

Retirement Villages (Financial Documents) Amendment Regulation 2024

Explanatory notes for Subordinate Legislation 2024 No. 71

made under the

Retirement Villages Act 1999

General Outline

Short title

Retirement Villages (Financial Documents) Amendment Regulation 2024

Authorising law

Sections 113AA and 228 of the *Retirement Villages Act 1999* (RV Act)

Policy objectives and the reasons for them

The objective of the *Retirement Villages (Financial Documents) Amendment Regulation 2024* (Amendment Regulation) is to primarily amend the *Retirement Villages Regulation 2018* (RV Regulation) to prescribe requirements to improve the transparency, accountability, and consistency of financial reporting by retirement village scheme operators under the RV Act.

The Amendment Regulation supports the implementation of amendments made to the RV Act by the *Housing Legislation Amendment Act 2023* (HLA Act), which commenced on 5 April 2023. These include a new objective to maintain public confidence in Queensland's retirement village industry by enhancing the financial transparency of the operations of retirement villages and the accountability of operators, a new regulation-making power for financial documents at section 113AA and giving village residents increased access to financial documents at section 113AB. The policy objectives of the HLA Act are provided in the explanatory notes that accompanied that Act.

The making of the Amendment Regulation meets the Government's commitment to finalise implementation of retirement village reforms to village financial statements under Action 17 of the *Housing and Homelessness Action Plan 2021 – 2025*. This forms part of the suite of retirement village reforms flowing from the *Housing Legislation (Building Better Futures) Amendment Act 2017*, which amended the RV Act to increase financial transparency and accountability in village operations.

Under the RV Act, scheme operators must establish and keep separate accounts for:

- a **capital replacement fund** for replacing the village’s capital items – the village operator is solely responsible for contributions to this fund
- a **maintenance reserve fund** for maintaining and repairing the village’s capital items - the residents of the village make contributions to this fund
- a **general services charges fund** for providing general services to village residents, for example: management, gardening, general maintenance, facilities for recreation and entertainment – resident contributions to this fund are as set out in residence contracts, and the RV Act limits how these charges can increase.

Scheme operators must prepare annual budgets and quarterly financial statements for the funds, and annual audited financial statements for the funds and the retirement village’s operation. Many retirement village residents live on fixed incomes, such as the age pension, so their capacity to scrutinise these funds provides reassurance that they are getting value for money, their investment in the village is protected, and that the village facilities can be properly maintained.

Disputes about how and why resident contributions to these funds increase, and how the money is spent, are the most common complaints from retirement village residents dealt with by the Department of Housing, Local Government, Planning and Public Works (the department) and the Queensland Retirement Village and Park Advice Service (QRVPAS).

The purpose of the Amendment Regulation is to prescribe the form and content requirements for the particular matters that must be included in fund budgets and quarterly statements, the audited annual financial statements and audit reports, and independent quantity surveyor reports.

The Amendment Regulation also prescribes the village quantity surveyor report (used by the scheme operator to identify expected capital replacement, and maintenance and repair costs, for the village) as an operational document ensuring access to the report by residents and prospective residents on request.

The provisions in the Amendment Regulation will improve the consistency and transparency of village financial statements and budgets. This will provide residents with increased confidence, transparency, and line-of-sight over their fees and charges and village operations and will ensure the chief executive has sufficient information when considering scheme operators’ compliance with the RV Act.

Achievement of policy objectives

The policy objectives of this Amendment Regulation are achieved by prescribing the form and content of prescribed financial documents to support the provisions in the RV Act.

The Amendment Regulation prescribes the requirements for complying with the RV Act section 113AA for the following financial documents:

- a capital replacement fund budget
- a maintenance reserve fund budget
- a general services charge budget
- a quarterly financial statement

- an annual financial statement
- an audit report
- an independent quantity surveyor's written report.

Other information may be included in the financial documents in addition to the information required under the RV Regulation (Part 4AA s16AH).

While section 113AA(1) of the RV Act allows for a financial document to be in an approved form, if one exists (see section 227AA(2)), the department is not proposing to issue approved forms for any of the prescribed financial documents at this time. Consequently, village operators may use, and adjust as necessary, their current reporting and presentation of budgets and financial statements to ensure they meet the requirements set out in the RV Regulation.

The regulation specifies requirements for financial statements and budgets for each of the required funds through regulation rather than through approved forms, to minimise implementation costs by allowing scheme operators to present these statements using existing accounting and reporting systems. Implementation will be further supported through the department providing financial guidance material and non-mandatory templates, which may assist smaller and stand-alone scheme operators.

Information and disclosure requirements for budgets and financial statements relate to:

- items or types of income or expenditure
- allocation of shared or apportioned expenses, such as staff, administration, utilities, with another village, corporate head office or other entities, including a co-located residential aged care, or a body corporate
- comparisons to corresponding items in annual statements, budgets and for previous years
- explanations for certain matters such as a surplus or deficit, differences between budget proposed expenditure and contributions and quantity surveyor report recommendations.

Additional disclosure requirements in the audited annual special purpose financial statements relate to:

- the basis for preparation of statements, such as accounting standards or policies
- scheme operator related party transactions where the operator has an interest in the entity or obtains a commission, fee or reward for services supplied to the village or residents
- unpaid scheme operator liabilities to former residents at the end of financial year
- declarations made by the operator as to whether the statement has been prepared in accordance with the RV Act, the information in the statement is true and correct, the statement was prepared on the assumption that the retirement village scheme is a going concern, the bank accounts for the three funds have been operated in compliance with the RV Act, and the operator is able to pay all the operator's debts relating to the retirement village as they become payable.

Key particulars for quantity surveyor reports will require disclosure of information about the:

- date of site inspection of a village and whether it is an updated or full report
- methodology used in the reports
- expected costs and fund contributions for capital replacement and maintenance and the apportionment of these over the 10-year report period.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the RV Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives of prescribing the detailed requirements for the budgets and financial statements for retirement villages.

Benefits and costs of implementation

The Amendment Regulation is not expected to have a significant cost on the operations, capacity and funding of government institutions. The amendments are expected to have a positive impact on the department in ensuring compliance with the RV Act, by making compliance requirements and processes more standardised and clearer.

Residents, resident committees, and consumer peak bodies will benefit from the increased transparency and accountability in village budgets and financial statements. Residents contribute their finances to the general services charges fund and maintenance reserve fund to pay for general services to residents of the village and the maintenance of the village's capital items. Residents and resident committees are engaged in the budget setting process, are entitled to copies of the budgets and financial statements and, under certain circumstances, may agree by special resolution at a resident's meeting to increase the total general services charge paid by residents.

The Amendment Regulation improves consumer protection for residents, by introducing minimum requirements and increased transparency and disclosure in budgets and financial statements. This will give village residents and prospective residents a clearer line of sight and scrutiny over how residents' finances are allocated and spent on services and village operations.

The department has calculated the estimated direct compliance costs for industry across the 328 villages for which data is available, at \$324,074 for first year establishment costs and \$1,149,632 for the first 10-year period. The estimated first year cost includes scheme operator establishment costs for updating business processes and educating staff about the new requirements, and increased costs for audit reports and for some villages' quantity surveyor reports. Over the first 10 years, the estimated costs to industry are anticipated to reduce as processes are updated to accommodate the regulatory requirements.

To put these estimated cost figures in context, the department has also estimated the value being paid out of the three funds each year and the total balance held in the funds. The department estimates that:

- the annual spend across three funds is approximately \$378 million, giving a straight cost extrapolation across 10 years for the three funds of \$3.786 billion.

- in addition, the estimated retained balance/surplus of the funds under management at 30 June 2023 was \$202 million.

Given the significant expenditure from these funds each year and the value of funds under management, the expected cost impacts are considered reasonable and to be outweighed by the benefits of improved consumer protection and confidence. There are also potential benefits for government, residents and scheme operators through decreased complaints and disputes in relation to budgets and financial statements, including decreased costs associated with dispute management.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted considering the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is consistent with these principles. Sufficient regard has been given to the rights and liberties of individuals and the institution of Parliament.

Consultation

The Housing Legislation Consultative Group (Consultative Group), comprising resident, seniors, industry/operator, and legal stakeholder groups, has been consulted over several years on proposals to improve financial reporting in retirement villages. Consultative Group members include the Association of Residents of Queensland Retirement Villages (ARQRV), Council on the Ageing Queensland (COTA), National Seniors Australia (NSA), Property Council of Australia (PCA), Aged and Community Care Providers Association (ACCPA), Urban Development Institute of Australia (UDIA), the Caxton Legal Centre's QRVPAS and the Queensland Law Society (QLS).

In 2019, the then Department of Housing and Public Works contracted an independent financial services and accounting firm, Findex (Aust) Pty Ltd, who consulted with industry and resident groups and some smaller scheme operators to advise on improved, standardised financial reporting for retirement villages and the potential impacts for resident and operators. Following on from the work carried out by Findex, the Consultative Group was consulted on a draft *Retirement Villages (Annual Financial Statements and Other Matters) Amendment Regulation 2021*.

Consultation feedback and further ongoing policy work identified limitations in the regulation-making power and financial provisions in the RV Act to achieve the policy objectives. Consequently, the 2021 draft Amendment Regulation was not progressed, and amendments to the RV Act were proposed to address these limitations and to ensure policy objectives could be achieved.

In August 2022, consultation occurred with the Consultative Group on a draft Housing Legislation Amendment Bill 2022 and through the Bill's Parliamentary Committee inquiry, for amendments to the RV Act to increase financial transparency and accountability, including a new regulation head of power for financial documents.

In October 2023, members of the Consultative Group and the Australian Institute of Quantity Surveyors (AIQS), were provided with a Consultation Draft Amendment Regulation and

consultation notes. Consultation meetings were offered to all members and the department met with the ARQRV, the PCA's Retirement Living Committee, and the AIQS. Written feedback was received from the ARQRV, QRVPAS, ACCPA, UDIA, PCA, some retirement village scheme operators, and the AIQS.

In response to feedback the consultation period was extended and further meetings were held with key industry, resident stakeholder groups, AIQS members and auditors in late 2023 and early 2024.

Further refinement of the Amendment Regulation was carried out to minimise the possible increases in required work and compliance costs for operators.

Resident and legal group stakeholders (ARQRV, QRVPAS) support the proposed regulation and the increased financial transparency and consumer protections. Feedback has assisted to clarify and tighten some provisions and reduce the likelihood of disputes about financial reporting.

QLS did not provide feedback on the draft Amendment Regulation, however supported and provided feedback on the 2021 draft Amendment Regulation, which assisted in the development and drafting of the 2023 Amendment Regulation.

Industry stakeholders (PCA, ACCPA, UDIA) and individual scheme operators supported the objects of increased consistency and transparency to be achieved through the proposed regulation. Concerns were raised about the implementation period, which was considered too short to allow the requirements to be incorporated into business processes, and the clarity of, and need for, specific requirements for the financial documents. Industry stakeholders advised that the amendments would increase operators' compliance, reporting and administration workloads, with increased operating costs potentially being passed onto residents in some form.

Resident and legal stakeholders acknowledge that some increased operator costs may increase resident fees, but that the benefits of the proposed changes would outweigh any possible costs, and increased costs would be offset by an anticipated drop in the number of financial matter disputes and the resulting costs associated with the dispute resolution process.

Issues raised by all stakeholders from the 2021 and 2023 consultations have been addressed by making changes to the draft Amendment Regulation where this was consistent with the policy intent of increased financial transparency, accountability and consistency of financial reporting and within power or could provide administrative efficiencies and clarity for operators.

Some other stakeholder suggestions to address transparency, disclosure and industry practice are more appropriately addressed through guidance material and will be considered in the development of the department's financial guidance material and the proposed AIQS guidance notes for quantity surveyors.

The NSA and COTA did not provide feedback on the draft Amendment Regulation.