FRAMEWORK FOR FAIRNESS UPDATE

GUIDELINES FOR ACHIEVING BEST PRACTICE IN NEW ZEALAND RETIREMENT VILLAGES

INCLUDES FURTHER INDUSTRY-LED ANECDOTE & EVIDENCE

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RVResidents ASSOCIATION OF NEW ZEALAND

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PURPOSE

The purposes of this publication are to:

- Assist the Ministry of Housing and Urban Development (MHUD) policy team support recommendations submitted by the Retirement Village Residents Association of New Zealand (RVResidents) when determining whether the Retirement Villages Act 2003 (the Act) and associated Codes and Regulations remain fit for purpose / are ‘future fit’ for purpose; and
- Help clarify or corroborate points made both in the *Framework for Fairness - October 2021* (FFF) and other RVResidents submissions referred to in the Background section below; and
- Alert MHUD to other relevant authorities that may assist its review.

BACKGROUND

MHUD is producing a discussion document in response to its Scope of Review of the Retirement Villages Act 2003 published 19th December 2022. MHUD must consider specific aspects relating to ‘phases of retirement village living’ and wider issues.

The discussion document may function as an interim regulatory impact analysis[1] but one which will be published for consultation, then hopefully followed by a legislative process.[2]

MHUD is amenable to receiving further evidence and credible anecdotes from RVResidents which assists its policy analysis.[3]

RVResidents has filed and published substantive evidence, data and insights including:

- *RVRANZ White Paper Submission Presented to the CFFC*, February 2021
- *Framework for Fairness - Guidelines for Achieving Best Practice in New Zealand Retirement Villages*, October 2021
- *Submission to the Social Services and Community Select Committee*, February 2022
- *Unfair Terms in Retirement Village Occupation Right Agreements*, September 2022
- RVResidents Response to RVA Reforms (Select Committee) - October 2022
- RVResidents Removing Inequity from the Code of Practice (NEW) - October 2022

Additionally, RVResidents has presented insights at over 10 government and industry engagements since the FFF.

[1] Guidance Note: *Discussion Documents and the Regulatory Impact Analysis Requirements* - December 2019 treasury.govt.nz
[2] *Reviewing the Retirement Villages Act 2003* – 26 April 2023, MHUD presentation to RVA Policy & Finance Forum
[3] MHUD meeting with RVResidents – 27 March 2023 - Minutes

OVERARCHING OBJECTIVES

To achieve the review's overarching objectives, RVResidents submits five evaluative questions should be asked by MHUD policy officials:

A. Is the Capital Sum paid by a resident for the Licence to Occupy (LTO) primarily a 'Resident loan' that helps operators sustain their businesses?
B. Are there concerns around the wealth transfer or distribution that occurs with the majority of LTOs?
C. Is there concern around the predominance of a single industry model and evolution of an oligopoly?
D. To what extent is retroactivity required to address imbalance to vulnerable consumers?
E. How does a legislative review include all operators?

A. Is the Capital Sum paid by a resident for the LTO a 'Resident loan' or a 'purchase for goods and services'?

A 2018 Tax Working Group report stated that "Occupation rights are interest free loans."[4] If Occupation rights are in effect interest-free loans, as our evidence overwhelmingly supports they are, residents should not have to wait too long for the return of those funds after exit as they are no longer receiving any occupation benefit in lieu of the interest-free loan. Furthermore, if a resident is not sharing in any capital gains, they should be afforded an interest payment on any amount that does not accrue as part of the DMF retained by the operator.

B. Are there concerns around the wealth transfer or distribution that occurs with the majority of LTOs?

Under the current business model, most operators make money in three different ways:

- Free funding via loans from residents to occupy the unit. This allows new villages to be built and funds growth for shareholders. This is currently estimated to be worth at least 5 percent a year multiplied by the average occupation of 7 years, and equates to a saving of 35+ percent for operators.
- Deferred management fee of 20-30 percent which residents pay on exit.
- 100 percent of any capital gains on reslicensing the unit.

Operators also charge:

- A weekly / monthly fee meant to cover the majority of the operator's operational costs.

The resident receives no financial benefit from the capital sum loaned, and they and any family / estate are financially worse off. Despite that, the 'social licence' of the sector must now be shifted through policy review so consumer capital repayments are returned to society, to the residents themselves or their families, and not held tax-free as operator capital. A re-set requiring a minimum requirement for interest payable to the resident calculated at the cash rate set by the reserve bank (i.e currently 5.5%).

[4] https://taxworkinggroup.govt.nz/sites/default/files/2019-02/twg-bg-4074124-retirement-villages-and-capital-income.pdf ":
"Occupation rights are effectively interest free loans that a resident provides to a retirement village that roughly matches the value of the property a resident is moving into. When a resident leaves, the village repays the loan (minus a fee) and enters into a loan with a new resident based on an increased value of the property. Some villages appear to treat the increase in the value of the loan as income for accounting; however the difference is not taxable.." - and per Advisor 4: *"Operators, statutory supervisors and the RV Registrar, all view occupancy advances as interest free loans and from an accounting perspective they are recognised as interest free loans. The note disclosures in the audited financials of an operator typically have some commentary around this."*

C. Is there concern around the focus of a single industry model that creates, in effect, an oligopoly or cartel-type behaviour?

With the sector predominantly offering a licensing model for occupation, there is an associated risk of anti-competitive behaviour, for example in the industry's member body approach to repayment of a resident's loan.[5] The majority of the Big 6 operators who account for around 70% of the market are all represented on RVA's Executive. While operators may refund a resident's capital at their discretion, and some, anecdotally, say they do, none of the Big 6 currently have this in writing in their ORAs.

D. The requirement for Retroactivity?

New legislation may be applied retroactively to existing contracts where the reason would be to right an imbalance that unduly impacts a vulnerable group or rectifies a mistake caused by the existing legislation.

MHUD can mitigate any burden of change to be implemented retrospectively by including appropriate rights to operators to apply for extensions (or other exceptions) to the particular change.

E. The inclusion of all operators?

A fair legislative framework protects all consumers and ensures smaller, rural operators and not for profits are no more advantaged by change than larger independent or multi providers. Risks to different types of operators can be managed using 'exceptional circumstances' provisions and 'application rights' for some changes, such as repayment timeframes.

CONTRIBUTORS

Our thanks goes to our Industry Advisors to ensuring this document was balanced in its approach, and included industry-led experience from right across the sector. Our contributors include a former National Operations Manager, former Independent Village manager, former Statutory Supervisor, and discussions with an NFP CEO to assist and comment on the suggested 'Best Practices' contained within the FFF. Advisor comments are highlighted throughout the document.

Special thanks goes to our team of volunteer researchers (retired policy writers, lawyers and researchers) that investigated relevant local and overseas related frameworks and interviewed Australian and Canadian representatives.

Final compilation of this update by:
Nigel Matthews, Chief Executive, RVResidents.
Troy Churton, Consultant, former CFFC National Manager for Retirement Villages.

[5] In 2019 Bupa offered a 6 month 'buyback' and included this in their promotional material. Within 18 months this had been removed. In 2022, another large player had rigorously discussed the adoption of a 28 day 'buyback' at Board level. However, on 17 Feb 2023 when this was raised by RVResidents in an email to the company, they stated that 'this is not something that we intend implementing at this stage'.

1. MAKING THE LEGAL FRAMEWORK/DOCUMENTS UNDERSTANDABLE

Residents are not enthusiastic about the quality of their occupation right agreements. In a 2020 Consumer NZ survey of 1,680 village residents, just 44 percent thought the occupation right agreement was “very easy” or “somewhat easy” to read and understand. Only 18 percent rated the terms and conditions as “very fair” and 26 percent as “somewhat fair”.[6]

In a 2022 RVResidents survey, 1,574 Respondents were asked to “Select up to five of the following items that are MOST important to you, and that you would like to see changed as part of a legislative review.” Out of 15 options available 45% responded “Easy to follow / standardised Occupation Rights Agreements” placing this in the top five requests of what was important to residents.

The benefits of introducing standardised occupation right agreements to make the framework and documents understandable outweigh any drawbacks, and standardisation is legally feasible:[7]

“Based on the investigation and analysis of the above topics, this report makes the following conclusions and recommendations:

Concludes from a legal perspective it is feasible to draft and introduce, by regulation, a standard form ORA for the retirement village industry that includes:

- *standardised provisions where the legislative framework prescribes both the subject and substance of those provisions;*
- *standardises the licence to occupy (LTO) model including the terminology and definitions that relate to this model. Operators to then insert their unique monetary figures into a standard framework for this LTO model…; and*

Concludes that after considering the drawbacks against the benefits of introducing a standardised ORA for the RV industry, with the exception of the drawback that relates to the costs to the RV industry and government of introducing a standardised ORA, the benefits outweigh the drawbacks. The drawback that has been raised regarding the significant costs associated with introducing a standardised ORA requires further consideration and analysis by regulators and the RV industry.”

Intending residents and their families should not need to rely on an industry members’ association such as the Retirement Villages Association (RVA) encouraging use of a template across only part of the industry as a substitute for national consistency.

> *Having a number of different agreements in one village setting may also perpetuate confusion between residents and around topics they may be most likely to compare, such as entitlements. This can lead residents to animosity towards each other and can cause a breakdown in the relationship between the resident and management. (Advisor 1)*

> *With all new contracts most providers only offer one type of agreement. These agreements vary relating to financial aspects based on the incoming residents financial circumstances, often as to how their Deferred Management Fee (DMF) is paid. (Advisor 1)*

[6] https://www.consumer.org.nz/articles/retirement-villages
[7] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/TAAO-RV_Annual-Investigation-Report_2021_22.pdf

At a basic financial level, the ORA is clear and lawyers can explain the quantum of a deferred management fee and the loss of capital gains. What lawyers and residents cannot do is get any perspective on whether these terms are fair or reflect the concept of value for money in a property transaction.[8]

Standardising contracts has helped Australian operators offer more occupancy choices than is currently seen in New Zealand, including strata or community schemes, company title schemes, registered long-term lease, loan-licence agreement, rental agreements and other leasehold type arrangements.[9] Greater retirement village housing choices, particularly rental or leasing options, will be possible if the definition of retirement village becomes unrestricted by a requirement for capital payment.[10]

Feedback on standard form contracts was sought as part of the Inquiry into the New South Wales Retirement Village Sector carried out in 2017. Residents said that the introduction of a standard contract has "improved the clarity of entry costs, ongoing fees, exit costs and resident rights and responsibilities".[11]

Without standardisation, there is a risk of needing to extend an already bulky and complex disclosure regime to provide consumer protection:

> *"In addition to a mandatory summary of key terms that all operators should adhere to, a product disclosure statement should be available which includes elements of the ORA and disclosure statement, enabling simplified ORAs and disclosure statements." (Advisor 4)*

Standardised contracts are unlikely to impose excessive costs on government and will proportionately distribute impacts across operators, residents and government.[12] The costs to the government of additional publications, communications, and training when implementing tenancy law changes for the considerably larger tenancy market,[13] were considered 'marginal' in contrast to the benefits of change.[14] A relatively low ten-year cost appropriation was suggested for implementing standardisation of retirement village agreements in Victoria, Australia.[15]

> *Standardising contracts is important because different contracts cause angst amongst residents and sometimes resentment. One of the big 6 at one stage had 12 different contracts. These often changed to suit the operator. Having standard terms and conditions provides consistency amongst residents and operators which is essential to reducing confusion and not allowing operators to change agreements to adversely affect the sector. The ORA we see in action today has come about with no regulation boundaries in place and operators taking opportunities to maximise their returns unchallenged. There should be scope as part of the standard agreement to offer finance options when purchasing i.e. deposits, securing a unit or apartment with existing real estate, payment periods, as everyone's circumstances can be different. There need to be controls on operators' ability to change contracts. (Advisor 1)*

Costs to operators standardising contracts may be further mitigated if the requirement for standardisation applies to all tenure arrangements entered after a certain date, similar to how changes relieving residents from any requirement to pay fair wear and tear were codified, per clause 50(3) RV Code of Practice, so as to apply only to ORAs entered after 25 September 2006.[16]

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[8] For a financial analysis of how DMFs are charged, capital gains are lost and model cross subsidisation see - "*Costs paid by residents to live in a retirement village*" – Janine Starks, Independent Report June 2023'

[9] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/TAAO-RV_Annual-Investigation-Report_2021_22.pdf - at page 13

[10] s6(1) Retirement Villages Act 2003

[11] *Inquiry into the NSW Retirement Village Sector Report*, 15 December 2017, page 38

[12] https://www.hud.govt.nz/our-work/residential-tenancies-amendment-act-2020/ Criteria applied in residential tenancy impact assessments and cost benefit analyses included it "is effective, clear, unlikely to impose excessive costs on government and will proportionately distribute impacts across operators residents and government".

[13] Stats NZ 2021 indicates 527,853 residential tenancy rental properties

[14] Impact-Summary-Residential-Tenancies-Amendment-Bill-Supplementary-Order-Paper.pdfed.pdf

[15] In its 2013 regulatory impact statement, Consumer Affairs Victoria forecast that the total cost of contract standardisation requirements over a 10-year period was estimated at $2,645,936, which included $1,346,138 for implementing standard layouts for retirement village contracts, see https://www.vic.gov.au/sites/default/files/2019-11/Retirement-Villages-Amendment-Records-and-Notices-Regulations-2013-RIS.pdf. The Victorian Government has since developed a Retirement Villages Amendment Bill Exposure Draft 2022 which proposes further refinements to improve the understandability of the framework and documentation, such as replacing the Disclosure Statement and Factsheet with one disclosure document called an Information Statement, which must be available on the operator's website https://engage.vic.gov.au/retirementvillagesact

[16] RV Code of Practice 2008 variations made in 2013 concerned no-fault exit situations and impact contracts entered after September 2006 - see https://retirement.govt.nz/retirement-villages/the-act-regulations-and-codes/code-of-practice/

Best Practice Guidelines for Making the Legal Frameworks/Documents Understandable:

The FFF emphasised it is vital residents have simple recourse against an operator when any disclosure statements or marketing documents make statements or offer 'inducements' that are relied upon, but do not eventuate or are changed.

The FFF said: Any pre-contractual sale communications should:

i. if discussed orally, be confirmed in writing within five working days, providing a summary of the discussion which may become part of the sales agreement, and
ii. include examples of financial ramifications for/of any represented actions, eg "Residents may transfer to another unit BUT there will be a charge of .....".

Residents will still be required to discuss the implications of contractual documents and any pre-contractual sales communications with their solicitor. Standardised contracts may assist lawyers advise prospective residents to a consistent standard.

Estimating transfer costs for a move from a Village unit to Care is driven by the housing market and can be influenced by the length of time the Resident spends in a Village and is therefore difficult to specify in every situation. However, as part of disclosure, the formula in calculating transfer costs should be well stated and part of the standardised provisions. (Advisor 1)

It is no different for the smaller and medium sized operators. (Advisor 2)

The range of remedies a resident could consider in the event of future facilities, or other matters disclosed but not provided,[17] are complex and unlikely to be pursued by residents. Consequently they are of limited use as consumer protections presently.[18] Very few elderly village residents are in a position to pursue complex legal remedies either financially or emotionally. Most require the assistance of supporting representatives.[19]

To help protect vulnerable elderly consumers from adverse consequences of sales representations or disclosures[20], a Commissioner or Ombudsman empowered to investigate and enforce is preferable.[21]

The FFF advocated for the following best practice:

f. Annually produced financial statements for each village will show fully itemised operating expenses and forecast long term expenditures for the current and upcoming period; and
g. Documents lodged with the Retirement Village Registrar's Office must include all information as a matter of public record, such as re-licencing timeframes, and should not redact information.

Each of these is expanded as follows:

[17] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/TAAO-RV_Annual-Investigation-Report_2021_22.pdf ..."possible remedies under the Act that a resident could consider with their lawyer are: • the prosecution of an operator for contravention of the operator's statutory duties under the Act in relation to disclosure statements; • seek to avoid the ORA under section 31(1) of the Act for contravention of section 30(1) of the Act; or • where there is evidence of a contravention of the statutory duty relating to the publishing of a disclosure statement and a resident can show they have suffered loss or damage arising from that act of publishing, consider seeking court orders for a remedy as prescribed in the Act"
[18] In the Retirement Commission's half yearly complaint reports, April 2022-September 2022, only 1.11% of complaints pursued a 'disclosure' issue. For October 2022 - March 2023 this was only 2.99% https://retirement.govt.nz/retirement-villages/monitoring-and-reports/
[19] See the evidence summarised by the Retirement Commission's https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/06128f4914/Report-2-RV-disputes.pdf pp9-11 regarding resident barriers to pursuing remedies through the complaints process'and see RVRANZ response to CFFC White Paper 2020
[20] This contrasts from one recommendation of the Retirement Commission: "Recommends that the best protection for a resident who enters a village relying on the availability of certain future promised facilities is to negotiate a clause with their operator to include in the ORA that the operator will provide those new facilities as set out in the disclosure statement https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/TAAO-RV_Annual-Investigation-Report2021_22.pdf)
[21] Discussed further under 4 below

f. Annually produced financial statements for each village will show fully itemised operating expenses and forecast long term expenditures for the current and upcoming period.

Strengthening statutory obligations so operators provide full annual financial statements for each village may improve industry monitoring by supervisors, monitoring agencies and will enable due diligence amongst consumers.

Some intending residents may think differently about joining a specific village within a group if they have good reason to believe that village is an under-performing village which an operator might try and dispose of while they are living there. Enabling residents and intending residents interested in understanding the performance of a village helps consumers make more informed decisions about their rights to transfer within the village or terminate their occupation right agreement and may assist more constructive engagement with village management particularly when operational issues arise.

A strengthened statutory obligation to provide a resident with financial statements for the village on request and at no cost to the resident, is an unlikely burden or new cost for operators - whether the village is independent or part of an operator group of villages. For larger operator groups, the village financials will already be available as they help form the overall operator entity audited financials. There is credible anecdotal evidence most larger and independent operators provide this information when requested anyway.

For the majority of villages the weekly fees collected, sometimes called service fees in financial statements, don't cover operating costs. (Advisor 1)

A full set of audited financials helps identify company performance but is not currently required for individual villages within the group. Most operators will provide individual village operating performance if requested by a resident. Declaring the performance of individual villages within a large operator environment may have potential to cause confusion for some residents and can be time consuming during AGMs. Residents are given a full financial disclosure of a village if requested. What is arguably more relevant for overall resident security is knowing that an organisation's financial position is secure rather than the financial performance of an individual village. (Advisor 1)

For large operators who have wholly owned operating entities, each entity is required to prepare a full set of audited financials, which is available to residents on request. At the AGMs for each village within the group a summarised set of accounts (usually a couple of pages or less) are included in the AGM papers. Currently all operators are required to include full audited financials in their annual returns which are filed with the RV Registrar. In my experience all of our operator clients produced audited financial statements and were happy to provide a copy to residents when requested. (Advisor 4)

Each of the big six operate their companies as a conglomerate. If one underperforms then it sits in the confines of the whole company, depending on where the village is from a development perspective as to what its performance expectations will be. Summerset does set its weekly fees separately based on the annual superannuation increases. That is a different approach compared to the other 5 of the big six who set weekly fees. (Advisor 1)

If you go into the Companies Register, you will see all Summerset villages listed as subsidiary companies, each with its own company number and separate incorporation date. (Researcher 1)

Typically, audited financials for a larger operator entity will provide a breakdown of the expenses in the notes to the accounts, but forecast long term expenditures are not included in audited financials. This is usually done separately in the long-term maintenance plan which all operators are required to provide to residents annually. (Advisor 4)

I provided fully itemised operating expenses to residents as part of our financial statements prior to the AGM. It was met with a lot of thanks by the residents and caused less antagonism if the weekly fees did have to be put up. It provided transparency. This is very simple for independents with unfixed fees. (Advisor 2)

In recent years some independent unlisted operators are resorting to other revenues to manage operating expenditure. (Advisor 2)

g. Documents lodged with the Retirement Village Registrar's Office must include all information as a matter of public record, such as re-licencing timeframes, and should not redact information.

A fundamental consumer protection created by the Retirement Villages Act 2003 was the disclosure regime requirement for operators to be registered and file publicly accessible documentation to help residents and intending residents understand their rights.[22]

South Australia[23] has moved towards enhanced information being collected and made easily accessible on their register. The register includes information about average length of time for exit entitlements being paid out by a village, entry and exit contribution payments of a village as well as details of any formal enforcement actions and other proceedings the village has been the subject of.

There is no policy development or legislative basis we have seen enabling redacted disclosure information or partly disclosed information. Just as there is no opportunity for government or parties to unit title transactions to redact or withhold key information in either forms of disclosure required under the Unit Titles Act 2010[24], the retirement village framework can encourage transparency and due diligence for consumers and their advisors by prohibiting partial disclosure or redaction of information required to be disclosed.

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[22] The full list of consumer protections is detailed in the CFFC White Paper https://assets.retirement.govt.nz/public/Uploads/Retirement-Villages/Documents-and-white-papers/CFFC-RV-whitepaper-2020-Final.pdf at page 7

[23] See: *Review of the Retirement Villages Act 2016 (SA)*, by PEG Consulting, Sept 2021 at page 7 https://www.sa.gov.au/__data/assets/pdf_file/0005/392837/Review-of-the-Retirement-Villages-Act-2016-SA.pdf] and [*Response to the Report of the Independent Review of the Retirement Villages Act 2016*, by the Office For Ageing Well Department For Health And Wellbeing, 2022 https://www.sa.gov.au/__data/assets/pdf_file/0005/825206/DHW-response-to-review-report-recommendations.pdf]

[24] https://www.unittitles.govt.nz/buying-or-renting-a-unit-title/buying-a-unit-title/

2. INFORMATION CONCERNING FUTURE TRANSFERS BETWEEN INDEPENDENT UNITS OR TO SERVICED CARE/CARE FACILITIES

From the start of the sales process for a unit in a retirement village there must be clear communication about the pathways for transfer between independent living units, and the pathways (if any) for transfer from independent living into short term or long term care facilities and the care services available at the village or other affiliated sites.

The FFF recommended that information about transfer pathways should include any associated costs or financial implications that may occur whether the transfer is from independent living to another independent living residence, to serviced apartments, assisted care, or any other levels of residential care.

Many intending residents are attracted to a retirement village with mixed beliefs about the provision of care at a future date and how to access it.[25] Monitoring report evidence confirmed some residents are unable to afford to transfer from their independent unit into care without financial assistance provided from the operator because they have no other financial choice, and some may reluctantly delay a move into care as a consequence.[26]

Transferring into care has been made more complicated for residents and their families with the introduction of care ORAs. We keep Independent Living and Aged Care very separate. (Advisor 5)

Best Practice Guidelines for Transfer between Independent Units or to Serviced Care/Care Facilities:

We have previously stated in the FFF that all villages must use prescribed ORA and disclosure statement templates that:

i. use standardised wording and explanation of the transfer process, irrespective of whether the care required is onsite or offsite, and
ii. include any financial costs to the resident including transfer fees and any effect on Deferred Management Fees (DMFs).

Examples of offer documents for villages I was supervisor of included stating there was a transfer fee of [x]% for transferring from one independent unit to another independent unit, or where no transfer fee applies, making it clear that the cumulative DMF was [x]%. The best documents also gave examples - i.e. 20% DMF, 8% of DMF had accrued on the first unit, so the max DMF on the second unit was 12%. (Advisor 4)

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[25] Over 1/3 of residents from an RVResidents 2022 survey ranked 'Upfront disclosure of Transfer to Care costs' in their top 5 most important items for legislative change
[26] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/CFFC-Financial-Services-Provided-by-Operators-Report-June-2020.pdf

There must be a clear statement in the Disclosure Statement as to:

i. the village's care facilities and previous 12 months occupancy levels, and

ii. that the facility may not be able to guarantee a bed in the care facility at the time the resident requires it.

Depending on the time of transfer, occupancy levels could be provided to village residents annually. But it is more helpful to distinguish occupancy from turnover. More accurate data in disclosure documents would be care bed turnover rates as some care units can turnover beds rapidly, especially nowadays with the health acuity assessment threshold being so high. Occupancy might be continuously high in the care facility, however turnover of beds might be high and beds often become available. Also when transferring from a village there are other options available if waiting for a care bed. For example, for large care centres with a high percentage of hospital level of care (HLOC) residents, turnover can reach 80-100% in 9-14 months. (Advisor 1)

Smaller independent operators will usually not automatically have a care bed available to a resident. This is also often the case with the larger operators in my experience as a clinician. At any one time there is usually a wait list of up to three to six village residents waiting for a Special care, Rest Home Residential care(RH) or Hospital Level (HL) bed in a care facility. As the push to provide care in home increased, the consequence was residents coming into care in a more compromised condition. (Advisor 2)

Bed turn over is a better indicator of availability. It is a large reason why some providers have a heavier weighting in HL versus RH in their swing bed care centres as the turnover is higher on average. For example the expectation of one of my employers was 78% HL and 22% RH, and that proportion was actually a KPI that was set and attached to my bonus. The reason to achieve higher levels of HL was due to the higher funding operators receive from the Ministry of Health between levels of care. Getting more funding from the Ministry helped balance out the cost of staffing. If your hospital level beds were too high your staffing costs superseded your budgeted expenditure. Conversely, if you had too many Rest Home level beds then your funding income did not meet your operational staffing costs. The balance between RH and HL beds is a very difficult juggle for independent villages who are limited in what they can generate with other types of revenue. (Advisor 2)

All new facilities have each room certified to provide for RH and HLOC (dual levels of care). Older facilities, depending on room design and amenities, were only certified as one or the other and could only be used for what they were certified to offer. The push from operator management is always to accept HLOC over RH as funding is significantly better and allows for improved staffing etc. Optimal percentages for bed split is 70-75% HLOC and 25-30% RH. This would provide greater returns and staffing ratios. The reason the staffing ratios are important is a large number of residents are assessed for RH care and need HLOC support or care. So RH funding was never enough, and this put significant pressure on staff. (Advisor 1)

One of the big 6 found, with new facilities that only offered care suite beds sold with an ORA, around 90% were sold as RH level of care as families didn't want to invest in a Care Suite if their family member required HLOC (generally shorter occupancy term). Because of this, new admissions were almost always RH level and percentages of HLOC rarely rose above 25-30%. Older facilities that refurbished existing rooms to Care Suite Standard would experience a reduction in HLOC occupancy impacting on return per bed rates. (Advisor 1)

Only ONE DMF should apply when transitioning from independent living to another unit in the village or into a care room or another village of the same operator.[27]

[27] Further discussed in topic 14 below.

Unit to unit:

My experience is that for transferring between independent units or to a serviced apartment a number of operators don't double dip with their DMF, but some do and there is nothing to stop this yet. Where a resident has lived in an independent unit and the maximum DMF has accrued for that occupancy, and the resident wishes to transfer to another independent unit and get credit for the DMF that has accrued on first unit, they only pay the balance of DMF that applies to the second unit. (Advisor 4)

The Victorian Government's recent policy approach places a statutory restriction on operators from charging a second DMF when a resident transfers from one unit to another within the same village.

Section 26Y of the Victorian Retirement Villages Amendment Bill Exposure Draft 2022 says:

"A person must not charge a resident of a retirement village for a deferred management fee in respect of the resident's occupation of residential premises in the retirement village if the resident moves to a different premises in the retirement village that is managed by the operator of the village."[28]

Unit to care:

Moving from an independent unit to care is different as a different model is triggered. It may be a combination of care suite ORAs or refundable accommodation deposit (RADs) or paying privately and/or government subsidised care. (Advisor 4)

Care units require significant operator investment and operators would not build them on the current funding formulas as prescribed by the Ministry of Health. What has not been made clear to consumers traditionally is that, despite operators promoting the availability of care to attract independent living residents to their village, the care and village are two different entities and businesses often with their own individual ORAs. When you buy a house and sell it you don't get your next contract with no real estate fees, or free. Nor would you get a care suite ORA for free. A fairer solution which reflects the different business models I would suggest, when a resident is transferring within a village to care, is that a once independent living resident gets a discounted DMF under the new care ORA. Village residents make up a small percentage of residents in care, the majority of care residents come from outside the village. (Advisor 1)

Independent operators do not have the capital to draw on like the Big 6 operators do. I agree that the one DMF from independent unit to independent unit is a reasonable request, but for transfers between care levels (ie serviced apartment and care facility) is a big ask. (Advisor 2)

Some operators are limiting the number of beds being made available because of shortages of staff, mainly nurses. They aren't meeting the prescribed staffing ratios in their contracts. Unless they have the regulated staffing levels they find it difficult to offer beds to anyone. (Advisor 1)

In a Summerset village, a serviced apartment is like the other independent apartments. The only difference is you have to continue to purchase one of 3 packages of services. Therefore it makes sense to have one DMF from independent unit to independent unit or to a serviced apartment in our village. (Researcher 1)

[28] *Retirement Villages Amendment Bill Exposure Draft 2022* https://engage.vic.gov.au/retirementvillagesac : deferred management fee means an amount payable under a residence contract, management contract or other retirement village contract by a vacating resident of a retirement village as a contribution for the cost of services provided in the village to the resident but does not include any amount payable as a maintenance charge, a charge for an optional service, and any other prescribed payment, unless the retirement village contract entered into by the vacating resident provides that the payment be included in the fee.

3. CLARIFYING THE INTERFACE OF CARE AND RESIDENCE

Developing a care proposition under an ORA structure is one of the three top priorities for NZ operators.[29] A village and care (or having a care facility) are viewed by many consumers as one and the same proposition, both by virtue of operator marketing and by being co-located, when in fact they are run as separate businesses.

Changes in the positioning of retirement villages in residential care also heightens the need for the definition of retirement village to be changed and for the rights of village residents who become care recipients to be consolidated.

The changes in positioning have been summarised as being in two dimensions[30]:

i. involvement of Retirement Villages in residential care, and
ii. the development of Occupational Right Agreements in residential care.

ORAs in residential care, even where an individual's first and only contact with a retirement village is through that residential care ORA, activate the Retirement Villages Act as well as all the health sector funding, service and regulatory settings associated with residential care provision. The definition of retirement village does not adequately reflect this nor reflects the overlap with other relevant regulatory settings.

Some Australian states expressly exclude or omit reference to care buildings from the definition of retirement village.[31] Some have other statutory requirements on operators to protect residents unable to access funds when moving into care.[32]

Both these sorts of provisions help consumers recognise the retirement village may involve distinct businesses, and so consumers need to make more sophisticated financial considerations before becoming a resident. These provisions help residents and their families who might find they are adversely impacted by a need to transfer from one business to the other when that time comes.

Best Practice Guidelines for Clarifying the Interface of Care and Residence:

a. The village hosts twice-yearly seminars for existing residents so they have a clear perception of the care options, costs, availability and timing
b. Ensure that any review of retirement villages legislation/CoP includes a requirement for the person who has Power of Attorney for property for Personal Care and Welfare (POA) to have the interface between independent living and care communicated to them and how the interface will be actioned when needs arise.

Some residents are very interested in understanding the pathway to care and some are can be quite defensive and it causes them anxiety to think about it. As a Nurse Manager and Regional Manager I would often have ad hoc conversations with residents about moving to care. One option would be to mandate that the village provide information about Needs Assessment and Care in any information material for new residents and when intending residents come to meet with either the Sales Team or Village Manager. The information can be as simple as a flow chart with some contact numbers. (Advisor 2)

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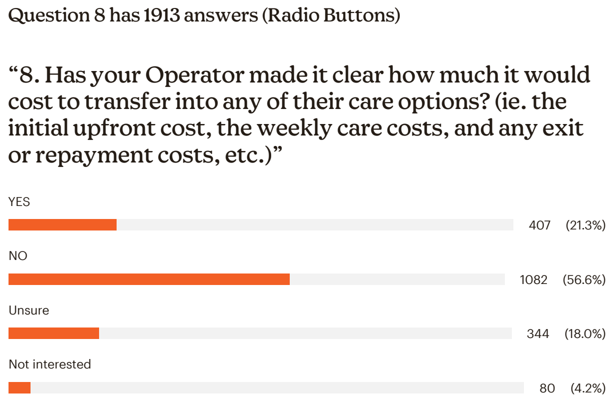
[29] ANZ Healthcare (2018) ANZ Retirement Villages Association Survey Report. New Zealand: ANZ, p. 1

[30] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/56439919cd/Interface-Retirement-Villages-Aged-Care-Findings-Report-Final-22-June.pdf

[31] https://legislation.nsw.gov.au/view/html/inforce/current/act-1999-081#sec.5 NSW: A complex with residential premises mainly for retired people who have contracts with the operator, or as prescribed by the regulations. It doesn't matter if some premises are occupied by employees or under different agreements. However, the definition excludes buildings for residential care, nursing homes, respite care, residential premises for Aboriginal Housing Office or the NSW Land and Housing Corporation, boarding houses, employee accommodation, and some residential tenancy agreements. https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.5QLD: A retirement village is premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units, under a retirement village scheme

[32] Consumer Affairs Victoria https://www.consumer.vic.gov.au/housing/retirement-villages]: If you are a non-owner resident, the payment of your exit entitlement could be delayed if the village operator cannot quickly find another person to occupy your retirement village unit. This delayed payment could be a problem for non-owner residents who need to meet the costs of moving into an aged care facility.



Extract from an RVResidents Resident Survey, May 2023

In my experience the majority of village residents protect their independence and some aren't yet ready to digest the care side of their journey. Most will only engage in understanding pathways to care when necessary. Care providers should be encouraged to provide material when required. Workshops could be provided annually or in conjunction with village committee requests. Three known providers use a one page document to outline things to consider if transferring from village to care. (Advisor 1)

An EPO usually requires a GP or Psychiatrist sign off before it becomes activated. Sometimes there is contention with residents where the daughter/son/relative has an unactivated EPO and is asking for information pertaining to the resident. One solution would be to require an additional term in the ORA that the resident does or does not give permission for the resident's EPO to be communicated with. (Advisor 2)

Good practice is to extend AGM invites to those holding an EPOA or POA, particularly for the care suite ORAs. If a new independent-living resident has no existing need to move to a higher level of care, there is usually not much appetite to look at the details of transferring to care. Many operators hold sessions on EPOs, moving to higher levels of care etc, and have standing general meeting agenda items around speaking to Village Managers or sales, if thinking about higher level of care offerings. (Advisor 4)

Extending invites to those holding EPOA needs to be a minimum standard with Cares Suites. Whilst residents in a village may have an EPOA it is rare they have been enacted, and by this point they would already be in care. AGMs should provide residents with more opportunity to bring a representative/support if they wish. (Advisor 1)

In our village we asked residents what questions they had about moving into care and we're basing our seminar on those. We have come up with good case studies, especially as different scenarios affect couples. (Researcher 1)

The common minimum entry age for residents is 70 years. Across the membership of RVResidents approximately 10,000 members, this has resulted in a national average age of 81 years for residents in independent living villages. Operators may prefer new entrants being in their mid-late eighties as it raises the likelihood of those residents needing some form of care sooner after entry into the village.

4. WEEKLY FEES

Weekly (or monthly) fees designed to cover the operational costs of the village can cause a great deal of stress for residents if they increase each year, especially if the increase is not linked to a metric such as the CPI percentage increase. Weekly fees may also include some fixed or capital costs that residents should not be charged for.

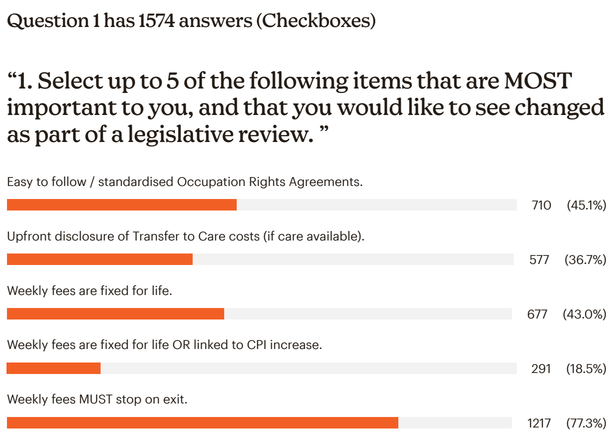
Weekly fees are designed to cover operational costs. Often weekly fees don't cover operational costs, especially for those operators who fix their fees. (Advisor 1)

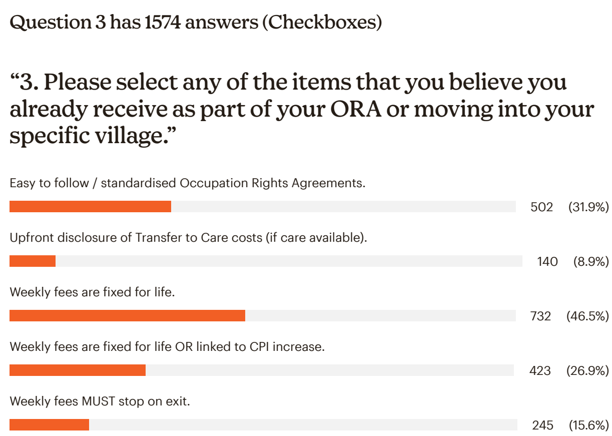
Unlike the Big 6 operators, the weekly fees for independents generally offset the operational expenditure. However that landscape has changed in the last two years and independent operators are increasingly now pulling from sinking lid type funds or the capital gain to offset operational expenditure. (Advisor 2)

A new village won't perform financially for 3-5 years depending on the sell down timeframes. Currently this is very slow as most people watch the real estate market. This type of request was very rare (Advisor 1 - 'Big Six' Provider experience). Then there are operators like Summerset that base their annual weekly fee increases on superannuation increases. Fixing weekly fees was done to provide residents with a guaranteed weekly fee that they can budget too. For the majority of Villages the weekly fees collected, sometimes called service fees in financial statements, don't cover operating costs. (Advisor 1)

The definition of interest free 'loan' on the portion of payment not used for DMF (generally 70-80% of total payment) is essential. It is achievable given most operators have removed capital gain from modern day agreements and they use that money to develop new facilities. The DMF covers the investment on the property residents reside in, the rest is used for other investments. Operators should pay interest on this portion for the life (resident tenure) of the loan, and this interest could be used to pay or partially pay the weekly fee if the resident wishes. (Advisor 1)

From a sales perspective this is an attractive sales proposition, respectfully it also provides residents with peace of mind when planning retirement. I believe providing option B would only be at a trade off i.e. if there was a capital gain component, otherwise option A should be best practice. (Advisor 1)





(Extract: RVResidents Survey: July 2022)

Best Practice Guidelines for Weekly Fees:

a. Villages charge residents a 'fixed for life' weekly fee, and

b. The minimum standard is that where a village is not charging a fixed weekly fee for life, the village has a cap on percentage increases in weekly fees aligned to the percentage increase to the National CPI. After five years of occupation the weekly fees should be fixed for life.

Requiring operators to charge a fixed fee clearly removes uncertainty and stress for residents. But it should be made clear that fixed fees for life only apply if you live in the same unit. So if the resident moves to a new occupancy such as a serviced apartment, a new weekly fee structure will apply. The other option is capping any increase in weekly fees to a transparent simple formula such as CPI. The ability to do this in practice depends on the size of the village. (Advisor 4)

For a number of reasons five of the big six fix their weekly fees for the life of the contract. The regime could require operators to fix fees if coupled with an option for interest on the loan portion of the agreement to cover weekly fees if the resident wants to. This would allow the resident to free up their superannuation to enjoy other things in life. (Advisor 1)

Weekly fee increases are capped to CPI and any increase would only occur AFTER superannuation increases. In 2022 we were charging $138 single and $145 couple. We are willing to make arrangements eg. Supported someone who was $60k short - so we agreed to make up the difference of fees they could not afford at the end. Flexibility to take weekly fees off at end (with DMF) if someone is struggling financially. (Advisor 5)

Mandating fixed fees for life would be trickier for some independent villages. It depends on size and turn over as to how sustainable this will be. With increasing operating costs (building, food, insurance, ACC levies etc) profit and loss is quite difficult to predict for the smaller independent operator. An example of this is a past employer who had a predicted deficit of $250k for the previous financial year, and then for the coming full year it grew to $450K. To cover some of this they had to increase the weekly fees. (Advisor 4)

Smaller independent operators that do not have serviced apartments are unable to pull the revenue from elsewhere. It is possible for the village to add a 'maintenance levy' onto the sale of the unit or home commensurate to the size and price to offset some of the expenditure. The DMF cap after five years also makes it difficult because new residents will be aware of this and it can cause discord. Larger independent operators can offset operating cost shortfalls with the capital gains they receive, but some smaller operators would struggle. Operators are relying on turnover of villas/apartments to buffer operating cost shortfalls. (Advisor 4)

By contrast, maintenance charges in Victoria only increase in accordance with any increase in the consumer price index. Any bigger fee increases proposed would only be allowed on grounds including by resolution of a majority of residents.[33]

[33] See factors set out in s38 of the Retirement Villages Act 1986, increases in salaries paid in accordance with an award or increases in any taxes and charges relating to retirement village land or its use imposed by law: https://www.consumer.vic.gov.au/housing/retirement-villages . The current *Retirement Villages Amendment Bill Exposure Draft 2022* https://engage.vic.gov.au/retirementvillagesact] would only allow increases above CPI by special resolution of residents to be passed at a resident meeting.

c. Operator's maintenance costs to village property and village amenities, along with operator membership costs (unless covering both resident and operator) and legal/mediation costs relating to complaints are not to be included in residents' weekly fees.

For an ORA/LTO arrangement this is generally the case, but not necessarily for unit titled occupation where a resident's contribution to the maintenance of village property will be in accordance with the Unit Titles Act.

For some ORA/LTO contracts a portion of the weekly fee is used by operators as a contribution to the funding of long term maintenance/replacement of village property. If this is the case all money contributed by residents for that purpose must be kept in a separate bank account and named as Residents Maintenance Account (or similar) per clause 43 CoP. (Advisor 4)

d. Weekly fees cease immediately on exit, when the unit is left vacant and the key returned.

Unfortunately operating costs don't stop due to a resident not being present. The payment of fees should cease quickly and be limited in good faith as services are no longer being used on vacant possession. The white paper submission minimum best practice is a fair compromise to ensure all parties are not disadvantaged. (Advisor 1)

Summerset now stops charging weekly fees on vacant possession. (Researcher 1)

I agree that minimum best practice expected is weekly fees reduce 50% on exit and cease after three months. This is manageable for the independent village. Requiring weekly fees to cease on exit may be punitive for some small independents. (Advisor 2)

The issue here is if the housing stock is empty for a prolonged period. Independent operators have historically offset all of the operational expenditure with the income from weekly fees. The pandemic changed this landscape. If you suddenly have a large amount of housing stock empty and no weekly fee income it would likely be detrimental for the small independent providers in the rural areas. A consequence may be to push people into metropolitan areas away from family. Housing stock turnover has decreased with the increase in inflation and the point of sale is now being pushed out significantly. What was taking a month is now taking six months to move, so there has to be an end point for weekly fees such as the three month mark. The resident should not be responsible for more than what is palatable on exit. (Advisor 2)

A number of operators either in the big six or independents will keep charging weekly fees after the contract is terminated. It really does depend on what the weekly fees are used for as some providers include rates and insurance in the weekly fees, some don't resulting in an unlevel playing field. (Advisor 1).

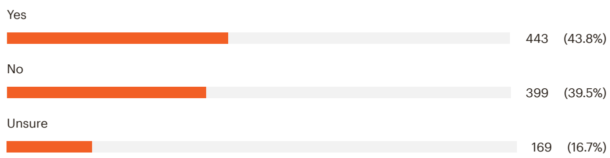
There should be clearer boundaries on what is included in the fee. Operators are always looking at opportunities to retrieve costs and they can confuse the market in their marketing i.e. some fix their fees for the duration of the agreement others as you pointed out with Summerset increase their fees annually. (Advisor 1)

If weekly fees were to increase $10 on average annually for the life of the agreement, which averages 7-8 years, that is an additional $3600 in fees for the life of the agreement against an operator that fixes fees. If another provider fixes fees but carries on the fixed fee 3 months post termination, that is an additional $1,980 for that period. There needs to be a fairer outcome for all residents. Based on current fee charges it appears Summersets weekly fee structure and annual rise are starting to outstrip other providers in charges. Oceania has an average weekly fee of $142 (the range is $110 older facility to $155 newer facility. (Advisor 1)

By contrast,[34] for residents who have a registered ownership interest in their unit (and are therefore sharing in capital gains), the equivalent weekly fee charge continues until a new contract with a resident or tenant is signed. But for residents who were not registered owners, in NSW their liability for the weekly fee equivalent ends 42 days after they leave, and in Queensland the period is 90 days.[35] Tasmania and Northern territory legislation is silent but in Victoria maintenance charges cease on the earlier of six months or when a new management contract is entered into with a new resident or when a new resident otherwise takes up residence in the unit.

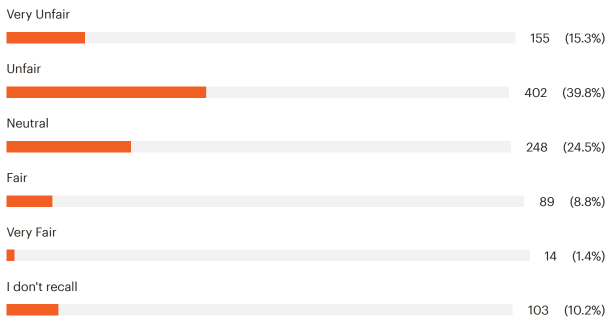
Question 1 has 1011 answers (Radio Buttons)

"When you signed your Occupational Right Agreement (ORA), do you recall if the exit conditions were a key part of that decision at the time?"



Question 2 has 1011 answers (Radio Buttons)

"How would you describe your thoughts or feelings about the exit conditions at the time you signed your Occupational Right Agreement (ORA)?"



(Extract: RVResidents Survey: January 2021)

[34] Retirement Villages Act 1986 clause 38B https://www.legislation.vic.gov.au/in-force/acts/retirement-villages-act-1986/084
[35] See ss151-155 Retirement Villages Act 1999 NSW & ss102-108 Retirement Villages act 1999 Qld

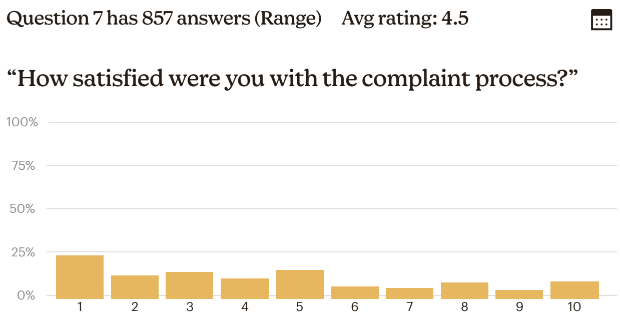
5. A SIMPLE COMPLAINTS SYSTEM AND AN AUTHORISED ADVOCATE FOR SENIORS

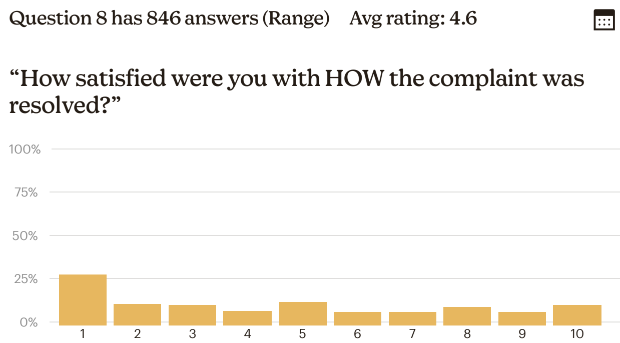
It was established[36] that the complaint process was not user friendly for residents, not responsive to residents' needs, situations and circumstances, and generally disadvantages the resident.

Despite a few changes to the Code of Practice in response to earlier monitoring work, a May 2022 RVResidents Complaints Survey demonstrates two thirds of the 1,251 Respondents said they had made a complaint at their village, with another 7.3% saying *"No, but they wish they had"*.

This RVResidents survey also showed 52.5% of respondents were having to deal with a health issue at the time of the complaint, and many residents were reluctant to negotiate, or felt intimidated by operator management.

Over three quarters of those that said they had made a complaint commented that it was not resolved quickly. The majority of residents were also unhappy with the complaint process and how the complaint was handled.





In a recent 2023 resident survey of 858 residents, another reason residents said they are dissuaded from engaging in the complaint process is the financial cost of participating in mediation and of having to use legal representation at any stage to help counter the operator's use of lawyers.[37]

The range of barriers for residents asserting their rights through the complaint process may be alleviated with an Ombudsman approach, similar to the Banking Ombudsman Scheme but incorporating revised timeframes to better reflect the size of the sector and its elderly demographics.

Industry ombudsman schemes are typically a condition of industry participants holding a relevant licence or registration, so all businesses in an industry must also participate in the scheme. Industry Ombudsman schemes are funded by industry, so industry has a financial incentive to minimise consumer disputes, and the Ombudsman process provides flexible solutions to disputes but also has 'teeth' because the Ombudsman can make findings binding upon the trader.

In responding to the Victorian Government's recent proposal to establish a Complaints Dispute Resolution Officer[38] the Consumer Action Law Centre strongly recommended an Ombudsman Scheme approach as better suited for managing older consumers' complaints.[39]

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[36] See evidence summarised by the Retirement Commission's https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/06128f4914/Report-2-RV-disputes.pdf pp9-11 regarding resident barriers to pursuing remedies through the complaints process
[37] RVRANZ Mailchimp survey result: full document provided to MHUD 22 May 2023 - see Q3. Over 56% were worried how much it would cost.
[38] Retirement Villages Amendment Bill Exposure Draft 2022 https://engage.vic.gov.au/retirementvillagesact Part 6D appointment of a chief dispute resolution officer
[39] https://consumeraction.org.au/wp-content/uploads/2022/11/221028-Submission-RV-Amendment-Bill-2022.pdf

Ombudsmen are typically required to investigate and report on systemic problems meaning that they not only provide solutions for individual disputes but also help bigger problems be solved at their source. They keep detailed records and make detailed reports that assist the advancement of consumers' interests. Ombudsman schemes are subject to regular independent review to ensure they are meeting their objectives and requirements.

Operators have the power to change the village in any way they choose, for example to raise the entry age from 55 to 70 years, without sufficient regard as to how the change may impact on the well-being of residents and the nature of the village. Even if the operator conducts some form of consultation, residents are powerless to influence the outcome that often has a major effect on their well-being. The village they bought into is no longer the same. Residents say it is a waste of time complaining when there is nothing in law to stop the operator doing this. There should be an agency able to investigate with the power to enforce a solution to compensate aggrieved residents. (Researcher 1)

There is a policy preference for Ombudsman type schemes managing retirement accommodation complaints in the UK. The UK Association of Retirement Housing Managers' Code of Practice[40] requires managers to belong to a government approved redress scheme which residents can use if they are dissatisfied with initial attempts to resolve a matter. Managers who are registered providers are required to become members of a Housing Ombudsman Service and offer access to it.[41]

The emphasis should always be on encouraging the operator and the resident to resolve this in the first instance. (Advisor 1)

Expecting a resolution of a complaint in 10 days is too short in my experience as a Village Manager. Twenty-one days is a more reasonable timeframe before needing to escalate anything to an Ombudsman. (Advisor 2)

Victoria's retirement village legislation obliges the village manager, at each AGM, to report on the number and nature of complaints for the previous year, their outcomes and any changes made as a result of issues that arose.[42] Coupled with recourse to an Ombudsman, this requirement could provide more vulnerable residents with greater confidence to participate in the complaint process.

We acted as a resident advocate for our client's Melbourne villages and the above procedures were undertaken at all the AGMs. It gives a good overview for residents to get an idea of the types of complaints or issues that had arisen during the year and whether there was a resolution or on-going situation. (Advisor 4)

In South Australia a dedicated advocacy service for retirement village residents has been set up through the membership organisation Aged Rights Advocacy Service.[43] This was one element of measures implemented to improve the operation of the retirement village sector, but is not a formalised feature of the statutory framework.

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[40] https://www.arhm.org/
[41] See Section 12 - Handling Complaints www.arhm.org/wp-content/uploads/ARHM_Code-of-Practice_Digital.pdf
[42] Retirement Villages Act 1986 https://www.legislation.vic.gov.au/in-force/acts/retirement-villages-act-1986/084
[43] https://www.sa.agedrights.asn.au/

6. CONSOLIDATE MULTI-AGENCY FUNCTIONS INTO ONE

The Retirement Commission's 2020 White Paper noted many agencies with roles overseeing the sector, that the retirement commissioner's functions were narrow in contrast to other commissioners, and a need for greater clarity and consolidation of these roles.

Best Practice Guidelines to Address Emerging Consumer Issues and Offer Varying Models:

a. There would ideally be one government department or agency with overall jurisdiction for Retirement Villages.

Agreed from a regulatory perspective. An Ombudsman could also serve as the complaints watchdog. (Advisor 1)

"What we are hearing from consumers and their whanau (family), as well as other groups in the sector, is that greater oversight is needed to drive quality improvement and protect people's rights when receiving aged care services."[44]

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[44] https://ageconcerntauranga.org.nz/application/files/6916/5343/3850/Issue_2_2022_Winter_-_Age_Concern_Tauranga.pdf quoting New Zealand's first Aged Care Commissioner, Carolyn Cooper, ex CEO of Bupa

7. COMPLIANCE WITH THE CODE OF PRACTICE

There is a need for ALL villages to be regularly audited by an independent agency instead of a member organisation. The RVA's 3-yearly audit process utilises independent assessors because there is no other agency empowered to do it, but does not protect residents in non-RVA villages. The Registrar of Retirement Villages[45] could be empowered and resourced to carry out audits from time to time bringing national consistency and independence.

The RVA audit is not particularly stringent compared with Aged Care Facility audits but it covers all important areas. (Advisor 2)

The Registrar could have more oversight not only at the time of becoming a registered retirement village but on a regular basis. I would recommend every two to three years. (Advisor 4)

Independent Villages do not have other internal benchmarks like the Big 6 do. An independent audit will give residents of independently owned villages peace of mind and help ensure the village management is accountable for meeting all requirements. (Advisor 2)

Best Practice Guidelines to Achieving Compliance with the Code of Practice:

There must be a detailed audit at the time of registration, prior to opening, to ensure all documentation and policies meet the requirements of the Act and are fit for purpose.

This would be manageable for independents. There are plenty of independent contractors who could help independent operators get up to speed for any audit, much like what happens in Aged Care. (Advisor 2)

I agree this should be the bare minimum as with the Ministry of Health auditing of care, managed with a one agency approach. (Advisor 1)

The finalised independent audits should be made available for the residents to read such as aged care facility audits online. (Advisor 2)

The RVA has recommended villages make the RVA audits available to residents but some large operators are saying they have no intention of doing this. (Researcher 1)

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[45] A similar self-auditing approach for Code compliance is used by the Association of Retirement Housing Managers- UK:https://www.arhm.org/code-of-practice/ . In Ontario, Canada the Retirement Homes Regulatory Authority is an independent, self-funded, not-for-profit regulator mandated by the government to protect and ensure the safety and well-being of seniors living in Ontario's retirement homes under the Canadian Retirement Homes Act, 2010 . The Authority monitors whether retirement homes follow the rules and shares unbiased, transparent safety information to residents and consumers

8. MANAGEMENT TRAINING

The FFF stated there is a need for all village managers up to and including CEOs to undergo some form of retirement village management training, which includes best practice for working with older clients.

The training should focus on working with elderly consumers. This is often where new village managers fall short, not understanding their audience or never having worked with the older age bracket before. Ideally the mandate would be for this training to be within the first six months of taking a role in the village. It should be a recognised qualification delivered from an accepted training provider with an aligned accreditation. (Advisor 1)

The current Te Ara Institute Village Manager training is beneficial to those that have not worked in the industry before. There is no harm in mandating training but it needs to be the right kind of training such as the one run by Te Ara. Consider efficiencies such as availability and accessibility for training especially in the regions. The training fees will increase operational costs to be recovered from village fees. (Advisor 2)

In South Australia a statutory obligation is proposed on operators to ensure any village manager, senior manager or 'other person employed to manage or work at the village' undertakes training before they start their role, or within 12 months of commencement of the statutory provision. In NSW law is proposed requiring village staff be trained in complaint handling and internal dispute resolution, with additional training provided as necessary.[46]

46 *South Australia Retirement Villages (Miscellaneous) Amendment Bill 2023*: 63A—Duty of operator to provide staff training; and *The Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019 NSW*

9. REPAIRS, REPLACEMENT AND REFURBISHMENT

The operator normally owns the building, fixtures and the chattels listed in the disclosure statement. However some ORAs require the resident to cover the cost of repair and replacement of chattels, appliances, fixtures etc without specificity.

Maintenance and replacement of chattels, appliances and fixtures, as well as periodic upgrading or refurbishing of the village or any unit within it should be undertaken by the operator using funds derived normally from the DMF and not from any weekly fees.

Agreed. (Advisor 1)

Some operators include the specific chattels that are an owner's responsibility to cover. Appliances, fixtures and fittings are typically included in buildings, plant and equipment (i.e. retirement village property) that is owned by the operator, so the operator should be responsible for maintenance and replacement or upgrading when required. (Advisor 4)

If the ORA is a unit title contract and the resident has rights to capital gain, then the percentage of right to capital gain would dictate the percentage of responsibility for maintenance and repairs. (Advisor 1)

Under Victorian law, the responsibility for maintenance, repair and replacement is stipulated clearly in the resident's contract and is linked to the operational financial model of the retirement village.[47] There is a greater variety of models used in Australia. Some financial models provide for all maintenance, repair, and replacement costs of independent living units to be included, on the basis that there is a higher deferred fee model with no capital gain share to the resident. Other financial models provide for a lower deferred payment and a capital gain share, on the basis that the resident is responsible for repair and maintenance and replacement for their unit.

[47] *Retirement Villages Amendment Bill Exposure Draft 2022* https://engage.vic.gov.au/retirementvillagesact

Best Practice Guidelines for Repairs, Replacement or Refurbishment:

a. Rights and protections for residents, similar to those for tenants under the Residential Tenancy Act, should be incorporated for residents into the Retirement Villages Act. Where the operator owns the building, fixtures and the chattels listed in the disclosure statement, it takes responsibility for all repairs and replacements of the building, fixtures and listed chattels unless damage is caused by the resident.

This would be possible for independent villages if they add a 'Repairs, replacement and maintenance' levy to the sale of the property. The levy would have to be commensurate with the size of the dwelling (up to $10-15K). For example, a large 11 hectare retirement village averaged $320K in repairs and maintenance and refurbishment of dwellings alone last year. On top of this out of capital gain, repairs, replacement and maintenance cost a further $200K for the financial year. Automatic replacement after X amount of years of fittings and fixtures would be out of the financial reach of some independent villages, especially smaller rural operators. A guarantee that prior to entry and at the 10 years mark of occupancy an independent party would review the property, much like a building report prior to purchasing a house. An independent tradesperson could also check the chattels (fridge, ovens, heat pumps) in the same way, negating unnecessary replacement but guaranteeing functionality. Smaller independent providers are unable to replace chattels routinely just because it is demanded. (Advisor 2)

b. Where the above has not yet been actioned:

i. the operator will follow the IRD's depreciation tables for life spans of an appliance or chattel and replace any faulty appliance or chattel that exceeds those lifespan estimates, and

ii. the operator will factor into the cost of repairs or replacement the fair wear and tear already undergone by such an item.

Often it is cheaper just to replace than repair. Operators should also factor in the health and safety of an individual where there might be a hazard e.g. worn carpet. (Advisor 1)

c. The operator will refurbish the unit if a resident has been in occupancy for 10 or more years.

This makes sense and should not burden the operator as the 10 year period exceeds the average length of stay for a resident and will only reduce the refurbishment costs when the unit is eventually vacated. (Advisor 1)

Ten years is reasonable. A 10 year period provides clarity to both parties on expectations and would work out cost comparable for operators' budgets as if someone vacates in year 11 -14 the refurbishment requirements would be a lot less if refurbished at the 10 year mark. (Advisor 1)

Quite a few residents have now been living in their unit for 10 plus years so naturally aspects of the unit, such as carpets, drapes, kitchen benchtops etc. will be looking tired and/or shabby. Under the current dominant model, refurbishment is commonly done once an ORA is terminated but some operators are working with residents who have lived in their unit for a period of time to do a partial refurbishment such as new curtains and carpets whilst they continue to reside in their unit. (Advisor 4)

d. The cost of any periodic upgrading and/or betterment of the village property should be met by the Operator. (Code of Practice, Clause 43)

Agreed based on modern day ORAs. (Advisor 1)

Absolutely manageable for independents. (Advisor 2)

In Australian states, renovation costs are shared when residents have a registered proprietary share in the unit and may receive a capital gain.[48]

e. When refurbishing units, the Operator should upgrade the units to the 'healthy homes' standard required of landlords, i.e. double glazing, insulation and a heating unit.

Agreed that has to be a bare minimum. (Advisor 1)

Absolutely and manageable for independents. (Advisor 2)

f. Operators should refurbish units to the Lifemark 4 standard which is promoted by Lifemark Design Standard and is in use by at least one major operator.

Yes agreed, a great benchmark, all new dwellings should be Lifemark 5 Standard. (Advisor 1)

Smaller independents could be pushed into financial difficulty having to adhere to this standard. Alternatively, a condition report by an independent contractor and an agreement to remedy any issues might be mandated. (Advisor 2)

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48 Under NSW law, former residents who entered into residence contracts are not liable to pay for refurbishment costs. (Division 4 Repair and refurbishment of residential premises s164). Under Queensland law refurbishment is not referred to. Renovation work means replacements or repairs other than reinstatement work. The cost of the renovation work must be paid by either the former resident and operator in the same proportion the capital gain is to be shared if the residence contract provides that, or otherwise by the operator. (59A Renovation work by scheme operator *Retirement Villages Act 1999*). Under Victorian law, a resident who permanently vacates does not have to pay for renovations. But the residents and operators can agree to share the costs and the capital gain/loss. (*Retirement Villages Amendment Bill Exposure Draft 2022* https://engage.vic.gov.au/retirementvillagesact Pgs 131 – 132, ss37H – 37I)

10. HEALTH AND SAFETY IN AND AROUND VILLAGES

The RVResidents believes appointing a resident to the health and safety committee of each village would help identify concerns and give operators a resident's perspective which would improve health and safety policies and improvements.

Best Practice Guidelines for Health and Safety:

a. The village residents will appoint a resident to the Health and Safety Committee for the village and will accompany that representative on a monthly walk around the village to identify health and safety issues. - and -
b. The village should provide the Emergency Preparedness Plan and Evacuation Procedures document when a resident moves into the village.

A & B above are fair points and make sense. Partnerships with residents are essential for Health and Safety to succeed in the village community. (Advisor 1)

Absolutely agree this is 100% possible. A quarterly walk around is probably sufficient, especially in smaller villages. It would have taken all day to walk around my last large workplace for health and safety checks so we split it up into zones instead with a walk around biannually. In between, issues can be raised by the representative in a monthly health and safety meeting. I believe it should be a resident representative elected by residents at a resident meeting, village manager and another staff member of the health and safety committee. Insights or actions should be minuted and included in the health and safety committee minutes the following meeting. (Advisor 2)

Australian state laws require emergency plans to be provided to residents. Under NSW legislation Operators are required to promote resident participation in the 12 monthly review of an emergency plan that considers the village's size, location, layout, and residents' needs but residents cannot be forced to participate. Each resident also receives tailored safety information for their specific unit in response to concerns raised during any inquiry.[49]

[49] https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/changes-to-retirement-village-laws#Changesfrom1February2021 ss58-58A

11. DEFINING THE CARE THAT RESIDENTS RECEIVE FROM STAFF WHEN AN ACCIDENT OR SUDDEN ILLNESS OCCURS.

Part of the residents' expectation of an operator is that there is someone onsite the majority of the time to assist, or respond to a call bell, should the need arise.

Best Practice Guidelines for Care and Safety in a Medical Emergency:

a. When an accident or sudden illness occurs with an independent living resident in a village which offers a call alarm or care centre, that village will have staff with first aid certificate training as a minimum, to respond and assist.

There is no guarantee, despite what the advertising says, that a staff member will respond to an independent resident's Call Bell when there are only 2 carers on duty and they are busy with rest home level residents in the care facility. (Researcher 1)

The big six confirm there is always a qualified first aider on site where staff are available 24/7. First aid qualification is also a question/requirement in the RVA member audit. If there is not care on-site residents are often provided with medical alarms for St Johns. Operators do not want to falsely provide a perception that they are responsible for primary care, and day to day medical requirements for independent-living residents is no different from living independently outside the village. (Advisor 1)

This is doable for villages that have a care centre. For a stand alone Retirement Village with no care centre this would require adding staffing from 5pm to 8.30am every day at significant cost to the village. My last workplace had this facility and emergency callouts overnight occurred rarely. Most residents had a St Johns alarm and chose to use that instead. Caregiver costs, at $30 an hour for 108.5 hours a week over 12 months, would be $169,260 per year without including ACC levies annual leave cover (4 weeks), sick leave cover (10 days). It's a significant cost to a smaller business for a nice to have. (Advisor 2)

12. REPAYMENT OF LOAN (RESALE AND BUYBACK TIMES)

Currently, the amount paid by the resident for a right of occupation is referred to as the 'capital sum' in the *Retirement Villages Act* (section 6). John Ryder, CEO of Qestral said in Stuff[50] that the *"upfront lump sum paid by residents to occupy a unit was an interest-free loan"*.

Operators concur that the capital sum paid to them by residents under a licence to occupy arrangement is a 'loan to the operator'. Summerset, Ryman and Arvida all refer to licence to occupy payments as 'residential loans' in their 2022 annual returns. For example Summerset's annual report for 2022[51] refers to 'residents loans' stating:

"Summerset also has residents' loans of $2.2 billion (2021: $1.8 billion). This is in the form of licences paid by residents under Occupation Right Agreements. These are repayable when residents vacate units and the associated Occupation Rights are resold."

A taxation review group[52] also confirmed the 'sale' of occupancy advances for use of the properties, less a management fee, that are returned to the resident or the resident's estate upon vacating the property, can be treated as interest free loans from the resident to the company; with the effect that there is value transferred to the company the longer the loan is outstanding.

Operators, statutory supervisors and the Retirement Village Registrar, all view occupancy advances as interest free loans and from an accounting perspective they are recognised as interest free loans. The note disclosures in the audited financials of an operator typically have some commentary around this. (Advisor 4)

The resident is not paid interest on their capital lump sum payment. The operator gets a source of free capital. The rearrangement of cashflows contradicts economic norms prevailing if there was an equal balance of power in the contract. Earnings made and benefits received by the operator are without capital outlay as the resident has paid for the value of the unit as a licence fee. The deferred management fee[53] reflects the delayed payment for the enjoyment of the village facilities which the resident has not paid for in the price of the unit.

NZ operators Summerset and Ryman report how they are buying up land in both NZ and Victoria, opening new large villages, and there is increasing concern as empty units in existing villages are sitting 'unsold'. One consequence of unsold units for consumers is the liquidity risk of operators and inability to be repaid. This is an unnecessary consumer risk inherent in the current framework that may have proliferated because the framework lacks specified time-based obligations for repaying loans.

For example, Summerset's 2022 Annual Report states:[54]

"Liquidity risk is the risk that the Group will not be able to meet its financial obligations as they fall due.… The Group manages liquidity risk on residents' loans and related sundry debtors through the contractual requirements of occupation right agreements, whereby a resident's loan is repaid only on receipt of the loan monies from the incoming resident."

All operators are required to include the aggregate amount owing to residents under their ORAs as a liability in the operator's balance sheet, and that is regardless of what an operator refers to the amount advanced by a resident for their right to occupy their unit (occupancy advance, resident contribution, occupational licence deposits etc.). (Advisor 4)

[50] https://www.stuff.co.nz/business/124727793/veteran-retirement-industry-businessman-john-ryder-takes-aim-at-the-retirement-commissions-recommendations-for-change
[51] https://www.summerset.co.nz/investor-centre/reports-and-presentations/ Annual report 2022 p55
[52] https://taxworkinggroup.govt.nz/sites/default/files/2019-02/twg-bg-4074124-retirement-villages-and-capital-income.pdf
[53] For a financial analysis of how DMFs are charged, capital gains are lost and model cross subsidisation see - *"Costs paid by residents to live in a retirement village"* – Janine Starks , Independent Report June 2023
[54] Summerset Annual report 2022 at page 78

Unit Title agreements could not be defined as loans (given the occupancy comes with proprietorship unlike most other types of occupancy offered). (Advisor 1)

A licence to occupy ORA is currently set up and 'presented' as a real estate transaction. This concept would need to change. Over time a number of agreements evolved for Oceania. At one stage we had 12 types of agreements in play, none of which used the term 'loan'. A legal definition for 'loan' would support a shift in this direction. If 'loan' was identified as all or part of the agreement then this would provide an opportunity for an ORA to include CPI or agreed interest returns on the loan portion of the agreement for the term of the agreement. (Advisor 1)

If the balance sheet splits out current and non-current liabilities, the ORA liability is classified as a current liability as the operator does not have an unconditional right to defer settlement. Settlement occurs when both a terminating event has occurred and there has been a subsequent resale of the ORA (licence). This is disclosed in the notes of the operator's accounts. (Advisor 4)

From an accounting and contract perspective and an operator perspective, the amount paid by a resident to secure an ORA unit is deemed an interest free loan as operators have no contractual obligation to pay interest on the amount received from the resident. (Advisor 4)

The timeframe for repayment of the resident's loan, less any agreed fees, can be a major cause of distress, especially after the death of a loved one or a change in health needs. Residents and immediate family need to know funds loaned to the operator will be readily available to cover any residential care costs, or associated expenses or for the winding up of an estate.[55]

While the RVA's position is that residents have signed these ORAs with legal advice, and that 95% are happy with their village, RVResidents survey data demonstrates that many residents do not consider the exit conditions as part of their decision making process.

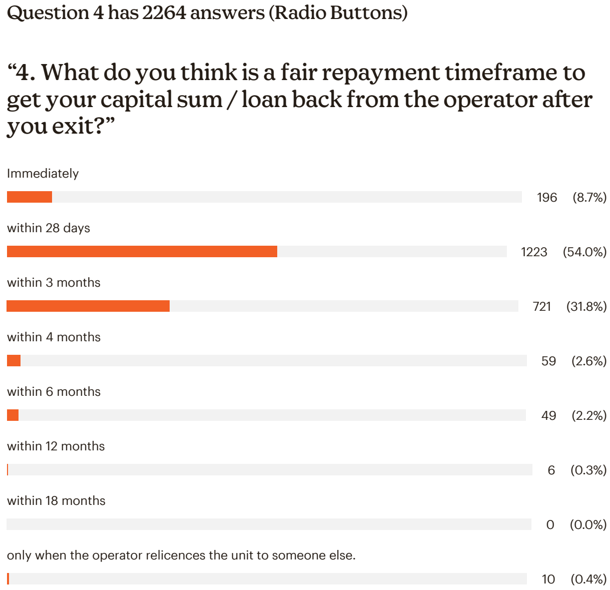
In Jan 2021, RVResidents surveyed 1011 members and asked:

56.2% of respondents either said no or could not remember.

Furthermore, when asked: *"Do you think it is fair to have a guaranteed timeframe for the return of your equity when you exit your unit?"* 91.8% of respondents said they thought it was fair or very fair to have a guaranteed timeframe for the return of their equity / loan.

[55] The RVRANZ submission in response to the Retirement Commissioner's 2020 White paper suggested: *1. Where an operator chooses to share a percentage of any Capital Gain in the value of a unit, an opportunity could exist for an operator to increase a legislated loan repayment time frame. This would be based on the amount of the shared gain offered; and 2. Where an operator chooses to not share any capital gain, then other options may be available for consideration to the sector including insurance schemes, the setup of an operator's fidelity fund or a bank loan.*

This evidence of resident experience is consistent with recent survey results:



(Extract: RVResidents Resident Survey: May 2023)

RVResidents acknowledges none of the three options for reforming loan repayments modelling being considered by the current South Australian framework review need be followed in NZ.[56] The first South Australian option follows the NSW approach, burdening a resident or its estate with the additional cost and stress of having to apply to a Tribunal to obtain an order for repayment when six months from vacant possession has passed. The second follows the Queensland approach reducing the timeframe in which an operator is obligated to repay from 18 months down to 12 months after vacant possession. The third is a status quo with repayment obliged after 18 months of notice of termination.

NZ's approach to loan repayment must be distinguished because the average time for re-licensing in NZ is shorter than the averages in Australia.

The RVA has publicly confirmed the average time for exit repayment in NZ is less than six months saying:

"We also know the average time for pay-back of a capital sum to a resident or their estate is four months, 75% within six months, and 90% within nine months…we think four months is satisfactory." [57]

Best Practice Guidelines for Repayment of Loan to the Resident:

a. Where the resident receives no share in any capital gain in the value of a unit nor has any say in the sale price, the Operator will pay all sums due under a terminated ORA to the former resident:
    i. within 28 days of the resident vacating unit and return of the key; and
    ii. the repayment of the loan will include an annual adjustment equivalent to CPI, for the period of time the resident had occupied the unit.
b. Any authorised resident-paid improvements to the property or operator's chattels which the operator retains and/or enhances will be taken into account when calculating the loan repayment amount. These would be recognised within the ORA, Code of Practice or any subsequent written arrangement prior to the improvements.

[56] https://yoursay.sa.gov.au/RVActAmendmentBill - and see summary of options in the 'Operator FAQ' download sheet
[57] https://www.stuff.co.nz/business/132002777/commerce-commission-investigating-retirement-villages - and repeated in RVA newsletter May 2023 https://www.retirementvillages.org.nz/Site/newsletter/2023_newsletters/commerce_commission/article_1.aspx

c. Default interest rates would be applied to any loan repayments not completed within the specified timeframes by the operator.
d. The operator will either carry capital reserves to cover any repayments that fall due, or subscribe to a bank loan facility, insurance scheme, fidelity fund or other scheme to assist in coverage.

There is reasonable industry-led data confirming the majority of turnover times for units has been under 12 months for many years.[58] The RVA has consistently represented how strong demand for units exceeds available supply and sustains both buoyant re-licensing and a development pipeline to serve the ageing population. (Annual Jones Lang Lasalle RV data white papers and CBRE RV data market reports are often referred to corroborate demand and development growth.)

Operators choose to indebt themselves to expand faster and build more villages to get more of the super-profit model. Debt has been preferred to equity in a low interest environment. The cost of interest on this debt gets capitalised into the cost of a unit…Operators run particularly capital-light models, borrowing short-term working capital from banks and repaying it as units are re-licensed. It is a rinse and repeat model….[59] Capital light models are not conducive to a range of accommodation types within villages like we see overseas.

A Queensland resident is entitled to receive their exit/departure entitlement at 18 months after the termination date, unless the unit is sold earlier. This is less favourable for residents than in VIC, TAS, and ACT where operators have a six month limit – unless sold earlier. However, in WA and NT there is no mandatory limit. In NSW a person can generally make an application for payment after 6 months (Greater Sydney) or 12 months (rest of NSW) of having vacated the premises.

In contrast to NZ, the average time for exit entitlement payment in Western Australia (WA) is 14 months.[60] Some residents can wait up to three to four years. This is causing hardship to former residents and their families. The Western Australian review aimed to provide a fairer balance between residents and operators in respect of the timing of the payment of exit entitlements and reduce the hardship being experienced by former RV residents.

A law change imposing shorter time periods for requiring exit repayments is reasonable for New Zealand given the average four month relicensing (turn over) times seen in NZ present a more limited risk for operators.[61]

To mitigate risk for operators the framework may provide similar operator rights as exist in South Australia, where operators can apply for an extension of time for making the exit repayment on the grounds of exceptional circumstances.[62] And to mitigate any further risk that applying for an extension to repay an exit repayment (loan) might signal that the business is not financially viable, the basis on which to determine if an extension should be granted would be that the operator demonstrates "exceptional circumstances". This gives an authorised NZ agency / Tribunal scope to take into account things like market and economic conditions, efforts made by the operator as well as the operator's financial position.

South Australian law enables operators to apply to extend the time for making that payment in the event of 'special circumstances' including financial hardship likely to be suffered by the operator.[63] In the Review of the Retirement Villages Act 2016 (SA), by PEG Consulting, Sept 2021[64] written submissions from resident respondents voiced concern that an 18-month period was far too long and should be reduced.

[58] As mentioned above, the average time for pay-back of a capital sum to a resident or their estate in NZ is four months, 75% within six months, and 90% within nine months, and the RVA has said four months is satisfactory."
[59] 'For a summary of recommendations on how to restore balance and fairness into pricing models – see Part 10 - *"Costs paid by residents to live in a retirement village"* – Janine Starks , Independent Report June 2023'
[60] Government of Western Australia Department of Mines, Industry Regulation and Safety - Decision Regulatory Impact Statement - Stage two of proposed reforms to Retirement Villages Legislation in Western Australia January 2022
[61] *"We see four months as satisfactory" and say that residents would accept a repayment timeframe of 3-4 months if an initial minimum repayment of $50,000 (increased by CPI) was being made on exit, similar to Vivid Livings approach.."* - per John Collyns, RVA Executive -
[62] *Report of the Independent Review of the Retirement Villages Act 2016*, by the Office For Ageing Well Department For Health And Wellbeing, South Australia 2022https://www.sa.gov.au/__data/assets/pdf_file/0005/825206/DHW-response-to-review-report-recommendations.pdf]:
[63] https://www.sa.gov.au/__data/assets/pdf_file/0003/39207/21003.1-AGEING-Retirement-Villages-A5-Booklet_WEB.pdf
[64] https://www.sa.gov.au/__data/assets/pdf_file/0005/392837/Review-of-the-Retirement-Villages-Act-2016-SA.pdf at 65-67

There is very little Australian experience readily apparent that proves either: making an exit entitlement payment by a specific time, if a unit has not been relicensed, has adversely affected operators, or put operators out of business, or that operators have been unable to adopt their business model to manage mandatory loan repayment times.

To the contrary, anecdotal evidence received from executive representatives for retirement village resident associations in NSW, Victoria, Qld and Sth Australia[65] indicates very few villages have wound up because of having time-imposed exit repayments of resident loans. Some businesses seemed to have broader management issues contributing to insolvency and were eventually sold to larger operators.

Overall, operators have adapted. The President of the South Australian Retirement Villages Residents Association, Roger Adamson, advised:

"We are not aware of any operator who has applied for relief due to hardship or any who have declared themselves bankrupt. All the doom and gloom they predicted would happen has not happened and in fact there have been a number of new villages built and more employment created. We are aware that in NSW they have a buyback period of six months and it has not caused them any problems that we are aware of and hence why we are seeking the same in our Act review."

In a Treasury analysis[66] of the potential financial implications of 'MEEP' (mandatory exit entitlement payment prior to re-occupancy of a unit) reforms on Western Australian village operators, Treasury concluded MEEPs are a cash flow issue rather than a cost, and that cash flow impact varies depending on the period proposed with shorter MEEPs requiring greater funding to be required by an operator. Treasury said:

"Assuming a steady state and closed system environment with no adjustment to future contract pricing, MEEPs will likely result in an impost to the working capital position of those operators for whom the MEEP period is shorter than either (i) the timing for unit re-occupancy or (ii) the contractual period under which they are to fund exit entitlements…".

The period to offset the cash flow impacts of MEEPs ranged from 0.2 years to 7.9 years.

With shorter averaged re-licensing times than Australian experience, it is reasonable to expect NZ operators are better prepared to adjust their modelling and cash flows sooner.

"We reiterate our view that the sector continues to provide a level of offering that is clearly extremely attractive to residents. In the listed sector, we observe contractual terms that are defendable against most of the claims being made; and practice in the case of buybacks that is consistent with what is being sought after with operators not generally relying on their contractual protections. Much of the private non-listed sector will share the same characteristics. We also highlight through this process the likely need for some education on the level of real profitability generated by the sector." [67]

Some smaller and medium sized independent operators could struggle to meet the 28 day time frame because they would not hold the capital. The feedback I have is six months is the time frame they would require given the current housing turnover rate. My last workplace which was a large well established independent could not have met this 28 day time frame either - it could have met a 3 month timeframe but not 28 days. (Advisor 4)

With the current slower housing turnover market, the timeframe would be pushed out not to more than 4-5 months. In these market conditions, sales fall over at the last minute as prospective residents have been unable to sell their own homes for the required amount. A trend I am hearing in the independent village community is that sales to new incoming residents are falling through with more regularity now, and the length of time for sale is now extending out past 100 days in areas where it was under 30 days only 18 months ago. (Advisor 4)

[65] Australian State Comparisons from Resident Associations - spreadsheet analysis provided to RVRANZ. The one publicised insolvency case in NSW was a village owned by a Malaysian company where vacant units were $250,000-$300,000 units (low priced) and there were 10 vacant and yet the insolvency was far higher (ie. $10-12 mill) suggesting the insolvency was more due to poor management rather than imposed buyback time.
[66] Department of Mines, Industry Regulation and Safety - Consumer Protection Division - January 2022
[67] Additional scrutiny on RV sector - listed operators well positioned but not immune': - Jarden Desk Note 11 May 2023 - Arie Dekker & Vishal Bhula

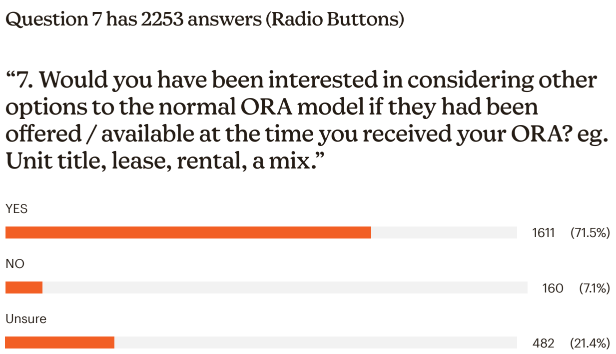
If several places become empty simultaneously it would put some business under if the 28 day timeframe was in place. But generally I think three months may put some under in the current economic climate and housing market. Housing stock turnover has decreased with the increase in inflation and the point of sale is now being pushed out significantly. (Advisor 2)

The average time to sell is a key indicator when measuring payback periods. It works both ways for operators selling vacant villas/apartments and potential buyers looking to buy into the retirement sector. As per Advisor 2's point, more units become vacant when the average selling time increases, and this applies pressure on both large and independent operators especially if the operator has loan clauses with banks that include a lower limit occupancy expectation. Paying back early before the unit is sold puts significant pressure on failing to meet those limit expectations. (Advisor 1)

One large operator is refusing to lower its LTO prices despite the fact private houses nationwide are lowering theirs. The operator is instead offering 'perks' such as offering possible purchasers six months to sell their own house, no weekly fees for x months, etc. With this operator's units being so expensive, possible purchasers try to get high prices for their own houses which they are then unable to sell, so that risks more relicensing falling over and therefore more residents who have terminated may be kept waiting longer for their loans to be repaid. (Researcher 1)

Empowering the Registrar to require data on the vacant possession and re-licence period (turnover) of units in each retirement village would assist agency monitoring of the industry and housing market generally, and help future proof the implementation of imposing mandatory exit repayment times.[68]

Removing the requirement for capital payments from s6 of the Act may promote innovation, incentivising operators to use a greater variety of financial models they could apply across different villages and stages of village development and ultimately extend village access to more diverse consumers.



(Extract: RVResidents Resident Survey: May 2023)

[68] This approach has been recommended in SA review: https://www.sa.gov.au/__data/assets/pdf_file/0005/392837/Review-of-the-Retirement-Villages-Act-2016-SA.pdf

13. CAPITAL GAIN/LOSS

We encourage a variety of occupancy models, especially those that allow residents to share in some or even all of the capital gain in value of the unit. However, where an operator does not share any capital gain the resident must also not share in any capital loss.

Best Practice Guidelines for Capital Gains and Capital Loss:

Any ORA that does not offer a resident a share in any capital gain value of the unit will not legally require the resident to share in any capital loss of the same.

Some operators have started innovating by offering capital gains on the basis it is more equitable to do so. In a Fletcher Building village on Auckland's North Shore residents share 50% of any capital gains, less the cost of refurbishment, from a sale, and if the home does not sell for more money Fletchers would not pass on the capital loss. Fletcher Residential chief executive Steve Evans has said the Fletcher financial operating model took on board the recommendations of the Retirement Commissioner following responses to its white paper.[69] In the Karaka Pines Village residents keep all capital gains, the deferred management fee is 12.5% of the sale price and the operator is participating in capital gains via an exit fee linked to the sale price, not the purchase price as is currently the case with the big 6 operators. This is a good example of a risk / return model which reflects fairness to the consumer and an academic restructuring of risk and return.[70]

When residents receive portions of capital gain as part of their termination arrangements this benefits the government when a resident needs to transfer into care. The resident's overall capital position would be greater and be available for meeting the cost of care longer before having to consider seeking a government subsidy or loan.

Like many NZ ORAs, the resident in a licence village in Australia does not own the unit and is not entitled to any capital gain that may arise from the sale of the unit. Instead, the scheme operator retains ownership of the unit and any capital gain that may arise from the sale of the unit.

Despite efforts to ascertain any information on the percentage split between units in Australian states that share gain and those that do not, none can assist. Roger Adamson, President, South Australian Retirement Villages Residents Association Inc advised:[71]

"Unfortunately we are not aware of any such data anywhere. We are struggling to get any transparency from the Property Council Operators Assoc. on such matters. The first sign of getting some of this information is in the current recommendations of the Draft Amendment Bill, which if passed will start to give us some of the data we have been looking to get for some time, but have been stonewalled on because of so called 'commercial confidentiality'.

The Australia Property Council retirement village census dated 2021 suggests of the 623 villages that responded, the *"proportion of deferred payment structures with and without separate capital gains share for the resident is 37% and 63% respectively. This represents a shift toward payment structures which do not include a separate capital gain share for the resident, growing from 49% in FY 20 to 63% in FY 21."*[72]

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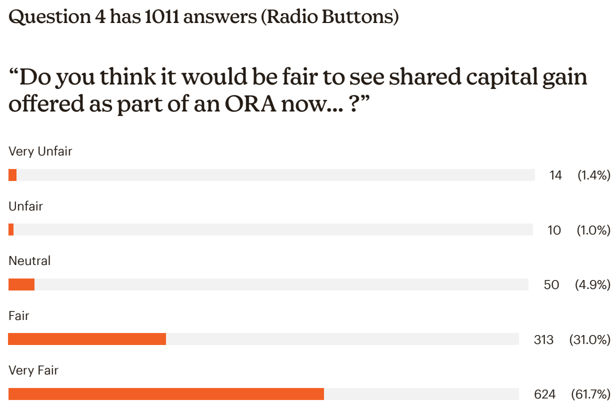
[69] https://www.stuff.co.nz/life-style/homed/retirement/130665523/new-retirement-village-model-shares-capital-gains-with-residents
[70] 'For a financial analysis of how DMFs are charged, capital gains are lost and model cross subsidisation see - *"Costs paid by residents to live in a retirement village"* – Janine Starks , Independent Report June 2023
[71] *Email Roger Adamson to Researcher 1 - 22.05.2023*
[72] The 2021 Retirement Census covers FY21 (Property Council July 2020 June 2021). Participation in the Retirement Census is entirely voluntary, meaning participating operators change year to year. Comparison with previous year figures should be considered with this in mind. For this census, the Property Council reports there were a record number of contributors with 62 operators across 766 villages and approximately 77,000 units.

Some Australian retirement village residents in unregistered leases with terms less than fifty years may still get a share in any capital gain when there is a change of lessee. These leasehold arrangements appear similar to our NZ licensing arrangement insofar as they involve the operator owning the dwelling, and the resident signing a lease to occupy the property albeit for a set period of time. In NSW, capital gain is defined as the increase between what a resident paid for the right to reside in the premises and what the next resident pays, less any costs associated with the sale or lease of the premises.[73]

A 2021 RVResidents survey of 1011 respondents demonstrated only 6% would receive a share of the capital gains,and over 92% believe it would be 'fair' or 'very fair' for operators to share capital gains now.



(Extract: RVResidents Survey: May 2023)

If interest was paid on a resident's lump sum, this could be seen as a restructuring of risk and return. Lower risk taken for lower return via an interest rate for a resident. And a higher risk for a higher return via capital gains taken by the operator.

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[73] For example, the NSW Act recognizes different types of leasehold title, including registered long-term leases of more than 50 years, registered long-term leases that entitle the resident to a share of 50% or more of at least 50% of the capital gain, assignable leases that terminate on assignment, and other leases that are not registered or have a term less than 50 years or entitle the resident to less than 50% of the capital gains. See generally across: https://telemon.com.au/faq/different-types-retirement-village-arrangements/

14. FEES ON TERMINATION

With no mandated requirement to provide mixed value units and no ability to provide occupancy without capital payments, operators are allowed to continue to accrue the DMF (if it has not reached the maximum accrual time) until they have relicensed the unit. Residents may also incur a second DMF should they wish to terminate occupation in one unit and transfer to another unit within the village.

> *Under the framework currently, operators are incentivised to develop in areas of higher house prices just as much as they may in areas where larger numbers of ageing people may live. Higher unit prices transfer into high DMFs taken from residents on termination. These 30% DMF fees on 1-1.5 million dollar plus properties are funded by residents. (Advisor 1)*

Additionally, continuing to charge weekly fees AFTER a resident has terminated the ORA and vacated a unit is a practice that continues in many villages.[74] Some villages have voluntarily stopped this practice and charge no weekly fees after termination of the ORA. Others continue to charge weekly fees, reduced to 50% after six months, until a new ORA has been entered into.

Operators should stop charging a weekly fee if the resident no longer occupies the unit or no longer benefits from the services covered by the weekly fee.

Best Practice Guidelines for Deferred Management Fees (DMF's) on Termination:

a. DMF does not accrue past the date of termination. Clause 54(4) of the Code of Practice currently enables operators to continue to accrue DMF well past termination and until the operator pays the resident. That payment date often depends on when the operator has re-licensed the unit. Clause 54 says: *"The fixed deduction must not accrue past <u>the date on which the resident is paid</u> the amount payable to them on termination of the agreement."*

There is a greater range of models and calculating methods for the DMF which the Australian consumer can choose from depending on their budget, financial preference, and future outlooks. Most Australian statutes[75] require operators to clarify how the departure fee (similar to the DMF) is calculated and paid in the contract up front and the exit entitlement operators must pay. For example, the DMF can be calculated at resale, or as a percentage of the ingoing contribution.[76]

b. Only ONE DMF should apply when moving between units within a village (or another village of the same operator) and also moving from a unit into a care suite within the village. The DMF should be calculated and deducted at the time the resident terminates to leave the village.

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[74] See section 4
[75] Leaving a retirement village | NSW Fair Trading Division 3 Departure fees https://queenslandlawhandbook.org.au/the-queensland-law-handbook/living-and-working-in-society/other-accommodation-options/resale-of-a-retirement-village-unit/
[76] Consumer Affairs Victoria https://www.consumer.vic.gov.au/housing/retirement-villages]

When a resident transfers from one unit in the village to another in the village, the first contract is terminated and a new contract (ORA) is entered into, but I agree there should be one DMF for example - to apportion say 10% accrued in first unit and DMF of 20% maximum that can accrue for second unit is 10%. Moving into a care suite is different and a new care suite ORA is entered into (using what is sometimes called a RAD - refundable accommodation deposit). For RAD's where I had been supervisor there is no deduction at termination, the RAD is repaid in full with no deduction. For Ryman villages, when a RAD is terminated they make the repayment within 30 days of the resident vacating the room and removing all possessions. In practice this is paid to the Statutory Supervisor and released after obtaining probate. (Advisor 4)

What has not been made clear to consumers traditionally is that, despite operators promoting the availability of care to attract independent living residents to their village, the care and village are two different entities and businesses often with their own individual ORAs. When you buy a house and sell it you don't get your next contract with no real estate fees, or free. Nor would you get a care suite ORA for free. (Advisor 1)

A fairer solution which reflects the different business models I would suggest for when a resident is transferring within a village to care, is that a once-independent-living resident gets a discounted DMF under the new care ORA. Village residents make up a very small percentage of residents in care, the majority of care residents come from outside the village. (Advisor 1)

Under our current NZ funding model an operator would not build a care unit based solely on the Ministry of Health funding levels. (They are broken and haven't kept abreast of inflation.) The small annual increases (A21 Envelope) over many years have made such an investment unviable. Hence the need to introduce Care Suites, Premium Accommodation Charges (PAC) or other value added propositions. As the ageing population increases in NZ we will experience a significant shortage in care beds. In NZ there is no incentive to build them as a stand alone investment. Taking away value added options like DMF on Care Suites will see operators shy away from building them. In such circumstances a DMF on Care works out to be a cheaper option than premium accommodation charges. This may see operators look to increase DMF at the front end of the contract if a transfer into care removes a new DMF. (Advisor 1)

The RVResidents's best practice guideline (b) is for transfers within the village, reflected in the recent Victorian Government's approach of placing a statutory restriction on operators from charging a second DMF when a resident transfers from one unit to another within the same village. s26Y of the Victorian Retirement Villages Amendment Bill Exposure Draft 2022 says:[77]

26Y (2) A person must not charge a resident of a retirement village for a deferred management fee in respect of the resident's occupation of residential premises in the retirement village if the resident moves to a different premises in the retirement village that is managed by the operator of the village.

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[77] *[Retirement Villages Amendment Bill Exposure Draft 2022* https://engage.vic.gov.au/retirementvillagesact]:deferred management fee means an amount payable under a residence contract, management contract or other retirement village contract by a vacating resident of a retirement village as a contribution for the cost of services provided in the village to the resident but does not include any amount payable as a maintenance charge, a charge for an optional service, and any other prescribed payment, unless the retirement village contract entered into by the vacating resident provides that the payment be included in the fee.

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