

Retirement Villages (Financial Documents) Amendment Regulation 2024

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Meaghan Scanlon, Minister for Housing, Local Government and Planning and Minister for Public Works provide this human rights certificate with respect to the Retirement Villages (Financial Documents) Amendment Regulation 2024 (Amendment Regulation), made under the *Retirement Villages Act 1999* (RV Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the Retirement Villages Regulation 2018 (RV Regulation) to improve the transparency, accountability, and consistency of the financial reporting by village scheme operators required under the RV Act.

The Amendment Regulation meets the Government's commitment to finalise implementation of retirement village reforms to village financial statements under Action 17 of the *Queensland Housing and Homelessness Action Plan 2021 – 2025*. This forms part of the suite of retirement village reforms flowing from amendments made to the RV Act by the *Housing Legislation Amendment Act 2023* and the *Housing Legislation (Building Better Futures) Amendment Act 2017*.

Under the RV Act, scheme operators must establish and keep separate accounts, and prepare budgets and quarterly statements and audited annual financial statements for a capital replacement fund, a maintenance reserve fund, and a general services charges fund. The income of the general services charges fund and the maintenance reserve fund are derived from residents' charges and contributions.

The RV Act also sets out the obligations on scheme operators and the rights of village residents and residents committees for consultation on draft budgets, presentation of the annual financial statements to a yearly meeting of residents, access to quarterly statements, and quantity surveyor reports, and resident approval for increases in the total general services charge under certain circumstances.

The proposed regulation amendments will prescribe the detailed financial reporting requirements for financial documents under section 113AA of the RV Act, comprising the capital replacement fund budget, maintenance reserve fund budget, general services charge budget, quarterly financial statements, annual financial statement and audit report, and the independent quantity surveyor reports used by scheme operators for preparing the capital replacement fund and maintenance reserve fund budgets.

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, budget 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:

- a general description of the retirement village's property and village infrastructure
- a summary of the age of each part of the retirement village
- date of the last physical site inspection of village
- methodology used in the reports
- expected costs and recommended fund contributions for capital replacement and maintenance and the apportionment of these over the 10-year report period.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

The following human rights are relevant to the Regulation:

- Property Rights (section 24 of the HR Act)

Nature of the right:

Section 24 under the HR Act states that—

- a) All persons have the right to own property alone or in association with others.
- b) A person must not be arbitrarily deprived of the person's property.

In this context, property is likely to include all real and personal property interests recognised under general law including interests in land, contractual rights, money, and shares. It may also include some statutory rights including traditional aspects of property rights such as to use, transfer, dispose and exclude.

The term ‘deprived’ is not defined by the HR Act. However, deprivation in this context is taken to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it. This clause does not provide a right to compensation. The protection against being deprived of property is internally limited to arbitrary deprivation of property.

The right to property is protected and promoted by these amendments in relation to amendments to financial reporting under the RV Act.

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Deprivation in this sense has been held to include the substantial restriction on a person’s use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude).

Retirement villages comprise of leasehold, licence, or freehold accommodation units along with communal areas and facilities. Under a residence contract, residents pay an ongoing contribution or purchase price for a right to reside in the village and receive services in relation to the village. Residents pay ongoing fees and charges for the services and the maintenance of the village facilities and property.

The improved transparency of financial statements, budgets and quantity surveyor reports brought into effect by the amendments will give retirement village residents a clearer line of sight and scrutiny over how their finances are allocated and spent on services and the village operations. Residents will be better able to determine the appropriateness of the resident fees and charges, including increased fees and charges. Residents will be able to more easily determine if appropriate funds are being allocated and expended for maintenance, repair, and replacement of retirement village property, including communal areas and facilities. This helps ensure that the village amenity and residents’ financial investment in the retirement village is being maintained.

The Amendment Regulation will provide the department, as regulator, with more transparent information to ensure scheme operators comply with their obligations under the RV Act, better enabling resident rights under the legislation, including residents’ financial and real property interests to be protected and upheld.

Conclusion

I consider that the Retirement Villages (Financial Documents) Amendment Regulation 2024 is compatible with the *Human Rights Act 2019* because it does not limit human rights.

THE HONOURABLE MEAGHAN SCANLON MP
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND PLANNING
MINISTER FOR PUBLIC WORKS