

Retirement villages legislative framework: Assessment and options for change

SUBMISSIONS SUMMARY AND RECOMMENDATIONS 2021

EMBARGOED until Wednesday, 9 June, 5am



Te Ara Ahunga Ora Retirement Commission will be the new name of the Commission for Financial Capability from July 1, 2021. Te Ara Ahunga Ora translates to 'the pathway to developing long-term wellbeing'. It reflects our purpose to empower the people of Aotearoa on their journeys to a better retirement. Our original English name of the Retirement Commission encapsulates the breadth and depth of our work in pursuing our mission and vision - to improve retirement outcomes for all New Zealanders, so that everyone can retire with confidence.

We have retained reference to the CFFC throughout the body of this document as the consultation, analysis and report writing phase was carried out while we operated under the name of CFFC.

Contents

Executive Summary	2
1. Background	4
2. Individual submissions	5
General feedback	5
Specific themes	5
3. RVRANZ collated submission	9
General feedback	9
Specific themes	9
4. Operator submissions	11
General feedback	11
Specific themes	12
5. Other stakeholder submissions	13
General feedback	13
Specific themes	13
6. Summary of areas of general agreement between stakeholders	15
7. Discussion	16
8. Cross-government issues	19
Strategic review: Responsibility for oversight of legislative framework	19
Aged care considerations	19
9. Recommendations	20
Appendix 1: Sources of submissions	23
Appendix 2: Summary of Method	24
Appendix 3 White Paper questions and summary of Yes/No answers	25
Appendix 4: Occupation Rights Agreement (ORA) and a Licence to Occupy (LTO)	27
Appendix 5: Summary of Australian legislation	27



Executive summary

A CFFC White Paper proposed a policy review of the retirement villages framework, including the resale and buyback process, weekly fees after vacating a unit, and a Code review. It noted flaws in the complaints system, confusing documentation, and explored the tricky interface between village and care facilities. It also noted the changing business and demographic environment. Feedback was sought¹.

The CFFC received over 3,000 responses to the White Paper, ranging from simple answers to the five questions posed in the paper to extensive written submissions.

Almost all individuals and residents, as well as the Retirement Village Residents Association (RVRANZ) and a large majority of other stakeholders, including the New Zealand Law Society (NZLS), support a full review of retirement villages framework.

Operators and the Retirement Villages Association (RVA) do not support a full review, but they do agree on a few areas for improvement.

Areas where there is general agreement that a review is needed relate primarily to improving disclosures for entering a retirement village (RV) and also for transferring to care. There is general agreement that the resale and buy-back process should be reviewed to ensure better disclosure, however there is no consensus about legislating specific changes. Many agree that the payment of weekly fees after exit needs to be looked at, with a view to setting limits. There is also consensus that more needs 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 only focussing on reviewing these limited areas is not sufficient to ensure a fair and balanced legislative environment.

We have categorised the themes identified in the submissions into three areas of the retirement village life cycle: moving in, living in, moving on.

In the **moving in** phase key concerns relate to disclosures, legal advice, and legal documentation. There is general agreement that legal documentation needs to be simplified. However, disclosure alone is not always sufficient, and regulations should ensure minimum standards and fair terms. This is particularly important because Occupation Rights Agreements (ORA) terms are generally not negotiable.

Those **living in** a retirement village generally report high satisfaction levels, and there are low levels of formal complaints. However, from the submissions we heard that, due to the nature of the Licence to Occupy (LTO) model, financial considerations play a role in whether residents feel they can raise issues, and they are not easily able to exit a village if they are unhappy with how complaints are handled/resolved. For this reason it is extremely important that there is a robust, trusted and simple complaints process to ensure that issues that arise are addressed in an appropriate manner, that takes into account the financial power imbalance that exists between residents and operators.

¹ Pursuant to the Retirement Commissioner's obligations under s36 of the Retirement Villages Act 2003 to monitor the effects of the RV legislative framework.

Most of the concerns raised in the individual and resident submissions related to issues that are encountered in the **moving on** stage of the lifecycle. Concerns related to resale and buyback timeframes, sharing capital gains, and the continuation of financial charges after exit were among the most widely discussed issues in the individual and resident submissions. Many operators highlighted that financial terms and consequences of resale and buyback process should not be legislated as these are commercial terms that allow operators to differentiate their models. However, a distinction needs to be made between dictating commercial terms and legislation that protects consumer rights and eliminates unfair terms. It is the moving on stage where residents and their families are often at their most vulnerable. Issues relating to resale and buyback timeframes, sharing capital gains, and financial charges post-exit, highlight strongly differing views around the minimum rights and responsibilities of both operators and residents. Once again it needs to be highlighted that ORAs are generally not negotiable.

Transferring to care is another area where more needs to be done to ensure there is a clear understanding of resident rights when contemplating moving into care within a village, as well as the financial consequences of such a move; and the implications of moving (or being moved) outside the village to receive higher levels of care.

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.

Based on the issues outlined in the White Paper, the unresolved competing tensions, and the feedback received from the submissions process, our recommendation is to conduct a policy framework review.



1. Background

The CFFC's White Paper: Retirement Villages Legislative Framework: assessment and options for change² was released for consultation at the beginning of December 2020. The consultation process was open until 5pm on Friday 26 February 2021. The CFFC received some requests, mainly from operators, for an extension to this deadline and these were granted on a case-by-case basis, with a final deadline of 31 March 2021³.

Submissions were received from a variety of stakeholders, and we make use of the following four categories in this summary report:

- Individual submissions⁴ (via the online submission portal and emails sent directly to CFFC). These include RV residents, family of current or past RV residents, and any other submissions made by an individual in their personal capacity.
- RVRANZ submission and the collated hard copy submissions from residents sought by the RVRANZ. These were primarily from RV residents, however on the form that the RVRANZ sent to residents they also encouraged them to get family to submit, either by filling in a hard copy form, or online. This means that while we can assume that the majority collected by RVRANZ were resident submissions, they may also include some submissions from family members of RV residents.
- Operator submissions: All submissions from Retirement Village Operator or Owner companies or individuals. The RVA submission on behalf of their members was also included in this group.
- Other stakeholder submissions: All submissions from other stakeholders including from lawyers, trustees, aged care, and consumer groups.

The total number of submissions was:

- Individuals: 1,316 submissions
- RVRANZ: 1 RVRANZ and 1,910 hard copy resident submissions⁵
- Operators⁶: 1 RVA and 13 operator submissions
- Other stakeholders⁷: 13 submissions

TOTAL SUBMISSIONS RECEIVED: 3254

We have structured discussion of themes and issues into the three stages of the retirement village lifecycle:

- moving into the village,
- living in the village, and
- moving on from the village (this would relate to those who move out of the village for any reason, including moving into care (which could be within the same RV) and those who pass away).

The following four sections describe the general themes in the four respondent categories.

Appendix 2 sets out our submission methodology, including the steps we took to minimise the risk of duplicate submissions.

Appendix 3 cites the questions posed in the White Paper and analyses responses by category.

² [CFFC-RV-whitepaper-2020-Final.pdf \(amazonaws.com\)](#)

³ The submission from the Health & Disability Commission was received in April and was included in the review as it had been specifically requested by the Retirement Commissioner.

⁴ We do not have a specific number that we can assign to retirement village residents as we did not ask those who submitted to identify whether they were a resident of an RV.

⁵ RVRANZ reported 1680 in their submission as at end February, and an additional 230 submissions were received during March, which were included in the final count.

⁶ See Appendix 1 for list of specific operators.

⁷ See Appendix 1 for list of other stakeholders.

2. Individual submissions

General feedback

The majority of individuals believed the White Paper canvassed issued fairly and accurately (96%)⁸. Those who disagreed mainly claimed there was a lack of consultation and canvassing of the views of retirement village residents during preparation of the White Paper.

There were very high levels of support for conducting a full review of the retirement village framework (99%). Comments specifically related to the review spoke about the need for an urgent review, that the review was overdue, and that they wanted a review to take place to ensure that the legislative environment was more balanced in terms of resident versus operator rights. Existing

residents were concerned that changes would come too late for them, and there were suggestions that any changes should be applied retrospectively to existing residents⁹. There were also comments that the RV financial model and legislative environment favoured the operator, and there were concerns that RV operators prioritise profit over care.

Specific themes

Table 1 summarises the key themes that were identified in the submissions. The themes relate to issues that were mentioned in at least 5% of the submissions, therefore issues that were only highlighted by a few individuals are not reflected¹⁰.



⁸ Not everyone who made a submission to the White Paper answered the questions, and some only answered a few of the questions. In the percentages reported we only provide feedback based on those who responded to a particular question (non-responses are excluded) more detail is provided in Appendix 2 & 3.

⁹ We note that legislative change is only very rarely applied retrospectively.

¹⁰ More detail regarding the analysis process is provided in Appendix 2.



Table 1: Summary of themes raised in individual submissions

Moving into village	Living in village	Moving on from village
<p>Purchase process</p> <ul style="list-style-type: none"> • Got legal advice but terms of ORA generally not negotiable, and limited choices so forced to accept terms of ORA • Concerns related to knowledge of lawyers with respect to the operation of ORAs, and how the ORAs and Code are applied in practice by RV operators • Promises of facilities that don't materialise (disclosure documents don't seem to be binding on operator) • Sales agents are not required to adhere to real estate agent standards, such as those related to disclosure/misrepresentation <p>Legal documentation</p> <ul style="list-style-type: none"> • Legal documents and disclosure documents complicated and overlap of information • ORAs should be standardised contracts (similar to residential tenancy or sale & purchase agreements) 	<p>Responsibility for maintenance & repair</p> <ul style="list-style-type: none"> • Concerns related to paying for repairs and maintenance of RV owned chattels • Refurbishment/ongoing maintenance if live in a villa for a long time <p>Resident advocacy (power imbalance)</p> <ul style="list-style-type: none"> • ORA clauses and interpretation in favour of operator • Voice for residents/resident advocacy <p>Review of complaints system</p> <ul style="list-style-type: none"> • Support review of complaints process • Support RV Commissioner/Ombudsman <p>Financial concerns</p> <ul style="list-style-type: none"> • Weekly fees: concerns related to increases, calls for standardised approach • Transfers within RV - financial consequences <p>Complaints regarding RV facilities & services</p> <ul style="list-style-type: none"> • General complaints related to RV facilities and services <p>Legislative framework/participants</p> <ul style="list-style-type: none"> • Too many govt entities involved - need someone with ultimate responsibility/power • Concerns regarding independence and functions of the statutory supervisors. 	<p>Resale and buy-back process</p> <ul style="list-style-type: none"> • Support guaranteed timeframe for buy-backs • Concerns related to delays in the resale process & delays in receiving funds • Support interest payable once vacant <p>Financial charges after departure</p> <ul style="list-style-type: none"> • Support stopping weekly fees after exit • Accrual of DMF should stop on exit <p>Capital gains</p> <ul style="list-style-type: none"> • Support sharing capital gains <p>Transfers to care</p> <ul style="list-style-type: none"> • Concerns about financial consequences (especially if delays in resale and buy-back process from RV unit) • Lack of information related to these transfers <p>ORA exit provisions</p> <ul style="list-style-type: none"> • Exit terms favour the operator • Improvements made by residents to their villas not taken into account in calculation of exit payments • Unfair exit terms (capital loss without gain; 80/20 contracts with selling fee as % of sales price)

Moving in

The issues related to entering into a village focused on the purchase process and the legal documentation related to entering into an **Occupation Rights Agreement (ORA)** to purchase, in most instances, a **Licence to Occupy (LTO)**¹¹.

In terms of entering into an **ORA**, while many noted they received legal advice there was concern that the terms of the ORA were generally not negotiable. The limited choices of operator financial models, and in certain regions, limited villages available, meant that many felt they had no choice but to accept the terms if they wanted to move into a retirement village (especially if they were no longer able to continue living in their existing homes). There was a feeling that the offers of occupancy were very much on a “take it or leave it” basis as operators were unwilling to negotiate terms, and given high demand for retirement villas, many had waiting lists so they could just move onto the next person on the list.

Some highlighted that, due to the specific nature of ORAs and how they were interpreted by the operators in practice, the knowledge their lawyers had was not necessarily at the level required to give specific practical advice regarding how the terms of the ORA would function in practice once they made the move into the RV.

There were concerns that sales agents were not held to the same standards as real estate agents, and that the facilities that were promised as part of the sales process did not always materialise. It was noted that there was a need for better regulation of sales agents (in line with the standards required of estate agents) and for the disclosure documents to be legally binding on the operator.

There were concerns that the legal documentation was too complicated, and that there was too much documentation. There were a number of comments that ORAs should be standardised, like residential tenancy agreements and sale and purchase agreements, so that it would be easier to understand and compare across RVs.

Living in

The issue mentioned most often relating to living in the village was responsibility for maintaining and repairing RV chattels. Many felt it was unfair that they should have to pay to maintain and repair chattels that they did not own. A lack of clarity about specific responsibilities and limited disclosure added

to the problem, with RV operators generally having the final say regarding who was responsible for specific costs.

For those who had lived in a village for a long time, there were also issues related to obligations on operators to refurbish villas. Generally full refurbishments only occur once they exited their villa. Some noted that they could potentially live in their villa for 20 to 30 years.

A number of submissions dealt with the issue of resident advocacy, and the inherent power imbalance in the resident operator relationship. There were concerns that where ORA terms were not necessarily clear, the interpretation of the clauses was determined by the operator and therefore generally favoured the operator. Another clear theme was the need for a voice for the residents, and for residents to be listened to and respected by operators.

Linked to the issues of the power imbalance and resident advocacy, submissions also highlighted the need for a review of the complaints system to make it simpler and fairer to residents. There was support for the appointment of an Ombudsman or a dedicated RV Commissioner.

Individuals also highlighted concerns regarding financial issues, with most focussing on weekly fees, where many were concerned about how fees increased. There were also concerns about the financial implications of transferring between units in the RV (moving from larger to smaller units after a partner passed away or moved into care; or moving to serviced units). Some mentioned that this would require a new ORA, which was not affordable given the escalation in prices since they originally purchased their initial ORA.

Individual submissions also highlighted complaints related to the provision of facilities and services in the RV, with some noting concerns about health and safety, construction, and general maintenance of facilities.

Lastly, in terms of the legislative framework, there were calls for a simplified structure with one central authority responsible for RVs, rather than the multiple government and statutory entities currently involved. There was also concern raised regarding the role of the statutory supervisor, both from the perspective of whether this role was sufficiently independent of operators (given that they are paid for, and appointed by operators), and calls for a review of the role that statutory supervisors should play within the framework.

¹¹ Refer to Appendix 4 for explanation of the ORA and LTO.

Moving on

Many of the key concerns that were highlighted by individuals in their submissions related to the third phase, moving on from the village.

In terms of the resale and buy-back process there was strong support for a guaranteed buy-back process. There were concerns expressed about delays in the process and the lack of control as the process is generally handled by the operator.

Many were concerned about financial charges continuing after resident departure. There was strong support for stopping weekly fees after exit, and individuals also highlighted that the accrual of the **Deferred Management Fee (DMF)** should also not continue after the unit was vacated. The continuation of this accrual meant that the former resident's capital sum continued to decrease the longer it took for the villa to be reoccupied.

The issue of capital gains was also frequently highlighted in the submissions. In general, there was strong support for reaching some arrangement to share the capital gain between the resident and the operator. While it was recognised that most agreements did not provide capital gains, there were still concerns that large price increases over time made it difficult for existing residents to move to other villages, or into care when an existing ORA capital pay-out would be insufficient to meet the new higher prices. The financial implications of transfers to care were highlighted, in particular concerns that residents would not be able to pay for care costs if they continued to pay weekly fees for their previous villa until it was reoccupied.

For those who would need to enter into a new ORA to move into care any delays in receiving their capital back from their existing ORA would create a shortfall of funds, and once again the issue of increases in prices created concern that, without a share of capital gain from their existing ORA, the new ORA for care would be unaffordable.

Several submissions observed that the exit terms of ORAs favoured operators, and that ORAs were generally not negotiable. Individuals noted that exit payments generally did not take into account any improvements made by the residents to their villas.

Finally, there were also specific concerns with the older versions of ORAs (that were still held by some residents) based on the 80/20 model. In these cases residents are responsible for the escalating refurbishment costs paid on exit and must pay a selling fee, a percentage of the sale price of the new LTO. Given rapidly-rising LTO prices this results in a financial deduction that gets larger as prices increase without the resident participating in any gains from the sale of the new LTO.

While it was acknowledged that these types of contracts were no longer commonly used, and some who had previously held these contracts had been offered new terms, there were still some residents who were subject to the terms of the original 80/20 contracts.

3. RVRANZ collated submission

General feedback

In this section we summarise the RVRANZ submission, which included the submissions from residents sought and collated by the RVRANZ¹².

There were high levels of agreement that the White Paper fairly and accurately canvassed issues (98% of those who answered this question). Also mirroring the responses in the individual submissions, 99% of those who responded to Question 3 were supportive of a full review of the legislative framework.

One of the most common comments from resident submissions was that it was time for a change and that a review was needed now to make the Act fair. The RVRANZ also noted concerns that there was no legislative requirement for periodic reviews of the framework, and that at the time the Act passed into law almost two decades ago, the responsible Minister had promised a

review within a reasonable time after implementation. This did not take place and was now long overdue.

The RVRANZ expressed the view that a policy review was about fairness and protection that the current legislation did not afford to older consumers, and not whether residents were satisfied or happy with village life.

Specific themes

The RVRANZ submission set out its own response and also highlighted the key issues that were raised by residents in the submissions collected by the RVRANZ.

In the sections that follow we focus on highlighting the themes from the RVRANZ submission and focus primarily on the top concerns raised by residents in comments collated by the RVRANZ in Appendix A of their submission.



¹² More detail is provided in Appendix 2.



Moving in

The RVRANZ was supportive of a review of disclosure statements with a view to producing simplified and accessible documentation. Their view was that changes to documents should be mandated by legislation.

Another aspect related to the moving in process was the need for recourse available to residents if facilities and services that were included in the disclosure statements or marketing documents did not materialise, or changes were made to what was promised. This was echoed by residents in their comments that there needed to be a way to ensure villages followed through on promises made during the sales process.

Living in

The submission noted the need for a review of the complaints function, and the need for an authorised advocate, Commissioner, or Ombudsman with the legislated powers to enforce decisions. The RVRANZ highlighted that the current formal processes were seldom used by residents who didn't want to make a fuss, or who were concerned they would be victimised, bullied or not listened to.

The need to support resident welfare and provide a voice for residents was also noted, and in this respect the work done by the RVRANZ was highlighted. Limited financial resources were noted as a constraint. Resident advocacy was raised in comments from residents who mentioned the need for an ombudsman and someone available to act as an advocate. Comments were also made by residents about the need for regular communication between operators and residents, the need for fair representation, and a fear that elderly people were being exploited.

Finally, residents from a variety of villages highlighted the need to have greater clarification regarding who pays for the cost of repairs and replacement of chattels.

Moving on

The RVRANZ highlighted that urgent attention needed to be given to the exit provisions in the Code. Its view was that weekly fees should be reduced to 50% immediately on exit, with a maximum time limit of 3 months. The RVRANZ supported introducing guaranteed timeframes for buy-backs, and that interest should be payable during the vacant period. They did not support restricting these changes to larger for-profit operators only.

It also provided recommendations for how the resale and buyback process should be amended to result in a fairer outcome for residents, by linking buyback timeframes to the percentage of capital gain allocated. They highlighted that amendments, in particular buyback times, should be carried out as a priority, and should also bring relief to existing residents (as has been implemented in New South Wales).

Concerns related to exit provisions were also among the most frequently made comments in resident submissions, specifically:

- Introduce capital gain sharing for both parties
- Review/shorten time limit to pay back
- Review/stop charging of weekly fee after vacating dwelling

Residents also raised financial concerns regarding transferring into care when there were delays in the resale and buy-back process. The RVRANZ was supportive of a review into how to improve and standardise information about transferring into higher levels of care.

4. Operator submissions

General feedback

Responses from the operators were highly consistent. The majority (62%) did not believe that the White Paper had canvassed the issues fairly and accurately, and all operators felt that there were important points missing.

A key issue raised by a number of operators was the inclusion of the case studies in the Appendix to the White Paper. Many expressed concern that these case studies were one-sided as no right of reply had been given to the operators involved to present their side of the story. There was also concern that these highlighted only negative resident experiences and did not cover cases where operators had gone to effort and trouble to assist with resolving resident complaints. In contrast to these case studies, many of the operators highlighted the high levels of resident satisfaction in general, and in their own villages.

There were concerns that the White Paper adopted a generic one-size-fits-all approach and did not sufficiently differentiate between models where capital gains are already shared, or between the not-for-profit sector versus commercial operators. In addition, a number of operators said that the White Paper failed to take into account a holistic view of the retirement village operator financial model, where issues like guaranteed buy-back time periods, and sharing of capital gains need to be considered in the context of the overall financial model and cannot be considered in isolation.

Operators also felt that the White Paper was trying to address too wide a scope in terms of broader housing questions for older New Zealanders. A number of operators noted that the provision of social housing was the responsibility of government, and not that of the RV sector, and that this was beyond the scope of the RV Act. There was a view that broader housing issues for older New Zealanders required attention as part of the broader role of the CFFC, but that this should be addressed separately from the review of the RV Act. In terms of the broader housing context, a number of operators did point out that the RV model frees up housing stock as residents generally sell their homes before moving into an RV.

Almost all the operator submissions (92%) were against a full review of the legislative framework. However, nearly all those who were against a full review still felt there were issues that needed attention and these are addressed in the specific themes covered in the next section. Operators claimed that the current legislative framework, with oversight by statutory supervisors, and self-regulation by operators, was sufficient. Operators also highlighted that the New Zealand RV model was seen as “world leading”.

Specific themes

We again consider the issues that were mentioned in the context of the three stages of the RV lifecycle.



Moving in

Operators were of the view that the current legislation, that made provision for getting legal advice, and the disclosures that were already in place, ensured that those who moved into an RV were aware of the implications.

Operators highlighted that people move into an RV as a lifestyle choice, considering the many benefits that were provided from living in a retirement community and specifically the financial certainty provided in terms of costs (especially with fixed fee models). Operators believe the structure of the financial model provides certainty for residents, and changes to the model would lead to greater uncertainty. Specifically, it was noted that upfront costs of buying into a RV would need to increase to offset any change to capital gain sharing or the buy-back process and that this would make RVs less affordable. This would result in many new residents retaining a much lower portion of the equity released from the sale of their houses with the higher upfront cost of buying into a RV.

This equity release was noted by a number of operators as a key attraction of the current model, as it allowed residents to free up a portion of the capital from their former homes to fund day to day expenses in retirement.

However, there was general agreement that improvements could be made in terms of disclosure documents. Reference was made to existing initiatives such as the RVA's "key terms summary" document as a way to simplify documentation.

Living in

Many operators highlighted high levels of resident satisfaction. Several noted that residents were not vulnerable.

Most agreed the complaints system could be reviewed to make it simpler; but there were concerns regarding the need to balance operator rights versus resident rights, and issues raised about frivolous and vexatious complaints. There were indications that there may be support for an Ombudsman, but only if the industry felt it provided sufficient benefit to outweigh the costs.

With respect to who should be responsible for maintenance of RV chattels, there was agreement there should be better disclosure. It was highlighted that operators taking responsibility for repairs and maintenance could be encouraged as examples of best practice.

Moving on

In most instances operators were of the view that many of the issues highlighted in the White Paper with reference to the resale and buy-back times were commercial terms that the operators used to distinguish themselves from competitors, and that these should not be encoded in legislation.

While there was some agreement that more transparency was needed regarding the resale and buy-back process, and therefore a need for better explanation and disclosure, operators did not support putting legislation in place to enforce mandatory buy-backs, paying interest on capital once a unit was vacant, or sharing capital gains.

In addition, a number of operators raised the issue that changes to the treatment of these would have knock on effects on upfront purchase costs, the DMF, as well as weekly fees charged by the operator. Many highlighted that any legislative changes would have adverse effects on the financial stability of the sector. There were also operators who noted that their current business models, and the profitability of these models, allowed for cross-subsidisation of rest care facilities that were now becoming more common within RVs. There was concern that changes to the business model would have a knock-on effect on their ability to provide private rest care facilities.

Most agreed that weekly fees after exit should be reviewed with a view to terminating these after a specific timeframe, and many highlighted this was something they already did. However, there was concern regarding the impact on small operators and other business models where the resident, or their estate, manages the sales process.

Lastly, in terms of moving into care, there was agreement that improvements could be made in terms of providing information about transferring into care. Reference was made to existing initiatives such as the RVA's best practice guide that provided key information about transfers to care.

5. Other stakeholder submissions

General feedback

Thirteen submissions were received. The majority (68%) believed that the White Paper had canvassed the issues fairly and accurately.

In terms of specific inaccuracies in the White Paper, the following specific corrections were pointed out in the Trustee Corporations Association of New Zealand (TCA) submission:

- On page 32, when discussing the role of the statutory supervisor, it is stated that residents have the power to remove “operators”. This is incorrect and should refer to the power to remove “statutory supervisors”.
- On page 34, it is stated that residents must receive information about matters listed in s34(3) of the Act. This is not accurate in that there is only an obligation to notify residents of these matters if the village does not have a statutory supervisor. If the village has a statutory supervisor, the obligation is to notify the statutory supervisor of these matters. It is only if the statutory supervisor so directs that each resident and intending resident must be notified.

There were also concerns raised in some of the submissions that the inclusion of resident case-studies only showed one side of the story.

Most stakeholders (80%) supported a full review of the legislative framework. Those stakeholders who did not support a full review all thought there were still issues that needed attention.

Specific themes

Two-thirds of other stakeholders felt there were important points missing from the White Paper. These missing issues are discussed in the following section.

Moving in

There was general agreement from stakeholders that disclosure statements could be improved. In addition there were submissions that dealt with specific aspects related to legal advice. Legal Executives New Zealand suggested that the legislation be amended to allow Fellows of the Institute to advise on and witness ORAs as these were

often the people engaged in face-to-face discussions with clients regarding ORA terms, and this would provide a more cost effective and efficient process for clients.

The New Zealand Law Society (NZLS) suggested ways to improve disclosures, such as including a compulsory glossary of terms, or a standard form contract, with schedules for specific details or variations. They also suggested expanded requirements for disclosure and certification of solicitors involved with advising clients on ORAs.

Eldernet highlighted the role that business and NGOs could play in the sector in terms of offering unbiased information and education.

Living in

Most of these stakeholders supported improving the complaints system. The Health & Disability Commission and FSCL highlighted how advocacy and complaints were dealt with in different sectors and provided insights into how there may be opportunities to incorporate ideas and share resources in the RV sector.

The NZLS highlighted the need to explore whether a dedicated Retirement Commissioner or Ombudsman was required for the RV sector.

TCA raised a number of issues related to specific deficiencies in the current code and legislation which could have adverse consequences for residents. Among these issues was insurance cover for operators (considering full cover versus cost of replacement and gap cover insurance), financial reporting to residents, the duty of the auditor to report to the statutory supervisor, and fire and emergency procedures needing to be reviewed to ensure compliance with the latest Fire and Emergency legislation.

We also heard from statutory supervisors that the requirement for the statutory supervisor to hold security on behalf of residents, against the titles to the land and also against the operating entity, should be prescribed in the legislation rather than just under the deed of supervision as this would ensure better protection of residents' interests.

Consumer NZ focussed on issues related to the unfair terms in the ORAs, including those related to maintenance charges, where residents were responsible for maintaining chattels they did not own.

The New Zealand Nurses Organisation highlighted the need to include issues relating to staff employed in RVs and noted that healthcare workers in RVs should be paid an equitable wage.

Moving on

There were mixed views from these stakeholders regarding the resale and buy-back process. While many supported reviewing current processes to make them more equitable to residents, others believed changes should not be legislated. They claimed the financial consequences of legislating changes would be detrimental to operators, which could cause instability in the sector.

The issues of sharing capital gains again resulted in mixed views. Consumer NZ raised a number of concerns regarding unfair terms in ORAs, in particular relating to capital gains. However, others were of the view that an individual RV should determine whether it shared capital gains as part of its model, as there would be knock-on effects to pricing and other costs.

There was more support for limiting or stopping fees once residents had exited the village, but some did not support this.

Submissions from Anthony Harper and Eldernet noted that they did not support limiting changes to larger for-profit operators and highlighted the negative impact this might have and unintended consequences that may arise from such a distinction.

Many raised issues related to transfers to care and most supported providing better information about transfers to care. Eldernet highlighted the issue of having capital held by the operator (due to the resale-buyback process) when the resident required access to this capital to fund Aged Residential Care. This was currently being addressed ad hoc by the sector with some providers offering 'bridging' finance. Eldernet suggested that facilities such as the current Residential Care Loan offered on freehold properties by the government should be extended to include those in Retirement Villages.

One other issue, raised in the NZ Aged Care Association (NZACA) submission, was the use of ORAs within Aged Care. They noted that the current ORA system was relatively straightforward and they would reject any system that would make it more complex. Specifically, they highlighted the ability to use ORAs within Aged Care lifted the quality and choice of accommodation offered by some in the sector. In their view, the regime's flexibility enabled this, and further regulation would seriously constrain this choice.

6. Summary of areas of general agreement between stakeholders

Considering these diverse views, there was some general agreement on areas that should be reviewed, summarised in Table 2. It must be highlighted that there was no agreement on legislating changes in these areas.

Table 2: Areas of general agreement

Moving into village	Living in village	Moving on from village
<p>Disclosure documents (and other legal agreements) Documents should be reviewed and made easier to understand</p>	<p>Complaints process Review and simplify the complaints process (but needs cost/benefit assessment)</p>	<p>Resale-buy back process Review the process (but no general agreement to mandate buy back times etc.)</p>
	<p>Maintenance of chattels Disclosure needs to be improved, look at reviewing how this is dealt with</p>	<p>Weekly fees terminate on exit Review but reservations about applying to all RVs</p>
		<p>Transfers to care Review and provide better information about transfer to care</p>



7. Discussion

The CFFC White Paper offered four options:

1. Maintain the status quo
2. Approve a Code variation to add some consumer protections
3. Conduct a regulatory systems assessment
4. Conduct a policy framework review (the recommended option)

Almost all individuals and residents, as well as the RVRANZ and a large majority of other stakeholders, including NZLS, support Option 4 - a full review of retirement villages framework. While Operators and the RVA do not support a full review, they do agree that there are some areas for improvement.

As highlighted in Table 2 there are limited areas of agreement among stakeholders about the issues that need review, and the extent to which changes should be legislated. However, the wide-ranging concerns expressed in the individual submissions, and those of other stakeholders, suggest a review that focuses only on these limited areas would not be sufficient to ensure a fair and balanced legislative environment.

Issues related to resident vulnerability appeared throughout the submissions. There were some submissions that highlighted that RV residents were not vulnerable, while at the same time, other submissions pointed out vulnerabilities particularly related to legal advice and consumer protection. While we would agree that residents are generally not vulnerable when they move into the village, vulnerability increases over time, and consideration needs to be given to the fact that age limits for entering RVs have generally increased. Many of the issues raised in the White Paper focus on the final moving-on stage, when vulnerability is at its highest, and the opportunity to complain is limited. It is therefore important that fit-for-purpose legislative protections are in place.

Moving in

As highlighted by the operators, people move into an RV as a lifestyle choice, with the benefits of safety, security, and the financial certainty provided by the current model. Operators say residents understand the model and get appropriate advice. However, the limited ability to negotiate the terms of the ORA and high levels of demand to move into RVs suggest that a “take-it-or-leave-it”

approach mostly operates. In addition, there is limited recourse for residents when promises made by sales agents, and intended future facilities and services mentioned in disclosure statements, do not materialise.

More needs to be done to promote education and awareness of the financial consequences of a move into an RV. There is a need for a stronger focus on education and awareness of what a move to a RV entails from a financial and legal perspective. This is especially important because in almost all cases this is not a purchase of real estate. Rather it is a financial transaction that requires an upfront capital payment to purchase an LTO. When the licence terminates the capital payment is returned minus the Deferred Management Fee (usually around 30% of the original payment). The benefit of the model is that the resident can usually purchase the LTO at a discount to what a freehold property would cost, they get to use village facilities at a weekly fee (which may be fixed), and the operator assumes ownership risks for the property.

This transaction is similar to providing capital as a loan, with the expectation of the return of capital at the end of the loan period. The difference is that not all capital is returned in exchange for the resident having the benefits of the LTO over the residency period.

This structure is important to understand as it has specific financial consequences that impact on a variety of outcomes, such as the capital value that will be left to the resident's estate. Importantly, individuals need to be aware of the adverse financial consequences if they change their mind about living in a village or wish to move to a different RV, as their capital sum will not be repaid in full. In an environment of rising house prices, residents will require extra capital to purchase a new LTO or to buy back into the property market. This causes some residents considerable stress: there is no simple way to easily leave an RV if the resident is unhappy (after the ‘cooling off period’ of 15 working days has passed). Therefore, some residents are financially trapped and their complaints and general dissatisfaction become stressful for both operators and fellow residents.

There is general agreement that legal documentation needs to be simplified. In addition to using a ‘plain English’ approach, this should also include reducing the amount of document duplication or overlap. However, disclosure alone is not sufficient. The power

imbalance that can occur (eg, ORA terms are generally not negotiable, only one suitable village in a territory, difficulty in comparing offerings between villages) would suggest that minimum fair terms need to be set by legislation.

In addition, we know from financial capability research that individuals are not always good at weighing up short term versus long term benefits and costs. Entering into an ORA is a case where the immediate benefits may outweigh the longer-term financial costs and consequences in the mind of the decision-maker, and this needs to be taken into account when reviewing both disclosures and legislation. Caveat emptor can only go so far.

Living in

Operators report very high satisfaction levels and low levels of complaints. However, there were concerns expressed in some of the submissions that complaints are under-reported: residents might not want to make a fuss or are concerned they would not be listened to or even bullied. At the same time, operators highlight the need for balance between resident and operator rights, particularly in the case of frivolous and vexatious complaints.

As previously discussed, the financial consequences of moving out of a village are costly for residents and can result in a feeling of being trapped in a village. This can also put pressure on operators as residents in this frame of mind may increase their levels of complaint. For this reason, it is extremely important there is a robust, unbiased, simple complaints process to ensure issues that arise are addressed in an appropriate manner, which takes into account the need for mutual respect, the power imbalance that exists between residents and operators, the stress unreasonable complaints can place on operators, and which recognises that residents can't just move away if they are unhappy with the resolution offered by the operator.

It is relatively common for operators to engage legal counsel to deal with complaints but this route is affordable to fewer residents. There were also concerns expressed in the submissions regarding the role of the statutory supervisor as an independent arbitrator given they are appointed by and funded by the operator. There is no resident advocate built into the complaints process.

Other complaints systems that focus on consumer complaints where financial and power imbalances exist (such as finance, insurance, and media complaints) may provide some insights into how best to structure an improved complaints system for RVs. Another missing element is an independent complaints

investigative function (such as seen in financial dispute resolution schemes). Such a scheme could be funded by operators, but not appointed by them, and would investigate specific issues of substance where the parties are deadlocked or not reaching agreement.

A further issue that needs attention is understanding the status of RV residents and how this relates to their rights and responsibilities. It is very clear from the operator submissions and the RVA that residents with LTOs are not homeowners and do not share in capital gains; however, neither are residents afforded the rights usually available to tenants. Tenants generally have no obligation to repair and maintain chattels that are not owned by them, they have the right to complain to the tenancy tribunal, their bond is generally returned within 10 – 15 working days, and they can also expect their landlord to adhere to specific legislated standards, eg, the Healthy Homes Standard.

RV residents with an LTO are neither owners nor tenants so it is particularly important to have clarity regarding their rights and obligations. At present they generally do not benefit from the rights of ownership or the rights of tenants.

Lastly, in terms of the legislative framework, there was support from individual submissions for a more simplified structure with one central authority responsible for RVs, rather than the multiple government entities currently involved. It should also be noted that the current legislative environment does not make provision for any government agency to audit retirement village compliance with the Code or other RV legislation, other than the Registrar's s97 powers to inspect relevant documents. However, the RVA has taken responsibility to conduct audits of Code compliance among its members every three years.

Moving on

It is at this stage of the process that residents (or their families) are often at their most vulnerable and not in a position to complain. Concerns related to resale and buy-back timeframes, sharing capital gains, and the continuation of financial charges after exit were among the most widely discussed issues in the individual and resident submissions. Operators highlighted that the financial terms and consequences of resale and buy-back process should not be legislated as these were commercial terms that allowed operators to differentiate their models.

However, a distinction needs to be made between dictating commercial terms, and legislation that protects consumer rights

and eliminates unfair terms. Once again it needs to be highlighted that the ORA terms are rarely negotiable. Therefore, the power imbalance would suggest that minimum fair terms need to be set. We note that recent and proposed changes to RV legislation in a number of Australian states have focused on setting minimum standards for exit terms and payments in legislation¹³.

In the submissions from operators, key concerns related to sharing capital gains and implementing mandatory buy-backs, which they felt did not take a holistic view of the RV financial model and would lead to uncertainty and financial challenges for many operators. Use of the term 'capital gain' was also seen as problematic. Operators noted that an LTO provides no ownership right: the capital sum received by the operator for relicensing the unit is not relevant to the outgoing resident as they do not own the property.

However, from the perspective of exiting residents (or their estate), in most cases residents with LTOs must wait for a new resident to purchase an LTO for their villa before getting paid out. This linking of transactions may be part of the reason why exiting residents might focus on what the new licence is being sold for, as it is only when this sale takes place that they are refunded their initial capital payment minus the DMF.

The issues related to resale and buy-back timeframes, sharing of capital gains, and post-exit financial charges, highlight the need for greater clarity regarding the minimum rights and responsibilities of those with different occupation rights. As an example, in the Australian RV legislation in some states there is a distinction between those with a registered interest (whose title to the unit they live in is registered in some way, including those who occupy based on long term lease arrangements) versus those with a non-registered interest (who are living in a unit based on some type of licence to occupy).

The distinction between the two broad types of occupancy is important in dictating exit provisions, such as timeframes for exit repayments and for cessation of recurring charges. In addition, these distinctions are important in determining responsibilities for maintenance and related charges. Broadly speaking those with registered interest are more likely to have a capital gain sharing

arrangement, while those with non-registered interest generally do not share capital gains. However, as they are not owners of the unit, their residence rights end when the unit is permanently vacated; therefore, timing of exit payments is linked to vacating the unit, not the resale of the licence to occupy¹⁴.

In New Zealand, an LTO would be an example of an unregistered interest, whereas a unit title would be an example of a registered interest. However, in New Zealand RV legislation, there is no clear distinction between rights and responsibilities linked to different types of occupancy rights. This is the case even though the definition of retirement village in the Act outlines how a resident's right of occupation can be provided in many ways, including "freehold or leasehold title, crosslease title, unit title, lease, licence to occupy, residential tenancy, or other form of assurance, for life or any other term"¹⁵.

Operators highlighted the confusion that surrounds the nature of the LTO, clarifying in their submissions that the rights of someone with an LTO were clearly distinct from those of someone who has ownership of the underlying property. This distinction is important not only as it applies to explaining why capital gains would not result from an LTO, as highlighted by the operators, but also in understanding what other obligations of ownership should not apply in the case of an LTO, such as maintenance costs, and issues around the timing of exit payments. If these rights and responsibilities were more explicitly stated in legislation, this could bring greater clarity to issues such as when capital gains sharing is relevant, who is responsible for maintenance, and timeframes around exit payments.

Information about transferring to care is another area where more needs to be done. There needs to be a clear understanding of resident rights if they move into care within a village, as well as the financial consequences of such a move, and the issues and obligations if they need to move outside the village, for example to receive higher levels of care or if the RV does not have an available care bed.

Currently there are misunderstandings about different levels of care, the various legislative environments, and the use of confusing terminology in the sector.

¹³ See appendix 5 for further detail

¹⁴ See appendix 5 for further detail

¹⁵ There are some sections in the Code of Practice that are limited to being applicable only where the operator has the responsibility for the sale of the residential unit, but there is no general distinction based on the occupancy rights, other than Sections 40 – 45 "Maintenance and upgrading" not being applicable to units owned by residents (where terms need to be set out in the ORA).

8. Cross-government issues

Strategic review: Responsibility for oversight of RV legislative framework

Currently the RV legislation is administered by the Ministry of Housing and Urban Development, with the Associate Minister for Housing (Public Housing) as the Minister responsible for administration of the RV Act.

Many of the issues raised in the White Paper, and the submissions received, relate to the financial terms of ORA contracts and concerns about consumer protection and fair-trade practices. In addition, the status of residents is unclear (neither owners nor tenants), which means they are not afforded many of the legislative protections of tenants. We believe a strategic review is warranted regarding whether the responsibility for this legislation might be better suited to falling within a financial and consumer protection framework.

As the underlying transaction is a financial contract, without, in most cases, resulting ownership of real estate, oversight from a Commerce and Consumer Affairs perspective might be more appropriate than the current oversight within the Public Housing portfolio.

Aged care considerations

The Retirement Commissioner's statutory mandate does not cover the aged care aspects of RV operations. When residents transfer to managed care (quasi- or hospital level care) responsibility transfers to the health system, and oversight to the Ministry of Health, DHB, Health and Disability Commissioner, and the Ombudsman. There is a lack of a clear line of sight between agencies and their varying responsibilities, which is not helpful to the resident or their family. The role of an Aged Care Commissioner as announced in the 2021 Budget will hopefully go some way to ensuring a more co-ordinated approach that is beneficial to all those involved in the sector.

Discussions with the Ministry of Health regarding the White Paper highlighted the potential for a knock-on impact of legislative change in the RV legislative framework to the Aged Care sector. In particular, officials reflected the operators' view that the provision of Aged Care within RVs is often facilitated through a cross-subsidisation of Aged Care costs from profits made by the RV operators in the rest of their RV operations.

The key issue highlighted by the Ministry of Health was the need to ensure sufficient supply of care beds (most of these are privately provided, so the RV sector plays a role in assisting supply). In addition, officials considered that RV provision of aged-care, and the competition between RV operators, drives good outcomes for the standard of aged care facilities provided. It is therefore important to find a balance between ensuring that RV resident rights are protected as part of a review of the legislation, and at the same time ensure that this does not have a detrimental impact on the funding of care beds.

The use of ORAs to provide care suites was also seen as a positive development in the aged care sector and provided a good model to develop/maintain Aged Care offerings. However, using ORAs is constrained when a person moves from an existing ORA within an RV to a new ORA for a care suite. If the resale-buy-back process is delayed, the resident may not have immediate access to capital to fund the new ORA. Currently this is being addressed ad-hoc by the sector with some providers offering 'bridging' finance. It was suggested that consideration should be given to extending the current Residential Care Loan offered on freehold properties by the government to also include those in Retirement Villages with LTOs.

9. Recommendations

Based on the issues outlined in the White Paper, and the feedback received from the submissions process as set out in this summary document, our recommendation is to conduct a policy framework review. In our view a piecemeal approach to change is insufficient.

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 where there is payment of a capital sum. It is a relatively light-handed regulatory environment. However, the industry has grown in scope and complexity since then, and other than a small number of revisions to the code, no legislative review has been conducted.

The RVA in both its submission, and a subsequent “Blueprint” presented to the Associate Minister for Housing, suggests that the approach that should be taken in many instances is to encourage the adoption of some of the suggestions in the White Paper as best practice with very limited Code changes and without legislative change. However, through its monitoring and oversight function, the CFFC has raised many of the issues covered in the White Paper in previous years, and while some changes have been implemented, the White Paper submissions confirm that many important issues remain unresolved and problematic.

In particular, the process for Code reviews is cumbersome and such reviews have not generally been welcomed by the operators.

In short, change is generally difficult to achieve without an incentive or a mandated process.

Making small, incremental or piecemeal changes also heightens the potential for unintended consequences in other sectors such as Aged Care, while a full review ensures that a systematic assessment is carried out to understand any potential effects on other sectors as a result of changes to the RV legislation.

Although we welcome and encourage the best practice approaches suggested by the RVA and operators, these measures should be considered as an interim step to improve some areas identified in the White Paper. We do not believe they are sufficient in scope or impact to circumvent the need for a full review.

While operators highlight that the New Zealand RV legislative model is considered “world leading”, there are in fact few jurisdictions where a similar model is used (primarily Australia¹⁶). Legislative reviews and changes have been carried out, or are underway, in many Australian states¹⁷. These reviews are focused on reforming out-of-date retirement village legislation. The focus of these changes has been to improve the balance between resident and operator rights and to ensure adequate consumer protection and fair-trade principles are adhered to in this rapidly expanding sector.

Many of the issues that are the focus of these overseas reforms are the same as raised in the White Paper, including disclosures, complaints processes, and regulation of exit charges. Unless New Zealand undertakes a full review, it runs the risk of ending up with an out-of-date RV legislative framework that is not fit for purpose.

The CFFC is available to assist in drawing up the Terms of Reference for the review and can provide support to the Ministry in undertaking it. Taking into account the areas that were highlighted in the White Paper and the feedback from the submissions, our recommendation is that the review should include but not be limited to the following issues:

- Consider how the legislation could better define the rights and responsibilities of RV residents and operators, and how these rights and responsibilities may differ for different occupancy rights
- Review the roles of the various Government entities involved in the RV legislative environment to ensure that adequate powers are provided to each to perform their functions effectively, and that there is one agency with overall responsibility and oversight. As part of this review, determine the approach that should be followed regarding investigating and auditing compliance with the legislation for all operators/villages¹⁸

¹⁶ Other jurisdictions such as the UK and Canada use various occupation rights within retirement villages/communities such as leaseholds and life leases. In the UK issues related to leasehold exit fees were investigated by the Law Commission (2017) and the Government announced that it would implement the majority of the recommendations contained in their report (<https://commonslibrary.parliament.uk/research-briefings/sn05994/>). In Canada life leases (which have similar features to the NZ LTO) are generally used by non-profit organisations, these agreements are governed by contract law (<https://www.canada.ca/en/employment-social-development/corporate/seniors/forum/report-seniors-housing-needs.html>).

¹⁷ See Appendix 5 for additional detail.

¹⁸ RVA currently carries out audits of Code of Practice compliance among its members every 3 years, however there is limited legislative oversight of compliance and not all operators are members of the RVA.

- Consider how to ensure a better process for future Code of Practice reviews by legislating a mandatory review of the Code every 5 years
- Review legislation, regulations, and the Code to ensure clarity and consistency and remove structural and drafting anomalies
- Review the need to improve the financial security of residents' capital sums in terms of legislating the guarantees that need to be held by Statutory Supervisors (this is currently only contractual and not in all cases)
- Consider how changes to the way in which the insurance industry provides cover impacts on the RV sector, and legislative requirements to ensure RV operators are adequately insured
- Consider whether changes to other legislation in the past two decades potentially impacts on the RV legislative environment, such as changes to consumer protection legislation and Health & Safety legislation (eg, Fire and Emergency New Zealand Act 2017)
- Review the interdependencies between the RV sector and the Aged Care sector to ensure any changes to the RV legislative environment does not have a detrimental impact on the Aged Care sector
- Review all elements of the framework to ensure clarity of, and balance between, rights and responsibilities of RV residents and operators

In addition to these overarching areas, there are also specific issues that require review related to the phases of moving in, living in, and moving on.

Moving in

- Review what needs to be disclosed on entry to village, and consider consequences for false or misleading statements
- Review introducing a standard-form, plain-English ORA for sector-wide use
- Review setting minimum standards to ensure ORAs do not contain unfair terms

Living in

- Review the complaints system to create a clear and simple process
- Review repair and maintenance responsibilities (linked to the review of rights and responsibilities of RV residents and operators)
- Consider how best to include resident advocacy within the legislative framework

Moving on

- Consider the introduction of minimum standards for specific financial exit matters linked to weekly fees and the resale and buyback process (linked to the review of rights and responsibilities of RV residents and operators)
- Review how to improve and standardise information about transferring into higher levels of care.

We understand that a full review will take time. Therefore, there are some areas where work can be carried out by the CFFC and the RV sector, to ensure better outcomes in the short-term while the review takes place. It should be noted that these actions are in addition to a full review and undertaking these actions in no way changes our recommendation that a full review is necessary.

We have taken into account the "Blueprint" produced by the RVA in the interim recommendations that follow.

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



APPENDIX 1

Sources of submissions from operators and other stakeholders

Operator submissions

1. Acacia Cove Village
2. Arvida Group
3. Bupa Villages and Aged Care NZ
4. Duffus Memorial Trust
5. Generus Living Group (Owner's submission)
6. Karaka Pines Villages
7. Metlifecare Limited
8. Northbridge Lifecare Trust
9. Oceania Healthcare
10. Qestral Corporation
11. Retirement Villages Association (RVA)
12. St Andrew's Village
13. Summerset Group Holdings Limited
14. Tamahere Eventide Home and Village

Other stakeholder submissions

1. Anthony Harper (Legal Practice)
2. Citizens Advice Bureau NZ
3. Consumer NZ
4. Eldernet & Care Publications
5. Financial Services Complaints Limited (Financial Services Disputes Resolution Scheme)
6. Grey Power Federation NZ
7. Health & Disability Commissioner
8. Kapiti Coast Grey Power
9. Legal Executives NZ
10. NZ Aged Care Association
11. NZ Nurses Association
12. NZ Law Society
13. Trustee Corporations Association of NZ



APPENDIX 2

Summary of Method

Quantitative analysis

A quantitative analysis was carried out to determine the percentage of those who answered Yes or No per question per stakeholder group (for Questions 1, 2, 3 & 4). Not everyone who made a submission to the White Paper answered these questions, and some only answered a few of the questions. In the percentages reported we only provide feedback based on those who responded to a particular question (non-responses are excluded). Refer to Appendix 3 for results of the analysis.

Qualitative analysis:

The free text parts of the online submissions (comments made in answering Questions 1, 2, 4 & 5) and email submissions were analysed using a qualitative approach, specifically thematic analysis, which focuses on identifying themes in qualitative data. Computer assisted qualitative data analysis software (CAQDAS) was used for the qualitative analysis. The use of CAQDAS enhances the rigour of the analysis process as checks can be carried out to ensure that all data is analysed and suitably coded.

Due to the large variety of themes mentioned in the individual submissions, the themes in this summary document relate to issues that were mentioned in at least 5% of submissions out of the total submissions from individuals that contained comments. Therefore, issues highlighted by only a few individuals are not reflected.

Process to minimise opportunities for submission duplication

Anyone who submitted an email was checked against the online portal email address field to see if they also had an online submission. In these instances the online submission information was transferred into the same document as the email submission so that only one analysis of the submission would take place. Each submission was analysed in its entirety in one go rather than question by question. This ensured that if someone

mentioned the same issue in answering Question 1, 2, 4, or 5 the issue was only coded once for that submission.

The RVRANZ approach to collecting hard copy submissions was on the back of concerns that not all RV residents would have access to the online submission portal. The wording on the RVRANZ hard copy form explicitly said “If you cannot access the online form... please complete and post this form”. An assumption was therefore made that those who filled in the RVRANZ hard copy forms did not also complete an online form.

In light of the large amount of submissions received, duplication concerns were also mitigated by using a thematic analysis and considering themes only if they were mentioned in a least 5% of submissions that contained comments.

RVRANZ collated submissions: verification procedure

The RVRANZ supplied the CFFC with the hard copies of all resident submissions that they had collected. The CFFC verified the total number of hard copy submissions by carrying out a physical count (n = 1910). In addition, the CFFC carried out a full count of Yes/No answers for Question 1, 2 & 3 and confirmed the percentage of Yes and No was accurate as reported in the RVRANZ submission.

A further sampling process was carried out to verify the resident comments that were recorded in the RVRANZ submission and Appendix A of the RVRANZ submission. All forms with comments were identified and then 10% of these forms were checked to see if comment made on the form matched those mentioned in the RVRANZ submission. The top 5 comments identified in the sample were the same as the top 5 comments identified by RVRANZ, in addition the sampled comments could all be matched back to issues mentioned in the RVRANZ comment list in Appendix A of their submission.

APPENDIX 3

White Paper questions and summary of Yes/No answers

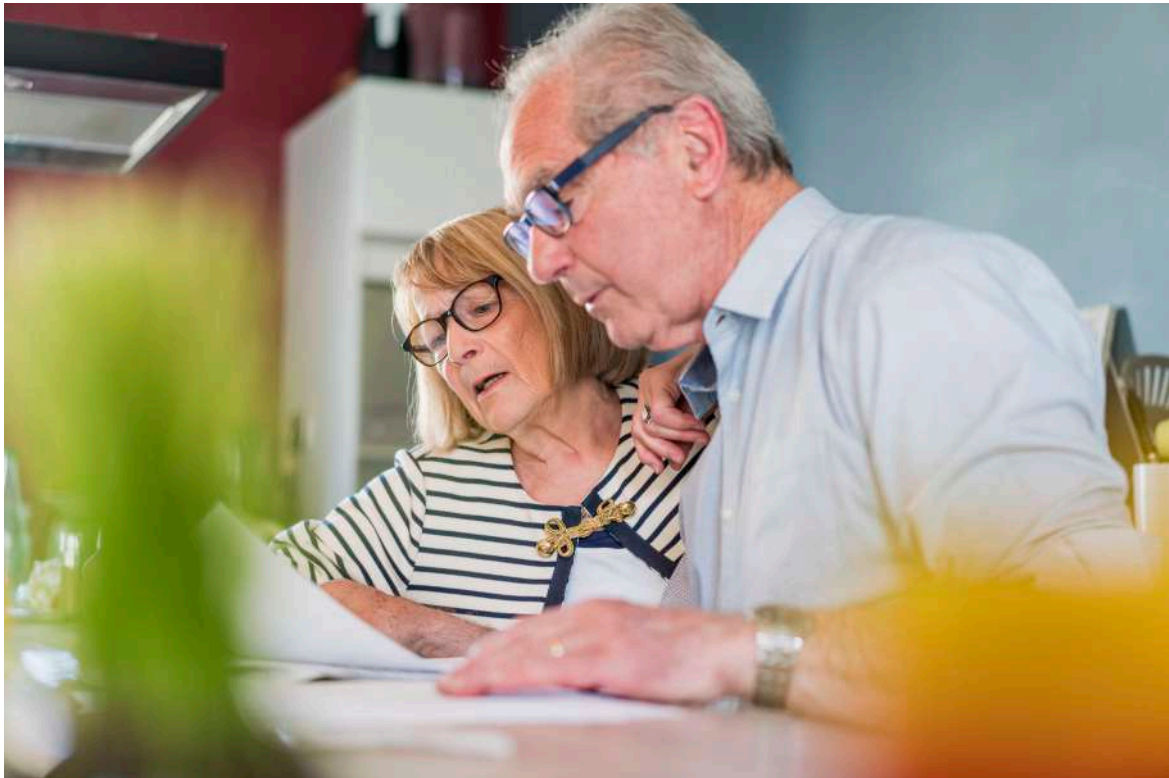
White Paper questions

On page 2 of the White Paper, the CFFC requested answers to five key questions.

1. Has the White Paper canvassed the issues fairly and accurately? (If No, please explain why)
2. Are there any important points that are missing? (If Yes, please describe the missing points)
3. Do you agree that a full review of the retirement villages framework should be undertaken?
4. If you replied No to Question 3, are there any issues that still need attention?
5. Is there anything else you would like to say?

Summary of Yes/No responses to questions 1, 2, 3 & 4:

It should be noted that not everyone who made a submission to the White Paper answered the questions, and some only answered a few of the questions. In the summary below we only provide feedback based on those who responded to a particular question (non-responses are excluded).



Question 1: Has the White Paper canvassed the issues fairly and accurately?

Stakeholder Group	Number who answered this question	Yes	No	Partly
Individuals	1270	96%	4%	
RVRANZ & collated submissions	1840	98%	2%	
RV operator	13	8%	61%	31%
Other stakeholders	9	78%	11%	11%

Question 2: Are there any important points that are missing?

Stakeholder Group	Number who answered this question	Yes	No	Partly
Individuals	1270	22%	78%	
RVRANZ & collated submissions	1597	15%	85%	
RV operator	13	100%	0%	31%
Other stakeholders	9	67%	33%	11%

Question 3: Do you agree that a full review of the retirement villages framework should be undertaken?

Stakeholder Group	Number who answered this question	Yes	No	Partly
Individuals	1271	99%	1%	
RVRANZ & collated submissions	1887	99%	1%	
RV operator	13	0%	92%	8%
Other stakeholders	10	80%	20%	

Question 4: If you replied No to Question 3, are there any issues that still need attention?

Stakeholder Group	Number who answered this question (and answered no to Question 3)	Yes	No	Partly
Individuals	13	46%	54%	54%
RVRANZ collated submissions	14	100%	0%	
RV operator	12	92%	8%	8%
Other stakeholders	2	100%	0%	

APPENDIX 4

Occupation Rights Agreement (ORA) and a Licence to Occupy (LTO)

The following extract from the RVA's submission is useful in defining the concepts of an Occupation Rights Agreement (ORA) and a licence to occupy (LTO) and explaining the different rights attached to different types of occupancy.

"The RV Act requires residents to have an ORA which sets out the terms and conditions of their residence in the village.

There are three broad types of occupancy rights in a village – a LTO, unit titles, or rent/leases. LTOs make up approximately 95% of all occupancy right agreements. The licence is a contractual right to occupy. It does not give rise to any interest in the land and is personal to the licensee.

In unit title villages residents will own the stratum fee simple estate.

In a cross-lease village, a resident will usually own the cross-lease title. Approximately 5% of the RVA's membership comprise of unit title villages. Some villages offer rental units in which the residents pay a rent which includes the right to live in the unit and have access to any community facilities.

The Residential Tenancies Act excludes tenants with an ORA from the provisions of that Act (and includes them in the RV Act)."

Appendix 5

Summary of Australian RV legislation

Overview of occupancy rights¹⁹

RV Legislation in Australia is State specific. In general, occupancy rights are divided into registered interest and non-registered interest, or in some legislation the distinction is between owner and non-owner. Most states have the same categories of occupancy rights (terminology does differ). NSW legislation is used to provide an overview of the different occupancy rights.

Registered interest: includes Strata or Community Scheme, Company Title Scheme, Registered Long-Term Lease (lease longer than 50 years). Residence right ends only when sale of unit is completed. Registered interest holders generally have more responsibility and independent decision making in relation to their property but can face more expenses when leaving the village. There is generally a capital gain sharing arrangement in place.

Non-registered interest includes loan-licence agreement²⁰, rental agreement, other leasehold arrangement (lease is under 50 years). Generally residence right ends when you permanently vacate unit or die, therefore timing of exit payments link to vacating the unit, and not the resale of the licence to occupy. Generally no provision is made for sharing capital gains with loan-licence/occupancy agreements. In NSW this is a common occupancy right in the not-for-profit sector.

The distinction between the two broad types of occupancy is important in dictating exit provisions, such as timeframes for exit repayments and for cessation of recurring charges. In addition these distinctions are important in determining responsibilities for maintenance and related charges.

¹⁹ fairtrading.nsw.gov.au/_data/assets/pdf_file/0008/381572/Inquiry_into_the_NSW_Retirement_Village_Sector_Report.pdf

²⁰ Similar to the LTO in NZ

Summary of exit provisions²¹

	Buy-back	Recurrent charges after exit
NSW	<p>Non-registered interest: Buy-back after 6 months if not re-sold or re-occupied</p> <p>Registered interest: right to apply for an order to receive calculated exit entitlement, if unit remains unsold after 6 months in the metropolitan area or 12 months in other areas (excludes residents of a strata scheme or community scheme)²²</p>	Only pay for 42 days or until new resident moves in (whichever earlier) (applies to non-registered holders, and from 1 July 2021 applies to registered interest holders (excludes residents of a strata scheme or community scheme) ²³
South Australia	Buy back unit after 18 months if not sold/relicensed prior, unless it would cause the operator financial hardship	Six months, unless the Tribunal deems it would cause the operator financial hardship
Queensland	Buy back unit after 18 months if not sold/relicensed prior, unless it would cause the operator financial hardship	Maximum liability 9 months. Residents are required to pay in full for 90 days and then ongoing fees are shared with operator in the same proportion to the share of capital gains from premises
Western Australia ²⁴	Review currently underway includes operator obligations such as exit entitlements	3 months for any contract made after 1 April 2014 and 6 months for any contract made before that time (applicable to non-owner residents)
Victoria ²⁵	<p>Review currently underway - includes looking at:</p> <ul style="list-style-type: none"> Mandated buy-backs for retirement village units not re-sold within a specified timeframe. Regulating the share of capital losses and gains. 	<p>Review currently underway includes looking at:</p> <ul style="list-style-type: none"> Amending the timeframe for charging fees to departing village residents

Overview of Australian RV legislative reviews

New South Wales²⁶

Responsibility for RV legislation: NSW Fair Trading

New legislation was passed in response to the Final Report of the 2017 Inquiry into the NSW Retirement Village Sector, led by Kathryn Greiner AO ('the Greiner Inquiry').

New legislation: The Retirement Villages Amendment Act 2020 (which commenced on 1 January 2021) and in the Retirement Villages Amendment (Exit Entitlement) Regulation 2021 which commenced on 4 February 2021.

Key changes following legislative review:

- Exit entitlements and recurrent charges after exit
- Option for residents to fund a move into aged care using estimated exit entitlement money

²¹ www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0008/381572/Inquiry_into_the_NSW_Retirement_Village_Sector_Report.pdf

²² www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-retirement-village-laws

²³ www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-retirement-village-laws

²⁴ www.commerce.wa.gov.au/consumer-protection/changes-retirement-villages-laws

²⁵ engage.vic.gov.au/retirementvillagesact

²⁶ www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-retirement-village-laws

Victoria²⁷

Responsibility for RV legislation: Consumer Affairs Victoria (CAV) (agency of the Department of Justice and Community Safety).

A review of the Retirement Villages Act 1986 is currently underway. This follows a Parliamentary Inquiry into the retirement housing sector, that recommended that the Government review the RA Act to determine the effectiveness in providing consumer protection while allowing growth and innovation in the sector.

“Aim to ensure that the RV Act:

- is contemporary and meets the needs of an ageing and diverse resident cohort
- continues to provide effective consumer protections by upholding the rights and interests of retirement village residents, and
- is flexible enough to facilitate growth and innovation in the retirement village sector.

It sets out 19 potential reform options to answer the five critical questions that need to be further explored:

1. What does the RV Act need to include to support well-functioning retirement villages?
2. What information should be provided to prospective and current residents and when? (including disclosure obligations, payment options, contracts and maintenance charges)
3. How can protections for exiting retirement village residents be strengthened? (including ongoing charges, reinstatement and renovation costs, sale and re-leasing costs and mandatory repayment of exit entitlements)
4. Are the current internal and external dispute resolution processes adequate?
5. What is the best governance framework to support well-functioning retirement villages? (including rights and responsibilities, residents committees, staff accreditation, village accreditation and an industry Ombudsman) “

Queensland²⁸

Responsibility for RV Legislation: The Department of Housing and Public Works²⁹

Government made some changes to the RV Act 1999 with several amendments coming into force in November 2017, and others rolled out over the following 12 months.

These changes were aimed at strengthening the regulatory framework for retirement villages and improving consumer protection for prospective and current residents.

²⁷ engage.vic.gov.au/retirementvillagesact

²⁸ www.chde.qld.gov.au/news-publications/legislation/retirement-villages

²⁹ Department of Housing and Public Works inspects retirement villages regularly to ensure they comply with the Act

Western Australia³⁰

Responsibility for RV legislation: Department of Commerce Consumer Protection

The first legislation to regulate retirement villages was enacted in 1992. The Act included a requirement for a statutory review after 10 years which was finally commenced in 2006. The Final Report on the Statutory Review was tabled in November 2010 with 100 recommendations for amendments and matters to be considered further.

Stage one: implementation of 79 recommendations occurred between 2012 and 2016. Focus on increasing transparency around retirement village contracts to assist consumers make better informed decisions.

Stage two: The outstanding recommendations from the Final Report have been grouped into categories. The first consultation paper (August 2019) focused on improving consumers' understanding of the retirement village product and its price. The second consultation (December 2019) focused on operator obligations such as exit entitlements, capital works funding, refurbishment and rules of conduct. The third consultation paper (March 2020) focused on clarifying when the Retirement Villages Act applies.

As part of the efforts to support recovery from the Covid-19 pandemic an advisory group identified that early resolution of some element in the reform process could have a positive impact on investment in the RV sector. A working group formed to identify reforms which might be suitable for fast tracking. Consultation on the remaining reforms will resume following the fast track process and a final consultation paper will be released during 2021.

South Australia³¹

RV Act Responsible Minister(s): Minister for Health and Wellbeing & Minister for Ageing:

The State Government is undertaking a review of the Retirement Villages Act 2016 and is considering feedback on whether it is meeting the intended objectives. The period for submissions closed in March 2021 and four key components are being reviewed.

- Considerations before someone moves into a village
- Living in a village
- Leaving a village
- Miscellaneous matters

³⁰ www.commerce.wa.gov.au/consumer-protection/changes-retirement-villages-laws

³¹ www.lga.sa.gov.au/news-and-events/news/latest-news/2021/march/review-of-the-retirement-villages-act-2016



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