# Impact Analysis Statement

## Summary IAS

### Details

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| **Lead department** | Department of Housing, Local Government, Planning and Public Works |
| **Name of the proposal** | Retirement Villages (Financial Documents) Amendment Regulation 2024 |
| **Submission type** | Summary IAS |
| **Title of related legislative or regulatory instrument** | Retirement Villages Regulation 2018 |
| **Date of issue** | 22 May 2024 |

**What is the nature, size and scope of the problem? What are the objectives of government action?**

As at 31 March 2024, Queensland had 331 registered retirement villages under the *Retirement Villages Act 1999* (RV Act) and approximately 100 different scheme operator groups, comprising commercial businesses and faith-based or not-for-profit organisations. Of these, 64 are single village operators. Approximately 46,000 seniors reside in 32,823 units of retirement village accommodation.

Residents make a significant financial investment to obtain a right to reside in a village, under either licence, lease, or freehold tenure for their accommodation unit and use of the village communal facilities.

Under the RV Act, residents pay ongoing fees for general services supplied or made available to all residents, and maintenance of the village capital items. Scheme operators are responsible for capital replacement and capital improvement costs, and the operation of three funds for the village (general services, maintenance reserve, capital replacement). The maintenance reserve trust fund and the capital replacement fund (secured by a statutory charge) are held by the operator for the benefit of residents of the village. Scheme operator financial reporting obligations include fund budgets, and quarterly and audited annual financial statements. Scheme operators must obtain annual quantity surveyor reports to prepare maintenance reserve and capital replacement fund budgets.

The need for greater transparency and accountability in the operation of funds and financial reporting is a long standing issue and has been the focus of retirement village reforms since 2017. A review of multiple data sources including resident complaints to the department and other compliance departmental action, recorded disputes at the Queensland Civil and Administrative Tribunal, stakeholder feedback during consultation, and an independent report by accounting firm Findex Australia Pty Ltd (Findex Report), identified inadequate and inconsistent standards of financial reporting across villages as a key contributing factor. For instance, between 2018-2020, 44 per cent of complaints and compliance actions related to village budgets and financial statements.

The current standard and level of transparency of financial reporting varies across villages and scheme operator groups. While many operators already provide sufficient detail in their financial documents, there is a lack of consistency across industry for disclosure of key information in budgets and financial statements, such as material types of expenditure, apportionment of shared expenses with other villages or entities, reserve amounts required to be held in funds, and assets and liabilities relating to the village.

This results in information asymmetry between residents and operators and limits residents' capacity to exercise their rights and obligations under the RV Act, including being properly informed for consultation and voting on certain resident fee increases and financial matters, and protecting their financial investment in their accommodation unit and village amenities. This situation also limits the department's capacity to assess compliance across the industry and identify and assist at-risk operators.

On 5 April 2023, amendments to the RV Act commenced that included a new regulation-making power for financial documents at section 113AA, better resident access to financial documents at section 113AB, and a new object at section 3(2)(a) to maintain public confidence in the Queensland retirement village industry by enhancing the financial transparency of the operations of retirement villages and the accountability of operators.

While the RV Act prescribes the requirements for financial reporting, these are not sufficiently specific or to a level of detail to ensure consistent standards, transparency, and materiality of information in the budgets and financial statements for the benefit of village residents, prospective residents and for the department. While section 113AA of the RV Act contains a head of power to make a regulation for financial documents, the Retirement Villages Regulation 2018 (RV Regulation) does not currently prescribe any financial reporting requirements or an approved form.

The objective of government action is to ensure appropriate transparency, accountability, and consistency of financial reporting in retirement villages to maintain public confidence in the Queensland retirement village industry.

## What options were considered?

Three options were considered against the objective of government action:
1. Preserving the status quo.
2. Providing financial guidance material to support best practice financial reporting.
3. Amendments to prescribe key regulatory requirements, supported by additional financial guidance material.

### 1. Preserving the status quo

Retaining the status quo would involve relying on the existing RV Act requirements for the preparation of financial documents.

### 2. Financial Guidance Material

Under this option, in addition to the current RV Act requirements, non-regulatory guidance would be provided by the department, in consultation with stakeholders, to outline best practice in financial reporting. This would include non-mandatory templates for budgets and financial statements. In addition, best practice guidance could be developed by the Australian Institute of Quantity Surveyors (AIQS) to support quantity surveyors in the preparation of reports about the recommended maintenance and capital replacement of village assets.

### 3. Amendments to prescribe key regulatory requirements with additional financial guidance material

In 2019, Findex Australia Pty Ltd, an independent financial services and accounting firm, undertook extensive engagement with retirement village stakeholders to identify recommended requirements for more standardised financial reports for budgets and financial statements and completed an impact analysis (Findex report). This work informed the development of the proposed regulation amendments to prescribe detailed requirements for the types and standard of information and disclosure in the budgets and financial statements, and relevant information for quantity surveyor reports.

Key requirements of the new regulation will include:

- provision of particular information related to items or types of income and expenditure
- reference to significance of information and breakdown of expenditure items
- information about apportionment of shared expenses with other villages or entities
- comparisons to corresponding items in earlier financial documents such as the previous year's budget and provision of actuals comparison amounts for income and expenditure items
- information about the calculation of the general services charge and the maintenance reserve fund contributions paid by residents, and the scheme operator capital replacement fund contributions

- the basis of preparation for annual financial statements and any accounting standards or principles used
- disclosure notes relating to particular matters, including surpluses or deficits, scheme operator commissions, fees, rewards or interests in any entity providing goods or services to the village
- information about outstanding liabilities to former residents
- a declaration by a scheme operator as to whether:
  - the financial statement has been prepared in accordance with the RV Act
  - the information is true and correct
  - the financial statement has been prepared on the assumption that the retirement village scheme is a going concern
  - the bank accounts have been operated in accordance with the RV Act
  - the operator is able to pay all the operator's debts relating to the retirement village as they become payable
- an auditor opinion as to whether the financial statement has been:
  - prepared in accordance with the RV Act and RV Regulation
  - capacity of the operator to pay the village debts during the next financial year
- inclusions for the quantity surveyor reports for capital replacement and maintenance and repair
- improvement in the alignment between the quantity surveyor reports, budgets and annual financial statements and explanations for any differences.

In 2021 and 2023, stakeholder feedback on draft versions of an amendment regulation has assisted to further refine the amendments, including:

- clarifying the extent of certain requirements and terminology
- refining the provisions to ensure application and workability across different village structures and sizes, such as for apportionment of shared expenses, corporate administration expenses, material expenditure, income categories
- adjusting certain requirements to reduce operator administrative burden and costs, and cost flow on to residents
- extending implementation timeframes to give scheme operators time to update business processes and complete staff training on new requirements.

Special purpose financial statements have been retained under the regulation amendments, as the proposed new requirements are only relevant to the key users of the statements, notably residents, prospective residents, and the department. This means that operators do not have to move to more onerous requirements for general purpose financial statements.

Under this option, in addition to the key requirements being set out in the regulation, financial guidance material would be provided to communicate requirements set out in the regulation and further support best practice financial reporting as per option two.

## What are the impacts?

### 1. Preserving the status quo

Retaining the status quo and relying on the existing RV Act requirements for financial reporting would result in no cost increase but prolong the current inconsistent standard of financial reporting. This is because while the RV Act prescribes the requirements for financial reporting, these are not sufficiently specific or to a level of detail to ensure consistent standards, transparency, and materiality of information in the budgets and financial statements for the benefit of village residents, as the primary users, and for the department. This would result in on-going issues, including on-going resident complaints and subsequent intervention by the department.

### 2. Financial guidance material

The use of non-regulatory financial guidance material would provide a level of improved reporting by some operators, however, would not ensure industry wide uptake and consistency, or provide an improved compliance framework to address existing issues with transparency and accountability. Under this option, it is expected that there be on-going resident complaints and necessary subsequent intervention by the department, though at a reduced level in comparison to option one.

**3. Amendments to prescribe key regulatory requirements with additional regulatory guidance**

The Findex Report identified the following benefits with detailed regulatory requirements:

- greater clarity for residents, village operators and managers, peak bodies, and other stakeholders, including simplified and transparent budgets and financial reporting
- opportunities to enhance resident engagement in the financial reporting process, and potential reduction in questions from residents and the community
- enhanced consumer protection and improved confidence in the process, budget, and financial reports, for the community, families of residents, and the department
- greater clarity on the "ask" and output for accountants and auditors, enabling standardisation of process to manage costs
- potential improvement in the viability of retirement villages by supporting improved financial practices of some village operators and managers in relation to budgets and financial reporting.

The Findex Report included a stakeholder net impact assessment based on interviews with stakeholders, discussion groups, outcomes of previous consultations and an examination of a sample of existing villages' budgets and financial reporting. It identified the following as potential costs for stakeholders arising from the proposed approach:

- For some scheme operators, there may be negligible costs depending on the current state of their budget and financial reporting process and outputs.
- For less sophisticated operators there may be establishment costs for accountants and auditors to address gaps (however these will likely be offset going forward by standardisation and efficiencies and mitigated by the release of guidance material to assist operators meet the minimum requirements and support best practice).
- Any additional costs may have a potential financial impact on residents, as costs may be passed on by operators.

Clearer, better itemised, and accurately presented budgets will make it easier for residents and resident committees to participate in the budget and fee setting process. This includes scrutinising budget increases, shared expenses, materiality of information, requesting additional information, tracking financial performance from year to year and budget figures against actuals, and participating in special resolution votes to approve a total general services charge where required under the RV Act.

There are also potential cost savings to residents by having more accountable budgets and financial statements as incorrect allocation of costs should be more easily identified. Safeguards in the RV Act mean that the total general services charge cannot increase above the CPI increase unless residents agree to the increase by special resolution vote, or it is an allowable increase under section 107 of the RV Act.

During consultation, resident and consumer legal stakeholders recognised that increased operator costs may result in a modest increase in resident fees, but that the benefits of the proposed changes would outweigh any costs. In addition, increased costs would be partly offset by an anticipated drop in the number of financial matter disputes and the resulting costs associated with the dispute resolution process.

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.

These costs have been estimated based upon feedback from operators, industry, resident bodies, quantity surveyors and auditors, and the department's analysis of a sample of retirement villages audited financial statements for 2022-23 and available quantity surveyor reports.

As part of the analysis, an hourly cost was first calculated based on average weekly earnings from multiple sources, then further scaled up using a multiplier of 1.75 provided by the Office of Best Practice Regulation to account for the non-wage labour on-costs (for example, payroll tax and superannuation) and overhead costs (for example, rent, telephone, electricity and information technology equipment expenses).

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. It did this by examining the 2022-23 financial statements of 76 retirement villages and categorising them by village size (number of units), operator size (number of villages), remoteness of area, regional or urban. By capturing the annual expenditure of each fund and total fund balance, then extrapolating these figures across villages of similar size and type, 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 from option three appears minimal and reasonable.

Key impacts for government are additional education, engagement, and regulatory activity to monitor compliance with the new financial reporting requirements. These costs will be met within existing resources and are anticipated to be at least partly offset by an anticipated reduction over time in managing complaints made to the department about financial reporting.

**Who was consulted?**

Consultation on financial reporting reforms for retirement villages commenced in 2019 with the Housing Legislation Consultative Group (Consultative Group), comprising representative groups for residents, seniors, operators, and the legal profession.

Members of the group include the Association of Residents of Queensland Retirement Villages (ARQRV), Council on the Ageing Queensland, National Seniors Australia, Property Council of Australia (PCA), Aged and Community Care Providers Association (ACCPA), Urban Development Institute of Australia (UDIA), the Caxton Legal Centre's Queensland Retirement Village and Park Advice Service (QRVPAS) and Queensland Law Society.

Following RV Act amendments to improve the transparency of retirement village financial operations, the Queensland Government engaged Findex Australia Pty Ltd to consult with resident and operator stakeholders and advise on more standardised financial reporting for retirement villages.

In 2021, the Consultative Group was consulted on the draft Amendment Regulation 2021. Consultation feedback and further 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.

In August 2022, the Consultative Group was consulted on a draft Housing Legislation Amendment Bill 2022 to amend financial reporting provisions in the RV Act, with further consultation occurring through the Parliamentary Committee inquiry on the Bill. The *Housing Legislation Amendment Act 2023*, amending the RV Act, was passed by the Queensland Parliament on 28 March 2023, and commenced on 5 April 2023.

In October 2023, members of the Consultative Group and the Australian Institute of Quantity Surveyors (AIQS), were provided with a consultation draft amendment regulation. Feedback was requested about the clarity and workability of the requirements, as well as potential compliance costs if implemented. Written feedback was received from the ARQRV, QRVPAS, ACCPA, UDIA, PCA, several retirement village scheme operators, and the AIQS and members. In addition, further consultation meetings were undertaken by the department between December 2023 and February 2024 with stakeholders who had provided submissions to obtain more detailed feedback, clarify provisions, discuss options for refinement, and consider cost impacts.

**What is the recommended option and why?**

The recommended option is to prescribe the key requirements for financial documents by regulation, combined with financial guidance material to communicate the requirements and support best practice. The financial guidance material would include non-mandatory templates for budgets and financial statements.

Prescribing key requirements for financial documents is necessary as the requirements for financial reporting are currently not sufficiently specific or to a level of detail to ensure consistent standards, transparency, and materiality of information in the budgets and financial statements. Without the prescription of key requirements, current on-going issues, including on-going resident complaints and subsequent intervention by the department regarding budgets and financial statement would continue. Financial guidance material alone would also not ensure appropriate levels consistency, transparency and the inclusion of material information as it would be optional for operators to follow only.

Prescribing the key requirements for financial documents by regulation, combined with financial guidance material ensures flexibility for operators while providing a regulatory basis to ensure operators' compliance with financial reporting and give effect to the RV Act's objects of consumer protection, financial transparency, and accountability of scheme operators.

Prescribing the key requirements for financial documents by regulation, combined with financial guidance material is consistent with the approach in other jurisdictions, notably New South Wales, Victoria, Western Australia and South Australia, which generally take a more prescriptive regulatory approach to village financial reporting than Queensland currently does. Several proposed regulation requirements, including disclosure of accounting standards or principles, shared or apportioned expenses, operator third-party relationships, liabilities to former residents and operator ability to pay debts, will bring the Queensland regulatory framework more in line with other states.

Prescribing the key requirements for financial documents by regulation, combined with financial guidance material delivers a commitment under Action 17 of the *Queensland Housing and Homelessness Action Plan 2021 – 2025*, which includes an action to finalise implementation of retirement village reforms to village financial statements. It is also consistent with *Homes for Queenslanders,* which includes continuing to modernise the housing legislative framework to improve consumer protections in a number of regulated accommodation sectors, including retirement villages, while making sure it's still viable for investors and operators to provide these housing options.

## Impact assessment

| | First full year | First 10 years** |
|---|---|---|
| **Direct costs** – ***Compliance costs**** | $324,074 | $1,149,632 |
| **Direct costs** – ***Government costs*** | Nil | Nil |

## Signed

Mark Cridland

Director-General
Department of Housing, Local Government, Planning and Public Works
Date: 22/5/24

Meaghan Scanlon MP

Minister for Housing, Local Government and Planning and Minister for Public Works

Date: 30/05/24