of that definition.<sup>34</sup>

### **Committee comment**

The committee considers the use of the funds from the initiative to be used in Queensland to assist in the provision of social housing services to be fundamental to the objectives of the Bill. Accordingly, the Minister may wish to consider whether addressing the definition of 'charitable donation deed' would remove any potential ambiguity.

### **Recommendation 4**

That the Minister for Department of Communities, Housing and Digital Economy consider whether there is a need to amend proposed new s 94I, paragraph (b)(ii)(A) of the definition of 'charitable donation deed' to include the words 'in the State', to ensure that when donated proceeds that are used to provide, or assist an entity to provide, a social housing service are so used only in Queensland.

## **2.1.2 Amendment to the Housing Regulation**

Clause 7 of the Bill would amend the Housing Regulation to prescribe Homes for Homes as a non-profit organisation.<sup>35</sup> While the proposed approach to the definition of 'non-profit organisation' effectively limits the application of the new provisions to Homes for Homes, the department advised it is 'theoretically possible' for another not-for-profit organisation that complied with the legislation to establish themselves as an organisation to gather donations using the donation deed model.<sup>36</sup>

## **2.1.3 Compliance with the *Legislative Standards Act 1992***

### **Institution of Parliament—Delegation of legislative power—Clauses 4 and 7**

As previously noted, clause 4 inserts proposed new division 2C in part 8 of the Housing Act to provide for charitable donation deeds. Proposed new s 94J of the Housing Act allows a non-profit organisation that is a party to a charitable donation deed for a lot to give the registrar of titles notice of the existence of the deed in the approved form. If given the notice, the registrar must record the existence of the deed in the freehold land register as an administrative advice on the indefeasible title of the land. However, the recording does not prevent a person from registering an interest in a lot, exercising a person's right under a registered interest, or releasing or surrendering a registered interest.

Proposed new s 94I of the Housing Act defines 'non-profit organisation' to mean an incorporated organisation that is:

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<sup>34</sup> Public hearing transcript, Brisbane, 28 November 2022, p 9.

<sup>35</sup> Explanatory notes, pp 4, 13.

<sup>36</sup> Public briefing transcript, Brisbane, 14 November 2022, p 4.

- registered, or is taken to be registered, as a charity under the *Collections Act 1966*, and
- prescribed by regulation for this definition.

Clause 7 inserts proposed new s 35A in the Housing Regulation to prescribe Homes for Homes Limited ACN 143 151 544 as a non-profit organisation for s 94I.

**Committee comment**

The committee is satisfied that there is a sufficient level of parliamentary oversight and scrutiny in relation to prescribing an incorporated organisation that is a non-profit organisation, given the Bill includes the regulation amendment to prescribe Homes for Homes Limited.

## 2.2 Maintaining public confidence in the retirement village industry

### 2.2.1 Proposed new purpose of the *Retirement Villages Act 1999*

The Bill proposes the insertion of an additional purpose (known as an object) into the RV Act: ‘to maintain public confidence in the retirement village industry by enhancing the financial transparency of the operations of retirement villages and the accountability of scheme operators’.<sup>37</sup> The explanatory notes state that the proposed new object would ‘assist with statutory interpretation and decision-making that best achieves purposes of public confidence, financial transparency, and accountability’.<sup>38</sup>

The new object would be in addition to the existing objects of the RV Act, which are set out in Table 1, below.

**Table 1: Existing objects of the *Retirement Villages Act 1999***

Main objects:	Other objects:
<ul style="list-style-type: none"> <li>• to promote consumer protection and fair trading practices in operating retirement villages and in supplying services to residents by:                             <ul style="list-style-type: none"> <li>▪ declaring particular rights and obligations of residents and scheme operators</li> <li>▪ facilitating the disclosure of information to prospective residents of a retirement village to ensure the rights and obligations of the residents and scheme operator may be easily understood</li> </ul> </li> <li>• to encourage the continued growth and viability of the retirement village industry in the state.</li> </ul>	<ul style="list-style-type: none"> <li>• to encourage the adoption of best practice standards by the retirement village industry</li> <li>• to provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion</li> <li>• to facilitate participation by residents, who want to be involved, in the affairs of retirement villages</li> <li>• to provide for processes for resolving disputes between residents and scheme operators.</li> </ul>

Source: *Retirement Villages Act 1999*, s 3.

### 2.2.2 Improving transparency, accountability and consistency in financial reporting

A key policy objective of the Bill is improved transparency, accountability and consistency of financial reporting in retirement villages.<sup>39</sup> To achieve this, the Bill would:

- create a new regulation-making power for financial documents named in the RV Act
- clarify and strengthen existing provisions in the RV Act relating to financial reporting
- increase access to particular village financial documents for village residents, the DCHDE and the public register for retirement villages.<sup>40</sup>

*Having financial information presented in a form that is accessible and easy to understand will generate trust between residents and scheme operators and will reduce the amount of resources dedicated to disputes and inquiries.*

Queensland Retirement Village and Park Advice Service, Caxton Legal Centre  
Submission 4, p 2.

<sup>37</sup> Bill, cl 9.

<sup>38</sup> Explanatory notes, p 5.

<sup>39</sup> Explanatory notes, p 4.

<sup>40</sup> Explanatory notes, p 4.

### 2.2.2.1 *Form and content of financial documents – proposed regulation making power*

The Bill proposes to insert a new Division 9A into the RV Act to permit regulations to be made about retirement village financial documents.<sup>41</sup> The regulation-making power would apply to budgets, quarterly and annual financial statements, audit reports and quantity surveyor reports.<sup>42</sup> The proposed new division contains proposed new ss 113AA and 113AB.

Proposed new s 113AA of the RV Act prescribes a regulation-making power for the form and content of village financial documents, including the following:

- capital replacement fund, maintenance reserve fund and general service chart budgets
- quarterly, annual financial statements and audit report
- quantity surveyors' written reports.<sup>43</sup>

The required details of the form and content of financial documents would be contained in regulation.<sup>44</sup> However, the proposed new section outlines, by way of examples, particular information that may be prescribed by regulation including:

- standards or principles (for example, accounting principles, auditing standards)
- types and presentation of information (for example, classes of income and expenditure, shared expenses)
- comparisons to corresponding items in earlier financial documents
- operator statements or declarations
- disclosure notes (for example, how resident charges are fixed; operator-related party transactions; operator liabilities to former residents)
- explanations for matters (for example, surplus and deficits)
- how information must be presented to assist residents, prospective residents or the DCHDE to understand the information.<sup>45</sup>

Existing provisions in the RV Act allowing for 'approved forms' for budgets and financial statements would be retained.<sup>46</sup>

Under the proposed transitional arrangements, requirements relating to form and content of financial documents that would be prescribed by regulation would not apply to:

- annual financial statements and the audit report of those statements for the financial year ending 30 June 2023<sup>47</sup>
- the adoption of a maintenance reserve fund budget for the financial year ending 30 June 2023.<sup>48</sup>

<sup>41</sup> Bill, cl 23, insertion of proposed new Division 9A into Part 5 of the *Retirement Villages Act 1999* (RV Act).

<sup>42</sup> DCHDE, correspondence, 11 November 2022, p 16.

<sup>43</sup> Bill, cl 23, proposed new s 113AA(3) of the RV Act.

<sup>44</sup> DCHDE, correspondence, 11 November 2022, p 10.

<sup>45</sup> Bill, cl 23, proposed new s 113AA(1)-(2) of the RV Act; DCHDE, correspondence, 11 November 2022, Appendix 2, p 16; Explanatory notes, p 5.

<sup>46</sup> See RV Act, ss 227 and 227AA.

<sup>47</sup> Bill, cl 27, proposed new s 237X of the RV Act.

<sup>48</sup> Bill, cl 27, proposed new s 237V of the RV Act.

### Stakeholder views

The Property Council of Australia (PCA) and the UDIAQ supported the principles of transparency, compliance and trust. However, both associations stress the need for a careful balance to ensure the additional obligations proposed in the Bill do not lead to excessive compliance costs which would need to be recovered from residents or be onerous for operators.<sup>49</sup>

Caxton Legal Centre, which is funded by the DCHDE to operate the Queensland Retirement Village and Park Advice Service, considers having information presented in a form that is transparent and consistent would:

- reduce the opportunity for inappropriate financial practices to be hidden
- assist scheme operators to respond to queries and requests for information
- assist legal and non-legal representatives to provide advice and attempt to resolve disputes at an early stage of the process.<sup>50</sup>

Regarding the specified requirements for the financial documents, the PCA stated:

- The use of the terms ‘approved form’ and ‘prescribed form’ appear to be a duplication (see proposed new s 113AA(1)(a) and (b)).
- Referring to compliance with Australian accounting standards in the examples of standards or principles that may be prescribed in regulation could trigger unnecessarily burdensome obligations for operators (see proposed new s 113AA(1)(c)).<sup>51</sup>

Stakeholder views relating to the matters that may be prescribed in regulation for financial documents (not including quantity surveyor reports which are covered in 2.2.2.2 below) are set out below:

- The changes would result in financial and reporting burden to village operators.<sup>52</sup>
- The proposed requirement that operators provide explanations about any matter that must be included in financial documents, including a surplus or deficit, should be permitted in the form of a summary or opinion, given there may be many reasons for a surplus or deficit in practice.<sup>53</sup>
- The nature of ‘disclosure notes’ should be clarified. The proposed requirement that operators provide disclosure notes about any matter that must be included in financial documents would result in operators’ budgets having pages of notes to the accounts and add significant complexity to them given the number of transactions resulting from some operators’ corporate structure.<sup>54</sup>
- Mandated forms should provide sufficient information as transparency is often reduced by including a large number of items under a cost centre or heading such as ‘garden maintenance’ or ‘salaries’.<sup>55</sup>

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<sup>49</sup> Property Council of Australia (PCA), submission 1; Urban Development Institute of Australia Queensland (UDIAQ), submission 8.

<sup>50</sup> Caxton Legal Centre, submission 4, p 2.

<sup>51</sup> PCA, submission 1, ‘Ambiguity/Duplication’ and ‘Burden on operators’.

<sup>52</sup> UDIAQ, submission 8; PCA, submission 1.

<sup>53</sup> PCA, submission 1, ‘Burden on Operators: s 113AA(2)(e)’.

<sup>54</sup> PCA, submission 1, ‘Ambiguity/Duplication: s 113AA(2)(d)’, ‘Burden on operators: s113AA(2)(d)’.

<sup>55</sup> Caxton Legal Centre, submission 4, p 2.

- The provision permitting regulation to prescribe the way information must be presented in financial documents should be omitted or amended for clarity; or, alternatively, the ‘approved form’ should provide for the preferred presentation.<sup>56</sup>
- The level of detail prescribed in regulation for financial documents should remain at the high level shown in the Bill to avoid overly long and complex documents, which may lead to confusion for residents,<sup>57</sup> or require operators to duplicate information.<sup>58</sup>
- Introducing 4 new lines of income into the financial documents for the general service fund and the maintenance reserve fund would complicate the presentation for operators and residents.<sup>59</sup>
- As residents are most interested in monthly fees, the number of units in each residence category and monthly fees should be introduced into the income documentation.<sup>60</sup>
- Smaller operators would suffer a greater impact from detailed requirements and may need to engage external specialist accounting services, whereas larger operators may have those services in-house.<sup>61</sup> Consideration should be given to exempting smaller villages or operators from onerous or complex requirements, as is done in New South Wales.<sup>62</sup>
- To not limit the pool of auditors available to service the retirement villages industry in Queensland, the particular information required to be included in a document should be limited to information or statements that can in practice be included in an audit report or signed off by an auditor, and not require specialist knowledge or expertise of the RV Act or retirement villages generally.<sup>63</sup>
- Statements or declarations required to be included in documents prepared by a scheme operator should be limited to matters that are within the knowledge of the operator.<sup>64</sup>

#### Departmental response

The DCHDE provided the following response to issues raised by stakeholders in relation to the proposed requirements for financial documents:

- The Bill does not prescribe compliance with Australian Accounting Standards for village financial reports. Stakeholders would be consulted on proposed accounting standards and principles to be prescribed by regulation.
- Explanations for a surplus or deficit in a financial statement are intended to provide relevant information needed for 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. Stakeholders would be consulted on proposed requirements for an explanation of a surplus or deficit to be prescribed by regulation.

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<sup>56</sup> PCA, submission 1, ‘Ambiguity/Duplication’. See proposed new s 113AA(2)(b).

<sup>57</sup> UDIAQ, submission 8, p 3.

<sup>58</sup> PCA, submission 1, ‘Ambiguity/Duplication: Section 113AA(2)’.

<sup>59</sup> Association of Residents of Queensland Retirement Villages, public hearing transcript, Brisbane, 28 November 2022, p 6.

<sup>60</sup> Association of Residents of Queensland Retirement Villages, public hearing transcript, Brisbane, 28 November 2022, p 6.

<sup>61</sup> PCA, submission 1; UDIAQ, submission 8.

<sup>62</sup> PCA, submission 1, ‘Burden on Operators: Section 113AA(2)’.

<sup>63</sup> PCA, submission 1, ‘Ambiguity/Duplication: s 113AA(2)(a)’.

<sup>64</sup> PCA, submission 1, ‘Ambiguity/Duplication: s 113AA(2)(c)’.

- 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 regulation will consider the applicability and workability of new disclosure requirements given the different corporate structures of retirement villages, and the objects of the RV Act.<sup>65</sup>

### **Committee comment**

The committee notes the concerns raised by some submitters and encourages the Queensland Government to continue to consult with key stakeholder groups on the drafting of the proposed amendment.

The committee believes that financial documents and statements available to residents must be clear and appropriate so that vulnerable older people especially can understand how operators are managing the village finances.

### **Recommendation 5**

That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with scheme operators, residents and other key stakeholders when drafting the proposed amending regulation to ensure that financial documents and statements available to scheme operators and residents are clear and appropriate.

#### **2.2.2.2 Quantity Surveyor Reports**

The Bill would impact those eligible to prepare quantity surveyor reports for the retirement village industry, the form and content of those reports, how they would be used and to whom they must be provided:

- Operators would be required to have regard to the quantity surveyor report when adopting the capital replacement fund budget.<sup>66</sup>
- A new definition in the Bill would mean that quantity surveyors servicing the retirement village industry must be a member or fellow of the Australian Institute of Quantity Surveyors<sup>67</sup> to 'ensure that an industry code of conduct and professional standards apply to the independent quantity surveyors preparing reports on village capital and maintenance'.<sup>68</sup>
- Quantity surveyor reports relating to a retirement village's capital replacement fund or maintenance reserve fund obtained or updated on or after 1 July 2023 would be kept on the public register for at least 10 years.<sup>69</sup>
- Residents would have access to any quantity surveyors report used to prepare draft budgets.<sup>70</sup>
- The operator would be required to provide quantity surveyor reports about a retirement village's expected capital replacement costs or expected maintenance costs for the next 10 years to the chief executive of the responsible department<sup>71</sup> (chief executive) within 5 months after the end of each financial year, with a maximum penalty for each report of 200 penalty units (\$28,750) for non-compliance.<sup>72</sup> Under proposed transitional arrangements,

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<sup>65</sup> DCHDE, correspondence, 25 November 2022, pp 13-14.

<sup>66</sup> Bill, cl 15.

<sup>67</sup> Bill, cl 28(2).

<sup>68</sup> Explanatory notes, p 6.

<sup>69</sup> Bill, cls 11 and 27, proposed new s 237T of the RV Act.

<sup>70</sup> Bill, cl 23, proposed new s 113AB(1) of the RV Act.

<sup>71</sup> Currently the Department of Communities, Housing and Digital Economy.

<sup>72</sup> Bill, cls 14 and 17; RV Act, s 35(3).

this provision would not apply to quantity surveyor reports obtained or updated before 1 July 2023.

- Independent quantity surveyors' written reports used by a scheme operator to determine the expected capital replacement costs and expected maintenance repair costs for the village for the next 10 years would be considered a 'financial document' and would be required to comply with any requirements set out in regulation or approved forms.<sup>73</sup>
- Operators would be required to ensure the annual quantity surveyor written report complies with a proposed regulation relating to the content of financial documents.<sup>74</sup>

#### Stakeholder views

The Australian Institute of Quantity Surveyors (AIQS) was supportive of the Bill. To increase financial transparency and accountability, the AIQS suggested the following information should be required inclusions in quantity surveyor reports:

- additional explanation for those assets that are of a capital nature in their entirety but parts of which may require maintenance
- explanations of 'remaining useful life' as opposed to 'technical obsolescence' of each asset
- identification of priority maintenance and the reasons for it
- definition of what residents are and are not responsible for.<sup>75</sup>

In relation to the inclusion of quantity surveyor reports under the meaning of 'financial documents', which would allow a regulation to prescribe the form and content of those reports,<sup>76</sup> stakeholders expressed the following views:

- The inclusion is a positive step as it would enable residents to understand the basis on which draft budgets are being produced.<sup>77</sup>
- The government should conduct consultation on any specific requirements imposed by regulations on the form and content of quantity surveyor reports to ensure they are suitable and practical to quantity surveyors.<sup>78</sup>
- The proposed requirements may increase the cost of quantity survey reports, which would be passed on to residents.<sup>79</sup>
- If a quantity surveyor does not have any prior knowledge of the particular retirement village, the measure would lead to an increase in costs<sup>80</sup> and be counterproductive.<sup>81</sup>

<sup>73</sup> Bill, cl 23, proposed new s 113AA(3) of the RV Act. See also RV Act, ss 92(1) and 98(1).

<sup>74</sup> Bill, cl 17; Bill, cl 23, proposed new s 113AA(2) of the RV Act.

<sup>75</sup> Australian Institute of Quantity Surveyors (AIQS), submission 6.

<sup>76</sup> See Bill, cl 23, proposed new s 113AA of the RV Act, and s 113AA(3) in particular.

<sup>77</sup> Caxton Legal Centre, submission 4, p 2.

<sup>78</sup> UDIAQ, submission 8, p 2.

<sup>79</sup> UDIAQ, submission 8, p 2.

<sup>80</sup> UDIAQ, submission 8, p 2; PCA, submission 1, 'Quantity surveyor'.

<sup>81</sup> PCA, submission 1, 'Quantity surveyor'.

- Prescriptive rules should be provided for quantity surveyors to ensure they are providing professional and transparent reports.<sup>82</sup>

*... there are only a limited number of quantity surveyors who are sufficiently experienced in the field of retirement villages. In regional Queensland this would likely be impractical, given the size of some markets.*

Urban Development Institute of Australia Queensland, submission 8, p 2.

As to the proposed requirement that operators provide the chief executive with quantity surveyor reports, the PCA noted:

- Obtaining updated quantity surveyor reports during construction of new retirement village schemes only for the purpose of complying with the proposed requirements would add to administration and compliance costs for operators.
- The Bill does not provide a clear objective for the chief executive receiving quantity surveyor reports and placing them on the retirement villages register or the benefits of accessing historical quantity surveyor reports on an ongoing basis.
- As an alternative to annual lodgement, Schedule 5 of the Retirement Villages Regulation 2018 should be amended to prescribe the quantity survey reports for the last 3 financial years as 'operational documents' that a resident or prospective resident is able to inspect under s 85 of the RV Act.<sup>83</sup>

#### Departmental response

The DCHDE advised that it proposes to work with the AIQS and operator and resident groups in relation to guidelines for quantity surveyor reports under the RV Act. Further, the DCHDE would consult with stakeholders on a proposed amendment regulation, including any proposed requirements relating to quantity surveyor reports. In relation to specific stakeholder comment, the DCHDE advised:

- Depending on the timeframe between registration of a new 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 Bill would require these updated quantity surveyor reports to be given to the chief executive and included on the register.
- Under s 35 of the RV Act, key records for each registered retirement village scheme, including annual documents, are to be kept on the retirement village register for at least 10 years.
- The consultation draft Amendment Regulation 2021 provided to stakeholders proposed prescribing the quantity surveyor reports as 'operational documents' under s 85 of the RV Act that a resident or prospective resident may access by request, and that would be considered as an additional means of access in the proposed new amendment regulation.<sup>84</sup>

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<sup>82</sup> AIQS, submission 6.

<sup>83</sup> PCA, submission 1, 'Burden on operators: Sections 35(2)(c), 92(8) and 98(8)'.

<sup>84</sup> DCHDE, correspondence, 25 November 2022, pp 11-12, 19.

**Committee comment**

The committee notes concerns raised by stakeholders about whether there will be a sufficient number of suitably qualified and independent quantity surveyors in Queensland, especially in regional Queensland. The committee also notes that in smaller communities, there are quantity surveyors already working for village operators.

**Recommendation 6**

That the Minister for Department of Communities, Housing and Digital Economy consider amending the definition of ‘quantity surveyor’ to narrow the likelihood of a conflict of interest where the number of available/qualified quantity surveyors is limited.

**Committee comment**

The committee notes the input from stakeholders who have warned of the potential for any extra costs associated with additional financial reporting requirements to be passed onto vulnerable village residents, many of whom are under financial stress due to rising costs of living, have no additional income and are at risk of being ostracised in their community or by their village operator for speaking out or complaining.

**Recommendation 7**

That the Minister for Department of Communities, Housing and Digital Economy consider compliance measures to ensure any extra costs associated with the proposed financial reporting requirements are not passed onto retirement village residents.

**2.2.2.3 Compliance with the Legislative Standards Act 1991****Institution of Parliament—Delegation of legislative power—Regulation**

As noted previously, cl 23 would insert proposed new division 9A into part 5 of the RV Act, which includes proposed new s 113AA. Under that section, a financial document must be in the approved form; and include the information prescribed for the document by regulation; and be prepared in accordance with standards or principles prescribed for the document by regulation.

According to the explanatory notes, prescribing the form and content of financial documents in regulation is justified:

... due to the technical nature of describing the relevant particulars, such as details about income and expenditure, standards, and disclosure notes. It is also appropriate for the detailed requirements to be kept together in the regulation as it will be easier for operators to access the information and determine their obligations. Including these details in a regulation will take place after further consultation with stakeholders, including operators’ financial officers, on the regulation amendments to ensure relevance and workability across all villages.<sup>85</sup>

A financial document must be prepared in accordance with standards or principles prescribed for the document by regulation.

If subordinate legislation, such as the proposed regulation, refers to a document that is not reproduced in full in the subordinate legislation, and changes can be made to that document without

<sup>85</sup> Explanatory notes, p 8.

it being brought to the attention of the Legislative Assembly, the relevant subordinate legislation may be considered to have insufficient regard to the institution of Parliament.<sup>86</sup>

The explanatory notes argue that:

The regulation-making power to prescribe Australian Auditing Standards for the annual financial statement audit report is consistent with the existing requirement at section 113(3) of the [RV Act], and will allow all prescribed requirements for an audit report to sit together in the regulation. The Australian Auditing Standards will continue to apply to an audit report regardless of whether a regulation is in place. The regulation may specify appropriate accounting standards and principles for annual financial statements, including any reference to Australian Accounting Standards.<sup>87</sup>

The committee notes that in determining whether it is appropriate for matters to be dealt with by an instrument that is not subordinate legislation, committees have taken into account the importance of the subject dealt with and the practicality or otherwise of including those matters in subordinate legislation.<sup>88</sup>

### **Committee comment**

The committee is satisfied that the delegation of legislative power and the incorporation of an external document (i.e. the standards or principles) is justified due to the technical nature of the form and content of financial documents, and the fact that the Australian Auditing Standards will continue to apply regardless of whether the regulation is in place, and they are readily available online.

#### **2.2.2.4 Clarification and strengthening of existing financial reporting requirements**

A number of proposed provisions in the Bill aim to clarify the intended operation of some existing provisions in RV Act and thus strengthen the DCHDE compliance oversight, including enforcing existing penalties.<sup>89</sup> The following existing obligations on operators would be made clearer:

- the requirement to carry forward a surplus or deficit into next year's budget before fixing the next year's total general services charge for residents and before the consumer price increase percentage increase cap is applied<sup>90</sup>
- the requirement to accumulate money in the capital replacement fund<sup>91</sup>
- the requirement to fix a reasonable amount for the capital replacement fund contribution and pay that amount into the capital replacement fund each financial year from the scheme operator's own money.<sup>92</sup>

#### **Stakeholder views**

- The clarifications support an interpretation of the legislation that is fair and protects the interests of vulnerable older Queenslanders.<sup>93</sup>

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<sup>86</sup> See *Legislative Standards Act 1992*, ss 4(2)(b), 4(5)(e).

<sup>87</sup> Explanatory notes, p 8.

<sup>88</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook), p 170.

<sup>89</sup> DCHDE, correspondence, 11 November 2022, pp 14-15.

<sup>90</sup> Explanatory notes, p 15; Bill, cl 19, amending s 102A of the RV Act.

<sup>91</sup> Bill, cl 15, amending s 93 of the RV Act.

<sup>92</sup> Bill, cls 15 and 28, amending s 93 and the schedule (Dictionary) of the RV Act; Bill, cl 16, amending s 94 of the RV Act.

<sup>93</sup> Caxton Legal Service, submission 4, p 3.

- Money for the capital replacement fund should be provided on an as-needs basis and not be required to be put aside at the beginning of the financial year.<sup>94</sup>
- A surplus in the maintenance reserve should carry forward each year to cover unexpected events, and not be used to reduce contributions.<sup>95</sup>
- Any surplus in the general service fund should be applied as a lump sum offset to the fees, in a one-off situation, as opposed to being applied against the monthly fees on a monthly basis.<sup>96</sup>

#### 2.2.2.5 *Increased access to village financial documents*

Under the Bill, all retirement village residents would be able to request copies of draft budgets for 3 village funds: the capital replacement fund, the maintenance reserve fund, and the general services charges fund.<sup>97</sup> The request would be required to be made 28 days before the beginning of a financial year and provided by the operator 14 days before the beginning of the financial year.<sup>98</sup> Currently, residents committees are able to request and obtain those draft budgets, but they are not available to all residents.<sup>99</sup>

Residents are already able to request the scheme operator to provide quarterly financial statements for the current financial year or for the last 2 completed financial years.<sup>100</sup> Currently, operators need only list income and expenditure for the 3 village funds on those statements.<sup>101</sup> Under proposed transitional provisions, that position would remain for quarterly financial statements received by the scheme operator before commencement of the Act the Bill would establish.<sup>102</sup> Under the Bill, the quarterly financial statements would be required to comply with the new form and content requirements discussed in section 2.2.2.1 above, and either have been audited or be in a form that is capable of being audited.<sup>103</sup>

In regard to annual financial statements, currently a scheme operator must call an annual meeting of the residents to present the annual financial statement as soon as practical after the annual financial statements are available.<sup>104</sup> Under the Bill, for financial statements relating to financial years ending after 1 July 2023, the operator would also be required to present an audit report to the annual financial statement at the annual residents meeting.<sup>105</sup>

The Bill would require the scheme operator to also provide all residents and residents committees with the quantity surveyor reports used to prepare the draft budgets, if asked in writing to do so.<sup>106</sup> Access to the quantity surveyor reports would enable residents and residents committees to better scrutinise the capital replacement fund and maintenance reserve fund budgets and the funds'

<sup>94</sup> Association of Residents of Queensland Retirement Villages, public hearing transcript, Brisbane, 28 November 2022, p 6.

<sup>95</sup> Association of Residents of Queensland Retirement Villages, public hearing transcript, Brisbane, 28 November 2022, p 6.

<sup>96</sup> Association of Residents of Queensland Retirement Villages, public hearing transcript, Brisbane, 28 November 2022, p 6.

<sup>97</sup> Bill, cl 23, proposed new s 113AB(1) of the RV Act.

<sup>98</sup> Bill cl 23, proposed new s 113AB of the RV Act.

<sup>99</sup> RV Act, ss 93(3), 99(4), 102A(4).

<sup>100</sup> RV Act, s 112.

<sup>101</sup> RV Act, s 112.

<sup>102</sup> Bill, cl 27, proposed new s 237W of the RV Act.

<sup>103</sup> Bill, cl 22.

<sup>104</sup> RV Act, s 131.

<sup>105</sup> Bill, cl 25; cl 27, proposed new s 237Y of the RV Act.

<sup>106</sup> Bill, cl 23, proposed new s 113AB.

performance.<sup>107</sup> Access to the quantity surveyor reports would also assist residents and residents committees to monitor whether the operators are complying with the RV Act.<sup>108</sup>

The Bill proposes that the operator would be required to provide quantity surveyor reports obtained or updated on or after 1 July 2023 to the DCHDE annually and that the reports be published on the public register for retirement villages kept by the chief executive.<sup>109</sup> Additionally, audit reports would also be required to be published on the public register.<sup>110</sup>

### Stakeholder views

Caxton Legal Centre considered access to financial documents in an improved simplified format to be an important part of ensuring transparency and accountability in retirement village financial reporting.<sup>111</sup>

Regarding the proposed requirement that operators provide residents with draft budgets 14 days before the beginning of a financial year, the PCA expressed the following views:

- Some budget items will not be known 14 days prior to the start of a new financial year.
- The provision may duplicate existing consultation obligations of operators.
- The provision should allow for the draft to be both completed and compliant with the proposed new form and content requirements as far as practicable.
- Operators should be able to comply with such requests by providing the requested draft budgets in a communal area or by another method of mass distribution, such as through a residents committee.
- Transitional provisions should clarify whether the provision would apply to draft budgets for the first intended financial year of operation of the Bill.<sup>112</sup>

In relation to the provision to residents of audited or auditable quarterly financial statements, the PCA asserted:

- An operator would be unlikely to be able to deliver quarterly financial statements audited in the required format within 28 days.
- Quarterly audits would incur a significant cost for the operator.

### Departmental response

The DCHDE provided the following responses to issues raised by stakeholders relating to increased access to financial village documents:

- The Bill does not change the existing requirement for a quarterly financial statement to be given to a resident within 28 days to be audited or capable of being audited.
- 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.

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<sup>107</sup> DCHDE, correspondence, 11 November 2022, p 9.

<sup>108</sup> DCHDE, correspondence, 11 November 2022, p 9.

<sup>109</sup> Bill, cl 11; see also RV Act, s 35; Bill, cl 27, proposed new s 237T of the RV Act.

<sup>110</sup> Bill, cl 11; see also RV Act, s 35.

<sup>111</sup> Caxton Legal Centre, submission 4, p 3.

<sup>112</sup> PCA, submission 1, 'Burden on operators: Section 113AB(2)(b)'.

- The requirement for an operator to provide draft budgets and a quantity surveyor’s written report to a resident or residents committee would take effect on commencement of the Act the Bill would establish.<sup>113</sup>

### 2.2.3 Providing for the chief executive to make and publish guidelines

The Bill would delegate power to the chief executive to make guidelines, which would be published on the department’s website. Those guidelines would inform persons about:

- the attitude the chief executive is likely to adopt on a particular matter
- how the chief executive administers the RV Act
- matters that may help a person comply with their obligations or responsibilities, or lawfully and appropriately exercise powers under the RV Act.<sup>114</sup>

The guidelines would have no legal effect and the provision would not extend the existing power of the chief executive to make non-binding guidelines.<sup>115</sup>

#### Stakeholder views

Stakeholder views on the proposed power for the chief executive to make and publish guidelines varied. The Caxton Legal Service welcomed the proposed amendment and anticipated the guidelines would:

- provide clarity for operators and residents as to their respective obligations under the RV Act
- promote consistency in interpretation of the legislation
- potentially reduce the need for time-consuming and costly disputes.<sup>116</sup>

The PCA asserted that the proposed provisions should not be included in the RV Act because:

- endorsing the guidelines in legislation would create the impression that they have the force of law or are binding on operators and or residents<sup>117</sup>
- if the guidelines were incorrect or did not reflect the true legal position or take a position not made clear in the RV Act, the effect would be to cause confusion for the industry as a whole, and to potentially cause loss to persons who rely on them.<sup>118</sup>

#### Departmental response

In response to stakeholder comments, the DCHDE provided the following assurances:

- under the proposed new section, guidelines made by the chief executive must be not inconsistent with the RV Act
- the proposed new section clearly articulates the purpose of guidelines and their status
- the purpose and status of the guidelines would be stated in any guidelines made and published by the chief executive
- stakeholders would be consulted on the financial guidance material for the RV Act and subsequent regulation.<sup>119</sup>

<sup>113</sup> DCHDE, correspondence, 25 November 2022, pp 12-13. See proposed s 113AB of the RV Act.

<sup>114</sup> Bill, cl 26, inserting proposed new s 226 into the RV Act.

<sup>115</sup> Explanatory notes, p 6.

<sup>116</sup> Caxton Legal Centre, submission 4, p 3.

<sup>117</sup> PCA, submission 1, ‘Guidelines by chief executive’.

<sup>118</sup> PCA, submission 1, ‘Guidelines by chief executive’.

<sup>119</sup> DCHDE, correspondence, 25 November 2022, p 15. See also bill, cl 26.

### **Committee comment**

It is important that the proposed guidelines to be made and published by the chief executive are clear and appropriate in order for industry, operators and residents to understand their obligations under the RV Act.

### **Recommendation 8**

That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with key stakeholders to ensure that all guidelines created under the *Retirement Villages Act 1999* are clear and useful for both retirement village scheme operators and residents.

#### **2.2.3.1 Compliance with the Legislative Standards Act 1991**

##### **Institution of Parliament—Delegation of legislative power**

The chief executive would be able to make the guidelines without their content coming to the attention of the Legislative Assembly and they would cover quite broad and unspecific matters. Accordingly, the committee considered whether the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly, and whether the provision has sufficient regard to the institution of Parliament.<sup>120</sup>

Although the explanatory notes do not justify whether the clause has sufficient regard to the institution of Parliament, the notes state that the guidelines:

... aim to communicate to operators, residents and other stakeholders in a consistent, public and transparent way, what the chief executive understands is required by the RV Act, to make clear how the chief executive understands obligations can be met and so reduce the opportunity for time-consuming and costly disputes.<sup>121</sup>

### **Committee comment**

The committee notes that the chief executive would be required to publish the guidelines on the DCHDE website. The committee is satisfied that delegating the power to make guidelines to the chief executive is justified, such that in this respect the Bill has sufficient regard to the institution of Parliament.

#### **2.2.4 Proposed new offences and penalties**

The Bill proposes 5 new offences. Under the Bill, it would be an offence for the scheme operator not to:

- give the chief executive a copy of the full or updated independent quantity surveyor's written report about the expected capital replacement costs for the village for the next 10 years within 5 months after the end of each financial year<sup>122</sup>
- have regard to the quantity surveyor report, comply with the proposed regulation regarding the form and content of financial documents, 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<sup>123</sup>

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<sup>120</sup> See *Legislative Standards Act 1991*, ss 4(2)(b), 4(4)(b), 4(5)(e).

<sup>121</sup> Explanatory notes, p 17.

<sup>122</sup> Bill, cl 14, amending s 92 of the RV Act.

<sup>123</sup> Bill, cl 15, amending s 93 of the RV Act. See Bill, cl 23 re proposed s 113AA of the RV Act: Form and content of financial documents.

- give the chief executive a copy of the full or updated independent quantity surveyor’s written report about the expected maintenance and repair costs for the village for the next 10 years within 5 months after the end of each financial year<sup>124</sup>
- adopt a general services charge budget that complies with existing requirements to raise a reasonable amount to provide for general services and fix the contribution amount, and comply with the proposed regulation regarding the form and content of financial documents<sup>125</sup>
- prepare and give a resident, or the residents committee, a copy of the draft budget and a copy of any independent quantity surveyor’s written report the operator had regard to for the draft budget.<sup>126</sup>

In addition, cl 21 of the Bill adds a condition to an existing provision in s 112 of RV Act which requires an operator to give a resident a quarterly financial statement within 28 days after receiving the request to state that the document must comply with the proposed regulation regarding the form and content of financial documents.<sup>127</sup>

### Stakeholder views

The Caxton Legal Centre considered penalty provisions relating to the provision of documents to residents and to the chief executive as a positive step, but warned:

- for penalties to be effective they must be seen to be enforced
- the efficacy of penalties would depend on the regulator being appropriately resourced and trained to respond to breaches of those provisions.<sup>128</sup>

#### 2.2.4.1 Compliance with the Legislative Standards Act 1991

##### Proportionality and reasonableness of the penalties – rights and liberties of individuals

To be satisfied that the Bill has sufficient regard to individuals’ rights and liberties as required under the *Legislative Standards Act 1992*,<sup>129</sup> the committee considered whether the proposed penalties are proportionate and relevant to the offences.<sup>130</sup> The explanatory notes clarify that the amendments to penalties address inconsistencies, so that similar penalties apply to all 3 fund budget requirements.<sup>131</sup>

All the proposed new offences have a maximum penalty of 200 penalty units (currently, \$28,750). As previously noted, cl 21 of the Bill amends s 112 of the RV Act, which has an existing maximum penalty of 100 penalty units (currently, \$14,375).

Existing offences in the RV Act attract maximum penalties ranging from 10 penalty units (for example, a new scheme operator failing to give notice to residents of the retirement village)<sup>132</sup> and 100 penalty units (for example, failing to give notice of a proposal to close a retirement village)<sup>133</sup> to 540 penalty units (currently, \$71,875) (for example, for operating an unregistered retirement village scheme).

<sup>124</sup> Bill, cl 17, amending s 98 of the RV Act.

<sup>125</sup> Bill, cl 19, amending s 102A of the RV Act. See Bill, cl 23 re proposed s 113AA of the RV Act: Form and content of financial documents.

<sup>126</sup> Bill, cl 23, proposed new s 113AB of the RV Act.

<sup>127</sup> Bill, cl 21, amending s 112 of the RV Act. See Bill, cl 23 re proposed s 113AA: Form and content of financial documents.

<sup>128</sup> Caxton Legal Centre, submission 4, p 3.

<sup>129</sup> *Legislative Standards Act 1991*, s 4(2)(a).

<sup>130</sup> See OQPC Notebook, p 120.

<sup>131</sup> Explanatory notes, p 8.

<sup>132</sup> RV Act, s 41J.

<sup>133</sup> RV Act, s 40A.

The penalties of 200 and 100 penalty units proposed in the Bill, therefore, fall within the range of penalties that currently exist under the RV Act. The proposed penalties also appear to be scaled, with the more serious offences under cls 14, 15, 17, 19 and 23 of the Bill attracting higher penalties than the less serious existing offence amended by cl 21.

### **Committee comment**

The committee is satisfied that the penalties proposed for the provisions are reasonable and proportionate, such that the provisions have sufficient regard to the rights and liberties of individuals.

### **2.2.5 Transitional arrangements**

The Bill proposes transitional arrangements for the application of the measures proposed in the Bill. The proposed timelines of the transitional arrangements are set out in Table 2 below.

**Table 2: Proposed timing of application of provisions**

Provision	Proposed Application
Requirement for copies of an independent quantity surveyor’s written report to be given to the chief executive	Would not apply to an independent quantity surveyor’s written report obtained or updated before 1 July 2023
Requirement to give a copy of an amended village comparison document to the chief executive	Would not apply to amendments made before the commencement of the Act the Bill would establish  (existing s 75(5) of the RV Act would continue to apply)
Requirement for a maintenance reserve fund budget to comply with proposed new s 113AA regarding form and content of financial documents	Would not apply to the adoption of maintenance reserve fund budgets for the financial year ending 30 June 2023  (existing s 99(1) of the RV Act would continue to apply)
Requirement to, upon request, give a resident a quarterly financial statement for each quarter that complies with proposed new s 113AA regarding form and content of financial documents	Would not apply to a request received before the commencement of the Act the Bill would establish  (existing s 112(2) would continue to apply)
Requirement for annual financial statements to comply with proposed new s 113AA regarding form and content of financial documents and for the audit report of that statement to be prepared in accordance with the Australian Auditing Standards	Would not apply to annual financial statements or their audit reports for the financial year ending 30 June 2023  (existing s 113 would continue to apply)
Requirement to present an audit report to the annual financial statements at the annual meeting of residents of the retirement village	Would not apply to annual meetings at which an annual financial statement for a financial year ending before 1 July 2023 is presented  (existing s 131(1) and (4) would continue to apply)

Source: Housing Legislation Amendment Bill 2022, cl 27, proposed new ss 237T, 237U, 237V, 237W, 237X, 237Y.

### Stakeholder views

Stakeholders expressed the following views regarding the proposed transitional provisions:

- Operators need certainty that the regulations would not commence prior to 1 July 2023.<sup>134</sup>
- It is imperative that operators are given enough time to comply with the new rules.<sup>135</sup>
- Transitional provisions do not go far enough.<sup>136</sup>
- There are no transitional provisions to reflect the DCHDE's commitment that the new requirements would apply only from the financial year 2023-24 onwards.<sup>137</sup>
- Transitional provisions should clearly indicate when each obligation commences to avoid confusion for operators and residents.<sup>138</sup>
- Transitional provisions have not been provided for the main section that would impact operators (s 113AA, which requires financial documents including budgets to be in the approved form and contain prescribed information as set out in the regulations).
- The transitional provisions should clarify whether the draft budgets would be required to comply with for the first intended financial year for the reforms (2023-24).<sup>139</sup>

### Departmental response

In response to stakeholder submissions, the DCHDE advised:

- The requirement to provide draft budgets and an independent quantity surveyor's written report to a resident or residents committee (proposed new s 113AB of the RV Act) would take effect on commencement of the Act that the Bill would establish.<sup>140</sup>
- The 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.<sup>141</sup>
- The DCHDE will take a supportive and capacity-building approach with operators regarding compliance with new reporting requirements.<sup>142</sup>

### **Committee comment**

The committee notes that stakeholders are seeking clarity about the timing of the proposed transitional provisions and the committee encourages the Queensland Government to provide clarity and certainty to stakeholders.

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<sup>134</sup> UDIAQ, submission 8, p 2.

<sup>135</sup> PCA, submission 1, 'Lack of transitional provisions'.

<sup>136</sup> UDIAQ, submission 8, p 2.

<sup>137</sup> PCA, submission 1, 'Lack of transitional provisions'.

<sup>138</sup> PCA, submission 1, 'Lack of transitional provisions'.

<sup>139</sup> PCA, submission 1, 'Burden on operators: Section 113AB(2)(b)'.

<sup>140</sup> DCHDE, correspondence, 25 November 2022, p 13.

<sup>141</sup> DCHDE, correspondence, 25 November 2022, p 6.

<sup>142</sup> DCHDE, correspondence, 25 November 2022, p 6.

### **Recommendation 9**

That the responsible department (currently the Department of Communities, Housing and Digital Economy) continue to consult with key stakeholders to ensure the proposed transitional arrangements are clear, appropriate and reasonable.

## **2.3 Compliance with fundamental legislative principles and human rights**

The committee has examined the Bill and considered the application of FLPs contained in Part 2 of the *Legislative Standards Act 1992* to the Bill. Where relevant, matters arising of FLP are discussed in sections 2.1 and 2.2 of this report, above.

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill and examined for compliance by the committee.

### **Committee comment**

The committee is satisfied the explanatory notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee has examined the Bill for human rights compatibility.

### **Committee comment**

The committee notes that the Bill does not limit any human rights protected by the *Human Rights Act 2019* (HRA). It is therefore unnecessary to consider whether the limitations are justified under s 13 of the HRA.

The HRA requires that a statement of compatibility must be tabled for a Bill.<sup>143</sup> The committee has examined the statement of compatibility tabled with the introduction of the Bill.

### **Committee comment**

The committee is satisfied the statement of compatibility tabled with the introduction of the Bill provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

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<sup>143</sup> *Human Rights Act 2019*, s 38.

## Appendix A – Role of the committee, inquiry referral and process

### The Community Support and Services Committee

The Community Support and Services Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>144</sup>

The committee's areas of portfolio responsibility are:

- Communities, Housing, Digital Economy and the Arts
- Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
- Children, Youth Justice and Multicultural Affairs.

The functions of a portfolio committee include the examination of Bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of FLPs
- matters arising under the HRA
- for subordinate legislation – its lawfulness.<sup>145</sup>

### Inquiry referral and process

Following the referral of the inquiry to the committee on 27 October 2022, the committee invited stakeholders and subscribers to make written submissions on the Inquiry on 2 November 2022. Eight submissions were received.

The committee received written advice from the DCHDE to the terms of reference of the inquiry, and a written response to submissions received by the committee.

The committee received a public briefing about the Inquiry from the DCHDE on 14 November 2022. A transcript is published on the committee's web page; see Appendix C for a list of officials.

The committee held a public hearing in Brisbane on 28 November 2022.

See Appendix D for a list of witnesses.

The submissions, correspondence from the DCHDE and transcripts of the briefing and hearings are available on the committee's webpage.

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<sup>144</sup> *Parliament of Queensland Act 2001*, s 88; Standing Order 194.

<sup>145</sup> *Parliament of Queensland Act 2001*, s 93; *Human Rights Act 2019*, ss 39, 40, 41 and 57.

## Appendix B – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Property Council of Australia
002	Homes for Homes
003	REIQ
004	Caxton Legal Centre Inc
005	Jim McCoombes
006	Australian Institute of Quantity Surveyors
007	Queensland Law Society
008	Urban Development Institute of Australia Queensland

## Appendix C – Officials at public departmental briefing

### Department of Communities, Housing and Digital Economy

- Mrs Mary-Anne Curtis, Associate Director-General, Housing and Homelessness Services
- Ms Ange Wright, Acting Executive Director, Strategic Policy and Legislation, Housing and Homelessness Services
- Mr Damian Sammon, Director, Legislation and Reform, Housing and Homelessness Services
- Ms Lisa Pollard, Manager, Legislation and Reform, Housing and Homelessness Services

## **Appendix D – Witnesses at public hearing**

### **Homes for Homes**

- Ms Tracy Longo, National Operations Manager

### **Association of Residents of Queensland Retirement Villages**

- Mr Leslie Ambor, Treasurer

### **Queensland Law Society**

- Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance
- Ms Wendy Devine, Principal Policy Solicitor

### **Property Council of Australia**

- Mr Robin Lyons, Deputy Chair, Queensland Retirement Living Committees
- Ms Rachel Ponting, Senior policy Adviser

### **Caxton Legal Centre Inc**

- Mrs Amanda Hess, Senior Lawyer, Queensland Retirement Villages and Parks Advice Service
- Miss Venetia Brown, Lawyer, Queensland Retirement Villages and Parks Advice Service