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Strategic Policy and Legislation
Housing and Homelessness Services
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Dear Strategic Policy and Legislation Team

Amendments to the *Retirement Villages Act 1999*

Thank you for the opportunity to provide feedback on behalf of the property industry in relation to the proposed amendments to the *Retirement Villages Act 1999* ('RV Act'). It is difficult to comment on this Bill in a meaningful way given the lack of detail contained within the Bill, as well as the lack of time provided to prepare a submission. However, it is clear that the effect of this Bill will be greater obligations on operators, the cost of which would be borne by the residents.

The Property Council is supportive of the principles of transparency, trust and compliance; however, we note that this is a careful balance because all additional obligations necessarily increase compliance costs which will have an impact on the industry and residents alike.

This is particularly significant in the area of budgets, where larger operators will likely have qualified accountants in-house to provide assistance, as opposed to smaller operators who will have to acquire the services externally. To ensure the cost to operators and, by extension, residents are not unnecessarily inflated, the required information under the Bill that is duplicative in nature or unnecessarily burdensome to operators to provide should be limited where possible.

Lack of transitional provisions

There are no transitional provisions to reflect the Department's commitment that the new requirements will only apply from the financial year 2023-24 onwards. Read strictly, the new requirements will apply immediately on commencement of the Draft Bill (except for one clause which postpones the provision of quantity surveyor reports to the Department to the 2023-24 financial year). The Draft Bill should clearly indicate when each new obligation commences, in order to avoid confusion for operators and residents across the sector. It is imperative that operators are given enough time to comply with the new rules.

Guidelines by chief executive

The proposed new power of the chief executive (Department) to issue guidelines setting out their views on the RV Act poses a significant danger to legal certainty for operators and residents. Whilst the publication of such guidelines is already an established practice, endorsing them in the legislation will create the impression that they have the force of law or are binding on operators/residents. Where the guidelines are incorrect, do not necessarily reflect the true legal position or otherwise take a position not necessarily made clear under the RV Act, the effect will be to cause confusion for the industry as a whole, and to potentially cause loss to persons who rely on them. The proposed provisions should not be included in the RV Act.

Burden on operators

Sections 35(2)(c), 92(8) and 98(8)

The Property Council is generally supportive of these amendments, however, it is not clear what objective is sought to be achieved by the chief executive receiving the QS reports and placing them on the retirement villages register. It is also not clear what are the benefits of accessing historical QS reports on an ongoing basis. For new retirement village schemes where improvements are under construction, the QS reports may be indicative for budgeting and disclosure purposes only until practical completion of the improvements is reached and the QS can more accurately report on expected costs. Obtaining updated reports during construction only for the purpose of complying with these proposed new provisions will only add to administration and compliance costs for operators. As an alternative to annual lodgement, Schedule 5 of the *Retirement Villages Regulation 2018* should be amended to prescribe the QS reports for the last 3 financial years as 'operational documents' that a resident or prospective resident is able to inspect under section 85 of the RV Act.

Section 112

It is unlikely that an operator will be able to deliver within 28 days quarterly financial statements that have been audited in SPFR format. Additionally, there would be significant cost implications of undertaking an audit on a quarterly basis.

Section 113AB(2)(b)

The effect of this provision will be that for residents will have the right to request the budget 28 days prior to the start of the new financial year. The operator then has 14 days to produce the budget (and QS Report). However, there are some items which will just not be known at this time. In addition, as there are already consultation requirements this provision may unnecessarily duplicate operator obligations. Ideally, the provision would

expressly allow for the draft to be both completed *and* compliant with section 113AA 'as far as practicable'.

Additionally, given that this provision will mean operator may now receive any number of requests from individual residents, provision should be made for operators to comply with such requests by providing the requested draft budgets in a communal area or another method of mass distribution (e.g. provision to the residents committee). This will allow the operator to comply with the section without requiring individual communication and provision to each resident who requests a copy, which could cause significant administrative issues.

Furthermore, the transitional provisions should clarify whether the draft budgets for the first intended financial year for the reforms (2023-24).

Section 113AA(1)(c)

Referencing compliance with the *Australian Accounting Standards* could trigger reporting obligations for operators, which creates unnecessary burden.

s 113AA(2)(e)

The reporting requirements associated with compliance with this provision will be unduly onerous for operators. Rather, the Regulations should allow this information to be provided in the form of a summary or opinion, as there will (by necessity) be many 'explanations' for a surplus or deficit in practice. For example, any item of expenditure that is greater or less than the budgeted amount will technically form part of the explanation and it will not be practical to list of all of these. The explanation will also necessarily involve an element of opinion or 'point of view' by the operator, which makes a summary or opinion format appropriate.

s113AA(2)(d)

This provision will result in operators' budgets having pages of Notes to the accounts. The corporate structure of some operators means that more transactions involve funds flowing through entities, which will add significant complexity to the accounts.

Section 226

It is open to the chief executive to provide online information, however referring to such guidelines in the RV Act is likely to give the impression that they have the status of legislation or are legally binding on operators/residents. In fact, such guidelines merely represent the chief executive's viewpoints on the interpretation of the legislation or the way it is to be applied, and do not have the force of law. The existence of statutorily endorsed guidelines risks causing confusion for operators and residents about their

rights and obligations under the RV Act and creates a risk of non-compliances by operators where they are relied on but are ultimately determined to be incorrect.

Ambiguity/Duplication

Sections 113AA(1)(a) & (b)

Paragraph (a) refers to an 'approved form', and paragraph (b) refers to a 'prescribed form', which appears to be a duplication. If 'approved form' and 'prescribed form' are intended to be different things, the provision should be amended for clarity. However, no approved form has been made available, which makes it difficult to comment.

Section 113AA(2)

The items listed in subsection (2) indicate that a relatively high level of detail is intended to be prescribed for financial documents. However, the Government should consider limiting the prescribed matters (either in sub-section (2) or the Regulations, when drafted) to those that are absolutely necessary for transparency, consistency and accountability and will not cause financial documents to become overly long, detailed or complex, or require operators to duplicate information. The Government should consider exempting smaller villages or operators from requirements that are likely to be more onerous or complex, as is the case in New South Wales.

s 113AA(2)(a)

This provision should be limited to information or statements that can in practice be included in an audit report or signed off by an auditor, such as statements of the auditor's appointment, qualifications or independence and statements about the correctness of the annual financial statement.

This provision should not require the auditor to state any particular matters that would require specialist knowledge or expertise of the RV Act or retirement villages generally (such as warranties that the scheme operator has complied with all requirements of the RV Act) so as not to limit the available pool of auditors to service the retirement villages industry in Queensland.

s 113AA(2)(b)

This provision should be removed or amended for clarity. For example, the reference to 'using' the document could be removed. Alternatively, if the Government has a particular way it would like the information to be presented, this should be taken into consideration when preparing the 'approved form' to be prescribed under sub-section (1)(a).

s 113AA(2)(c)

For documents prepared by a scheme operator, the proposed statements or declarations should be appropriate and limited to matters that are within the knowledge of the

operator. For example, the prescribed form of Prospective Costs Document provides a simple statement and date of certification in the first section.

s 113AA(2)(d)

It is not clear whether the proposed 'disclosure notes' will be fixed statements of text to educate the reader about the relevant matter (similar to prescribed text appearing in the Village Comparison Document or Prospective Costs Document), or bespoke details to be reported for the particular village. The examples of 'disclosure notes' given in the draft provisions suggest the latter. The nature of the proposed 'disclosure notes' should be clarified.

Schedule (dictionary)

Quantity surveyor

Part of the definition of 'quantity surveyor' includes a component that says the report must be prepared by a surveyor who must not 'have a direct or indirect interests that conflicts or could conflict, with the appropriate preparation of the report'. This definition is extraordinarily broad as surveyors could easily have interests that could conflict – i.e., the mere act of receiving payment from one party could be a conflict. However, as professionals they follow professional guidelines and obligations. If the intention is that a quantity surveyor does not have any prior knowledge of the particular village, this appears counterproductive and unnecessarily expensive. This is exacerbated by the fact that there are only a limited number of quantity surveyors to are sufficiently experienced in the field of retirement villages.

Financial year

Whilst not proposed in the Draft Bill, a definition of 'financial year' could be inserted, directing the reader to the meaning given to that term in Schedule 1 of the *Acts Interpretation Act 1954* (Qld) (being '*a period of 1 year beginning on 1 July*'). Currently there is no definition of 'financial year' in the RV Act, meaning that it is not immediately obvious on reading the RV Act whether a particular financial year is prescribed for retirement villages in Queensland or whether operators can select their own. Directing the reader to the definition in other legislation will confirm that each retirement village in Queensland must have a financial year of 1 July to 30 June, increasing clarity for residents, operators and other stakeholders in relation to financial documents and reporting for retirement villages in line with the objectives of the Draft Bill.

Conclusion

The Property Council's interpretation of many of the provisions in the Draft Bill is that they seem to increase regulatory burden and cause confusion for operators of retirement villages. This runs counter to the Government's desire to support vulnerable people with housing, and the need to plan for the 178.3% increase in the number of people aged over

85 in Queensland that CEPAR has forecast over the next 20 years. In its current form, the Draft Bill will move costs from existing residents to operators, then back to residents and ultimately to taxpayers when potential future residents cannot afford or are not able to access a suitable retirement village.

Additionally, the Government has given industry a period of only one week to provide comments on the Draft Bill, being Friday 19 to Friday 26 August 2022. This is significantly shorter than the usual timeframe for consultation on draft legislation and is insufficient to provide the specific feedback that the Department has requested, being *'feedback from [operators] finance specialists, accountants and auditors to ensure the proposed amendments are workable in villages of all sizes and tenures'*. The short timeframe provided for comment is unrealistic and unreasonable given the specific feedback requested and the length of time that has passed since the proposed reforms were announced (2017). It is imperative that when draft Regulations are prepared to implement specific requirements for financial documents, a review and feedback period sufficient to allow full examination by all relevant stakeholders and their advisers is allowed.

The Property Council is eager to maintain ongoing involvement in the consultation process for this Bill and changes to the Regulation anticipated by this Bill. We welcome the opportunity to discuss any aspect of this submission with the Strategic Policy and Legislation team in more detail. If you have any questions in relation to the Property Council or this submission, please do not hesitate to contact me on bmyers@propertycouncil.com.au or 0400 778 833.

Yours sincerely



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