

TEXT VERSION: SPECIAL ANNOUNCEMENT FROM RVRANZ - RE: CFFC REPORT - Wed 9th June 2021
Some extremely pleasing news... - Peter Carr, President RVRANZ

Shortly after we distributed the latest newsletter, which included our vitally needed petition document, we then became aware of the Retirement Commissioner's findings from the 3,300 submissions to the White paper.

Clearly the Commissioner's statements align very much with what we have been attempting to achieve especially over the past year. Many members' meetings throughout the country have been addressed to ensure that the aims remain true and that the RVRANZ mission does not lose momentum.

The very well attended regional AGM's have shown that there is growing interest in our association which has doubled its membership over the past twelve months. There is still a long way to go to achieve what we consider is a fair and level playing field in the RV industry. Our petition, and the Commissioner's timely and well thought out findings, are just part of the steppingstones to meeting our targets.

Thank you all for your support. Please do not hesitate to get ten signatures on each petition. Equally important is the role that you can play in encouraging other residents in all villages to join with us on this campaign.

We commend the accompanying public statement from the Retirement Commissioner for your consideration, along with her offices' recommendations and a link to the full report.

A copy of our media release can also be viewed online. www.rvrnz.org.nz

Urgent review recommended for retirement village legal framework - Media Release from Jane Wrightson, Retirement Commissioner

Retirement village legislation is at risk of becoming outdated and unfit for purpose, requiring urgent review to eliminate unfair terms in contracts and better protect the rights of consumers.

The Commission for Financial Capability (CFFC), office of Retirement Commissioner Jane Wrightson, has released a report and recommendations following public consultation on a discussion paper studying the effects of the complex legal framework governing the retirement village sector.

The CFFC received nearly 3300 submissions. While most were from individuals and the Retirement Village Residents' Association, others came from operators and other stakeholders including lawyers, supervisors, and consumer advocates.

"Retirement villages provide an attractive option for some older New Zealanders and they are well-marketed. However, in the 20 years since the legislative framework was established there has been no review to assess whether the balance of power between operator and consumer is appropriate," said Wrightson. "We found competing tensions that are unresolved, and recommend a full review of the framework be carried out as a matter of urgency."

Submissions backed up concerns expressed in the CFFC's paper regarding the resale process, weekly fees charged after a resident vacates a unit, flaws in an overly complicated complaints system, confusing documentation, and the tricky interface between village and care facilities.

"These issues are important because it is difficult to leave a village once contracts are signed. Residents are neither owners nor tenants and their consumer protections are limited," said Wrightson. "It is therefore important that fit-for-purpose legislative protections are in place."

Almost all individual submitters, the residents' association and a large majority of other stakeholders, including the New Zealand Law Society, supported a full review of the regulatory framework.

Operators and the Retirement Villages Association (RVA) did not support a regulatory review, but agreed some areas may need improvement. These related to improving disclosure for entering a village, and for transferring to care. There was general agreement that the resale process should be reviewed to ensure better disclosure,

but no consensus on legislating specific changes. Some operators agreed the ongoing payment of weekly fees after a resident exits a village needed to be looked at, with a view to setting limits. There was also consensus that more needed to be done to clarify responsibility for repairs and maintenance of chattels in individual village units.

“However, the wide-ranging concerns expressed in the individual submissions, and those of other stakeholders, suggest that focussing only on these limited areas is not sufficient to ensure a fair and balanced regulatory environment,” said Wrightson.

The RVA recently offered to look at improvements in a few areas in a “blueprint” created in response to the CFFC review. Although the CFFC welcomed and encouraged the best practice approaches suggested in the blueprint, these measures should be considered an interim step.

“We do not believe they are sufficient in scope or impact to circumvent the need for a full review. The retirement village sector is growing and if the Government does not review the regulatory framework now, New Zealand runs the risk of ending up with a weak framework that does not properly protect older consumers and their families.”

The CFFC has offered to assist in drawing up the Terms of Reference for the review, and support the Ministry of Housing and Urban Development in undertaking it.

In the meantime, Wrightson said there were some areas where work could be carried out by the CFFC and the retirement village sector to ensure better outcomes in the short-term while a review took place. These “interim recommendations” included a review of contracts to identify and remove unfair terms, the appointment of an RVA Disciplinary Authority to deal with serious complaints about operator behaviour, and the supply of data to the CFFC regarding resale times and the processes villages follow in terminating financial charges after exit. This would provide insights into which operators were following best practice, and where there were issues that may require further investigation.

“Through its monitoring and oversight function, the CFFC has raised many of the issues covered in the discussion paper in previous years. Change has been slow and the submissions we received confirm that many important issues remain unresolved and problematic,” says Wrightson. “A piecemeal approach to change is insufficient. The industry has grown in scope and complexity since the framework was drawn up, yet is still a young industry. In the interests of both consumers and operators, it’s time the balance was reset.”

Exec Summary and Recommendations from the CFFC's Report

The following is an abridged version of the reports Exec. Summary and Interim Recommendations. Please feel free to download the full 30+ page report.

>> [DOWNLOAD HERE](#) <<

The final paragraph of the Exec. Summary sums up by saying - "A full legislative review has not taken place since the legislation was enacted almost two decades ago. The initial intention of the legislation was to provide a framework for retirement living options in a then-nascent industry. The industry has grown in scope and complexity since then and projections are for further significant growth. Other than some revisions to the code, no review has been conducted to assess whether the balance of power between operator and consumer is appropriate. **We therefore recommend that a full review of the legislative framework is carried out as a matter of urgency.** [Emphasis Added]

Pgs 9 & 10 of the report were dedicated to the RVRANZ’s submission thanks to more than 1900 resident submissions collated.

Interim Recommendations: moving in

- CFFC and RVA to encourage widespread use of the Key Terms Summary (KTS) in a standard template format so that matters such as capital payment, weekly fees, the Deferred Management Fee (DMF), availability of care and the transfer process, and other important conditions about living in the village are made clear to intending residents
- CFFC to investigate the development of an online tool for intending residents to 'compare and contrast' individual RV terms and conditions to assist consumer decision making (information to populate this tool would need to be initially provided by RV operators to CFFC and updates would also need to be provided as and when terms change or at some regular interval)
- CFFC to work with NZLS and ADLS to determine training needs/requirements of lawyers to ensure they are equipped to provide advice on ORAs
- RVA to work with members, residents and CFFC to identify best practice for future ORAs that define each party's responsibilities in this area so that residents are not responsible for maintaining operator-owned chattels but also protect the operator from abuse of chattels
- RVA to review ORAs in general and continue to work with the RVRANZ and the CFFC in identifying clauses that are unfair, and engage with members to ensure that any unfair terms are removed

Interim Recommendations: living in

Resident advocacy:

- RVA proposes to co-opt an independent person, who may be a village resident, onto the RVA's Executive Committee
- RVA and RVRANZ to continue to work co-operatively in terms of the Memorandum of Understanding signed in December 2020

Complaints system:

- RVA proposes to include an independent member (as is common in other organisations) on the Complaints Committee to be part of the review process and to guide both operators and residents on the justice or otherwise of the complaint or dispute. We suggest the independent member should chair the Complaints Committee
- RVA appoints a Disciplinary Authority to deal with complaints about egregious operator behaviour
- CFFC to investigate providing resources to support education of both operators and RV residents on effective approaches to handling complaints

Interim Recommendations: moving on

- The RVA proposes monitoring relicensing terms via annual survey of members
- CFFC, in its monitoring function, to request RVs to supply data to the CFFC (in terms of s36(4) of the RV Act) regarding: resale and buyback times and the processes they follow in terms of terminating financial charges after exit to provide insights into who is following best practice standards, and where there are issues that may require further investigation

- CFFC and RVA to encourage widespread use of the Key Terms Summary (KTS) in a standard template format so that matters such as availability of care and the transfer process are made clear to intending residents
- Relevant government agencies (MSD & MoH) to investigate feasibility of extending Residential Care Loans offered on freehold properties by the government to include those in RVs with LTOs

RVRANZ President’s response to the media.:

Clearly the Retirement Commissioner has read the tea leaves with clarity and in a caring manner.

This is not a battle between David and Goliath. It is a sensible and professional approach for a long overdue opinion with regard to the need for a level playing field.

That 3300 people, the majority of which were retirement village residents, took the opportunity to make worthwhile submissions to the White Paper, makes a mockery of the industry operator's view that 96 per cent of retirement village residents are living in an aura of violins and kumbaya.

The clear message from the Retirement Commissioner, an entirely independent observer, that major material change to the Act and associated regulation and codes is well overdue, aligns exactly with the aims and oft-repeated objectives of the RVRANZ.

This is, and should be, a well balanced industry. Where elderly people in the twilight of their lives, are exploited by heavy handed operators intent on huge profits. Where entirely unfair financial practices should be questioned. Where, in some cases, elderly - mainly single ladies - are commercially exploited, layering them with undesired stress - is an oft-repeated sad reality.

RVRANZ congratulates the Retirement Commissioner on her clear and well balanced view with regard to seeking a whole-of-industry reform. By way of challenging ageing legislation to ensure that almost 50,000 (and growing) elderly people, who have sunk their life savings into a perception of a comfortable quality of life, can remain secure and safe in the knowledge that they will not be exploited.

URGENT PETITION

Although the report has requested an urgent review, we believe a government petition, initiated by the RVRANZ is required to help address a perceived 'complacency' shown by the current government - in light of recent comments.

PLEASE try to get all 10 spaces filled with signatures on the petition enclosed within the latest printed newsletter over the next 5 weeks.

The petition seeks to ask;

1. That the government initiates an urgent review of the Retirement Villages Act of 2003 and 2008 Code of Practice to address the imbalances between operator and resident.
2. That where a resident with an Occupational Right Agreement has no share in the capital gain nor any involvement in the sales process of their unit, the operator guarantees to return the capital (less the deferred management fee) to the departing resident on resale/relicensing of the unit or within 28 days of exit, whichever comes first."

An online e-Petition form (for emailing or sharing over social platforms) will be available shortly. **We will email members the link when it has been approved.**

Contact: RVRANZ, c/- Private Bag 4707, Christchurch. Email: secretary@rvranz.org.nz Phone: 027 608 3700.