

Housing Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of this Bill is the Housing Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

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

The Housing Strategy aims to ensure confidence in housing markets, ensure consumers are protected and the housing legislative framework is reformed and modernised.

The Housing Legislation Amendment Bill 2022 (the Bill) helps meet objectives of the Housing Strategy by:

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

The *Queensland Housing and Homelessness Action Plan 2021-2025* at Action 17 commits the Government to finalise implementation of retirement village reforms to village financial statements.

The Bill amends the:

- *Housing Act 2003* (Housing Act)
- *Housing Regulation 2015* (Housing Regulation)
- *Retirement Villages Act 1999* (RV Act).

Housing Act amendments to enable establishment of Homes for Homes (donation deed model) in Queensland

Homes for Homes Limited (Homes for Homes) is an independent, not-for-profit social enterprise established by The Big Issue (a street magazine sold by homeless people). Homes for Homes generates private sector revenue to invest in social and affordable housing projects by securing voluntary donations from landowners, including property developers, upon sale of a participating property.

One of the policy objectives of the Bill is to amend legislation to support the establishment and operation of the Homes for Homes donation deed model in Queensland. The initiative operates in other jurisdictions, including New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory. Under the model, landowners and property developers can voluntarily enter into a ‘donation deed’ to make a tax-deductible donation of 0.1 per cent of the sale price of their property at the time of sale. Support for the Homes for Homes initiative is consistent with the Housing Strategy objective of boosting the supply of affordable housing.

A key feature of the Homes for Homes initiative in other jurisdictions is the use of a permissive caveat on the land title to remind selling property owners to make the voluntary donation under the donation deed, and to perpetuate the participation of the property in the initiative. A caveat is a notice to the Registrar of Titles identifying that a party other than the registered owner of land is claiming an interest in that land. The caveat may prevent the registration of some dealings with the property, for example a transfer or sale, or a mortgage being taken out against the land until such time as a court is able to determine the rights of the parties, or the caveat is otherwise withdrawn, lapses or is cancelled.

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 as it does in other states and territories. In Queensland, an equitable mortgagee can only lodge a caveat susceptible to lapsing after three months under section 126 of the *Land Title Act 1994*.

However, 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.

An Administrative Advice would serve to notify persons dealing with the land that the owner has entered into the voluntary donation deed. In this manner, it is like a caveat in respect of its notification function. An Administrative Advice, though serving as a notification, does not serve to make the donation deed bind successors in title. Instead, it acts 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 agreed to donate a portion of the sale price to Homes for Homes.

One of the objectives of the Bill is to amend the Housing Act to allow the recording of an Administrative Advice noting the existence of a voluntary donation deed under which a landowner agrees to donate a portion of the sale price of their property to Homes for Homes to use to increase the supply of social and affordable dwellings in Queensland.

Improving financial reporting in Queensland retirement villages

The policy objectives of the Bill in relation to retirement villages are to:

1. address limitations in the RV Act’s existing provisions and regulation-making power for achieving the policy goal of more transparent, accountable, and consistent financial reporting
2. improve financial transparency of village operations by increased access to financial documents
3. strengthen public confidence in a financially transparent and accountable retirement village industry.

Background and context for retirement villages reform

The RV Act establishes the regulatory framework for the operation of retirement village schemes in Queensland. The RV Act places obligations on scheme operators for keeping of village funds for general services, maintenance and capital replacement, fund budgets and related quantity surveyor reports, quarterly financial statements, audited annual financial statements and audit reports. Residents and resident committees have rights to information, consultation, and some decision-making by special resolution in relation to budgets and financial statements.

Under the retirement village model, residents make a significant initial financial investment and also pay ongoing fees. In addition to paying an ingoing contribution for a right to reside or purchase price for the unit, residents pay ongoing fees and charges for general services, including for staff and village operations, and for village maintenance. Replacement of capital items may be funded all or in part from the residents' ingoing contributions paid to the operator. The levying of the ongoing fees is on a cost-recovery basis, with the operator's profit taken when the resident departs in the form of an 'exit fee' and any capital gain (as provided in the residence contract).

Issues about financial transparency and accountability constitute a high volume of village resident complaints made to the Department of Communities, Housing and Digital Economy (the department) as well as compliance work with operators, and disputes brought under the RV Act, including through to the Queensland Civil and Administrative Tribunal (QCAT).

Reforms to improve the transparency, accountability and consistency of village financial reporting commenced in late 2019 with amendments made in the *Housing Legislation (Building Better Futures) Amendment Act 2017*. In 2019, the department contracted an independent financial services and accounting firm, Findex (Aust) Pty Ltd, to consult with stakeholders and advise on more standardised financial reporting for retirement villages. In 2021, the department consulted on a draft Retirement Villages (Annual Financial Statements and Other Matters) Amendment Regulation 2021 (draft Amendment Regulation).

In 2021, development of, and consultation on, the draft Amendment Regulation identified limitations in the regulation-making power and other provisions in the RV Act to deliver more transparent and consistent financial statements and budgets to be provided to village residents and the department.

The RV Act amendments in the Bill, a subsequent Retirement Villages Amendment Regulation, and published guidance material for operators will constitute finalising the financial reporting reforms under *Queensland Housing and Homelessness Action Plan 2021-25*.

Achievement of policy objectives

Housing Act amendments to enable establishment of Homes for Homes (donation deed model) in Queensland

Amendment of the Housing Act

To achieve the objective of supporting the Homes for Homes model to operate in Queensland, the Bill will insert a new division into the Housing Act to allow a non-profit organisation prescribed under regulation, to record the existence of a charitable donation deed on a land titles record.

The Administrative Advice notifies persons dealing with the land that the owner has entered into the donation deed and acts as a reminder to the landowner at the time the land is sold of their voluntary agreement to donate a portion of the sale price.

The Administrative Advice does not create any obligations on a property owner. The obligation to make the donation is created by the donation deed, and not by the Administrative Advice which simply records its existence. These changes will enable Homes for Homes to operate in Queensland as it does in other jurisdictions.

Financial reporting in Queensland retirement villages

Amendments to the RV Act

To achieve the policy objective of improved transparency, accountability and consistency of financial reporting in retirement villages, the Bill will amend the RV Act to:

- create a new regulation-making power for financial documents specifically named in the RV Act and clarify and strengthen existing provisions related to financial reporting
- increase access to particular village financial documents for village residents, the department and the public register for retirement villages
- insert a new object into the RV Act.

The Bill will prescribe the new financial reporting requirements by regulation and enable scheme operators to adapt their existing financial reporting systems to meet these requirements in the RV Act and regulation. This approach is more cost effective for operators and minimises costs passed on to residents than alternative approaches such as relying on approved forms to achieve greater transparency.

The amendments in the Bill and subsequent regulation aim to take into account the differing size, management structure, and accounting systems and services provided by scheme operators. The department will provide financial guidance material and non-mandatory templates to support implementation, which may particularly assist smaller and stand-alone scheme operators.

The amendments include a specific regulation-making power to prescribe the form and content of village financial documents' which may apply to listed financial documents. These documents comprise the budgets for the capital replacement fund, maintenance reserve fund and general services charge, the quarterly and annual financial statements, audit reports, and quantity surveyor reports. While the details for the form and content of financial documents will be contained in the regulation and not the RV Act, the amendments outline, including by way of examples, particular information that may be prescribed by regulation. The regulation may also prescribe particular standards or principles applicable to the preparation of a financial document.

To support achievement of the policy objectives of improved transparency and accountability for retirement village funds, other requirements that may be prescribed for financial documents include:

- particular information related to items or classes of income or expenditure
- information about the allocation of shared or apportioned expenses, like staff, administration, utilities, with other entities operating in the village, co-located residential aged care, or corporate head office
- comparisons to corresponding items or classes in earlier financial documents, which may include previous year budget and actuals comparison amounts for income and expenditure items
- an explanation of matters in the document, such as the reason for a surplus or deficit
- how information must be presented to assist residents, prospective residents or the department, to understand the information
- a statement or declaration by a scheme operator or other person
- disclosure notes relating to particular matters.

Most villages' annual financial statements already reference relevant accounting principles or Australian Accounting Standards, and the regulation will enable relevant and consistent application and disclosure across villages. The regulation may prescribe the use of Australian Auditing Standards, as currently required under section 113 of the RV Act.

Further stakeholder consultation will occur to determine appropriate accounting standards or principles for the annual financial statements, noting that these are special purpose financial statements used by residents and the department. Continued stakeholder input will help ensure that the new financial reporting requirements are administratively efficient and workable for villages of different sizes, tenures, and corporate and management structures.

A new object in the RV Act strengthens the Act's purpose and commitment to Queensland having a financially transparent and accountable retirement village industry. The new object, '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', supports the RV Act's main objectives of promoting consumer protection and fair trading practices while encouraging the continued growth and viability of the industry. The new object will assist with statutory interpretation and decision-making that best achieves purposes of public confidence, financial transparency, and accountability.

The amendments also further RV Act objects encouraging adoption of industry best practice standards and facilitating participation by residents in the affairs of the village. Amendments extend access to the draft budgets for the three funds to all residents, not only residents committees, and for the first time all residents can access the quantity surveyor reports about expected capital and maintenance costs, used to prepare the budgets. The quantity surveyor reports also must be provided to the department annually and be on the public register. Increasing all residents' access to key financial documents is expected to drive improved operator accountability and performance, especially for villages without a residents committee to engage with operators on financial operations matters.

The 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 *Residential Services (Accreditation Act) 2002*. 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.

A new definition in the Bill means quantity surveyors must be members of the Australian Institute of Quantity Surveyors. This will ensure that an industry code of conduct and professional standards apply to the independent quantity surveyors preparing reports on village capital and maintenance.

The Bill amends the penalty provisions for budgets and financial statements to rectify inconsistencies and to incorporate existing provisions in the RV Act and regulations as elements under existing penalty provisions.

Alternative ways of achieving policy objectives

The amendments contained in this Bill are a result of extensive policy analysis, including jurisdictional comparisons, and extensive consultation with a broad range of consumer, resident and industry stakeholders, independent finance experts and, with respect to the Housing Act amendments, consultation with a not-for-profit social enterprise over recent years.

Housing Act amendments to enable establishment of Homes for Homes

The proposed amendments support the Homes for Homes charitable donation deed model to operate in Queensland. In other jurisdictions the Homes for Homes model uses permissive caveats recorded on land titles to remind a property owner of the voluntary donation deed upon sale of the home. However, Queensland's land titling law does not support use of caveats in this way. To enable Homes for Homes to most closely replicate the model used in other jurisdictions, amendment of the Housing Act to enable the recording of an Administrative Advice on land titles is necessary.

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.

Financial reporting in Queensland retirement villages

The RV Act amendments address issues and limitations in the Act, including the current regulation-making power, which restricts achievement of the policy objectives. The amendments are considered the best way for achieving the policy goal of more transparent, accountable, and consistent financial reporting required under the RV Act.

Estimated cost for government implementation

Housing Act amendments to enable establishment of Homes for Homes

Amendments to the Housing Act to support operation of Homes for Homes will not require the Queensland Government to commit any funding or make any government properties subject to a donation deed. The amendments are unlikely to have any significant operational or financial impact on Queensland Government agencies.

Financial reporting in Queensland retirement villages

There are no significant financial implications on government arising from the legislative reforms to the RV Act for retirement villages financial reporting. Implementation costs will be met through existing budget allocations.

Consistency with fundamental legislative principles

The proposed amendments to the Housing Act to implement the Homes for Homes model are consistent with fundamental legislative principles.

The proposed amendments to the RV Act are consistent with fundamental legislative principles. Sections 4(2)(b), 4(4)(a) and (b) and section 5 of the *Legislative Standards Act 1992* require primary and secondary legislation to have sufficient regard to the institution of Parliament, which requires consideration of whether provisions are better suited for inclusion in an Act or subordinate legislation.

By insertion of a new section 113AA into the RV Act, the Bill creates a broader regulation-making power for village financial documents to overcome limitations in the general regulation-making power. This is in order to meet the policy objectives of improved transparency, accountability and consistency of financial reporting in retirement villages. In doing so, proposed section 113AA articulates parameters for the form and content of specifically listed financial documents that may be prescribed by regulation, which will ensure consistency with the policy objectives of the authorising law, including the new object contained in the Bill which strengthens the RV Act's purposes of financial transparency and operator accountability.

Establishing the broader head of power in the RV Act to prescribe the form and content of financial documents 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.

While it is proposed that stakeholder consultation on a draft amendment regulation occurs following introduction of the Bill, this does not presume the passage of the Bill by Parliament, and this will be made clear to stakeholders. The amendment regulation will only be finalised for approval following passage of the Bill and will incorporate any required changes resulting from the parliamentary process, thus having sufficient regard to the institution of Parliament.

Providing that the chief executive may make guidelines is not a sub-delegation of legislative power by reference to non-legislative documents, as this clause does not give legal effect to the guidelines. The preferred approach where appropriate is to amend the RV Act and the Retirement Villages Regulation 2018 to ensure clear meaning rather than relying on chief executive guidelines.

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.

In accordance with section 4(3)(k) of the *Legislative Standards Act 1992*, the Bill is drafted in a sufficiently clear and precise way and avoids ambiguity. Any reference to the potentially ambiguous concept of 'materiality' for classes of expenditure and income will be addressed in the regulation, likely by reference to accounting standards, following further stakeholder consultation. The Bill also clarifies the intended operation of some existing provisions in the RV Act, such as section 102A, by clarifying that a scheme operator must comply with their obligation to carry forward a surplus or deficit in the budget before applying obligations under section 106 for fixing the total general services charge. Amendments to section 93 and 94 clarify how a scheme operator must fix the amount of the capital replacement fund contribution and pay this amount from operator money into the capital replacement fund each financial year.

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals. The Bill amends the penalties for operators' failure to comply with the RV Act's requirements about budgets and financial statements. This addresses inconsistencies so that similar penalties apply to all three fund budget requirements.

Consultation

Community consultation

Homes for Homes has sought expansion of the Homes for Homes model into Queensland for several years and proposed the use of Administrative Advices as an alternative to the permissive caveats used in other jurisdictions. Homes for Homes was consulted on a Consultation Draft of the amendments to the Housing Act and the Housing Regulation. Homes for Homes has indicated it supports the relevant components of the Bill.

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 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.

ARQRV and QLS broadly support the Bill. ARQRV advised that the Bill is comprehensive and addresses its recommended changes for inclusion in the amendment regulation. The QLS considers the strengthened disclosure provisions strike an appropriate balance between the need for consumer protections and administrative burden for operators.

The three industry groups (Property Council of Australia, Urban Development Institute of Australia, Aged and Community Care Providers Association) generally expressed support for the policy goals of more consistent financial reporting and increased transparency. However, these groups noted concerns about striking the balance between consumer protections and operator obligations and increased compliance costs, especially for smaller operators. Industry groups provided similar legal and technical feedback on the Bill. This advice has assisted with clarifying provisions in the Bill.

Industry groups commented on difficulties with providing feedback on the likely impacts of the draft Bill without seeing the amendments to be made to the Retirement Villages Regulation 2018. They provided additional substantive feedback relevant to the amendment regulation, which is being taken into consideration in drafting the amendment regulation. Releasing a draft amendment regulation for consultation after the Bill's introduction will address this issue and help address the concerns of industry stakeholders.

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 parts of the legislation. The Bill will amend certain sections in the 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.

All stakeholders highlighted the need for a lengthier and comprehensive consultation period on the detailed regulation amendments. To achieve this, stakeholder consultation on a Consultation Draft Amendment Regulation will need to occur following introduction of the Bill. Industry groups' feedback reinforced their request for a significant implementation period of at least six months, prior to the 2023-24 financial year, and more recently the Property Council has called for implementation to be held over to the 2024-25 financial year to allow for operator readiness. The department 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.

The Caxton Legal Centre had no suggestions for the Bill at this stage. National Seniors and Council on the Ageing did not provide specific feedback on the Bill, though previously have engaged in consultation on the financial transparency reforms for retirement villages.

Government consultation

The Office of Best Practice Regulation was consulted on the development of the retirement villages regulatory proposal for improved financial reporting, including on the earlier draft Amendment Regulation and the proposed amendments to the RV Act.

Consultation was undertaken with the Office of Queensland Parliamentary Counsel in finalising the Bill.

Titles Queensland was consulted about amending the Housing Act to enable the use of Administrative Advices to record the existence of a Homes for Homes donation deed on a land title. Titles Queensland was also consulted and provided feedback on the draft Bill prior to finalisation.

All government departments were consulted on the proposed amendments to the Housing Act, Housing Regulation and RV Act.

Consistency with legislation of other jurisdictions

The legislation amended by the Bill is specific to the State of Queensland.

Housing Act amendments to enable establishment of Homes for Homes

The amendments to the Housing Act will enable Homes for Homes to operate in Queensland in a similar way to other jurisdictions, including New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory. A key feature of the Homes for Homes initiative in other jurisdictions is the use of a caveat or some other recording on the land title to remind selling property owners to make the donation under the donation deed. In other jurisdictions, the model operates using permissive caveats.

Financial reporting in Queensland retirement villages

Several proposed amendments, including about standards and principles, disclosure of shared or apportioned expenses, operator third-party relationships, liabilities and payments to former residents, and guidelines will bring the Queensland RV Act more in line with other states, notably South Australia, New South Wales and Western Australia.

Notes on provisions

Part 1 Preliminary

Clause 1 states that when enacted the Bill will be cited as the *Housing Legislation Amendment Act 2022*.

Clause 2 states that Parts 2 and 3 of the Bill, which amend the *Housing Act 2003* and Housing Regulation 2015, commence three months after the date of assent. The amendments to the *Retirement Villages Act 1999*, which are in Part 4, commence on assent.

Part 2 Amendment of *Housing Act 2003*

Clause 3 states that this part amends the *Housing Act 2003*.

Clause 4 inserts a new Division 2C “Charitable donation deeds” into Part 8 of the Housing Act.

Section 94I provides definitions for the division and the more significant of these are described below.

Section 94I defines a charitable donation deed as a deed (a) entered into by a non-profit organisation and the registered owner of the lot and (b) under which the owner of the lot has agreed to a donation from the proceeds of the sale of a lot to the non-profit organisation, which agrees to only use the proceeds to provide or to assist an entity to provide, a social housing service or to otherwise increase the supply of social and affordable housing in Queensland. This provision ensures that funds raised by Homes for Homes Limited in Queensland are directed to increasing the supply of social and affordable housing in Queensland.

Section 94I defines a non-profit organisation as an organisation registered or taken to be registered as a charity under the *Collections Act 1966* and prescribed under the Housing Regulation 2015.

Section 94J enables a non-profit organisation who 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.

Section 94J(3)(a) clarifies that the advice will remain recorded on the title of the lot despite change of ownership and until it is removed under section 94K or under section 29A of the *Land Title Act 1994*.

Section 94J(3)(b) clarifies that an Administrative Advice does not prevent a person from registering an interest in the lot, exercising their rights under a registered interest or releasing or surrendering a registered interest.

Section 94K enables an Administrative Advice to be removed at any time by request of either party to the charitable donation deed by completing the required form.

Clause 5 amends Schedule 4 (Dictionary) of the Housing Act to include terms relevant to the new Division 2C.

Part 3 Amendment of Housing Regulation 2015

Clause 6 states that the part amends the Housing Regulation 2015.

Clause 7 inserts a new section 35A in the Housing Regulation 2015 prescribing Homes for Homes Limited as a non-profit organisation for the purpose of new section 94I of the Housing Act, definition of non-profit organisation, paragraph (b).

Part 4 Amendment of *Retirement Villages Act 1999*

Clause 8 states that this part amends the *Retirement Villages Act 1999*.

Clause 9 amends and renumbers section 3 to insert a new object of this Act which is 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. This object strengthens the RV Act's purpose and commitment to a financially transparent and accountable retirement village industry, in line with its main objects of promoting consumer protection and fair trading practices and encouraging continued industry growth and viability.

Clause 10 omits the existing definition of capital replacement fund contribution at section 18.

Clause 11 amends section 35(2) to require a copy of each independent quantity surveyor's written report that is given to the chief executive responsible for administering the RV Act, for the capital replacement fund under section 92(6) or the maintenance reserve fund under section 98(8) to be kept on the retirement village scheme register. The clause also consequentially amends section 35(2)(c) to include the annual financial statement audit reports on the register, and renumbers section 35(2) subsections.

Clause 12 amends section 63(5)(b) to clarify that any accrued maintenance reserve fund contributions payable by a former resident must be listed separately on the exit entitlement statement provided to that former resident showing how the exit entitlement was worked out by the scheme operator.

Clause 13 amends section 74(5) to require a scheme operator to give the chief executive both a copy of the amended village comparison document and written notice of the amendment, which must be done within 28 days after amending a village comparison document because of a material change to any information in the document.

Clause 14 amends section 92 relating to the amount of the capital replacement fund.

Amended section 92(1) requires the independent quantity surveyor's written report about the expected capital replacement costs for the village for the next 10 years to comply with any regulation or approved form made under new section 113AA in relation to the report. The scheme operator must obtain this report before deciding a capital replacement fund budget under section 93.

Sections 92(5) and (7) are omitted from the RV Act as the timeframe for these provisions has expired. Scheme operators were required to pay additional amounts to reach the capital replacement reserve amount in an existing capital replacement fund within a specified period of 5 or 10 years from commencement of this division in the *Retirement Villages Act 1999*. Section 92(6) is consequently renumbered as section 92(5).

New section 92(6) requires the scheme operator to give a copy of the full or updated independent quantity surveyor written report obtained under subsection 92(1) and (2) during the financial year to the chief executive within 5 months after the end of each financial year. A penalty applies for non-compliance with section 92(6).

Clause 15 amends and renumbers section 93 relating to the capital replacement fund budget. Section 93(1) is replaced with a new section 93(1) requiring that the scheme operator must, having regard to the quantity surveyor's report that the operator obtained under section 92(1), adopt a budget each financial year for the capital replacement fund that complies with subsection 93(2) and complies with a regulation or approved form made under the new section 113AA in relation to the budget. A penalty applies for non-compliance with new section 93(1).

Existing section 93(1A) referring to an approved form and existing sections 93(3) to (5) referring to draft budgets given to a residents committee are omitted as these provisions are dealt with in other clauses of the Bill.

Subsection 93(2)(b) is amended to make it clear that the capital replacement fund contribution is to be paid by the scheme operator, from money of the scheme operator, and is to cover the capital amount mentioned in section 93(2)(a). This specifies that the contribution is to cover the reasonable capital amount for necessary and reasonable spending from the capital replacement fund for the financial year, in addition to reserving an appropriate proportional share of amounts accumulated in the fund to meet anticipated major expenditure over at least the next 9 financial years. Amended section 93(2)(b) provides the definition for the capital replacement fund contribution, replacing the definition at former section 18 of the RV Act.

New section 93(3) provides that the scheme operator may use all or part of an incoming contribution to pay the capital replacement fund contribution, but must not otherwise raise or attempt to raise all or part of the contribution from residents. The former section 18 definition which provided for the scheme operator to decide and describe in the resident's residence contract, a percentage of the incoming contribution as the contribution to the capital replacement fund contribution no longer applies.

Clause 16 amends section 94(1)(c) to clarify that the scheme operator must ensure that the capital replacement fund contribution for each financial year must be paid into the capital replacement fund each financial year.

Clause 17 amends section 98(1) and inserts new section 98(8) relating to the amount of the maintenance reserve fund.

Amended section 98(1) requires the independent quantity surveyor's written report about the expected maintenance costs for the village for the next 10 years to comply with any regulation or approved form made under new section 113AA in relation to the report. The scheme operator must obtain this report before deciding a maintenance reserve fund budget under section 99.

New section 98(8) requires the scheme operator to give a copy of the full or updated independent quantity surveyor written report obtained under sections 98(1) and (2) during the financial year to the chief executive within 5 months after the end of each financial year. A penalty applies for non-compliance with section 98(8).

Clause 18 amends section 99 for the maintenance reserve fund budget and renumbers subsections.

Section 99(1)(a) is amended to require that the maintenance reserve fund budget must comply with the requirements for the budget at section 99(3) and comply with any regulation or approved form made under the new section 113AA in relation to the budget. Section 99(3) is also amended to refer to subsection (1) to make this connection clear. This means that the existing penalty provision for section 99(1) applies to non-compliance with the requirements for the budget set out in section 99(3) and new section 113AA.

Sections 99(4) to (6) referring to draft budgets given to the residents committee, or a resident are omitted as these provisions are dealt with in other clauses of the Bill.

Section 99(8) is omitted because when the maintenance reserve fund was separated from the general services charges fund by amendments to the RV Act made under the *Housing Legislation (Building Better Futures) Amendment Act 2017*, section 106 no longer applied to the maintenance reserve fund.

Clause 19 replaces section 102A(1) and (2) with new section 102A(1) that the scheme operator must for each financial year, adopt a general services charge budget that complies with subsection 102A(2), and complies with any regulation or approved form made under the new section 113AA in relation to the general services charge budget. A penalty applies for non-compliance with new section 102A(1).

Section 102A(2) referring to an approved form and sections 102A(4) to (6) referring to draft budgets given to a residents committee, are omitted, as these provisions are dealt with in other clauses of the Bill.

Section 102A(8), renumbered to section 102A(4), is amended to clarify the application of the section and reduce ambiguity. Section 102A(4) requires that the scheme operator first comply with the requirement under renumbered section 102A(3) (previously section 102A(7)) to carry forward any surplus or deficit amount in the general services charges fund at the end of the financial year and take this into account in the budget, before the scheme operator complies with requirements under section 106 for fixing the total general services charge, that is before the Consumer Price Increase (CPI) percentage increase cap is applied.

Clause 20 corrects an error in section 107(d) to refer to section 38A(1)(a) and not section 38A(2)(a).

Clause 21 reorders and amends section 112(2) to require a quarterly financial statement to comply with any regulation or approved form made under the new section 113AA in relation to the quarterly financial statements, show the income and expenditure for the capital replacement fund, maintenance reserve fund and general services charges fund, and either has been audited or is capable of being audited. The section omits the requirement for an approved form as this is dealt with at new section 113AA of the Act. A penalty provision applies for non-compliance.

Clause 22 amends and renumbers section 113 for annual financial statements. Section 113(1) requires an annual financial statement to comply with any regulation or approved form made under the new section 113AA in relation to annual financial statements. Section 113(2) referring to an approved form is omitted and dealt with at new section 113AA of the Act.

The requirement at existing section 113(3) for an audit report for the annual financial statements to be issued under Australian Auditing Standards is omitted and replaced by an audit report that complies with a regulation or approved form under section 113AA and subsection 3. This means that the requirement for Australian Auditing Standards for annual financial statements and audit reports may sit in the regulation, along with other prescribed requirements for audit reports.

New section 113(3) provides that if, at any time during a financial year, no standards or principles for the preparation of audit reports are prescribed by the regulation, that the audit report for the financial year must be prepared in accordance with the Australian Auditing Standards.

Clause 23 inserts a new Part 5 Division 9A Requirements for financial documents.

New section 113AA inserts a new regulation making power to provide for a regulation on the form and content of financial documents. New section 113AA(1) states that a financial document must be in the approved form if one exists, and be in the 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. Examples of standards and principles may include accounting standards or principles, and the Australian Auditing Standards.

New section 113AA(2) describes the types of form or information that a regulation may prescribe for a financial document and provides examples for this, without limiting what may be prescribed under section 113AA(1)(b).

Examples of other requirements that may be prescribed for financial documents include:

- particular information related to items or classes of income or expenditure
- information about whether items or classes are shared with other entities. This may refer to the allocation of shared or apportioned expenses, like staff, administration, utilities, with other entities operating in the village, co-located residential aged care, or corporate head office
- comparisons to corresponding items or classes in earlier financial documents, which may include previous year budget and actuals comparison amounts for income and expenditure items
- an explanation of matters in the document, such as the reason for a surplus or deficit
- how information must be presented to assist residents, prospective residents or the department, to use or understand the information
- a statement or declaration by a scheme operator or other person that must be included
- disclosure notes or explanations relating to particular matters that must be included.

Disclosure notes prescribed by regulation may require the scheme operator to:

- show in budgets how they fixed residents total general services charge and maintenance reserve fund contribution, the scheme operator capital replacement fund contribution and how any relevant RV Act requirements were met

- disclose in the annual financial statement, a scheme operator's related party transactions. This may include any transactions or arrangements relating to any utilities, services or facilities provided to residents (such as electricity, internet, or insurance provided by a third party) that the operator has an interest in or would obtain any fee or reward for
- disclose in the annual financial statement information about an operator's liabilities owed to former residents.

Section 113AA(3) defines a financial document to mean the budgets for the capital replacement fund, maintenance reserve fund and general services charge, quarterly financial statements, annual financial statements and audit report, and the independent quantity surveyor's written reports for the capital replacement fund and the maintenance reserve fund.

This Clause also inserts new section 113AB which sets out the requirements and timeframes for a scheme operator to provide to a resident or the residents committee, on their written request, a copy of draft budgets and a copy of any independent quantity surveyor's written report for the capital replacement fund or the maintenance reserve fund that the scheme operator had regard to for preparing the respective budget. This new section replaces former sections about access to draft budgets and increases transparency as it means that a resident or a residents committee can now access both a draft budget and the written quantity surveyor report the scheme operator used to prepare the budget. Related Clause 28 inserts a definition for a draft budget for the capital replacement fund, maintenance reserve fund and general services charge in the RV Act's dictionary. A penalty applies for non-compliance with section 113AB.

Clause 24 amends sections 129B(1) to refer to a draft budget for the financial year. Draft budget is defined in the dictionary and includes a draft of a capital replacement fund budget, the maintenance reserve fund budget and the general services charge budget.

Clause 25 amends section 131 regarding the annual residents meeting to include the audit report for the annual financial statement.

Clause 26 inserts a new section 226 to provide that a chief executive may make guidelines, not inconsistent with this Act, to inform persons about: the attitude the chief executive is likely to adopt on a particular matter; how the chief executive administers the Act, or about matters to help persons comply with their obligations and responsibilities, or lawfully and appropriately exercise powers under this Act. The guidelines must be published on the department's website. 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. Such guidelines are non-legislative documents and as such, do not have legal effect.

Clause 27 inserts a new Part 15 Division 6. This clause provides for transitional provisions that deal with the following matters.

New section 237S provides definitions for the division.

New section 237T refers to the application of new sections 35(2)(c), 92(6) and 98(8) and provides that an independent quantity surveyors report obtained or updated before 1 July 2023 is not on the retirement village scheme register or is not required to be given to the chief executive 5 months after the end of the financial year.

New section 237U provides for the continued application of former section 74(5) in relation to the amendment of a village comparison document made before the commencement.

New section 237V provides for the continued application of former section 99(1) in relation to the adoption of a maintenance reserve fund budget for the financial year ending before 30 June 2023.

New section 237W provides for the continued application of former section 112(2) in relation to a request for a quarterly financial statement received by the scheme operator before commencement.

New section 237X provides for the continued application of former section 113 in relation to an annual financial statement and an audit report for the financial year ending before 30 June 2023.

New section 237Y provides that former section 131(1) and (4) continue to apply in relation to an annual meeting of residents at which an annual financial statement for a financial year ending before 1 July 2023 is presented to the meeting.

Clause 28 amends the Dictionary for the Act.

The existing definition for the capital replacement fund contribution is omitted and replaced by a definition with reference to section 93(2)(b).

A new definition is inserted for a draft budget referring to the capital replacement fund, maintenance reserve fund and general services charge budget.

A new definition is inserted for a quantity surveyor to mean 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.