REVIEW OF THE RETIREMENT VILLAGES ACT 2003: OPTIONS FOR CHANGE

RVRESIDENTS SUBMISSION - NOVEMBER 2023

www.rvr.org.nz

RVResidents ASSOCIATION OF NEW ZEALAND

Throughout this submission you will see photos of residents living in retirement villages, like Jenny. These people are some of the many volunteers that completed the questionnaire and then helped to collate the thousands of responses from other residents throughout Aotearoa (NZ). Our special thanks goes to them and the 11,000+ other residents that simply want to be heard.

Jenny (in her 70's)

EXECUTIVE SUMMARY

The following 92 page document reflects comments RVResidents received from more than 11,270 respondents. At the time of sending this document to print, 10,577 questionnaires had been received from singles, couples and family members. Further bundles of responses to MHUD's discussion document were arriving on the day of sending to print.

RVResidents has highlighted key points using **bold text** and percentage totals of respondent answers in coloured sections for selected questions.

Tallied results to the questionnaires are explained in **Appendix f**. Responses to many MHUD questions elicited a 80+ percentile support for proposals. These were:

- 97% believe the responsibility for maintenance and repairs (including the direct cost of these) should be assigned to the operator, except where there's intentional or careless damage or loss. Responses related to other chattel questions were 73% - 95% for Yes, including that these proposals should apply to existing ORAs.
- 81% believe there should be a new dispute resolution scheme that is independent of retirement village operators, with only 3% disagreeing. 51% were unsure on whether legal representation should be limited in a new scheme.
- 83% said a clear statement that a suitable aged residential care unit cannot be guaranteed should be included in one of the new disclosure documents, while only 3% disagreed.
- 95% said retirement villages should be upgraded to meet certain building standards, such as the healthy homes standards. 1% disagreed.
- 96% believe operators should have to repay a former resident's capital sum within a fixed period. 56% said within 28 days, 33% said within 3 months, 7% in 6 months, and less than 0.5% said 12 months.
- 96% agreed operators should have to pay interest on a former resident's capital sum if the unit remains vacant after six months, with 76% of respondents saying from vacant possession or from 28 days.
- 89% said a mandatory repayment timeframe for residents' capital sums should apply to existing ORAs while only 1% disagreed.
- 80% said operators should stop charging weekly fees when a unit is vacated, and 1% disagreed.
- 96% said fixed deductions should stop accruing when a unit is vacated or very shortly after.
- 94% said operators should have to maintain insurance policies that are sufficient to pay out all residents' capital sums and 74% said operators should be restricted from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property and the resident was not at fault.
- 88% said sales and transfers of retirement village units have the same consumer protections as the Real Estate Agents Act 2008.

Two questions received high negative responses from residents:

- 68% said operators should NOT be allowed to charge aged residential care residents in ORA care suites a second fixed deduction, while 6% were fine with it.
- 83% did NOT know of someone living in a retirement village that was regularly cold or damp. 10% did.

Some answers showed a high degree of uncertainty or possible confusion over the question:

- 43% were unsure if an independent advocacy service would be needed under a new dispute resolution scheme (although 41% agreed it would be needed).
- 52% were unsure whether legal representation should be limited in a new (complaints) scheme.
- 36% were unsure or did not answer whether operators that share capital gains would not be required to make residents share in capital losses.
- Most (79%) were either unsure, or did not answer, regarding any issues with the current provisions for offences, penalties, and enforcement tools under the Act.

We include comments from two external advisors to support the RVResidents feedback. Former Investment banker, Financial Advisor and commentator Janine Starks, along with Shamubeel Eaqub, Economist, believe the Cost Benefit Analysis work provided is 'not suitable to inform policy making decisions' and therefore unreliable as a basis for a number of the proposals in the document.

Janine Starks' report shows the figures used in Martin Jenkins report are grossly inflated to the detriment of the residents, and in fact, operators can afford a 28 day buyback. Starks demonstrates how the average per unit cost to an operator of a mandatory 28 day exit repayment is the most understandable and most relevant basis for determining fair and workable policy settings. Only when you compare the small per unit cost to an operator relative to exceptional revenue operators earn off each unit per average resident tenure do you get a more accurate insight on the low impact of short exit repayment requirements to operators and fairness to consumers. Shamubeel Eaqub concludes a first principles approach has not been adopted within the analysis, and doubts if there is "symmetry of fairness in the rights and responsibilities" in the contracts. Both commentaries are included in the Appendix.

A RVResidents document submitted to MHUD in June 2023 is referenced in some responses. The RVResidents Framework for Fairness Update provided industry-sourced evidence and contained 5 evaluative questions: *Is the Capital Sum an interest free loan? Are there concerns around wealth transfer / distribution? Concern over a single industry model? Inclusion of all operators, and the place for retroactive legislation?*

A key issue highlighted by at least six proposals and their responses was whether or not specific changes should apply to existing residents. A very strong majority said yes:

- 90% said proposals regarding chattels should apply to existing residents.
- 89% agreed mandatory timeframes for repayment should apply to existing contracts.
- 86% agreed interest should be paid on the capital sums of existing ORAs.
- 97% agreed operators should stop charging weekly fees on existing contracts on exit.
- 93% agreed to no capital loss clauses where no capital gain was shared on existing ORAs.
- 84% agreed that limits on fixed deductions and accruals should apply to existing ORAs.

RVResidents contend restricting legislative improvements to only new ORAs will create a "haves and have nots" environment; one where it is more advantageous for operators to re-licence units on older contracts resulting in further divisions and unfair outcomes.

The initial framework and its 'one size fits all' resident-funded paradigm was developed by operators with little resident or consumer input, in the context of an inadequately regulated environment where only the Securities Act offered protection for resident interests.

It's time to rectify that.

We trust the feedback provided in this document and in the 10,577+ responses received from consumers across the country assists MHUD to provide a framework to support business modeling that can be both fair to consumers, and fit for the future in a fast changing demographic environment.

REVIEW OF THE RETIREMENT VILLAGES ACT 2003: OPTIONS FOR CHANGE

Tell us what you think about proposals for changing the Retirement Villages Act 2003, codes and regulations.

Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) is undertaking a review of the Retirement Villages Act 2003, and its associated regulations and codes.

On 2 August 2023 we published a discussion paper, **Review of the Retirement Villages Act 2003: options for change**. The discussion paper sets out proposals relating to the three main stages of retirement village living: moving in, living in, and moving out. It also seeks feedback on other topics, such as the definition of retirement village, insurance, the operation of the Retirement Villages Register, and the Code of Practice.

We want to hear from retirement village residents, their families, prospective residents, operators, sector bodies, legal advisors, and anyone else who has an interest in retirement villages.

How to use this template

We have created this template for those who can't, or do not wish to, use our online survey tool. This template contains the same information and questions as the online survey, and can either be printed and filled in by hand, or you can type your answers into the text fields using a PDF viewing programme such as Adobe Acrobat or Preview.

You can:

- comment on all, or some, of the proposals
- answer all, or some, of the survey questions
- tell us anything else you think we should know that is relevant to the review.

Any questions marked with an asterisk (*) are required and the rest are optional.
We recommend that you read the discussion paper before you complete the survey.
If you have chosen to fill this template out online, you can email your completed submission to RVAreview@hud.govt.nz.
If you have printed this template and filled it out by hand, you can either scan the document and email it to RVAreview@hud.govt.nz, or post it to the following address:
Retirement Villages Act Review Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development PO Box 82 Wellington 6140
The closing date for submissions is 5pm, Monday 20 November 2023.

Submitter information

Please provide some information about yourself. The information will be used to help us understand how different groups view the proposals for change. Any information you provide will be stored securely.

* Your name:
RVResidents Association

Organisation (if applicable):
RVResidents Association

* Your email address:
ce@rvr.org.nz

Your phone number:
021 138 7064

The best way to describe yourself or your organisation:

- ☐ Retirement village resident
- ☐ Retirement village operator
- ☐ Whānau/family of retirement village resident
- ☑ Sector body or association The Retirement Village Residents' Association of New Zealand
- ☐ Iwi/Māori organisation
- ☐ Lawyer/law firm
- ☐ Real estate agent
- ☐ Prefer not to say
- ☐ Other individual (please describe below)
- ☐ Other organisation (please describe below)

The RVResidents Association is the independent voice of village residents and their families with 10,465 members in 75% of all registered villages in NZ.

The documents in the Appendix are referenced throughout our feedback:

The Appendix includes:

a. DMF descriptions
b. A Village's Care Facility disclosure example
c. Code of Practice concerns summary
d. Report: Demonstrating the fairness of mandatory 28-day buybacks - Janine Starks
e. Statement: Economic analysis and cost buyback - Shamubeel Eaqub
f. RVResidents revised MHUD questionnaire - Data Summary of 10,577 responses to the MHUD discussion document

We also note the statements of support for our feedback received by Consumer NZ and Community Law Centre, and the comprehensive evidence contained within our Framework for Fairness Update 2023[1]

Your ethnicity:

- ☐ Pākehā/NZ European
- ☐ Māori
- ☐ Pasifika
- ☐ Asian
- ☐ Prefer not to say
- ☐ Other (please describe below)

Other:

Your region:

- ☐ Northland
- ☐ Auckland
- ☐ Waikato
- ☐ Bay of Plenty
- ☐ Gisborne
- ☐ Taranaki
- ☐ Hawkes Bay
- ☐ Whanganui-Manawatū
- ☐ Wellington
- ☐ Nelson-Tasman
- ☐ Marlborough
- ☐ West Coast
- ☐ Canterbury
- ☐ Otago
- ☐ Southland
- ☐ Overseas (please specify below)

[1] https://www.rvranz.org.nz/wp-content/uploads/2023/08/RVR-FFF-Update-JUNE23-Digital.pdf

Use of information

Your submission will help the government to develop policy that may be put into legislation and regulations. HUD officials may contact submitters directly if we require clarification of any matters in submissions.

Release of information

We may publish a submissions analysis. This could include a summary of submitters' views and may include the names of individuals or organisations that have made submissions.

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including HUD. Any personal information you supply to us in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in this discussion paper. You have the right under the Privacy Act to access your personal information and request any corrections to that information. If HUD has a good reason for refusing a request for correction, you are entitled to request that a statement be attached to the information of the correction that was sought but not made.

Please clearly state below, and in any email or covering letter, if you do not wish your name, or any other personal information, to be included in the summary of submissions.

☐ Please tick the box if you do not wish to have your name or other personal information included in any information about submissions we may publish.

Any person may make a request for submissions under the Official Information Act 1982 (OIA). Please clearly state below if you have any objection to the release of the information contained in your submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information under the OIA. We will take such objections into account and will consult with those submitters when responding to requests under the OIA.

*☑ I consent to my submission being released if requested under the Official Information Act 1982.

RVResidents Association consents

*☐ I consider my submission, or identifiable parts of my submission, should be withheld from release and have stated my reasons and the grounds that apply under section 6 or section 9 of the OIA for consideration by HUD:

Reason for withholding submission in whole or in part: 5

Follow up

Are you happy for HUD to contact you if we have any questions about your submission?

☑ Yes ☐ No

Anitra (aged 70) & Ken (aged 72)

OVERVIEW OF THE REVIEW

The Retirement Villages Act 2003 sets out the obligations of retirement village operators and rights of retirement village residents in New Zealand. Over recent years, consumer protection issues have been raised by residents and their families, sector organisations, and consumer advocates.

This review considers whether the Act, its regulations and its codes remain fit for purpose to ensure:

- adequate consumer protections to residents and intending residents of retirement villages
- an effective balance between the rights and responsibilities of residents and operators of retirement villages
- the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice
- the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights.

Where we consider the legislative regime is not meeting these objectives, we have proposed changes to provide better outcomes. In other areas we seek information and feedback to inform further policy work.

To read the overview of the review, please refer to page 18 of the discussion paper.

Q.1: Do you agree with the scope and objectives of the review? (See paragraphs 20-24 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Why/why not? :

The scope of this review reflects issues identified in the Retirement Commission's White Paper (2020/21)[2]. We agree with assessing fair protections and outcomes for consumers - namely residents, intending residents and their families.

Paragraph 24 of the Ministry's discussion document outlines what the review does not cover such as *"The Commerce Commission investigation into complaints it has received. The complaints allege breaches by retirement villages operators of certain Fair Trading Act 1986 provisions including the unfair contract term provision."*

Parts of the current dominant business model (the licensing form of ORA) supported by the framework are unfair, and can create unfair circumstances for residents. The proposals in the discussion document begin to address those parts. Change is necessary in order to fulfill one of the main purposes of the Act which is "to protect the interests of residents and intending residents". We note Consumer NZ has also reviewed unfair terms in occupation right agreements.

We strongly recommend this review considers findings from the current Commerce Commission investigation into unfair terms in Occupation Right Agreements.

Q.2: Do you have any comments on how the proposed changes, by themselves and collectively, might affect different parts of the sector (Such as different types of villages, residents and other stakeholders)? (See paragraphs 25-28 of the discussion paper)

The current framework was industry-led by operators. Consumers had little or no input to the formation of the original legislation. The Retirement Villages Association (RVA) even engaged in litigation with the relevant Ministry in the establishment of the framework, particularly about the contents of the Code of Practice prescribed for under the Act. We understand that Code was based on a document their members had used previous to the new Act.

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[2] https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/Legal-framework-report-2021/RC-RV-White-Paper-Report-2021-.pdf

Our feedback is that the 'industry-led' method of managing claims about unfairness under the framework since its inception has been twofold:

- by suggesting mandatory independent legal advice cures or discharges unfairness, and
- by expressly stating in the framework that entering an occupation right agreement is not without risk.

Practically, there are two separate types of business models: the dominant licensing model benefiting shareholders, and the rarer type where varying degrees of proprietary interest or capital gain sharing enables greater benefit for the resident.

Paragraph 26 of the Ministry's discussion document reports that *"Operators have been clear that any changes to financial exit matters, and in particular a mandatory repayment time period would impact their business model."*

However we can show that the proposed changes will not disproportionately impact the preferred licensing business model of operators regardless of the type of operator.

In considering the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choices we recommend that Not-for-profit should not be treated differently from other operators.

Please refer to additional independent material about the impacts of this review on the sector from Janine Starks and the peer assessment from Shamubeel Eaqub **attached and marked d) and e) respectively.**

Q.3: Do you have any information you could share on Māori interests in and experiences of retirement villages that we should take into account in the review? (See paragraphs 29-32 of the discussion paper)

Anecdotally, some Iwi organisations invest in retirement villages that appeal to non-Iwi markets, while developing separate whanau housing developments for their own whanau. (Ngati Whatua is an example.)

Nothing prevents any Maori or a member of any ethnicity entering a retirement village as far as we know. Diversity of age and ethnicity is welcomed by residents.

Our observation is that retirement villages under the dominant licensing model appeal more to European and Asian markets, and that Maori appear to favour developments specifically created by Maori for their own 'people'.

We refer to the supporting comment filed by the Community Law Centre noting how the existing framework leads to disproportionate housing and accessibility options for aging people regardless of ethnicity.

DISCLOSURE STATEMENTS

A **disclosure statement** is a document setting out the main terms of an offer for an intending resident to enter a retirement village, such as the state of the village, services and facilities offered, and the estimated financial return to the resident if they were to sell or dispose of a unit. Operators must provide intending residents with a written disclosure statement document containing specified information before they can sign an occupation right agreement.

Issues with the disclosure regime:

- Disclosure statements are often long, hard to understand and difficult to access.
- There can be too much information, the wrong kind of information, and duplication across documents.
- Undertakings in disclosure statements and advertisements can be hard to enforce.

We have developed proposals to address these issues.

To read more about this topic, please refer to page 28 of the discussion paper.

Q.4: Which of the proposed options for new disclosure documents do you agree with? (See paragraphs 46-57 of the discussion paper)

☑ Option 1 – A Village Comparison and Information Statement

☐ Option 2 – A new shorter Disclosure Statement

☐ Neither of these

Please give reasons for your answer, including any alternative suggestions about how the issues with disclosure documents could be addressed.

We prefer Option 1, as prospective residents need easy, comparable access to information, as early as possible before making a decision and obtaining an ORA. We highlight the importance of having both documents being published on the villages website and available as part of any other sales material.

Q.5: Is any information missing from the proposed documents?

Please refer to the following appendices of the discussion paper:

- Appendix 1 – Proposed Village Comparison template
- Appendix 2 – Proposed Retirement Village Information Statement template
- Appendix 3 – Proposed new Disclosure Statement

☑ Yes ☐ No ☐ Not sure

If yes, please tell us what this is.

Appendix 1 – Proposed Village Comparison template

Note in relation to Question 7, at least one operator offers 'bespoke DMFs' that generate revenues to the operator that are far higher than the 20-30% standard DMF. These bespoke DMFs apply when the incoming resident cannot afford the whole Licence To Occupy asking price. In those situations the operator 'lends' what is missing and charges a high DMF (eg 35%) based on the full asking price. We submit any non-standardised form of DMF which includes any type of loan back from the operator to the resident needs to be declared clearly as a credit or loan arrangement in the Village Comparison. Please refer to our further feedback about bespoke DMFs under Q.86.

Regarding Question 12, some villages, while not having an aged residential care facility, do have apartments that are licensed to offer rest home level care.

The distinctions between care facilities and rooms capable of being available for care needs to be clearer. A facility implies an existing institution or obvious area of infrastructure.

A facility does not imply units that may or may not be certified for care-assessed residents located amongst independent living areas.

Regarding Question 13, we think operators should be required to state how many standard aged care residential rooms there are distinct from premium care rooms. At a broader policy level we note the well-documented trend for many retirement village operators to only provide premium level rooms and the societal impact of a growing two-tier aged care system.

Appendix 2 – Proposed Retirement Village Information Statement template

Regarding Question 30 and Question 49, we repeat the feedback provided for Appendix 1 above.

Appendix 3 – Proposed new Disclosure Statement

Regarding Question 26, we think the following statement must be included to make the duty on operators to provide clear reliable information stronger: "This information is current as at the date of this Disclosure Statement."

In relation to Question 29, at least one operator (Summerset) offers 'bespoke DMFs' that are far higher than the 20-30% standard DMF and apply when the incoming resident cannot afford the whole Licence To Occupy asking price and so the operator 'lends' what is missing and charges a high DMF (eg 35%) based on the full asking price. This loan arrangement needs to be declared in the Retirement Village Disclosure Statement as it has caused grief to some residents who have not understood how it might be calculated leaving them with less capital on termination.

Regarding Paragraphs 37 and 38 of the Ministry's discussion document and Question 45 we repeat the feedback provided for Appendix 1 above.

Q.6: Would the proposals to deal with false and misleading statements and inconsistency between a disclosure document and an ORA address the issues we have outlined? (See paragraphs 58-61 of the discussion paper)

☑ No ☐ Not sure

Please give reasons for your answer, including any alternative suggestions about how these issues could be addressed.

The proposals do not go far enough to generate adequate rights.

Changes to the Act must have stronger remedial options including the right to cancel and or receive compensation whenever statements, made either verbally or in writing in a disclosure document, then differ from what is delivered or do not eventuate in a reasonable time after the resident has moved into the village.

For example, if an operator or its agent has represented, whether orally or in writing, or in supporting advertising, to an intending resident that the village will have a new recreation facility or care facility within a few years, and the intending resident relies on that representation in deciding to become a resident, the representation should be treated as a material term of the contract (ORA).

For a specific example of how disclosed representations can be protracted leaving residents with strong powerlessness see **Appendix part b)** - 'A Village's Care Centre disclosure statement review'.

The Ministry should apply the recommendations from the Retirement Commission's Annual Investigation Report (30 June 2022) from page 33, noting considerable duplication between the disclosure statement and ORA, and apply the Commission's summary of current settings for enforcing matters in disclosure statements that do not materialise.

We submit that common law and equity remedial rights (such as specific performance, right to cancel for substantive breach, damages etc) need to be integrated into the Act and applied to a range of disclosure and non-performance situations.

To enable residents to enforce their rights, a clearly empowered agent to whom consumers can apply for redress must be established, so the framework becomes truly consumer-protecting.

Q.7: Please add any other suggestions you have for improving the retirement villages disclosure regime.

Paragraph 62 of the Ministry's discussion document says *"The proposed changes would increase consumer protections for residents and intending residents by … The ability for residents to enforce undertakings made in disclosure documents and advertisements, or to claim compensation if they do not eventuate, would be strengthened."*

We repeat the feedback provided under Q6 above. A range of remedial options must be codified into the Act so residents have more rights when operators or their agents make material representations about future developments which then do not manifest after a reasonable time.

A strengthened range of remedies and a broadened enforcement jurisdiction recognises intending residents and residents as a unique consumer class.

For example, some operator policy changes have very stressful impacts on the well-being of some existing residents and on some intending residents. An example that has also been the subject of a Dispute panel decision is when operators change the entry age from 55 to 70.

The range of remedial options should include a right to seek compensation where a policy change made by an operator can be shown to cause loss, suffering or harm regardless of whether the policy change was lawful. The range of remedial options should also include enabling residents to terminate their ORA with no deduction of the DMF.

Kay (aged 81)

OCCUPATION RIGHT AGREEMENTS

An **occupation right agreement (ORA)** is a contract between a retirement village operator and a resident, giving the resident the right to occupy a unit in a retirement village. An ORA can cover a variety of ownership and occupation agreements, but in practice around 95 percent of retirement village units are sold under a 'licence to occupy' agreement. This means a resident buys the right to live in their unit but does not own it.

Issues with ORAs:

- Currently, ORAs can be long, complex and difficult to understand.
- Some information in ORAs is duplicated in the disclosure statement and Code of Practice
- Residents are generally unable to negotiate the terms of their ORAs, and some ORAs may contain unfair terms.

We have developed proposals to address these issues.

To read more about this topic, please refer to page 35 of the discussion paper.

Q.8: Which of the proposed options for standardising ORAs do you agree with? (See paragraphs 81-86 and Appendix 4 – Proposed standardised layout for ORA in the discussion paper)

☐ Option 1 - Standardising the format (i.e., the headings and layout)

☑ Option 2 - Standardising both the format and some of the terms

☐ Neither of these

Please give us your reasons, including any suggestions for how the issues with ORAs could be addressed.

We agree with the summation in Paragraph 94 of the Ministry's discussion document *"Because some terms would be standardised as well as the layout under option 2, the rights and responsibilities of residents and operators would be very clearly defined and enhance residents' understanding more than option 1. This means intending residents could compare different village contracts more easily and potentially negotiate different or better terms with operators. It would be easier to spot and address terms which are arguably unfair. Option 2 has the potential to better enhance consumer protection for residents and intending residents."*

In a 2022 RVResidents survey of members, 45% of the 1,574 respondents selected *"Easy to follow / standardised Occupation Right Agreements"* in their top five (out of 15) options as the most important for them.

The Ministry should apply the support provided by the Retirement Commission Annual Investigation Report (2021-22) for standardising both structure and terms.

An example of an issue that needs to be addressed is the term 'Deferred Management Fee' (DMF). This term needs to be standardised and needs to be defined to include what the fee is for and what it covers.

Currently the DMF concept has a number of alternative names: exit fee, fixed deduction, facilities fee or village contribution which creates confusion for consumers.

Examples of what DMFs are reported to cover are set out in our **Appendix a)**.

Q.9: Which terms should be standardised in ORAs, and which terms should not be standardised? (See Appendix 5 – Standardisation of terms in the discussion paper)

Please give us your reasons.

We acknowledge the Ministry commenced a working group with stakeholders including RVResidents to consider this issue in advance of the discussion document consultation concluding.

To give best effect to Option 2, we submit all the items listed under the headings 'What can be standardised' and 'What could be standardised' in the Ministry proposed Appendix 5 - Standardisation of terms should be standardised.

The Retirement Commission's Annual Investigation report (2021-22) lists the terms that are duplicated across a disclosure statement and an ORA.

Where there is duplication of subject matter between the disclosure statement and the ORA, we believe those terms should be in the ORA. This will ensure contractual enforceability for consumers and will reinforce the importance of due diligence and mandatory legal advice.

We acknowledge this means that those terms will need to be stated more substantively making the ORA potentially bulkier, but making the disclosure statement potentially more concise.

Q.10: Are there certain types of retirement villages that the proposed standardised format would not work for?

☐ Yes ☐ No ☑ Not sure

Please give us your reasons.

Once the definition of retirement village is improved as recommended in our response to Q.55, all villages must be obliged to use the standardised format.

Q.11: Are there terms currently included in ORAs that could be considered unfair to residents?

☑ Yes ☐ No ☐ Not sure

If yes, what are they and why are they unfair?

We repeat our feedback regarding the need to include findings from the current Commerce Commission investigations under Q1 above.

We also refer the Ministry to the RVResidents document **'Unfair Terms In Retirement Village Occupation Right Agreements' (September 2022)** for a full review of terms considered unfair, and to the Consumer NZ research on unfair terms in ORAs.

We agree with Paragraph 79 in the Ministry's discussion document "*... we have also come across terms in some ORAs that are arguably unfair to the resident. This includes, for example, terms which require a resident to allow a village representative to enter their home with no or very little notice, or which allow operators to let new residents occupy a unit before they have repaid the outgoing resident's capital sum. We have also identified other terms which may breach privacy rights by requiring access to a resident's personal health information directly from health agencies. This may be contrary to the principles of the Privacy Act 2020 and could indicate broader privacy concerns about how information is collected and used by operators.*"

The legislation currently allows operators to charge residents for maintenance, repair and replacement of operator-owned chattels and fixtures - and the legislation currently allows operators to charge residents weekly fees (or a proportion of weekly fees) after a unit is vacated. These examples have been identified as creating unfairness.

Q.12: Should a specific power be included in the Act to declare certain terms in ORAs to be unfair? (See paragraphs 90-92 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

If yes, who or which body should hold this power?

The new independent complaints and dispute resolution scheme provider, should hold the power if that is not to be part of the Retirement Commission or other new Ombudsman type office specific for the RV industry.

A power declaring a term unfair must come with corresponding powers to award remedies to match the significance of the declared unfair term(s).

Q.13: Are there any ORA terms which may breach a resident's privacy? (See paragraphs 99-101 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

If yes, what are they and what additional measures are required to address potential privacy breaches?

Some ORAs allow the operator access to a resident's personal health information directly from health agencies. This is contrary to the principles of the Privacy Act 2020.

ORAs should contain a statement that, regardless of whether personal resident information is supplied to an operator by consent, the Privacy Act 2020 applies to the collection, storage and use of any personal information held by operators.

Q.14: Should conveyancers be able to provide intending residents with legal advice on ORAs? (See paragraph 102 of the discussion paper)

☐ Yes ☑ No ☐ Not sure

Please give us your reasons.

We understand by the term 'conveyancer' that the Ministry may be including legal executives and other legal qualified people who conduct routine conveyancing transactional work.

The requirement for certified independent legal advice imposes the highest standard of care on solicitors, and is also used in property relationship situations. We believe this level of certification must remain.

The decision to enter an ORA has significant consequences and consumers deserve the utmost levels of professional standards and professional accountability.

To enable a broader range of more transaction-oriented service providers to provide legal advice dilutes the importance of the lawyer role in the decision to become a resident.

The lawyer is already restricted in that he or she is unable to give what might equate to financial advice. The lawyer might however engage in a thorough analysis that extends into discussing the wisdom of the transaction given what their client tells them.

We think there is a best practice opportunity to impose a statutory duty requiring operators to expressly recommend to any intending residents that they also seek independent financial advice before entering an ORA.

MAINTENANCE OF OPERATOR-OWNED CHATTELS AND FIXTURES

Retirement village units come fitted with chattels and fixtures owned by the operator. The chattels and fixtures vary between villages and units, but commonly include hot water cylinders, dishwashers, curtains, and light fixtures. The legislation does not explicitly cover responsibilities for maintaining, repairing, and replacing operated-owned chattels and fixtures.

Issues with operator-owned chattels:

- Operators can set the terms in ORAs for the maintenance and repair of chattels and fixtures, including who is responsible for covering the costs.
- Some residents are required to pay for maintaining and repairing chattels and fixtures they do not own, and which may have been used by previous residents.
- Some residents are required to pay for damage which should be classified as fair wear and tear.

We have developed proposals to address these issues.

To read more about this topic, please refer to page 43 of the discussion paper.

Q.15: Do you agree with the proposal to amend the definition of ‘retirement village property’ to specifically include operator-owned unit chattels and fixtures?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

There needs to be clear definitions of ‘chattel’ and ‘fixture’. We submit there is a broader policy consideration in this chattel definition issue, and in all other aspects of this review.

We acknowledge the Retirement Villages Act definition for retirement villages was based on a limited ‘resident-funded’ capital model. This was acknowledged by the Law Commission (referenced in the Retirement Commission White Paper 2020/21).

The initial framework was developed by operators in the context of an inadequately regulated environment where only the Securities Act offered protection for resident interests. This review can bring the framework up to date and fit for the future with refreshed settings for what is fair and reasonable.

This includes listening to residents, re-setting definitions and broadening incentives and housing options beyond the one-size fits all ‘resident-funded’ paradigm supporting massive capital-hungry developments.

91% of respondents agreed with the proposal while only 3% said no.

Q.16: Do you agree with the proposal to require operators to provide a list of operator-owned chattels and fixtures and the condition of these to intending residents?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Without such a list there would be no clarity - resulting in unfairness, arguments and disputes.

96% of respondents agreed with this proposal while only 1% said no.

Q.17: Do you agree with the proposal to assign responsibility for maintenance and repairs (including the direct cost of these) of operator-owned chattels and fixtures to the operator, except where the resident or their guest causes intentional or careless damage or loss?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

We agree that the proposal stated in paragraph 121 of the Ministry’s discussion document addresses: *“questions of fairness, as the costs of maintaining, upgrading, and repairing operator-owned chattels and fixtures would be met by the operator who has the benefits of ownership.”*

The proposal aligns retirement village occupation with other accommodation-related legislation such as the Residential Tenancies Act 1986.

Residents under licensing arrangements should receive protections that are as good as other non-proprietary occupants in more or less comparable situations.

97% of respondents agreed with this proposal while only 1% said no.

Q.18: Do you agree with the proposal to clarify that marks due to use of mobility aids and incontinence are classified as 'fair wear and tear'?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Given the 'ageing in place' of residents in villages and the increased operator practice of raising entry age policies, we contend there are likely to be increased adverse effects to property from mobility aids or resident mishaps.

These 'marks' are not caused deliberately. They are a foreseeable risk for operators providing housing for the elderly. They should be classified as 'fair wear and tear' given the specific environment those events happen in, rather than labelled or stigmatised as issues the elderly person causes and becomes responsible for.

73% of respondents agreed with this proposal, 14% were unsure, and 11% didn't agree.

Q.19: Do you agree with the proposal to require operators to meet the cost of replacing or upgrading operator-owned unit chattels and fixtures when they wear out?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

This proposal addresses questions of contractual and social fairness. The costs of replacing or upgrading operator-owned unit chattels and fixtures when they wear out should be met by the proprietary owner, namely the operator. This would align with other accommodation-related legislation such as the Residential Tenancies Act 1986.

95% of respondents agreed with this proposal while only 2% said no.

Q.20: If introduced, should the proposals apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Applying legislative changes to existing contracts is an appropriate policy approach that properly responds to the interests of vulnerable consumers. Please refer to our feedback on retroactivity in Q.44 below.

If an ORA contains a term that requires the resident to maintain, repair, replace or upgrade an operator-owned chattel or fixture, this should be declared to be unfair. The operator cannot apply, enforce or rely on the unfair contract term.

90% of respondents agreed with this proposal while only 2% said no.

Q.21: If there are other issues with maintenance and repairs that we should be aware of, please tell us about them.

Some operators allow residents to purchase extra chattels and fixtures. At exit, the resident must remove the item and restore the unit to how it was pre-installation or donate it to the dwelling. In this situation the resident-provided chattel or fixture will be deemed part of the unit for which the operator is not responsible. The incoming resident may be asked to sign a form to accept responsibility for the specific chattel or fixture as an extra.[3] Issues arise when the incoming resident has not received such a list and assumes the items will be repaired etc by the operator.

Incoming residents should know clearly which chattels and fixtures are the operator's responsibility to maintain, repair, replace or update, and which are the residents' responsibility.

14% of respondents had made additional comments. See tally forms & attached sheets for summaries.

[3] Summerset J45: Extras to Dwellings Policy

Lionel & Rachell (both aged 80+)

One operator's association, the Retirement Villages Association, at its Annual General Meeting on 17 July 2023, endorsed the following remit for its members:

As a matter of best practice, Operators should:

- *Provide each resident on entry into the Village with a list the Operator's chattels included in the residential unit as at the commencement of the ORA term.*
- *states that the operator is responsible for replacing any Operator-owned chattel when that chattel reaches the end of its normal economic life. Where an operator chattel requires replacement prior to the end of its normal economic life due to the actions of a resident, then a resident will be responsible for the cost of replacement to the extent that such cost is not covered by the operator's insurance.*

To achieve consumer protection, we suggest this remit does not go far enough as it does not include maintenance and repair of operator-owned chattels and fixtures.

As well, the RVA remit for its members does not apply to operators that are not RVA members. Member association-based remits do not offer any assurances to consumers because member remits may be modified or removed at a later AGM.

A SIMPLE AND EFFECTIVE DISPUTE RESOLUTION SCHEME

Village operators are responsible for receiving and resolving complaints under the current dispute resolution scheme. If a negotiated resolution cannot be reached, a dispute panel can be appointed to hold a hearing and make a binding decision.

Issues with the complaints and disputes regime:

The current scheme does not align well with best practice principles for dispute resolution. For example:

- the scheme is not independent from operators
- statutory supervisors and disputes panels are engaged by operators which impacts perceptions of their independence
- residents may be reluctant to complain to the operator as they do not want to be seen to be making a fuss or feel it may affect their relationship with village management or staff
- the scheme can be complex to navigate
- dispute panel hearings are adversarial and expensive.

To address these issues we propose to replace the current scheme with a new scheme that aligns with the best practice principles – accessible and user focused, independent, efficient, effective, and accountable.

To read more about this topic, please refer to page 49 of the discussion paper.

Q.22: Do you agree with the proposal to establish a new dispute resolution scheme that is independent of retirement village operators? (See paragraphs 140-149 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Please give us your reasons, including any alternative suggestions about how issues with the current scheme could be addressed.

We agree a new independent dispute resolution system resourced through the central government is needed for the reasons outlined in paragraphs 133 - 139 of the Ministry's discussion document.

Our recollection from our organisation's participation in Code variation discussions with the Retirement Commissioner office in 2014-2016 is that the variations affecting the complaints process at that time were a compromised outcome.

We know of some cases where residents are desperate to leave their villages and are presented with Exit Agreements with confidentiality clauses. Those residents feel duress and often lack the financial resources to engage legal input to try and obtain sufficient compensation for harm they feel they have suffered from the operator or financial loss on leaving the village. In one case the Exit Agreement gave the resident less than two months (including Christmas) to find another housing option and to completely exit the village, otherwise the operator's offer would be withdrawn. With a well empowered, investigative, independent agency, this situation may not have escalated to that extent.

RVResidents has provided considerable data and evidence to help demonstrate the need for, and benefit to be received from, an independent system with a sufficiently empowered arbiter and sufficiently resourced advocacy and support component.

See pages 19-20 in RVResidents 'Framework For Fairness Update', June 2023[4]

81% of respondents agreed with this proposal while only 3% said no.

Q.23: Should the new scheme be delivered by:

- [ ] a dispute resolution scheme provider
- [x] a government appointed commissioner
- [ ] neither of these?

Please give us your reasons.

We support the new scheme being operated by the Office of the Retirement Commissioner for the reasons outlined in paragraph 145.

The Office of the Retirement Commissioner has been held in high regard by residents and the public particularly since 2014/15. From that time the Retirement Commissioner office had a dedicated national management resource and took a more proactive approach to its monitoring functions.

That approach resulted in a range of forums bringing different parties together, annual research and monitoring reports for Ministerial awareness, impartial engagement across industry groups to facilitate dialogue on improvements, public education events and advisory support for many residents and intending residents and their families. Much insight gained was reflected in its December 2020 White Paper.

The other option would involve the cost of going out to tender, contracting the chosen provider, monitoring the contract, and re-tendering if necessary.

Another central government-provided option for formal disputes would be extending the jurisdiction of the Tenancy Tribunal to handle retirement village disputes that could not be resolved after arms-length or mediated opportunities.

Q.24: Should residents be required to contribute to the costs of resolving disputes between residents (where the operator is not a party to the dispute)?

- [x] Yes
- [ ] No
- [ ] Not sure

If yes, what costs should residents contribute to?

If residents are involved in a dispute amongst themselves, it is fair they should contribute to the costs of resolving the dispute.

38% of respondents agreed with this proposal while 27% said no and 31% were unsure.

[4] RVResidents 'Framework For Fairness Update', June 2023, pages 19-20, https://www.rvranz.org.nz/wp-content/uploads/2023/08/RVR-FFF-Update-JUNE23-Digital.pdf

Q.25: Should legal representation be limited in a new scheme?

☑ Yes ☐ No ☐ Not sure

If yes, how should it be limited?

Legal representation is often deployed by well-resourced operators and potentially added to their operating costs to be recovered through outgoings charges. That adds to stress and often to delayed outcomes for residents and their families and greater adversarial behaviours. Legal representation should only be permitted in a hearing situation in very limited circumstances.

17% of respondents agreed with this proposal while 24% said no and 52% were unsure.

Q.26: Do you have information you could share on the costs of the current complaint and dispute resolution scheme for operators or for residents? For example, if you have been a party to a complaint or dispute in the past, could you provide information on the costs you faced (the type and amount), if any?

In a 2023 RVResidents' survey[5] of 858 residents, over 56% were dissuaded from engaging in the dispute process because they were worried how much it would cost to participate in mediation and having to use legal representation at any stage to help counter the operator's use of lawyers.

Q.27: Would independent advocacy support that is free for residents to access be needed under a new dispute resolution scheme? (See paragraphs 158-159 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

If yes, please give your reasons and suggestions for how it might work.

Paragraph 158 in the Ministry's discussion document says that *"the scheme provider would not represent or advocate for individual residents"*. Because of this, and because of the power and resource imbalance between residents and operators, there will still be a need for residents to be able to access a free, independent advocacy service.

RVResidents would be a body that could be contracted by government, or via levies collected by government from operators, to manage a budget appropriation for independent conciliation services and provide a resident-focussed advocacy support.

Alternatively, RVResidents and RVA and the Ministry could agree to co-fund and contract an independent national industry liaison officer to conciliate outcomes before they become positional and in need of formal mediation or adjudication. We note the Retirement Commission's National Manager often applied this type of attendance during 2014-2020.

41% of respondents agreed with this proposal while 8% said no and 43% were unsure.

MOVING FROM RETIREMENT VILLAGE LIVING INTO AGED RESIDENTIAL CARE

Alongside independent living, many retirement villages offer rest home care, hospital-level care, and/or secure dementia care. Aged residential care is part of the health system, but the health and retirement villages systems overlap when a resident transfers from independent living to aged residential care.

[5] RVResidents 'Framework For Fairness Update', June 2023, page 19, https://www.rvranz.org.nz/wp-content/uploads/2023/08/RVR-FFF-Update-JUNE23-Digital.pdf

Many residents choose a retirement village for the continuum of care it offers, attracted by the prospect of a seamless transition to aged residential care should they need it in the future. Villages are offering an increasing range of accommodation options in response to resident demand, with different payment arrangements. This may involve residents transferring to aged residential care paying a capital sum, including a refundable accommodation deposit (RAD), and having a new ORA.

Issues with transferring to aged residential care:

- Residents may have expectations a suitable room within their village will be available when they need to transfer to aged residential care.
- The interface between retirement villages and aged residential care is complex, and can be challenging for residents, their families, legal advisors and operators to navigate.
- Disclosure documents and ORAs may not always provide clear, comprehensive information on the options available and process for transferring to aged residential care.
- The financial implications can be significant but are not always well understood.

We have developed proposals to address these issues. Note the proposal relating to providing more comprehensive information in disclosure documents to intending residents overlaps with the Disclosure Statements section. Please refer to page 28, Appendix 1 – Proposed Village Comparison template, Appendix 2 – Proposed Retirement Village Information Statement template, and Appendix 3 - Proposed new Disclosure Statement of the discussion paper.

To read more about this topic, please refer to page 61 of the discussion paper.

Q.28: What information on occupancy levels of aged residential care should be provided to intending residents? (See paragraphs 181-184 of the discussion paper)

☑ Average occupancy across the previous 12 months AND 37%

☑ Current occupancy levels at a clearly dated point in time 32%

☑ Other information

☐ No information

☐ Not sure

Please give us your reasons, including details if you answered 'other information'.

The range of ways care is provided is interpreted very broadly and leads to confusion. A distinction needs to be made between units in the village that have been licensed to provide rest home level care and options within a dedicated care facility in the village campus area.

There must be clarity around the current status of any actual or proposed new care facility and what it will offer in the way of care.

Any representation about care in the village or in a proposed care facility must be treated as a material term, linked to stronger remedial rights to cancel the ORA or be compensated if such care facilities do not eventuate in a reasonable time.

Q.29: Should a clear statement that a suitable aged residential care unit cannot be guaranteed be included in one of the new disclosure documents? (See paragraph 181 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Residents should be clear there is no guarantee of a suitable aged residential care unit at the time it might be needed. We repeat the feedback for Q28.

Ryman states that any resident requiring aged residential care will get it, though not necessarily immediately or in the same village. It may be provided in a neighbouring village. They also say that Rest Home or Hospital Level Care can be provided in an independent unit or serviced unit for the interim until a care bed is available.

83% of respondents agreed with this proposal while 3% said no.

Q.30: If there are other issues related to transferring from an independent living unit to aged residential care that should be considered as part of the review, please tell us about them.

In a 2022 RVResidents survey of members, over a third of respondents ranked ‘upfront disclosure of Transfer to Care costs’ in their top five most important items for legislative change.

In a 2023 RVResidents survey of members, only 21.3% of the 1,913 respondents said their operator had made it clear how much it would cost to transfer into any of their care options.

As the Ministry’s discussion document points out in paragraph 174, the situation can be further complicated where a couple has been living in an independent living unit and one needs to transfer into care.

For example, one of a couple living in a village’s independent villa is assessed as needing rest home level care. For him or her to move into a room that has been certified to offer rest home level care in the main building of that village, a second licence-to-occupy currently costing another large sum of capital would be necessary.[6]

Not many couples have access to that amount of money .Some residents try to avoid transferring into care because they are financially locked into their existing retirement village unit with their healthier partner.

The current framework and associated health frameworks incentivise fewer retirement villages to build care facilities offering standard rooms, and few retain any standard care rooms.

In our experience, care rooms in the village or in dedicated care facilities on village sites seem to get upgraded to either premium rooms or care suites. Many residents who need care put off transferring into care to defer the costs of transition, putting their welfare at risk.

Q.31: Should operators be allowed to charge aged residential care residents in ORA care suites a second fixed deduction (‘deferred management fee’)? (See paragraphs 179-180 of the discussion paper)

☐ Yes ☑ No ☐ Not sure

Please give us your reasons, including if it should be capped or limited in some way.

For residents who live independently and then transfer into care, that move is part of the holistic ‘continuum’ of their retirement living experience that attracted them to consider retirement village living in the first place. The possibility of needing care is part of the entire ‘age in place’ value proposition.

It is both socially and contractually unfair to suggest a need to transfer into care triggers a double dip into capital, even if a new occupation right agreement and ARC agreement is required. The transition and any remaining DMF to accrue from the original occupation right agreement should be considered holistically.

6% of respondents agreed with this proposal while 68% said no.

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[6] Scenario 1, slide 4 “Summerset at Aotea Transferring for Care” PowerPoint presentation, 15 June 2023, from Marjorie Gambitsis, Registered Legal Executive, Summerset Group Holdings Limited. A copy of the presentation and the accompanying audio is available.

Q.32: Do you have information on different practices across the sector relating to ORAs for aged residential care you can share with us, including the different terms and conditions offered? For example:

- What kinds of different terms and conditions do operators offer where a resident has a second ORA for living in the same village?

Transfer from independent or serviced unit to care

In some villages, such as Summerset villages, with transfers from an Independent Living Unit or Serviced Apartment to a Care Suite (whether at the same or different village), the DMF accrued on previous independent living is not taken into account.

Using the Summerset example, if the transfer to care is a choice-based transfer without a needs-assessment, then the terms and conditions are the same as if a new resident moved into that unit, with an administration transfer fee as a % of the new home price charged. If it's a needs-assessed transfer, Summerset offers an interest-free advance of any capital over and above what the resident can pay (via the Repayment Sum from the old home) and no administration transfer fee is charged. However, a new DMF is charged.

Transfer from independent unit to serviced unit

Ryman ORAs cover both independent and Serviced Living. There is no additional or second DMF for transferring from an independent unit to a Serviced unit. If a single person who lives in an independent unit needs to transfer to a Serviced unit, they move as soon as one is available having signed a new ORA. The resident does not pay anything towards the serviced unit until their independent unit is sold and no interest accrues. As soon as the independent unit has been sold, the resident is refunded their initial payment minus the DMF owing. They then pay for their Serviced Unit (often cheaper than the Independent unit depending on how long they were there). No interest applies at any stage and there is no Transfer Fee.

The ORA is terminated on exiting either type of unit and transferring into Aged Residential Care. The two tiers of Aged Resident Care costs then apply, that is the government subsided level and the accommodation supplement.

- Is it common practice for operators to charge a second fixed deduction or is there variability across the sector?

We understand most larger RVA member operators will apply a new DMF to reflect the next contractual position under the ORA for care. Any DMF accrued on previous independent living is not taken into account.

For transfers from an independent unit to another independent unit (or from a serviced apartment to another serviced apartment), there is more likely to be 'overall' apportionment of the DMF.

Either:
(a) the DMF payable on the new unit is reduced by the percentage DMF already accrued on the old unit. For example, if the resident has accrued a DMF of 15% of the Licence Payment on their old unit they will pay a DMF of no more than 10% of the Licence Payment for the new unit;

Or:
(b) the DMF payable on the new unit will be no more than 25% of the Licence Payment for the new home minus the DMF (in dollars) paid for the old unit.[7]

- Where a second fixed deduction is charged, does the percentage increase by length of stay, and at what percentage is it capped?

Summerset: 25% over 4 years for independent units; 25% over 2 years for all other units.

- What potential implications of stopping or limiting second fixed deductions should we be aware of, such as increased weekly fees for residents, or reduced new supply of aged residential care facilities?

[7] Summerset *Transfer Within & Between Villages Policy & Procedure* as at June 2021

Bill (aged late 80's)

MINIMUM BUILDING STANDARDS FOR RETIREMENT VILLAGES

Retirement village units are built to different standards, depending on the applicable building regulations at the time they were constructed. Older village units are likely to be of a lower standard than newer ones, unless the village has undergone significant refurbishment and has been brought up to more recent Building Code standards.

Because of the older age and associated health needs of residents, it is important that retirement villages are built or upgraded to a high standard, are warm and dry and are accessible for disabled people.

To read more about this topic, please refer to page 70 of the discussion paper.

Q.33: If there are any other issues with minimum building standards that we have not covered, please tell us about them.

There are serious issues with the lack of smoke detectors and their maintenance in the villas of independent residents. These residents vary in age and come with varying degrees of mobility or medical issues. They range from visually impaired, mobility compromised, or requiring outside home help, to fully fit and functional residents. Many are unable to climb a step ladder to test the alarm or fit a new battery, and some would not know how to.

Many village owners leave the responsibility for smoke detectors to independent residents to manage. Village owners appear not bound by the provisions of the current Building Code or the Residential Tenancies Act around the supply and maintaining of smoke detectors.

For new or renovated buildings, the New Zealand Building Code requires an approved smoke alarm to be fitted in every escape route (hallway) and within three metres of every sleeping space door.

Residential landlords must install a smoke alarm within 3 metres of each bedroom door, or in every room where a person sleeps and ensure these alarms remain in working order during the tenancy. The Residential Tenancies Act requires landlords to replace expired smoke alarms with long-life battery photoelectric smoke alarms that comply with Australian Standard AS 3786 or one of these equivalent standards: UL217, ULCS531, BS5446 Part 1, BS EN 14604 or ISO12239; and be installed according to the manufacturer's instructions with the replacement date on display.

Photoelectric smoke alarms are good at detecting both flaming and smouldering fires. They are the type recommended by Fire and Emergency New Zealand.

For the increasing number of residents who are deaf or hard of hearing, there are specialised smoke alarm systems with extra features such as extra loud and/or lower pitch alarm sounds, flashing strobe lights, or vibrating devices. Having hard-wired, interconnected photoelectric smoke alarms fitted alongside bed-shakers and/or strobe lights is ideal.

We submit that existing villas for independent residents should be fitted with smoke alarms that meet the standards outlined in the latest Building Code and the Residential Tenancies Act.

Q.34: Do you or someone you know live in a retirement village unit that is regularly cold or damp?

☐ Yes ☐ No ☐ Not sure See respondents individual answers

If yes, please tell us about it.

10% of respondents said yes while 83% said no.

Q.35: Should retirement villages be upgraded to meet certain building standards, such as the healthy homes standards?

Note: The Residential Tenancies (Healthy Homes Standards) Regulations 2019 are made under the Residential Tenancies Act 1986 and apply to rental properties. The Regulations have standards for heating, insultation, ventilation, moisture ingress and drainage, and draught stopping.

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

We agree meeting Healthy Home standards should be a minimum requirement. We understand many operators are doing this nowadays but the requirement should be codified in law.

We note that one of the operators' associations, the Retirement Villages Association, at its Annual General Meeting on 17 July 2023, endorsed the following remit:

"Where, as part of the refurbishment of a residential unit following termination of an occupation right, an operator changes or replaces any part of the residential unit that is the subject of the Healthy Homes Standards (such as changing or replacing heating, insulation, ventilation, draught stopping measures or moisture ingress or drainage systems), the operator must ensure that the relevant item as changed or replaced complies with the Healthy Homes Standards.

For the purposes of this Remit, Healthy Homes Standards means the standards and related exemptions set out in Sub-Parts 2 to 7 of the Residential Tenancies (Healthy Homes Standards) Regulations 2019 as at 1 July 2023."

This is a useful move but does not cover operators who are not members and it could be modified or removed at a later AGM. The requirement must be codified in law.

95% of respondents said yes while 1% said no.

Q.36: Is the design of your retirement village age-friendly and accessible to support residents to age in place?

☐ Yes ☐ No ☐ Not sure See respondents individual answers.

If no, what changes would be needed?

Multi storey developments present practical health and safety issues for residents especially in emergency evacuation situations.

We have feedback from some of our members that some apartment block corridors are too narrow to allow those on walking frames to easily pass others coming towards them, especially if the other is using a frame. Wider apartment front doors could ease access and reduce potential deterioration from paint scarring for example.

Ambulance and undertaker parking and access doesn't always seem to have been thought through. Overall we think the provision of visitor and service parking is often under-supplied by operators. We believe this under-supply is something being exploited through local government planning.

For an independent resident who uses a walker or a wheelchair, a lot of the doors leading to garages and outdoors are heavy. Some residents struggle to maneuver themselves through the door. Some residents feedback they sometimes have to wait until another resident comes along to help them by holding the door open.

79% of respondents said yes while 11% said no.

REPAYMENT OF THE RESIDENT'S CAPITAL SUM

Retirement village residents pay a capital sum, or sum of money, in return for their right to live in their retirement village. When the resident leaves the village, the capital sum is repaid to the resident or their estate, minus a fixed deduction (also known as a deferred management fee) which is the percentage kept by the operator.

Issues with repayment of capital sums:

- For residents with licence to occupy ORAs, retirement village operators do not have to repay a former resident's capital sum until their unit has been relicensed.
- Operators need to take all reasonable steps to relicense the unit once the resident has left, but this can still take a long time.
- While waiting for the unit to be relicensed, the former resident or their estate does not have access to their money, which can cause significant financial and emotional stress.

To read more about this topic, please refer to page 72 of the discussion paper.

Q.37: Do you agree with any or all of the following? You can tick more than one box.

We believe a multifaceted approach is needed, including:

- either a 5-day or 28-day exit repayment of resident capital in licensing (dominant ORA model) situations (with an associated right for operators to apply to extend the repayment time), and,
- enabling greater repayment times where a resident has a proprietary interest in the unit and/or a claim to share more than 50% of any capital gain associated with the ORA arrangement, and,
- enabling payment of interest to the resident in any situation where there is a delayed repayment or an extended period granted for delayed repayment.

☑ The proposal to require operators to repay a former resident's capital sum within a fixed period after the ORA has been terminated and the unit has been fully vacated, and if so, how long should the fixed period be.

For ORAs involving licensing, repayment should be within five business days where terminated by the operator, and within 28 days where terminated by the resident. (See explanation below).

96% of respondents said yes while 1% said no.

56% supported a 28 day period, 33% supported a 3 month period, so 89% in total wanted repayment in three months or less. Only 7% supported 6 months. Only 0.5% supported anything longer than 6 months.

For ORAs involving licensing, repayment should be within five business days where terminated by the operator, and within 28 days where terminated by the resident. This is fair given the cost per unit of a 28-day buyback to the operator is $13,535 on a $600,000 unit. (see Appendix d)

The basis of an early buyback decision should compare this cost to the revenue earned by operators ($1,014,000) and the tax free capital gains taken ($510,000) on the average unit. The cost of the buy-back represents less than 3% of capital gains, leaving operators with 97% of gains.

RV Residents submit that a 28-day buyback is the only fair outcome. The analysis in Appendix d) supports this approach as the only fair outcome.

If MHUD introduce a 12-month buyback, 95% of New Zealand families will see no change.

Such a policy could only be seen as an emergency mop-up measure for a small minority. In terms of numbers, of 4862 units which vacate annually only 243 a year would require a buyback.

If MHUD introduce a 6-month buy-back most families will still carry higher costs than operators. Only 23% of families will require a buyback (1118 families annually), but will still suffer a use-of-money loss averaging $18,000 per family (6 months lost returns on $450,000 at 8% p.a.). The remaining 3743 families will not get a buyback as their units will sell before the obligation occurs. They still suffer up to a 6-month loss of interest. This cannot be valued at 3% (as per the Martin Jenkins report) due to the bias of using a metric based on a poor value deposit-account. The long-term Kiwi Saver growth rate is 8% a year.

For operators, given 91% of units sell within 9 months and 95% in 12 months, their costs only amount to $3,150 per unit, for a 6-month buy-back.

"It is essential to consider the merits of, and then implement, a 28-day buy-back given the complete transfer of pricing power, given to this industry." - **per Janine Starks**

.."the current model is not equitable to residents. Imposing a common buyback period would create a level playing field, where all providers would be bound by the same approach. By having a reasonable buy-back period based on local evidence, and a penalty rate referenced to the 10 year bond yield (for example 10 year government bond yield + x%) in a schedule would allow all providers to approach this on a level playing field. Creating exemptions based on open book policy on grounds of financial hardship should be considered". - **per Shamubeel Eaqub**

For detailed feedback about fair repayment times please refer to our supporting material:

- Janine Starks paper - in **Appendix marked d)**
- Shamubeel peer review paper - in **Appendix marked e)**

☑ The proposal to require operators to pay interest on a former resident's capital sum if the unit remains vacant after six months.

Interest at an above market rate should always be paid **from the time of termination** (see explanation below) in any situation where there is no short guaranteed buy back time or there is a delay in repayment.

Please also refer to our supporting material:

- Janine Starks paper - in **Appendix marked d)**
- Shamubeel peer review paper - in **Appendix marked e)**

Please give us your reasons, including any additional suggestions for how the issues covered could be addressed.

Addressing the Repayments:

Either [A] Repayment via new sales and/or a sinking fund

A mandatory sinking fund should be easy for operators to implement because:

- All operators know, on average, the number of units sold in any one year. Statutory supervisors already monitor solvency risks associated with outstanding loan repayment liabilities.
- Repayment Sums will be different amounts depending on what the unit was purchased for, when it was purchased, and whether the DMF has been fully accrued. All operators can work out the average needed in any one year ($x).
- The operator would need to have access to $x for the first year to pay residents within 28 days.
- As the operator received the LTO purchase price from each new incoming resident, the operator would take a minimum required % of the anticipated Repayment Sum and add it to the village sinking fund.
- In that way, the sinking fund would be resourced with sufficient funds to provide buybacks within 28 days, noting the unlikelihood of operators needing to repay bulk residents at any one time potentially exhausting the entire sinking fund.

Or [B] Repayment via bridging finance

Under this option operators need not hold substantial funds and could make repayments within 5 business days.

Banks tend to offer large commercial customers interest rates better than retail residential borrowers get. Operators could raise sufficient bank funds to repay the outgoing resident by transferring the licence ownership to the bank as a specific security (or a short term assignment), paying interest to the bank until a new resident of the licence is found, and then buying the licence back from the bank when the new resident settles up. This arrangement with the bank would be separate from the operator's normal bank borrowing.

In this way, the outgoing resident (or their estate) would not have to wait long for repayment, the bank would have full security for its advance, and the village's normal bank funding would be unaffected.

From the bank's viewpoint, the advance would be even better secured than normal lending as the sale value of the licence would be in addition to whatever else the bank holds as security.

The Statutory Supervisor should not object to this option as the interests of all residents in the village are undiminished.

The operator would have to bear any interest cost of the temporary bank loan arrangement but this would be a relatively small cost per unit in comparison to their revenue gain (development margin, DMF, and capital gain) per unit. An additional benefit for the operator is that the interest it paid (if it needed to utilise this option) would be tax deductible to the operator.

Currently, once a unit has been re-licensed, the operator must repay the outgoing resident's capital sum within five business days of payment being received from the incoming resident. There is no reason why the operator could not be mandated to pay out within five business days of the resident handing over vacant possession of the unit as transferring the licence to the bank and receiving the amount for the Repayment Sum should be streamlined.

Being required to pay interest to the bank would provide an additional financial incentive for operators to quickly relicense vacant units.

This solution should be mandated to apply to new AND existing contracts, after allowing a lead-in time of six months for operators and banks to set up their process.

Would mandatory repayment times affect operator viability?

For consumers, exit repayment terms have usually been non-negotiable. Some operators have indicated mandatory repayment time frames would adversely affect their financial viability as they would need to divert or borrow sufficient funds to meet their repayment obligations within the mandatory time frame.

Paragraph 219 in the Ministry's discussion document says *"An independent analysis of the costs and benefits of a mandatory repayment time frame has been undertaken. This analysis estimated that, with a 12-month timeframe and no exemptions, the annual cost across the sector in the first year the mandatory repayment time frame applied would be between $10.645 and $44.216 million. This equates to an average cost per unit of between $238 and $989."*

The Martin Jenkins cost benefit analysis creates a distorted impression that a mandatory timeframe would bankrupt the industry.

It provides zero perspective for determining a policy setting on the fair time for operators to repay interest-free capital loans.

We refer to **Appendix marked d) and e)** for more analysis of the cost-benefit analysis and reasons why shorter repayment times should be legislated.

The average per unit costs of a mandatory 28 day exit repayment is the most understandable and most relevant basis for determining fair and workable policy settings. Only when you compare the small per unit cost relative to revenue operators earn off each unit every average resident tenure do you get a more accurate insight on the low impact of short exit repayment requirements to operators and fairness to consumers.

Doug (aged 77)

In the Martin Jenkin cost-benefit analysis, an average opportunity cost of $339[8] per unit on a $600,000 unit is about 0.05 of a percent (5 basis points) up to $1,407 (roughly 25 basis points) or 0.25% of the original purchase price.

A $600,000 unit has a 20% development margin in it ($120,000) which is realised immediately. Then the operator keeps 25% DMF ($150,000) and the capital gains. Assuming prices only increase around 3% a year, in the next eight year period operators would get 25% in capital gains ($150,000). They will be making more like 75% on old historic units from 2015, so this 25% is conservative.

To understand the disproportionate benefit an operator receives from the absence of a short buyback, presume a resident moves in during 2023 for $600,000 and dies eight years later in 2031. The operator sells the unit for $750,000 and owes the family $450,000 (as a DMF of 25% of the original 2023 price NOT the 2031 price has been taken off). The operator's total revenues will be $420,000 (development margin of $120,000, plus $150,000 DMF, plus capital gains of $150,000).

With revenues earned of $420,000 from a single resident per unit, we contend operators cannot resist a short 28 day exit repayment requirement. For example, if there's a cost of up to $3,095 per unit to fund mandatory repayments at 6 months or even $$13,535 per unit with 28 days mandatory repayments, that cost is relatively very small in contrast to revenue.

If operators are being given the social license to take considerable revenue streams including (untaxed) capital gains, which is completely against economic norms, then they must repay consumer money loaned to them interest-free within 28 days of the consumer vacating.

One of the reasons operators give for slower sales of older units is that incoming residents prefer new units. Sometimes operators suggest delays are beyond their control such as difficulty getting tradespeople or getting consents quickly for more significant upgrading jobs.

It is the interest-free loans from the purchase price paid by residents with older second-hand units that initially funded the new units. The benefit to the operator of resident-funded development and resident-funded (through delayed repayment of capital) refurbishment or upgrading before a new resident takes over a unit, is disproportionately excessive.

Operators use that resident money to landbank, build, sell, then keep building new units.

We submit it would be unfair to sustain current policy settings whereby operators' new projects are a contributing cause of delayed unit sales of older units, but operators do not want to fund the delay that they are causing!

We repeat feedback mentioned in our response to Q15. It is well documented that the initial framework was completely industry-led, developed by operators in the historic context of an inadequately regulated environment where the Securities Act only appeared to protect resident interests.

This review can bring the modelling in the framework up to date and fit for the future. This includes resetting the prevailing one-size fits all 'resident-funded' paradigm for massive capital hungry developments.

"It is unconscionable that operators make an average of $1 million revenue over the 8-year tenure of a resident living in a village (based on a $600,000 purchase price), but are refusing to support legislation to buyback the unit in a short mandated time frame". - per Janine Starks - (extract from Appendix d)

"When we purchase our ORA we are required to pay the full amount prior to moving into the Villa. So, why on earth can't we receive the full funds due on the date of vacating. Is this fair??? I think not. In some cases, including our purchase, we were required to pay the full amount of the ORA 3 months prior to us being allowed access to the Villa due to renovations being carried out. Is this fair? Again, I think not!" - per Brian Peat, President RVResidents

Q.38: Which option/s do you consider would most improve fairness for residents?

Our second solution [B] above would be the fairest for residents.

Q.39: What impacts would the proposed options have for operators?

Our feedback in Q.37 covers this. Our solutions would have very little financial impact on operators. In fact we would expect the good business relations most operators appear to have with their banks to be enhanced.

[8] Martin Jenkins report table 11.

Q.40: Should operators be able to apply for an exemption from the proposed mandatory repayment timeframe because of undue financial hardship?

☑ Yes ☐ No ☐ Not sure

If yes, what should qualify as undue financial hardship?

Our FFF Update[9] noted how some Australian state legislation applies mandatory repayment times with a statutory right for operators to apply for an extension of time in cases of serious financial hardship.

Given the role the statutory supervisor plays ensuring the residents' financial interests are not compromised, we believe a similar right in NZ law would be fair for operators to have, but expect it would rarely be used.

Where serious financial hardship can be substantiated by an operator (via a full set of accounts or statutory supervisor confirmation and is due to say multiple exits at once) then some flexibility could be afforded for operators, as happens in some Australian state legislation. Any insolvency concerns are also mitigated.

We suggest an operator's inability to repay should be noted in future disclosure statements (similar to relicensing times). Theoretically the need for an operator to apply for an extension should not be required often, especially if the statutory supervisor has been actively involved and the bank is taking primary security over the unit.

Resident concerns about the operator-supervisor relationship and useful recommendations were also made in the Retirement Commissioner's monitoring report into supervision (2017-18).

Statutory supervisors seem to have a close relationship with the operators who select them.

Overall we also think the requirement for statutory supervision should be mandatory without exemption. We think that would reflect the supervision provided across other industries where consumers provide large sums of capital, such as financial services. This would assist operators receive impartial direction sooner to help mitigate any solvency or security risks.

Q.41: Should certain types of retirement villages (for example not-for-profit villages) be either exempt from the proposed mandatory repayment timeframe or subject to a longer repayment timeframe?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

For units where residents have proprietary ownership and/or operators share capital gains with residents, there needs to be an additional right to extend the standard exit repayment time. Applying a mandatory 28-day repayment time frame for situations where the resident owns the unit or has a share in capital gain, without a right to seek an extension, could cause valuation issues as the capital gains (and therefore the former residents' exit payment entitlement) would not be known until the unit has been relicensed.

If a resident owns the unit or has a claim to more than 50% of the capital gain in the unit, then it is fair that the resident must carry more of the risk associated with repayment of capital.

See the RVR White Paper Response (26 Feb 2021)[10] - in particular the table showing repayment periods depending on % capital gain shared on pages 9-10.

A requirement for a sinking fund would help mitigate the perceived risk of not being able to repay (say due to an unusually high number of contemporaneous exits) regardless of the type of operator or village location.

A singular regulatory approach enabling operators to apply for an extension to time is preferable as used in some Australian states with 'Exit Entitlement Orders) if an operator is legitimately unable to secure funding to pay a resident out. The appointed agency eg. FMA or Ombudsman-type role would then have powers to extend or require partial payment.

[9] See page 27 in RVResidents 'Framework For Fairness Update', June 2023
[10] https://www.rvranz.org.nz/wp-content/uploads/2021/11/WP-submission-26022021.pdf

Some Operators also appear to advocate that small villages may not survive a buyback regime. This is highly unlikely as these companies are often not in the construction game building new villages. Their cash flows from 20-30% management fees and earning the capital gains, give them stable balance sheets. These businesses will not struggle to put in place short term bridging loans with banks, to fund the gap between sales. Interest can be rolled up until the point the unit is sold, ensuring there is no cashflow difficulty caused by the loan. See further - **Appendix d)**

Q.42: How long should operators have to relicense a unit before they need to start paying interest to the former resident? Please give us your reasons.

The resident is not getting any benefit from the licence to occupy which has been terminated. It is fair that interest begins to be charged for what was previously provided interest-free until the exit repayment requirement has been met.

52% of respondents said 28 days from vacant possession, with 24% saying vacant possession.

The Martin Jenkins model significantly understates benefits of early repayment and interest payment to residents. It uses 3 percent as the measure of assessing the opportunity cost to families of not receiving their money. This can't be justified while allowing shareholders to use a 10% cost of capital. Families do not invest money in low paying savings accounts. Kiwi Saver growth funds have produced 8 percent a year over the long term. Families with debt want to pay off mortgages and these cost around 7 percent a year currently. Those with credit cards are paying double digit rates and could eliminate these if they had their money back.

Q.43: If implemented, does the Interest on Money Claims Act 2016 provide a fair interest rate for operators to pay former residents if they have not relicensed the unit within six months?

☐ Yes ☐ No ☐ Not sure

Please give us your reasons.

Clause 12(3) of that Act states *"In this section, interest rate, for any given day (day A), means the base rate plus the premium expressed as a daily effective rate, where—*

(a) base rate means—

(i) the average of the 6 observations for the retail 6-month term deposit rate most recently published by the Reserve Bank of New Zealand before day A; or

(ii) if some other indicator interest rate is prescribed as the base rate that applies for the purposes of this section from a specified date, the prescribed rate, if day A is after the specified date;"

We refer to the findings in Appendix d,e and f. We believe the Martin Jenkins cost benefit analysis cannot be relied on and further independent peer review is required.

It is possible to interpret the Martin Jenkins approach to support a short buyback period in terms of costs and fairness. Therefore any alternative interest paying requirement for any delay beyond a short buyback period should include a higher compensatory component than market rates.

Please refer to the attached independent peer reviews of Janine Starks and Shamubeel Eaqub.

We submit alternative proposals should be considered:

EITHER
Given that the proposal in Q.43 is to only allocate interest after <u>6 months</u>, a fairer rate would be the retail **<u>12-month</u>** term deposit rate most recently published by the Reserve Bank of New Zealand.

OR
The retail **<u>6-month</u>** term deposit rate most recently published by the Reserve Bank of New Zealand should be used but would apply from when the resident vacates the unit and hands in the keys.

Q.44: If implemented, should the proposal to introduce a mandatory repayment time frame for residents' capital sums apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Retrospective legislation attaches legal consequence now and for the future to an event or transaction that took place in the past. Introducing mandatory repayment times for existing ORAs is retrospective, attaching new consequences for actions already actionable under existing law.[11]

We note even retroactive changes are still constitutionally possible with sufficient transitional notice. Law change conferring benefits and lifting burdens retroactively is not as objectionable because it is curative and beneficial.[12]

We agree that proposals SHOULD apply to existing ORAs and are prospective in that they will apply to future situations under existing contracts.

Residential Tenancy Act law changes were applied to existing contracts because, like retirement village residents, tenancy consumers are often considered vulnerable.

The framework review must deliver a total reset of the scope and modelling of ORAs to deliver fairness for consumers who are not only vulnerable but have provided interest-free capital to the operator often for years whilst still paying a rent-equivalent in the form of weekly fees.

We understand MHUD is required to conduct systemic statutory reviews of all Acts it administers. Planning for an implementation review of all changes implemented by this review in, say, five years, could help test and manage any unforeseen consequences from applying change to existing contracts.

Residents are not getting any benefit from their licences to occupy once vacant possession is delivered. Contractual requirements to repay must apply to existing contracts regardless of operational or market issues within operator control or not.

The new framework must acknowledge capital loaned by consumers in exchange for occupation, and therefore reset the obligation to repay towards the benefit of the lender of that capital.

89% of respondents said yes while 2% said no.

Q.45: If implemented, should the proposal to require operators to pay interest on former residents' capital sums apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

Yes we repeat our feedback for Q44 above. The resident is not getting any benefit from their licence to occupy which has now been terminated so they should get their interest-free loan repaid promptly.

86% of respondents said yes while 3% said no.

[11] By contrast retroactive law is one that operates on past events as though it were in force when the past event took place- See: Waldron, J --- "Retroactive Law: How Dodgy was Duynhoven?" [2004] OtaLawRw 8; (2004) 10 Otago Law Review 631
[12] J.F. Burrows, *Statute Law in New Zealand* (3rd edition, 2003), p. 403, quoted in "Legal 29, 2003, para. 55.

STOPPING OUTGOINGS AND OTHER FEES

Outgoings, also known as weekly fees, are fees for the costs relating to the operation, management, supervision and maintenance of the village as a whole, paid by residents as agreed in their ORAs.

Issues with stopping outgoings and other fees:

Some retirement village operators continue to charge outgoings to former residents until their units have been relicensed. This means former residents are being charged for services they receive no benefit from.

To read more about this topic, please refer to page 79 of the discussion paper.

Q.46: Do you agree with the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after? (See paragraph 236 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Please give us your reasons, including any additional suggestions for how the issues with outgoings and other fees can be addressed.

We agree with the Ministry's discussion document paragraph 235 *"We see this as unfair as former residents no longer receive the benefits of the services paid for by the outgoings charge. In extreme circumstances where there is difficulty relicensing a unit, this can mean former residents continue to pay outgoings for over 12 months after vacating their units (albeit discounted by 50 per cent after six months)."*

In a 2022 RVResidents survey of members, 77.3% of respondents ranked 'weekly fees MUST stop on exit' in their top five most important items for legislative change.

The requirement should be consolidated formally into the statute, not left to the Code.

We understand the RVA, as one operator organisation and not representing all operators, says over 70 percent of villages owned by its members already do this, so the proposal aligns with current best practice.

The requirement does not prejudice operators unfairly. We understand RVA members supported this requirement at its 2020 RVA AGM but it was not formally endorsed at the RVA 2023 AGM.

97% of respondents said yes while 1% said no.

Q.47: Should the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

We repeat feedback in Q.46 noting many operators have already been applying this change to existing ORAs, so it is more than likely the requirement applying to existing ORAs does not prejudice operators unfairly.

As a unique example, Summerset sent residents a letter in 2010 stating that as from 1 October 2010 weekly fees would cease upon vacant possession. Contracts up till then had said the fees would continue until relicensing.

For all ORA arrangements where the resident has no proprietary interest in their unit, upon vacant possession the resident should have no further obligation to fund outgoings.

The framework review must deliver a total reset of the scope and modelling of ORAs to deliver fairness for consumers who have provided effective interest-free capital and funds, through fees, towards operating expenses of the operator for years.

94% of respondents said yes while 1% said no.

FIXED DEDUCTIONS

A fixed deduction is a sum charged by retirement village operators when a resident vacates their unit. The amount of the fixed deduction may depend on how long a resident has lived in the village, with the percentage increasing over time until it reaches a limit (typically between 20 and 30 percent of the capital sum).

The fixed deduction is subtracted from the repayment of the resident's capital sum once the unit has been vacated and relicensed. A fixed deduction is sometimes called a deferred management fee, exit fee, facilities fee, or village contribution. Fixed deductions cover the resident's use of village facilities during their time living in the village and include a margin to help cover the costs of supplying and upgrading the village and facilities for future residents.

Issues with fixed deductions:

- Fixed deductions can continue to accrue between a resident vacating a unit and the unit being relicensed, despite the resident no longer receiving the benefit of the village facilities.
- The Code of Practice places no limits on fixed deductions.

Q.48: Do you agree with the proposal to require fixed deductions to stop accruing upon a unit being vacated or very shortly after? (See paragraphs 248-249 of the discussion paper)
To read more about this topic, please refer to page 81 of the discussion paper.

☑ Yes ☐ No ☐ Not sure

Please give us your reasons, including any additional suggestions for how issues with fixed deductions can be addressed.

We agree with paragraph 242 *"Fixed deductions are designed to reflect the benefit the resident received from their use of the facilities in the village during their time there. The deduction also includes a margin to help cover capital costs of supplying and upgrading the village and facilities for future residents."* Fixed deductions are sometimes not used by operators for their intended use (see our further comment under Q.50). We also note the existing framework expressly warns consumers that investing in retirement villages is 'not without' risk.

For all ORA arrangements where the resident has no proprietary interest in their unit the resident's capital should not be exposed to prolonged risk, and should not be further reduced by an ongoing DMF accrual calculation or other term having such an effect.

The framework review must deliver a total reset of the scope and modelling of ORAs to deliver fairness for consumers who have provided effective interest-free capital and funds towards operating expenses of the operator often for years.

Please also refer to our observations about bespoke types of DMF under Q.86.

96% of respondents said yes to this proposal while less than .5% said no.

Q.49: Should limits be placed on the size of the fixed deduction?

☑ Yes ☐ No ☐ Not sure

Why/why not?

For situations where there is no share in any capital gain for the resident, the fixed deduction should be no more than 30 per cent of the capital sum. This would be a fair intervention because the operator is already making substantial profits, with minimal contribution to national taxation revenues, through development margin, fixed deduction, and capital gain.

We contend generally, across all ORAs, any proposals by operators to increase DMF rates above 30 per cent could be considered as enabling price gouging.

This limit must also prevent operators from setting bespoke fixed deductions with specific residents who cannot initially meet the full price of a new unit. Currently in some villages, Summerset for example, this can be as high as 35%.

Limiting the size of the fixed deduction could help ensure operators price their units appropriately with greater alignment to the cycles of the housing market.

However, licenses to occupy are not proprietary tenure. We understand the valuation approach used by operators for licensing units can relate more to values derived from cash flow analyses for the unit as a rental-type proposition more than on traditional market capital valuation approaches applying to the broader housing market.

We believe consumers must be discouraged from entering ORAs they can not fully afford and operators must be deterred from becoming credit providers for small capital shortfalls as much as possible. Limiting the size of fixed deductions may be more likely to incentivise operators to value and price their units more competitively or incentivise broader forms of tenure.

74% of respondents said yes while 6% said no.

Q.50: Is greater transparency needed about the specific costs covered by fixed deductions?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Yes, greater transparency would help residents (and independent auditors) understand what residents' money is being used for and how they are or are not benefitting. The concepts should be defined simply.

The capital accrued to an operator from the DMF capital paid by a resident (retained by the operator) should be used primarily for sustaining capital expenditure requirements of the operator's business - such as village facility upgrades and long term maintenance.

The revenue to an operator through weekly fees paid by a resident should be used primarily for operational expenditure requirements of the operator's business.

Please also refer to our observations about bespoke types of DMF under Q.86 and how the capital from them may or may not be getting used.

Q.51: If introduced, should the proposal apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Why/why not?

We repeat the feedback provided in Q.44 and Q.47.

For all ORA arrangements where the resident has no proprietary interest in their unit the resident capital should have no further financial exposure being reduced by an ongoing DMF calculation or other term having such an effect.

The current practice of accruing fixed deductions after a resident no longer lives in the village is an unfair term and should be declared null and void in existing contracts.

The framework review must deliver a total reset of the scope and modelling of ORAs to deliver fairness for consumers who have provided effective interest-free capital and funds towards operating expenses of the operator often for years. So if a resident is no longer living in the village, their fixed deduction should not continue to accrue.

84% of respondents said yes while 3% said no.

TREATMENT OF CAPITAL GAINS/LOSSES

Retirement village operators are under no obligation to share capital gains (or losses) from re-licensing a unit with the outgoing resident when their capital sum is repaid. While some villages share capital gains with outgoing residents, most do not.

Issue with capital gains/losses:

Under the terms of their ORA, an outgoing resident may be liable for any capital loss from relicensing the resident's unit, even if the resident is not eligible to share any potential capital gains. This is one-sided and unfair.

To read more about this topic, please refer to page 83 of the discussion paper.

Q.52: Do you agree with either or both of the following? You can tick more than one box.

☑ The proposal to require that operators can only make a resident liable for a capital loss on resale of their unit to the same extent as they would be entitled to any share of the capital gains.

☑ The proposal that operators that share capital gains with residents would not be required to make residents liable for capital losses to the same extent? (See paragraphs 257-258 of the discussion paper).

Please give us your reasons, including any additional suggestions for how the issue in this section can be addressed.

We agree with the Ministry's discussion document paragraph 255 *"We consider placing the risk of capital loss on residents whilst only operators stand to benefit from capital gains is one-sided and unfair."*

We also agree with paragraph 259 which says *"This proposal would provide better consumer protections and a better balance between the rights and responsibilities of operators and residents. The proposal would prevent operators from obtaining all the benefit of capital gains whilst placing all the risk of capital losses on residents."*

Q.53: If implemented, should the proposal apply to existing ORAs?

☑ Yes ☐ No ☐ Not sure

Please give us your reasons.

We repeat the feedback provided in Q.s 44,47 and 49 on the need to reset the framework by applying change to existing contracts.

A term is unfair if it makes an outgoing resident liable (in part or full) for any capital loss upon relicensing the resident's unit, especially if the resident is not eligible to share any potential capital gains.

65% of respondents said yes while 6% said no.

Q.54: If there are any other issues with capital gains or losses from the relicensing of a unit in a retirement village that should be addressed in the review, please tell us about them.

See respondents individual comments.

Margaret (aged 89)

FUTURE-PROOFING THE DEFINITION OF RETIREMENT VILLAGE

The definition of a retirement village is in section 6 of the Retirement Villages Act 2003. The key elements are:

- a property, building or other premises containing two or more residential units providing accommodation, services and/or facilities for people in their retirement
- a resident's right of occupation may be provided by way of freehold or leasehold title, cross lease title, unit title, lease, licence to occupy, or residential tenancy
- residents pay a capital sum for their right to occupy a residential unit.

We want to ensure that future cohorts of older New Zealanders can access a range of housing that meet their needs. Increasingly, people will still have mortgages on their homes or be renting when they reach retirement age and may not be able to afford a capital sum to buy into a retirement village.

There can sometimes be confusion as to whether other establishments, or parts of them, meet the definition of a retirement village. Unit title lifestyle villages, for example, target retirees with similar marketing to registered retirement villages.

To read more about this topic, please refer to page 86 of the discussion paper.

Q.55: Is the definition of retirement village easy to understand? (See Appendix 6 of the discussion paper)

☐ Yes ☑ No ☐ Not sure

Why/why not?

A multi-paged definition is usually not a user-friendly definition. It suggests a number of terms or concepts included within the definition of the substantive term, and which may be easier understood by being separated.

There needs to be a plain english definition of retirement village that reflects the fundamental proposition of the framework is provision of a housing product, via contractual arrangements for predominantly independent living people, and thereby not a health product.

The retirement village definition, or a separate definition, must clearly distinguish that any care component on the village site or adjacent to it, offered whether by ORA or not, is a care business subject to a separate legislative framework and is separate from the retirement village business.

The relevant health and care related statutes must be referenced in making those distinctions. Several relevant words also need explicit definition to incentivise common industry language, such as 'care'.

There needs to be a stronger recognition of the fact that independent residential living is a very different type of residing and a very different type of business from residential care-assisted living.

The RV framework terminology also has a broader impact for local government planning policy settings and housing development. There are many examples of retirement village operators applying the current retirement village definition to influence local government plans in order to support development proposals by alleging them to be 'residential' in nature in local planning contexts.

However we do not believe that a care facility operation is primarily a residential housing proposition but is a health and care proposition.

We suggest it is disingenuous for operators and developers to lobby Councils to assess retirement village proposals that are more than 50% care-based developments as being residential housing developments. That conflates two distinct businesses and industries.

The RVA actively lobbies Councils to seek greater development freedom leveraging the broad definition of retirement village. Operators would have far more challenges in local planning if they had to apply to develop a hospital in a residential area. Which is why they exploit the definition of retirement village and lobby for it to be interpreted broadly in planning policy.

There are very different, and more than minor, effects for existing residential neighbourhoods created when a care facility or hospital is built in the neighbourhood under the guise of it being a retirement village.

A stronger, plain english definition of retirement village distinguishing it from a care business could bring greater benefits to consumers and local government planning.

Q.56: Are any aspects of the definition unnecessary or redundant?

☐ Yes ☑ No ☐ Not sure

If yes, please tell us which ones.

Q.57: Does the definition enable operators to respond to changing demographics and housing needs?

☐ Yes ☑ No ☐ Not sure

Why/why not?

The requirement that residents pay a capital sum for their right to occupy a residential unit prevents innovation with models that would enable residents who cannot afford a capital sum to buy into a retirement village.

Continuing to require capital payment for consideration incentivises operators to sustain unfair licensing arrangements and excludes growing numbers of ageing New Zealanders from being able to choose retirement village options.

Other models are needed that, for example, provide for residential tenancy agreements, rights to occupation conferred by ownership of shares, and other ways to encourage possible purchases of a unit.

INSURANCE COVER FOR RETIREMENT VILLAGE OPERATORS

Retirement village operators are required to take out comprehensive insurance policies to cover loss, damage or destruction caused by fire, accident or natural disaster. Policies must provide 'full replacement cover' unless this type of policy is not available.

Issues with insurance cover requirements:

- It is no longer possible for many operators to obtain full replacement cover policies.
- When an entire village is destroyed and the operator terminates all ORAs, most insurers will pay out the indemnity value of the village which will typically be less than the amount required to pay out all the residents' capital sums (with no fixed deductions charged to residents). In some cases, there can be a substantial shortfall that the operator is required to cover under Code of Practice obligations.
- Provided that residents are informed, there are no restrictions in the Code of Practice on operators passing on insurance excesses to residents. Where retirement village property has been damaged and residents are not at fault, passing on the insurance excess is likely to be unfair.

To read more about this topic, please refer to page 88 of the discussion paper.

Q.58: Do you agree with any or all of the following? You can tick more than one box.

☑ The proposal to require that operators maintain insurance policies that, at all times, are sufficient (alongside other funds) to pay out all residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated.

94% agreed

☑ The proposal to restrict operators from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property; and if the resident was not at fault for the loss, damage or destruction.

74% agreed

☐ Neither of these (See paragraphs 280-285 of the discussion paper).

Please give us your reasons, including any additional suggestions for how issues with insurance cover can be addressed.

The requirement that operators "pay out all residents' capital sums" rather than paying out the current market value of the unit would leave most affected residents with insufficient funds to purchase another home.

For example, a resident who paid $400,000 when they moved in during May 2010, would not be able to have many relocation choices if being paid out that sum due to a no fault insurance claim today .

94% of respondents said yes to this proposal while 1% said no.

To protect residents, we submit there needs to be a requirement in legislation that residents who are permanently displaced by a no fault destruction event should receive the greater of either

(1) the fair market value for their home that applied immediately prior to a destructive event; or (2) an amount equal to their licence payment, if the unit cannot be repaired or replaced and the operator cannot provide a similar home in the village.

Some possible solutions how Operators could achieve this might be:

1. Operators collectively implement a national full replacement insurance policy covering all villages in New Zealand to cover the destruction of any village scheduled in the policy in the event of a natural disaster such as fire, earthquake or flood. This will take account of the rate of the inflation and house values in their area so that their residents will be able to move to another village of their choice without financial loss; OR
2. Operators pay a levy to a central fund, administered under the control of the appropriate government agency, to help make up the difference between the full replacement value the residents receive from the retirement village where they reside, based on their individual contribution when they came into the village, and the amount paid out following an earthquake, fire, or flood or other natural disaster, compared to the increased cost of a unit in another village in the same or similar locality at the time of the disaster.

The amount of the contribution from each owner of a village to the fund could be calculated by an independent actuary and have regard to the exceptional circumstances and infrequency of a natural disaster in the locality of each village.

When the fund has reached the amount to cover the difference between the two figures, it shall be suspended and only resume when the actuary advises that it needs to be topped up. The actuary shall advise what amount shall be charged to each village owner.

The size and profitability of the village owners shall be taken into account in determining the level of the levy.

Q.59: Do you foresee any issues with the proposal to remove the requirement that operators should have "full replacement cover" and instead allow them to obtain sum-insured and collective type insurance policies?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Some operators have a policy that a resident will be paid the fair market value for their home that applied immediately prior to a destructive event if their home cannot be repaired or replaced. This gives a fairer result for a resident. These operators have up till recently been able to take out full replacement insurance which because of the number of villages involved, spread the risk.

Full replacement insurance would be more expensive for operators with one or just a few villages, resulting in their residents being at risk if their homes were destroyed and they received only their capital sum. However, it is reported that it is no longer possible for many operators to obtain full replacement cover policies. So operators would need both insurance policies and other funds to pay out affected residents.

Q.60: Is a 12-month transition period sufficient for operators to update insurance policies or obtain new ones to meet the proposed sufficient coverage requirement?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Yes. We refer to our feedback in Q.58. We think it is more than likely the collective bargaining power of operators working with the insurance industry would lead to a significant corporatised package bespoke for the retirement village industry within 12 months.

Q.61: Are there any other scenarios in which operators' ability to pass on insurance excess amounts to residents should be restricted?

☑ Yes ☐ No ☐ Not sure

If yes, please tell us about them.

The decision to take an excess on the village is the operator's decision alone.

It is unfair for operators to impose any insurance excess as an operating cost for residents to pay through weekly fees.

The sorts of damage or destruction situations justifying a claim are unlikely to be caused by a resident. The statement "if the resident was not at fault for the loss, damage or destruction" could be further refined to include situations that arise due to a resident's infirmity, frailty, physical or mental disability such as dementia.

SECURITY FOR RESIDENTS' CAPITAL SUMS

Retirement village operators must appoint a statutory supervisor, unless the Registrar of Retirement Villages grants an exemption. Statutory supervisors represent the collective financial interests of retirement village residents and monitor the financial position of the village.

Statutory supervisors can negotiate with a retirement village operator to hold a security agreement; a land security through a mortgage or encumbrance, and/or personal property security through a general security agreement (GSA).

Security arrangements set the priority order in which creditors (including residents) receive amounts due to them. Personal property security also gives the statutory supervisor the ability to appoint a receiver quickly, if required.

Issues with security of residents' capital sums:

- Not all statutory supervisors can negotiate to hold personal property security through a GSA (but can negotiate to hold land security through a mortgage or encumbrance). This leaves a security gap which could result in residents not being refunded their full capital sum if a village gets into financial difficulty.
- Statutory supervisors must request information from auditors of retirement villages. In some other sectors, auditors must report concerns about finances to the relevant supervisors.

To read more about this topic, please refer to page 92 of the discussion paper.

Q.62: Do you agree that statutory supervisors should have the ability to hold both land and personal property security on behalf of residents? (See paragraphs 299-301 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Why/why not?

We agree that a key role of the statutory supervisor is to protect the collective financial interests of residents.

We refer the Ministry to the CFFC monitoring report (2017-2018) which noted feedback from supervisors aspiring to have greater security-taking options.

45% of respondents said yes to this proposal while 16% said no and 31% were unsure.

Q.63: Would legislating that statutory supervisors have to hold both types of security affect banking arrangements?

☐ Yes ☑ No ☐ Not sure

If yes, how?

We understand many statutory supervisors already ensure they have a first ranking security charge over operator titles to land anyway.

On that basis there appears to be no reservation from the banking industry to enable supervisors to have greater ranking security than what the bank itself could take so we would not expect banking resistance to greater use of GSAs.

Q.64: If the legislation was to empower a statutory supervisor to hold a GSA, should this be first ranking or is it sufficient for this to rank second in priority behind the bank lender? Please give us your reasons.

The primary interest to be protected at all times must be the capital supplied by a resident. This should be the first ranking above bank lenders.

Q.65: What impact would requiring auditors of retirement villages to report to statutory supervisors if there was concern about solvency have on the security of residents' capital sums?

The impact would be positive: to assist operators, assist the supervisor to review the operator's practices and therefore help guard against any developing or future solvency impacts.

There should be a requirement that auditors of retirement villages report to the Registrar directly as well as statutory supervisors if there was concern about solvency. This aligns with the role of the statutory supervisor to protect the collective financial interests of residents.

Helen (aged 92)

CULTURALLY RESPONSIVE SERVICES AND MODELS OF CARE

Our vision is that everyone lives in a home and a community that meets their needs and aspirations. Connection to culture and affirmation of identity are hugely important for health and wellbeing. To date, retirement villages have mostly been home to older New Zealand European/Pākehā. Our population is changing and over time more of our older people will identify with ethnic groups other than Pākehā.

To read more about this topic, please refer to page 94 of the discussion paper.

Q.66: Does your retirement village provide a culturally responsive environment and/or services?

☐ Yes ☐ No ☐ Not sure See respondents individual answers

Please tell us how.

48% of respondents said yes to this proposal while 12% said no.

Q.67: Are there any changes you would like to see in how retirement villages provide a culturally responsive environment and/or services?

☐ Yes ☐ No ☐ Not sure See respondents individual answers

If yes, please tell us how.

44% of respondents said no, 40% were unsure and 7% said yes.

Q.68: Are there any areas we should be aware of in the review that may impact Māori or other cultural groups differently? If yes, please tell us about them.

The current concept of a retirement village holds less appeal for Maori, Pasifika, and others including many Pākehā, who place greater emphasis on intergenerational living. As well, increasingly retirement villages are pricing their accommodation and services beyond what the average New Zealander would be able or willing to pay. Other options, such as multi-generational and co-housing opportunities, co-operatives, shared equity co-ownership, deed-restricted housing, and papakāinga may represent better solutions.

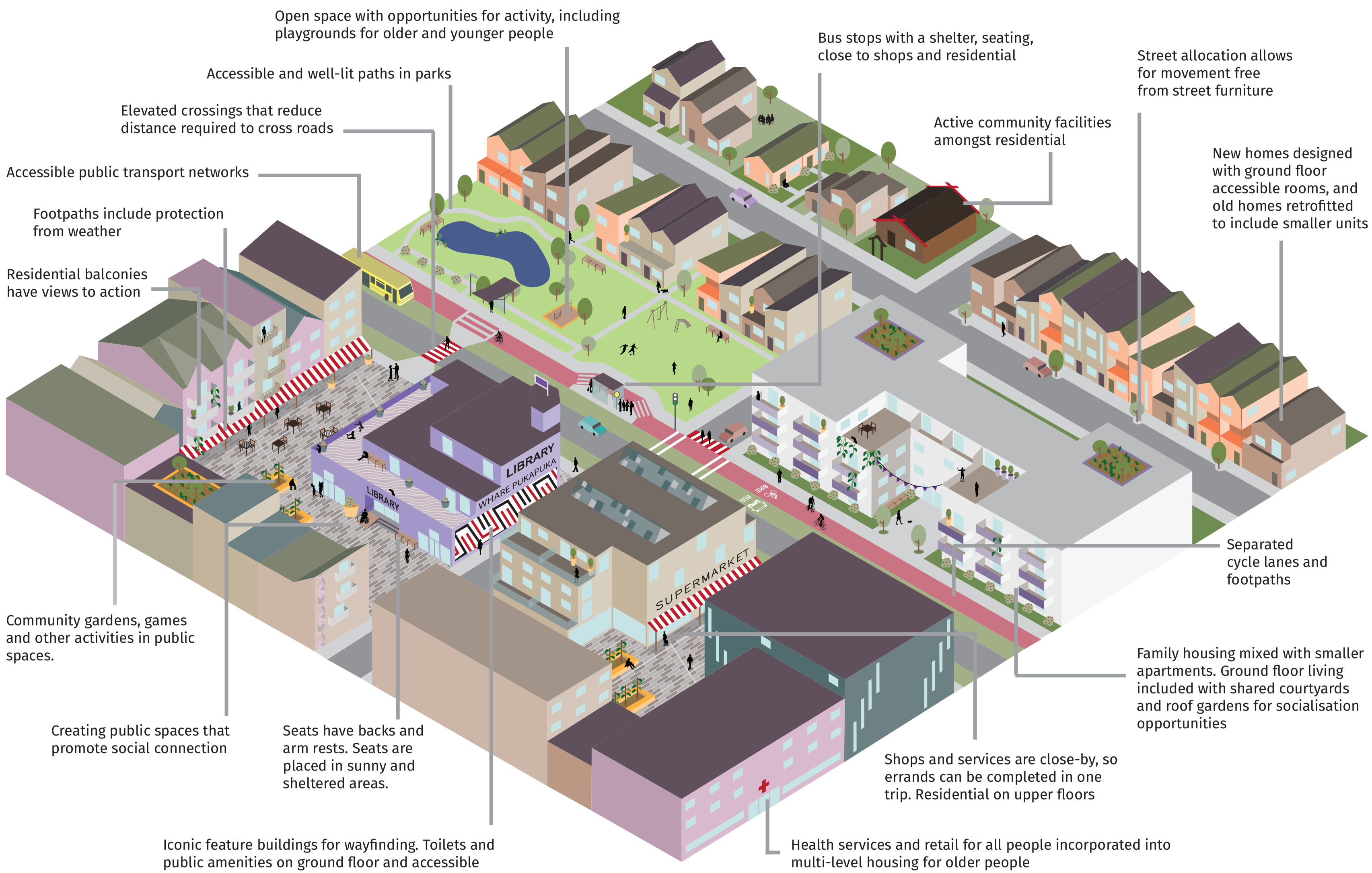
We draw attention to an exciting concept from Page 25, *"Te hua o tō tātou taupori kaumātuatanga ki ngā anamata whanake whare, tāone anō hoki The long-term implications of our ageing population for our housing and urban futures"*, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, March 2023:

Ngā tū wāhi tāone pai mō te hunga kaumātua

Creating Age friendly urban places

Age friendly
Aotearoa New Zealand

Te Tari Kaumātua
Office for Seniors



ROLES OF GOVERNMENT AGENCIES IN THE RETIREMENT VILLAGES SYSTEM

Multiple government agencies have roles and responsibilities in the retirement villages system.

Stakeholders have noted that the system is complex, with many agencies involved but none taking an overall leadership role. There is no government agency responsible for auditing retirement villages' compliance with the legislation (though the Retirement Villages Association and statutory supervisors undertake monitoring and compliance roles).

To read more about this topic, please refer to page 96 of the discussion paper.

Q.69: Do you think government agencies have sufficient powers to carry out their functions within the retirement villages system?

☐ Yes ☑ No ☐ Not sure

Why/why not?

The current legislative environment does not make provision for any government agency to audit retirement village compliance with the Code or other retirement villages legislation, other than the Registrar's s97 powers to inspect relevant documents.

While it is appreciated that one operator association group, the RVA, contracts a third party to carry out 2 or 3 yearly audits of its member villages, this is an inadequate audit assurance for the entire industry and for the consumer interest.

The outcomes of RVA member audits are rarely discoverable, and the results may be interpreted to create favourable impressions of the village or the overall industry. Only a government funded and provided auditing service should be used.

34% of respondents said no, while 43% were unsure.

Q.70: Do you think a government agency should be tasked with monitoring and auditing retirement villages' compliance with the legislative framework?

☑ Yes ☐ No ☐ Not sure

Why/why not?

An example exists in the Residential Tenancies Act 1986 administered by the Ministry of Housing and Urban Development. The Tenancy Compliance and Investigations Team (TCIT) in the Ministry of Business Innovation and Employment (MBIE) has a role to investigate tenancy agreements. The team can take a case to the Tenancy Tribunal for failure to comply with an improvement notice issued by the Chief Executive of MBIE for a breach, or likely breach, of the Residential Tenancies Act 1986 (see section 126H).

An improvement notice is an effective tool to ensure all parties are aware of what needs to be improved and the timeframes for improvement. TCIT works with landlords to ensure these improvements are completed in a timely manner. TCIT also has the power to take action where an improvement notice has been ignored. An example can be found here.[13]

A Retirement Village Compliance and Investigations Team could be established in MBIE, maybe as part of, or linked to, the Registrar of Retirement Villages. The team would be empowered and resourced to carry out audits to bring national consistency and independence.

We repeat the feedback in Q.69 above. To date residents in RVA member villages have not been allowed to view the results of their village's audit.

77% of respondents said yes, while 6% said no and 12% were unsure.

[13] https://www.tenancy.govt.nz/about-tenancy-services/news/property-manager-to-pay-damages-after-failing-to-comply-with-improvement-notice/

Q.71: System roles are currently spread across a range of government agencies, and stakeholders have observed that there is no clear system leader. Do you think one agency should have an overall leadership role?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Yes. We refer to the significant body of evidence RVResidents has provided on this topic.

Most recently see pages 19-20 in RVResidents 'Framework For Fairness Update', June 2023.[14]

78% of respondents said yes to this proposal while 6% said no.

THE OPERATION OF THE RETIREMENT VILLAGES REGISTER

The Retirement Villages Register is a registry of all retirement villages in New Zealand. The Registrar of Retirement Villages (located within the Ministry of Business, Innovation and Employment) is responsible for the registration of villages and maintenance of the Register.

The review provides an opportunity to amend the provisions in the Act which provide for the establishment, maintenance, and operation of the Register, so they more closely reflect the way the Register is maintained and operated in practice, by:

- requiring operators to provide additional information and documents that the Registrar is already requesting in practice
- including a power for the Registrar to correct minor or technical errors on the Register
- providing the Registrar with a power to specify the manner in which documents are to be filed or lodged
- providing a power to regulate the purposes for which the Register can be searched and the manner in which it can be searched.

To read more about this topic, please refer to page 98 of the discussion paper.

Q. 72: What additional information and documents should be required under the Act to be available to the Registrar? (See paragraphs 324-327 of the discussion paper)

The name, physical address, registered office, address for communication, registration number and registration status (i.e., registered, suspended or cancelled) of the village.

Any previous names used by the village.

The name, address and date of appointment of the operator.

The name, address and date of appointment of the statutory supervisor.

Notice of exemption from the requirement to appoint a statutory supervisor and notices of variation to the terms and conditions of these exemptions (where applicable).

Any content which is prescribed by regulations.

The New Zealand Business Number for the operator, and contact phone numbers and email addresses for the operator and the village.

A section for all 'related companies' as defined under the Companies Act, to be listed - and a requirement to state whether any related company owns the care component of the business distinct from the independent living component.

[14] https://www.rvranz.org.nz/wp-content/uploads/2023/08/RVR-FFF-Update-JUNE23-Digital.pdf

Q.73: Do you agree that the Registrar should have the power to correct minor or technical errors in the Register? (See paragraphs 328-329 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Why/why not?

The Registrar should also have the power to require all details are disclosed and ensure that no details are redacted from documents filed for registration.

Q.74: Do you agree that the Act should be amended to provide the Registrar with a power to specify the manner in which documents are to be filed or lodged? (See paragraphs 330-332 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Why/why not?

Yes, for the reason outlined in paragraph 332 of the Ministry's discussion document, and we repeat our feedback for Q.73.

Q.75: Do you agree that the Act should be amended to provide the power to regulate the purposes for which the Register can be searched and the manner in which it can be searched? (See paragraphs 333-336 of the discussion paper)

☑ Yes ☐ No ☐ Not sure

Why/why not?

Yes, for individuals privacy, but there should be no need for any limitation as to how the Register can be searched. It is important residents and prospective residents and their families can search for and view whole Disclosure Statements and Occupation Right Agreements for the villages in which they may have an interest.

Generally, the registry website search functioning is poor and needs to be made more user-friendly.

Q.76: If there are other improvements that could be made to the Register, please tell us them.

The Registrar should have the power to require all details about the village be disclosed and no details about the village be redacted from documents filed for registration. eg. Times for relicencing are invariably redacted.

Operators should be required to list any 'related companies' as defined under the Companies Act, and a requirement to state whether any related company owns the care component of the business distinct from the independent living component.

CODE OF PRACTICE

The Code of Practice builds on the provisions in the Retirement Villages Act 2003 and regulations by setting out further rights and obligations of retirement village operators and residents.

Issues with the Code of Practice:

- There is no requirement for the Code of Practice to be reviewed on a regular basis.
- The Code of Practice is not written in plain language and can be difficult to understand.
- The Code of Practice sets out procedures for annual and special general meetings, which all residents are expected to attend. We have heard that some residents may struggle to attend or understand these meetings, and others do not want to attend.
- The Code of Practice sets out consultation requirements, but they may not be followed or strong enough in relation to increases to weekly fees.

To read more about this topic, please refer to page 101 of the discussion paper.

Q.77: Do you agree with any or all of the following improvements to address the issues identified with the Code of Practice? You can tick more than one box.

☑ Introducing a regular review of the Code of Practice (for example every five or ten years).

☑ Introducing a plain language Code of Practice.

☐ Providing the Code of Practice (and other registered documents) in alternate formats such as New Zealand Sign Language and Braille.

We refer to our Framework for Fairness Update (June 2023 - section 7 page 22) with further feedback on ways of ensuring compliance with the Code of Practice. We also refer to our summary of concerns with the Code in the **Appendix marked c)**.

A plain english version of the Code was collaboratively worked on by the Retirement Commissioner's office utilising independent consultants, with additional input provided thanks to RVResidents and RVA between 2014-2020. That work should exist in the Retirement Commissioner files and would be easy to integrate with new framework changes.

If someone can see sign language, they can also see text. If someone is blind, an additional option might be an auditory recording of key documents such as the Code. This might appeal to people with low vision or who prefer listening over reading.

☐ None of these.

Please give us your reasons.

Q.78: What changes, if any, should be made to:

- the way the Code of Practice is currently varied?

We refer to the summary of issues summarised in **Appendix c**.

Anecdotally, proactive monitoring and annual research reports undertaken by the Retirement Commissioner's office often resulted in a range of recommendations, some of which could be addressed by Code variation.

However many suggestions for change were opposed by operators who sought industry-led best practice arrangements instead, where industry-led meant operator-led.

We support regular proactive monitoring by an independent agency as a means of gathering information about industry. We suggest one way to bypass disparate industry interests and stakeholder differences about issues is for a formal Code variation review process to be prescribed every 3 years.

Paragraph 350 of the Ministry's discussion document says: *"The Code of Practice sets out the procedures for annual and special general meetings. All residents are expected to attend annual or special general meetings. Through stakeholder discussions, concerns have been raised about residents not wanting to attend and/or vote at these meetings or where they may feel their views are not represented. There have also been issues raised about residents in aged residential care who struggle to attend or understand these meetings. We are interested in feedback on the procedures and requirements for annual and special general meetings, and what amendments may be required."*

- the requirements for annual and special general meetings in the Code of Practice?

RVResidents partnered with the Retirement Commissioner to produce a Handbook for Resident committee meetings.

The best practices contained in that handbook could be consolidated into the Code of Practice.

Q.79: Are there any other issues with the current Code of Practice? If yes, please tell us about them.

RVResidents has previously furnished the Ministry and the Retirement Commissioner with detailed concerns about the Code of Practice (CoP). Please refer to **Appendix c** summary of concerns.

The Code of Practice purports to give effect to the resident-protecting purpose of the Act. In CoP Clause 4(2) it is clear that the purpose of the CoP is to set out only the minimum requirements operators must comply with to meet their legal obligations under the Act.

Those minimum requirements do not in some circumstances provide adequate protections for residents (especially when they need to exit a village). The CoP is therefore not fulfilling the purpose for which it was created or the purpose of the Act under which it was issued.

Q.80: If your weekly fees have increased during occupancy, please tell us about the experience, including whether residents were consulted.

Q.81: Should consultation requirements for weekly fees in the Code of Practice be changed or strengthened?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Please refer to Code of Practice concerns summarised in **Appendix c**.

Consultation practices vary considerably.

A government-approved prescriptive standard for what good consumer consultation is should be imposed in the Code.

CODE OF RESIDENTS' RIGHTS

The Code of Residents' Rights summarises minimum rights granted to a resident by the Act.

Issues with the Code of Residents' Rights:

- The Code of Residents' Rights includes a resident's right not to be exploited, but there is no reference to a right to safety.
- Residents' responsibilities towards one another are poorly defined in the Code of Residents' Rights. For example, there is no obligation on residents not to interfere with the peace, comfort, or privacy of other residents.

To read more about this topic, please refer to page 103 of the discussion paper.

Q.82: Are changes needed to the Code of Residents' Rights, such as clarifying and strengthening residents' rights and obligations to one another?

☑ Yes ☐ No ☐ Not sure

If yes, please tell us how?

We suggest there be stronger references enabling residents to address alleged breaches of the code directly to independent agencies rather than through operator first complaint-handling. The independent agency must also have greater investigative, enforcement and remedial powers.

The concept of exploitation under the Code needs to be defined to make it clear that exploitation can happen in a manner of ways including personal and financial.

Dave (aged 80)

OFFENCES AND PENALTIES

The Act sets out offences and penalties for people breaching or failing to comply with certain provisions. The Act also provides for enforcement mechanisms, such as the power of the Registrar to suspend registration of a retirement village operator for specified offences. If proposals in the discussion paper for the disclosure regime and ORAs are implemented, new offences and enforcement mechanisms would be created.

To read more about this topic, please refer to page 105 of the discussion paper.

Q.83: Are there any issues with the current provisions for offences, penalties, and enforcement tools under the Act?

☑ Yes ☐ No ☐ Not sure

If yes, please give us your reasons, including any changes you would like to see.

The extent of a Dispute Panel's power to award remedies under s69 of the Act limits what a resident might achieve, even when the issues are clearly within the list under s53. For example, the power to award a compensatory remedy is limited to disputes relating to disposal of a unit (s53(3) and s70(1)(b).

The jurisdiction, powers and remedial options for the current dispute panel must be broadened so residents have far greater chances of being compensated through exemplary and penal damages for a wide range of operator indiscretions and breaches not just delays in resale.

69% of respondents were unsure, with 12% saying no and 10% yes.

APPLICATION OF THE REAL ESTATE AGENTS ACT 2008 TO SALE OF A RETIREMENT VILLAGE UNIT

When a resident vacates a unit, the two most common ways of relicensing or selling are either directly (by the resident or the village) or through a real estate agent (engaged by the resident or the village).

If a real estate agent is used, the consumer protection mechanisms in the Real Estate Agents Act 2008 (REA Act) apply directly to the buyer and the seller who has engaged the agent. Where the transfer of a unit is facilitated directly without the use of a real estate agent, the general protections of the retirement villages legislation apply. However, the wider protections under the REA Act, for both the buyer and the outgoing resident, do not.

To read more about this topic, please refer to page 106 of the discussion paper.

Q.84: Should all sales and transfers of retirement village units have the same consumer protections?

☑ Yes ☐ No ☐ Not sure

Why/why not?

88% of respondents said yes to this proposal while 1% said no.

Q.85: Do you think the third party facilitating the sale or transfer of a retirement village unit (whether that is the retirement village operator or an independent third party) should have a general fiduciary duty to act in the best interests of the outgoing resident?

☑ Yes ☐ No ☐ Not sure

Why/why not?

Because a fiduciary duty enables equitable remedies for consumers. What is important is a) that the framework integrates those equitable remedies into the statute so residents, intending residents, and their families have greater rights and improved options to enforce them, and b) that the exiting resident is paid out promptly.

84% of respondents said yes to this proposal while 1% said no.

FINAL COMMENTS

You are welcome to write to us about any retirement village matters that relate to the review but may not be covered in this discussion paper. This can include any personal experiences you might have had that should be considered as part of this review.

Q.86: If you have anything else on the review of the Retirement Villages Act you want to share with us, please let us know.

We draw the Ministry's attention to further issues regarding Deferred Management Fees (DMFs) and Bespoke DMFs.

A definition of Deferred Management Fees does not appear in legislation nor is there clarity around what these fees are used for and their purpose. Examples of what DMFs are reported to cover are included in the Appendix.

Some operators are incentivising intending residents into ORAs, appearing to offer favourable DMF arrangements relative to the intending resident's lack of purchasing power. We believe this may be creating further unfair outcomes for consumers.

For example, Summerset has recently developed a new product called a Bespoke Deferred Management Fee which includes components that are similar to that of an interest-bearing loan and should therefore fall under the Credit Contracts and Consumer Finance Act 2003. In its latest Disclosure Statement Summerset states:

"The standard Deferred Management Fee is 25% of the Licence Payment and is accrued over four years for an Independent Living Unit and two years for a Serviced Apartment. The Deferred Management Fee amount may differ if we have agreed a bespoke Deferred Management Fee with you, in which case the amount will be set out in your sales application and Occupation Right Agreement."

In one example from a Summerset village, the operator shows how a 25% DMF of $125,000 on a $500,000 Licence to Occupy (LTO) would result in a Repayment Sum after four years of $375,000.

However, should the residents be $50,000 short, they would pay what they could, (eg $450,000) and with the operator applying a bespoke DMF of 35% ($157,500) the Repayment Sum after four years would be $292,500.

So for being short of $50,000 at the beginning, the residents would not only have that $50,000 taken out of their Repayment Sum but would also have a further $32,500 taken out because of the 35% bespoke DMF.

Summerset

Estimated Return Schedule (ERS)

The estimated repayment sum that a resident, former resident, or the estate of a former resident, could expect to receive on the sale or disposal of the licence for the dwelling.

Resident name:	[redacted]
Village:	[redacted]
Dwelling:	[redacted]
Licence Payment	$715,000
Price Paid	$665,000
Discount Arrangement DMF (as a % of Price Paid)	34.00%
DMF Accrual Period (years)	4
Initial DMF on Commencement (based on Price Paid)	6.80%

		Discount Arrangement		Standard Arrangement	
From commencement date	Price Paid	Estimated DMF under Discount Arrangement	Est. repayment sum under Discount Arrangement	Est. standard DMF (25% of Licence Payment)	Est/ repayment sum under Standard Arrangement
0 years	665,000.00	45,220.00	619,780.00	35,750.00	679,250.00
1 year	665,000.00	90,440.00	574,560.00	71,500.00	643,500.00
2 years	665,000.00	135,660.00	529,340.00	107,250.00	607,750.00
4 years	665,000.00	226,100.00	438,900.00	178,750.00	536,250.00
5 years	665,000.00	226,100.00	438,900.00	178,750.00	536,250.00
10 years	665,000.00	226,100.00	438,900.00	178,750.00	536,250.00

The estimated financial return is not directly affected by a termination of the Occupation Right Agreement arising out of a breach of the agreement by the resident or a decision of the resident to terminate the agreement voluntarily

In this example the residents were short $50,000 because of having to reduce the sale price of their own home. Rather than reducing the price of retirement village units (to match the downturn in the housing market) the operator instead offered a 'bespoke DMF' of 34%.

	With a 25% DMF	*With a 34% DMF*
Price of LTO	*$715,000*	*$665,000*
DMF fully accrued	*$178,750*	*$226,100*
Repayment Sum	*$536,250*	*$438,900*

For these residents after four years, the Repayment Sum will be $97,350 LESS than it would have been if the residents had paid the full LTO price with a 25% DMF.

If from this $97,350 the original $50,000 is deducted, the remaining $47,350 is a gain for Summerset. By 'deferring' the $50,000 shortfall Summerset gains a bonus of $47,350.

The residents were very distressed as they had assumed it would only be the shortfall of $50,000 that would be deducted, not the extra $47,350.

This raises a very serious question: what is the nature of this transaction and the 'gain' made by the operator, especially as the operator says it does not provide loans.

We refer the Ministry to the Commission for Financial Capability monitoring report (2020) on Financial Assistance provided by operators.

The report raised a number of issues relevant to this example . These include:

- The use of the word 'deferral' by operators to describe financial assistance rather than the use of the word 'loan' or 'financial assistance'.
- The potential need for more access to, and promotion of independent financial advice for residents – once again there is no consistent documentation provided by operators offering financial assistance regarding the steps residents should be taking before making a final decision (irrespective of the immediate financial need that some residents face).
- … The most common types of loans are for loans on entry (bridging finance – more likely to be interest bearing) … Page 10 reported that RVA found 53.57% of operators provided financial assistance with ORA advance/ capital sum shortfalls. Page 11 reported bridging loans are short-term (eg up to 5-6 months) until the incoming resident has sold their home.
- Lump sum loans on entry, where there is a shortfall in the capital sum required are relatively rare at present, although operators and the RVA report that this is likely to be an increasing need in the future with lower levels of home ownership and equity among older people. These are less likely to be interest bearing and are also most often referred to by operators as 'deferrals', or discounts on entry, with the balance deferred until settlement.
- However on page 20, the finding from the PWC RVA survey reported that "loans are most commonly used to assist with the capital sum/ORA advance, are typically interest-free and repayable when the ORA sum is repaid by the operator via an offset. The largest operators also provide loans as bridging finance to help residents move into villages."

We believe the 'gain' made on a bespoke DMF is solely related to the operator 'lending' the LTO $ shortfall PLUS making a handsome profit as a result.

It would be a true deferral if ONLY the $ shortfall was taken off the Repayment Sum. By making a substantial gain, the arrangement falls under the Credit Contracts and Consumer Finance Act 2003 and the Financial Service Providers Act.

If operators wish to avoid the complications these Acts cause, they would need to ensure bespoke DMFs were non-interest bearing, did not include any gains, and were purely a way of deducting the $ shortfall from the Repayment Sum.

By using bespoke DMFs as they are currently, we believe they are providing credit to residents without meeting their obligations under the Credit Contracts and Consumer Finance Act 2003.

Given the situation above, we suggest a provision is required in legislation that decrees capital received or foregone as part of the entry price must not attract interest or gain for the operator.

Operator-supervisor relationship

Another matter is resident concerns about the operator-supervisor relationship. Useful recommendations were made in the Retirement Commissioner's monitoring report into supervision (2017-18).

Statutory supervisors seem to have a close relationship with the operators who select them. Sometimes, as a way to curtail residents from seeking engagement with the supervisor of their village, residents are told their weekly fees help pay for the supervisors' time.

Overall we also think the requirement for statutory supervision should be mandatory without exemption. We think that would reflect the supervision provided across other industries where consumers provide large sums of capital, such as financial services. This would assist operators receive impartial direction sooner to help mitigate any solvency or security risks.

Q. 87: Please attach any additional supporting material.

Please see our Appendix material over page.

Jenny (aged 80+)

APPENDIX

The Appendix includes:

a. DMF descriptions
b. A Village's Care Facility disclosure example
c. Code of Practice concerns summary
d. Report: Demonstrating the fairness of mandatory 28-day buy-backs - Janine Starks
e. Statement - Shamubeel Eaqub
f. RVResidents revised MHUD questionnaire - Data Summary of 10,577 responses to the MHUD discussion document

We also note the statements of support for our feedback received by Consumer NZ and Community Law Centre, and the comprehensive evidence contained within our Framework for Fairness Update.

a) Examples of different DMF descriptions:

- It is to cover the cost of the management and refurbishment of the village (roading, footpaths, lighting, communal amenities etc.). What this fee covers will vary from village to village.[2]
- The deferred management fee gives you the right to occupy your unit and enjoy the village amenities.[3]
- The deferred management fee is your contribution to the refurbishment and management of the retirement village.[4]
- A good way to think of the deferred management fee is that it covers the long-term costs of residing at the village, such as maintenance of facilities and communal areas, and the re-licensing and refurbishment of your property after the licence ends.[5]
- ... this sum is used towards shared facilities or other village needs.[6]
- … is your contribution to the overall running of the village including management, your villa/unit and the amenities that are provided by the village.[7]
- … a payment made by you as a contribution to the operator's general costs incurred in the supply of accommodation, common amenities and conveniences and related services at the Village over the life of the Occupation Agreement …[9]
- … is payable to us in consideration for the supply of services relating to or for the management of the Village. …. as a contribution to our general costs incurred in the supply of accommodation, common amenities and conveniences and related services at the Village over the life of this Licence…[10]
- … a fee payable to us for providing you with a lifetime right to occupy your Home and use the Village facilities.[11]
- ... payment to us for providing your Home to you for life together with the right to use the Village facilities.[12]

[2] https://www.eldernet.co.nz/knowledge-lab/retirement-villages/overview-of-retirement-villages/what-is-the-deferred-management-fee-dmf
[3] https://www.rymanhealthcare.co.nz/what-we-offer/useful-articles/deferred-management-fee
[4] https://www.rymanhealthcare.co.nz/ryman-news/what-is-a-deferred-management-fee
[5] https://www.villageguide.co.nz/resource-centre/the-costs-of-living-in-a-retirement-village
[6] https://financialadvice.nz/wp-content/uploads/2022/05/Retirement-village-life-guide-for-financial-advisers.pdf
[7] https://www.pierlaw.co.nz/an-overview-of-occupation-right-agreements/
[8] https://www.scannelllaw.co.nz/5_2022_Dec_Feb.htm
[9] Summerset at Aotea Disclosure Statement, page 16, dated 12 June 2009
[10] Summerset at Aotea Occupation Right Agreement, Clause 21.6, dated 19 May 2010
[11] Summerset at Aotea Disclosure Statement, dated 29.06.2022
[12] Summerset at Aotea Occupation Right Agreement, Defined Terms, July 2022

b) A Village's Care Facility Disclosure

The following extracts from consecutive disclosure statements demonstrate sustained non-fulfilment of a care facility that intending residents and residents received representations from the operator about:

[redacted] care facility (or care centre) mentioned in all Disclosure Statements

2014 August 7

2(a) has a resource consent to construct ... a care facility containing 58 apartments

total of 226 Units). The Village Owner intends to develop the Village in five stages over five years, subject to sufficient units being pre-sold and the Village Owner obtaining building consent and bank financing suitable to it.

- Stage 3 is scheduled to commence in April 2016 and be completed by March 2017. This is expected to consist of 14 further villas, 14 further terrace houses and 8 further apartments (which will all be residential Units) together with a care facility with serviced apartments (which will also be residential Units).

The Village Owner retains absolute discretion to determine whether and how it will proceed with the staged development. A plan of the Village on completion of all five stages of development is attached to the Occupation Right Agreement. This plan may change.

(The above paragraph was repeated in each Disclosure Statement.)

2015 March 16, September 7, and November 27

- Stage 3A is scheduled to commence in August 2016 and be completed by February 2018. This is expected to consist of a care facility with serviced apartments (which will all be residential Units).

2016 October 12

- Stage 3A is scheduled to commence in October 2017 and be completed by April 2019. This is expected to consist of a care facility with serviced apartments (which will all be residential Units).

2016 December 20

- Stage 3A is scheduled to commence in October 2018 and be completed by April 2020. This is expected to consist of a care facility with serviced apartments (which will all be residential Units).

<u>2017 September 18, 2018 February 16, and 2018 September 28</u>

- **Stage 3A is scheduled to commence in January 2019 and be completed by July 2020. This is expected to consist of a care facility with serviced apartments (which will all be residential Units).**

<u>2019 May 17, 2020 May 15, and 2021 July 20</u>

- Stage 3A is on hold pending the application and acceptance of a resource consent application to the Tasman District Council. As part of this application the care facility design commenced in January 2019. Depending on the outcome of the resource consent application, construction is expected to commence by early 2021. Stage 3A is expected to consist of a care facility with serviced apartments (which will all be residential Units).

<u>2021 August 26 and November 12</u>

Stage 3A is on hold pending the application and acceptance of a resource consent application to the Tasman District Council. As part of this application the care facility design commenced in January 2019. Depending on the outcome of the resource consent application, construction is expected to commence by late 2022. Stage 3A is expected to consist of a care facility with serviced apartments (which will all be residential Units).

<u>2023 August 18</u>

Stage 3A has been renamed stage 8. The care centre design commenced in January 2019 and is ongoing. Construction is expected to start mid 2024 and will be constructed in three stages over a three year period. Stage 8 is expected to consist of a care centre with serviced apartments (which will all be residential Units).

c) Q.79 - Summary of concerns with the Code of Practice

Section 28 - Residents participation in decision-making
28(1) assumes a generic right to be consulted as in the *Code of Residents' Rights, Right 3.* We would expect residents would be consulted about <u>anything that will change the nature of the village</u>, eg increasing the minimum entry age from 55 to 70. Such an entry age change affects the nature of the village, and there are many anecdotal stories how existing residents who want to leave because of this change, (including a case that was heard by the Disputes panel - Poynton Metlifecare case). So residents who are aggrieved should be able to terminate without incurring any penalty (eg no DMF) and given appropriate compensation.

28(5) reads: *The operator must not decide a matter before consultation has been completed, but is not obliged to agree with every comment or to act on the advice provided. The operator must consider all responses received with an open mind. The outcome cannot have already been decided.*

It would be impossible for residents to ascertain whether the operator complied with this clause in the CoP as it allows for a subjective decision which is not subject to any form of review. It is also a possible contravention of the *Code of Residents' Rights, Right 8 'not to be exploited'.*

Section 35 - Procedure for resolving formal complaints
35(2) reads: The operator will suspend taking any proposed action that is the subject of the complaint until the complaint is resolved. The operator may, after consulting with the statutory supervisor, decide that it is in the best interests of the village as a community to continue with the proposed action while the dispute about the action is being resolved.

The Statutory Supervisor makes recommendations based upon the operator's point of view without due consultation with the aggrieved parties. These recommendations are not subject to any form of review! It is also a possible contravention of the *Code of Residents' Rights, Right 8 'not to be exploited'*.

Sections 40 – 45 - Maintenance and upgrading
The CoP places an obligation on the operator for maintenance and upgrading but does not prevent operators from contractually passing on the costs to residents contrary to the fact that the wording implies that the responsibility for the costs is that of the operator.

Some ORAs contain provisions that residents are responsible for the **cost of all internal maintenance** including fixtures and chattels belonging to the operator. These provisions seem to be contrary to the general meaning of the general obligations of the operator, CoP 40(1) and are inconsistent with the main purpose of the Act, leading to unfair outcomes.

43(4): This clause is in contradiction to clause 43(1) which states: *The operator must ensure that it can afford to maintain the retirement village property.* Any requirement that residents should contribute to funding long-term maintenance should not apply unless clearly quantified and disclosed in a Disclosure Statement filed prior to the signing of an ORA which is not currently the case.

Operators rely on this provision to justify passing the **cost of all internal maintenance** on to residents. Regulation 21(2) of the **Retirement Villages (General) Regulations 2006** may imply that the resident of a residential unit in the village is responsible for maintenance but is silent on the cost aspect. This regulation is contrary to the Act's main intent to protect the interests of residents and intending residents of retirement villages.

Section 47 – Grounds for termination if the unit is damaged or destroyed through no fault
47(5) reads as follows: *If the resident does not accept an option to transfer to another unit, the occupation right agreement will be treated as if it has been terminated by the resident and for the avoidance of doubt the payment provisions in clause 47(2)(e) of this Code of Practice shall not apply.*

This is a harsh provision that does not allow for a resident's reasons for not accepting an offer to transfer or for any appeal of the operator's decision and a possible contravention of the *Code of Residents' Rights, Right 8 'not to be exploited'*. It is also inconsistent with the main purpose of the Act.

Section 49 – Operator's process for exercising the right to terminate the occupation right agreement
49(3)(e): The Statutory Supervisor makes recommendations based upon the operator's point of view without due consultation with the aggrieved parties. These recommendations are not subject to any form of review. This represents a possible contravention of the *Code of Residents' Rights, Right 3 'to be consulted'*. This is also inconsistent with the main purpose of the Act.

Section 54 – Payment due to the resident on termination or end of occupation
54(2) Continuing charges for outgoings. The practice of operators continuing to charge for outgoings without any time limit is contrary to Clause 9(c) of Schedule 5 of the Act read with the Act's main intent to protect the interests of residents and intending residents.

54(6) Payment after sale or disposal of the residential unit by the operator
Operators delaying the repayment of a former resident's capital indefinitely until payment is received from a new resident is contrary to the *Code of Residents' Rights, Right 8 'not to be exploited'* read with the Act's main intent to protect the interests of residents and intending residents. Also, it can be inferred from article 57(3) of the Act that parliament's intention was that repayment should be affected within nine months from termination thus providing a remedy to residents when repayment of capital has been delayed more than nine months.

Both the regulations and clause 52(1) of the CoP confirm the intended maximum period for the re-licencing of a vacant unit hence also the provisions of clause 53 of the CoP.

54(3) reads: The **fixed deduction** must not accrue past the date on which the resident is paid the amount payable to them on termination of the agreement. This provision is contrary to the *Code of Residents' Rights, Right 8 'not to be exploited'* while also defeating the Act's main intent to protect the interests of residents and intending residents.

Sections 55-57 Communicating with residents
There is nothing specific in these sections about ensuring meeting rooms have appropriate acoustics, Bluetooth technology and hearing loops to assist the increasing number of residents who have hearing difficulties.

David & Janet (both aged 77)

d) Report: Cost benefit analysis supporting early repayment - Janine Starks

Demonstrating the fairness of mandatory 28-day buy-backs

Author: **Janine Starks**
Financial commentator; background in funds management, investment banking and personal finance

1 November 2023

Peer reviewed: **Shamubeel Eaqub**
Economist; Positive Capital – Impact Investments – CFA Institute

5 November 2023

Disclaimer: *This report contains models of the returns and cashflows in the New Zealand Retirement Village industry. Averages and proxies have been used to form a broad picture of costs and benefits to operators and residents. Statements and opinions are given in good faith and in the belief on reasonable grounds that these are not misleading. No responsibility is accepted for errors or omissions; however, they arise. All information is from sources deemed reliable, such as material published by the Ministry of Housing and Urban Development and audited company reports, but no representation or warranty is made as to their accuracy. Opinions in this report, are the independent views of the author. They are general in nature to assist provision of feedback to MHUD and are not a recommendation in relation to acquiring or disposing of a financial product.*

Contents

1. Executive summary

- **A 28-day buy-back is the only equitable outcome for residents and their families**. It is unconscionable that operators make an average of $1 million revenue over the 8-year tenure of a resident living in a village (based on a $600,000 purchase price) but are refusing to support legislation to buy-back the unit in a short, mandated time frame.

- **The Martin Jenkins Report has significant errors and is unsuited for policy decision making.** Errors result in 471% overstatement of costs for the 6-month buy-back and 1200% for the 12-month buy-back. As this is an external consultant's report it will require recalculations to get Treasury sign-off, given it is the document supporting a decision.

- **The cost per unit of a 28-day buyback is $13,535 (on a $600,000 unit).** The basis of an early repayment / buy-back decision should compare this cost to the revenue earned by operators ($1,014,000) and the tax-free capital gains taken ($510,000) on the average unit. The cost of the buy-back represents less that 3% of capital gains, leaving operators with 97% of gains.

Corrected cost of buybacks per unit (average calculated using 4862 units that vacate annually):

Based on $600,000 original price less 25% Deferred Management Fee

28-day buy-back:	$13,535 per unit ($65.8 million annually)
6-month buy-back:	$3,150 per unit ($15.3 million annually)
12-month buy-back:	$562 per unit ($2.7 million annually)

Using the methodology of the Martin Jenkins Model a 28-day buy-back would cost the industry $218 million annually (4862 units x $450,000 x 10% cost of capital).

Their calculations show a 6-month buy-back at $72.2 million annual cost and a 12-month buy-back at a $32.8 million annual cost. These numbers contain large scale errors that render the report unusable for decision-making purposes.

Errors have occurred because a margin-of-error was added that triples the cost of 12-month buy-backs and adds 40% to 6-month buy-backs. This is compounded for 10-years. In addition, the consultants fail to use a weighted cost of capital in line with the sales distribution figures provided by operators.

- **Operators earn revenue of $1,014,000 on a $600,000 unit over the 8-year tenure**. The cost of a 28-day buy-back represents 1.3% of revenue or 2.6% of the capital gain taken by operators under an Occupational Rights Agreement. This adds valuable perspective to the $450,000 received by a family under a buy-back arrangement.

Development margin 20%:	$120,000
Deferred Management fee 25%:	$150,000
Capital Gain 85%:	$510,000
Value of interest free loan 39%:	$234,000
Total	$1,014,000

  Operators have earned **$4.9 billion** in revenue on these 4862 units over 8 years and **$2.48 billion** in capital gains. Residents are asking the industry to fund $65 million from this.

- **An exemptions regime should deal with extraordinary events whereby operators find they are unable to repay**

- **Capital gains and losses cannot be apportioned on a 1:1 basis.** This is due to the mathematical requirement to include *probability* in a pricing structure to make it accurate. If an operator takes any level of capital gains, all market losses will need to accrue to the operator.

- **It is submitted the 12-month buy-back model is largely redundant for most families and should not be implemented**. Given 95% of units sell within 12 months, the vast majority of families will see no benefit to the policy. Only 5% (243 families a year) will benefit. This fails to even up the economic imbalance of power between operators and families.

- **A 6-month buy-back is unfair to residents and should not be implemented as most families will still carry higher costs than operators.** Only 23% of families will receive a buy-back (1118 families annually), but will still suffer a use-of-money loss, averaging $18,000 (loss of 8% for 6-months on $450,000) . For operators, given 91% of units sell within 9 months and 95% in 12 months, their costs only amount to **$3,150** per unit, for a 6-month buy-back.

- **Both 6-month and 12-month buy-back options place a disproportionate cost on residents.** These options look even worse under the structure of a model which takes all capital gains, when a market price is paid for the unit.

2. Introductory commentary supporting a buy-back of 28-days:

Operators balance sheets are dynamic and constantly restructured to allow for the changing business cycle. Inflation and rising interest rates, are the most recent extraordinary event where operators had to alter their business plans (build rate) and change the ratio between capital and debt. They have raised more capital from shareholders via new share issues, reduced their debt levels as demanded by banks and pulled back their build rate as a commercial consequence. These factors all require constant risk management. Claiming buy-backs cannot be funded by shareholders or banks is disingenuous when many other unforeseen events alter how capital and debt are applied.

Operators debt arrangements involve the roll up of interest (the bank receives interest when the unit sells to a new resident). No cashflow consequences will occur for operators who choose debt over capital as a funding option for buy-backs.

A buy-back occurs at a moment in time where tax free capital gains are about to be crystalised. When the unit sells (is re-licensed) to a new resident, these gains make their way to the balance sheet as revenue. It is inconceivable that banks or shareholders would not accommodate the short-term funding costs to capture these gains. If faced with a choice between sharing gains or funding a buy-back, the complaints about funding costs would disappear.

In an efficient market where participants have equal power, the party who pays a market price for a property would keep the capital gains. This is the economic norm. The current New Zealand ORA model, dictated by licensing, can only exist due to a complete transfer of pricing power to one party: operators. The outcome is that units may be materially mispriced on a risk/return basis. The 28-day buy-back offers a solution helping rebalance to the market equation.

Successive governments appear to have granted a social license to operators to remove capital gains from contracts, which is against economic norms, when the resident pays the full market price of a unit. Legal advice required in current legislation does not address this point. The current law does not prevent operators exercising excessive market power over consumers through the pricing structure of their model. While price gouging is not illegal, current framework settings presume efficient markets will largely prevent it. If the current RV oligopoly model remains, a 28-day buy-back should be implemented.

Many retirement village industry participants came from property development and construction backgrounds, with little access to long-term capital. This necessitated creative, but punitive pricing structures. Residents funded new developments by providing interest free loans without any ownership rights. They paid fees of 20-30% of their unit-value to use village facilities and agreed to contracts which gave away all capital gains. There are very few alternative occupancy models in New Zealand.

The capital structure of operators is their choice and we should not be drawn into making a decision on buy-backs based on how they choose to structure their balance sheets with regard to debt vs capital. Economic fairness should be the basis of the decision.

As we've seen in the recent economic cycle, operators are perfectly capable of restructuring themselves to cope with changed costs, or selling to those with stronger capital structures. Their revenue and profits have remained high throughout the recent restructuring of their balance sheets and they've been forced to pull back their build rate in the current cycle as banks demanded they carry less debt and more capital.

3. Martin Jenkins Model contains significant errors.

Martin Jenkins consultants appear to understand the sales distribution data but have failed to implement it in calculating the weighted cost of capital. This remains unexplainable and results in significant errors in the report.

Sales Distribution data states:

77% of units sell within 6 months
91% of units sell within 9 months
95% of units sell within 12 months

If a buy-back is mandated at 6-months, sales data tells us a large proportion of those units will be sold in the following 3 months. This is not accounted for and the consultants assume operators will incur the cost of funding 100% of these units for further 12 months. This is statistically impossible according to data provided to Martin Jenkins by operators themselves.

The same applies with a 12-month buy-back. While operators don't say how long it would take to sell the last 5% of units, it is highly unlikely every unit would sit for another full year, unsold. That would involve 243 units failing to sell for two years.

The Martin Jenkins Model contains the following errors:

1. **Incorrect margin of error**. Currently a margin of error of 10% has been used. This sounds reasonable, but hasn't been added as percentage.

- In New Zealand 95% of units are sold within 12 months, leaving only 5% unsold. The model adds a raw 10% and increases this to 15%, tripling the number of units unsold (a 200% margin of error). New Zealand unit sales are well surveyed with decades of data. We would challenge operators to find a 12 month data point from the historical series where a 200% margin of error was necessary to capture the risk. While small operators could see unusual anomalies in deaths and resales due to a limited sample size, decision-making can't extrapolate this across the industry. Small operators will also see the reverse anomaly.

- In the 6-month data, the margin of error results in 40% being added to costs. Not only are the margins of error unusable as the basis of a buy-back decision, there is also material inconsistency between 200% and 40%.

- It appears Martin Jenkins consultants believed New Zealand should use the same margin of error as Western Australia, where units take far longer to sell. With a greater percentage of unsold units this raw 10% would have a less material effect.

2. **Error compounds over 10 years**. While a one-off black-swan event could occur, where 15% of units are unsold, having this reoccur 10 years in a row is almost statistically impossible. The 200% margin of error, multiplies out 10 times, making the end result unusable in decision making.

3. **Cost of capital applied for a full year**. The Martin Jenkins model incorrectly assumes capital (or debt if this is the financing tool) is tied up for a full year, from the point the buy-back obligation is triggered. It appears the sales distribution curve has not been applied to the model and this results in another large overstatement of costs. It is implausible that every unit which has not sold at the 6-month or 12-month trigger point, remains unsold another 12 months later, causing the full 10% cost of capital.

4. **Significant overstatement of costs.** Errors result in 471% overstatement of costs in the 6-month buy-back and 1200% in the 12-month buy-back

5. **Significant understatement of benefits.** The Martin Jenkins model uses 3 percent as the measure of assessing the opportunity cost to families of not receiving the money. This can't be justified, while allowing shareholders to use a 10% cost of capital. Families do not invest money in low paying savings accounts. Kiwi Saver growth funds have produced 8 percent a year over the long term. Families with debt want to pay off mortgages and this cost around 7 percent a year currently. Those with credit cards are paying double digit rates and could eliminate these.

6. **Division by 40,000 units:** The Martin Jenkins model gives per unit costs, but these are likely to be misunderstood by most readers. This is not the cost of an individual buy-back. The model takes the annual cost of capital and divides by 40,000 units. Presumably this is to give operators a tool to use to work out the cost of capital on their own village size (i.e. cost of capital x number of units in a specific village). The costs should be spread over the number of annual buy-backs i.e. 4862* units to give the average cost of a buy-back. While this significantly increases the per-unit costs, they are pulled back down by the errors above.
   *Number of units vacated each year due to deaths and exits, modelled by Martin Jenkins

Reliance on the report could severely disadvantage residents.

There is no scenario where this report can be used in making a fair decision for the families of residents.

4. Revenues made by Operators

The Martin Jenkins Model assumes an average unit value of **$600,000**. With a 25% Deferred Management Fee, the Operator will return **$450,000** to family members after 8 years (the average life span of a resident).

Operators make the following revenue on a $600,000 unit:

1.	20% development margin on the new build	$120,000
2.	25% Deferred Management Fee	$150,000
3.	85% Capital Gain*	$510,000
4.	39% Interest Free Loan**	$234,000
	Total Revenue earned	**$1,014,000**
	Cost of a 28-day buy-back	**$13,535**

The cost of a buy-back as a percentage of revenue:	1.3%
The cost of a buy-back as a percentage of capital gains:	2.6%

Operators have earned **$4.9 billion** over 8 years, in revenue on the 4862 units which vacate annually due to resident deaths and exits. Of this, **$2.48 billion** is tax-free capital gains. Residents are asking the industry to fund **$65 million** from this to pay for a 28-day buy-back.

*8% p.a. compounded gain as per Martin Jenkins Model
**RBNZ base rate 4.24% compounded, no risk margin

5. The 6 and 12-month buy-back options are inadequate

Residents submit that a 28-day buy-back is the only fair outcome.

If MHUD introduce a 12-month buy-back, 95% of New Zealand families will see no change. Such a policy could only be seen as an emergency mop-up measure for a small minority. In terms of numbers, of 4862 units which vacate annually, only 243 a year would require a buy-back.

If MHUD introduce a 6-month buy-back most families will still carry higher costs than operators. Only 23% of families will require a buy-back (1118 families annually), but will still suffer a use-of-money loss averaging **$18,000 per family** (6 months lost returns on $450,000 at 8% p.a.). The remaining 3743 families, will not get a buy-back as their units will sell before the obligation occurs. They still suffer *up to* a 6-month loss of interest. This cannot be valued at 3% (as per the Martin Jenkins report) due to the bias of using a metric based on a poor value deposit-account. The long-term Kiwi Saver growth rate is 8% a year.

For operators, given 91% of units sell within 9 months and 95% in 12 months, their costs only amount to **$3,150** per unit, for a 6-month buy-back.

It is essential to consider the merits of a 28-day buy-back, given the complete transfer of pricing power, given to this industry.

6. Social License granted for the model run by operators

It is unconscionable that operators make an average of $1 million revenue over the 8-year tenure of a resident living in a village unit (based on a $600,000 purchase price), but are refusing to support legislation to require a buy-back of the unit in a mandated time frame.

This revenue is generated via a development margin, the value of an interest free loan, Deferred Management Fee (DMF) and capital gains which don't accrue to residents.

Families are currently made to wait until the unit is refurbished and sold, before being paid. This is despite the resident only having a right to occupy and receiving no capital gain, while paying a full market price at the time of purchase.

The New Zealand model has been allowed to develop unhindered over time by any consumer price protection mechanisms. While price gouging is not illegal in New Zealand, elderly buyers who have limited time, have been drawn into contracts where fair financial outcomes have been abandoned.

This has become an accepted practice due to successive governments appearing to grant a social license to operators to take capital gains from residents and their families, in order to enable a freeing up of the supply-chain in the housing market (i.e. enabling operators to build more units funded by residents capital gains, instead of requiring shareholders pick up this role).

This is why the Retirement Village Sector became a constant overachiever on the NZX-50 and attracted high levels of attention from investors and brokers. From 2011 to 2021 returns were 25 percent a year (over 830 percent with dividends reinvested). This is unheard of, in other property sectors. Share prices have now taken a significant fall, not because of reduced profits, but due to the reliance on debt and increased interest rates. Operators capital structures caused the slide, not the revenue and profit making ability of the underlying model.

The New Zealand model developed out of necessity, due to operators weak financial backing in the early days of the industry. Many operators grew out of construction and property development backgrounds and haven't had access to long term stable capital. This necessitated some creative pricing structures to get residents and banks to fund developments, while charging healthy margins and keeping capital gains to pay for the building of new villages.

7. Current framework delivers financial unfairness.

The legislation was enacted to protect residents by way of mandatory legal advice, but it was industry-led not consumer-led. This has steadily enabled an oligopoly based around the ORA model (Occupational Rights Agreement). Operators rely on the fact residents require legal advice before agreeing to a model where capital gains don't accrue. Unfortunately under an oligopoly this is consumer protection in name only, not in functionality.

There are no other choices for lawyers to suggest. Lawyers can only make a client aware of the significant costs and the transfer of wealth but do not offer financial advice. If a client is alone, needs a village lifestyle, can't cope with maintenance, or needs to downsize to free up money, these needs over-ride the wealth transfer and a lawyer will have to be practical about this.

In most cases 'advice' isn't possible, because no other options exist locally. Various companies are introducing gain-sharing, but its occurrence is limited. Lawyers may also be cornered into condoning situations for clients not financially suited to purchasing (licensing) a unit. Those with health issues or who enter a village above the average age, will cross subsidise other residents who live longer. These residents will transfer wealth to operators far more quickly. They will grant operators the opportunity to strip out a 20-30% deferred management fee, usually in 4 years, when the average occupancy tenure is 8. The financial decision is acutely disadvantageous to consumers, but there is no other solution for lawyers to suggest.

In short, there is no protection in the law which prevents operators exercising excessive market power over residents regarding the pricing structure of their model. The mandatory legal advice and solicitor certification required is unlikely to address this point. In an efficient market where participants have equal power, the party who pays a market price for a property would keep the capital gains. The New Zealand model can only exist because there has been a complete transfer of pricing power to one party: operators.

If government is determined to let this oligopoly continue to run with its weak capital structure, and ability to take both management fees and the capital gains from residents, there needs to be some 'give' to counter-balance the 'take'.

A 28-day buy-back is shown to cost $13,535 in terms of temporary funding costs. This represents only 2.6% of the tax-free capital gains operators make.

Even if gains are half of this calculation, the cost of a 28-day buy-back would only represent a 5% transfer back to residents with operators able to take 95% of the tax-free capital gain, after funding the repayment to families.

8. Distinguishing affordability from cost of a buy-back

It is incorrect for operators to tell MHUD that banks or shareholders will refuse to fund buybacks and operators cannot afford this important consumer protection.

Management have to cope with increased business costs from many directions. They either borrow more, ask shareholders for more money, accept a profit reduction, or reallocate existing debt and capital to cope with a new event. If operators claim banks and shareholders won't fund buy-backs, what they are actually saying is management refuse to alter the current business plan to allow for this expense. It is unimaginable that when other very volatile business costs change, there is no ability to cope. Interest rates rise, but management cannot refuse to restructure debt or change their build rate. Their banks would not accept this. Construction prices, wages and other inflationary business costs all rise. Management cannot refuse to alter their build rate or level of debt and tell suppliers they can't meet the costs.

What operators are not being transparent about is their ability to allow for increases in business costs in the 'head room' they have within their balance sheet and their ability to adjust to unexpected change. In the current business cycle, management have coped with big increases in interest rates, construction costs, wages and general inflation.

Operators have struggled. But not because their businesses aren't highly profitable (profits have been very healthy), but because their capital structures have been weak.

What we mean by this is they rely on a "capital-light" model (limited money from shareholders). They grow their businesses by constructing new units with debt. Banks allow them to "roll-up" interest (add it to the debt rather than make payments) until units sell.

Part of the construction recipe is that residents provide interest free loans and become another source of funding. Shareholders need to provide a lot less capital with these two sources; banks and residents. Rising interest rates have caused operators to come close to breaking banking covenants. They have been forced to reduce debt and their build-rate. Some have had to go to shareholders and replace debt with new capital. It's been awkward, but operators are learning, despite high profitability, the capital-light model has risks.

In the Retirement Village Industry in New Zealand, there is no such thing as an unprofitable operator, there's only the issue of those with capital-light structures. Their capital structure is their choice, and we should not be drawn into deciding on buybacks based on how they choose to structure their balance sheets about debt vs capital.

A policy setting about buy backs should be based on the economic fairness of the model to residents. As we've seen in the recent economic cycle how operators are perfectly capable of restructuring themselves to cope with changed costs or selling to those with stronger capital structures. Their revenue and profits have remained high.

A new cost, like buy-backs, is a temporary funding issue. In New Zealand, 95% of units sell within 12 months. They have the ability to allocate the revenue from new-build sales, to buy-backs and finance the rest by borrowing money short term with interest costs rolled up. The payback for incurring this cost is the extraction of a very lucrative capital gain from the unit sale. As pointed out earlier, this cost is less than 3% of the tax-fee capital gain they are about to crystalise.

This is not unsecured lending – operators have ownership of every unit they buy-back. They also have healthy equity in the unit given the 25% management fee and capital gains being extracted from the payment made to the family. It is low risk, secured, short term lending. Even small operators should be able negotiate loan facilities with banks in order to extract these healthy capital gains.

Buy-backs don't present operators with an affordability issue, but some may claim they have a cashflow issue.

This can be solved with a rolled up short term debt instrument and acceptance that their capital structure maybe weak if it can't cope. That choice of capital structure doesn't convey the right to deny residents a fair financial arrangement, given they have provided them with over $1 million in revenue and passed significant intergenerational wealth to operators via a model which has organically grown to legitimise this wealth transfer. This model is unable to exist in many other countries due to far higher consumer protection laws and competition authority oversight.

For those who claim they can't fund the buy-back cost, it could even be suggested they share gains and get an exemption from buybacks.

It would be disingenuous of operators to suggest any buy-back mandate would cause a significant reduction in their ability to build new units. Some are already pulling back development and signalled this over a year ago.

Could buy-backs cause a liquidation event?

Operators like to point out the case in Australia where an operator (Settlers Lifestyle) failed in 2019 after buy-back legislation was put in place. It is worth noting this operator had a capital structure which made it non-resilient. The business was sold at a loss to shareholders but is now owned and operated under a capital structure where buybacks are in place. Its residents continue to live in their homes and the ownership change was no different than any other merger or acquisition we see in this sector.

Operators who are unable to offer adequate rights to residents should not be in the industry and weak balance sheets are not an excuse for refusing fair financial rights. Given the revenue levels NZ operators are making and taking all capital gains, it is an industry where it is very hard to fail.

Operators also appear to be pointing out that small villages may not survive a buy-back regime. This is highly unlikely as these companies are often not in the construction game, building new villages. Their cash flows from 20-30% management fees and earning the capital gains, give them stable balance sheets. These businesses will not struggle to put in place short term bridging loans with banks, to fund the gap between sales. Interest can be rolled up until the point the unit is sold, ensuring there is no cashflow difficulty caused by the loan. As reiterated earlier, a small price to pay for this lucrative wealth transfer from families to the bottom-line of village owners.

Small village owners often have a tight shareholder base, privately held, not listed. Their exit plan has been well demonstrated; they sell to larger operators eventually. It is not buy-backs which will cause smaller operators to exit. It is the natural business cycle that their eventual buyers are generally the large operators. This is not a negative event. An industry which evolves over time to be run by large well capitalised companies is an industry growing up and maturing.

Exemptions

A legislative structure can exist which is both prescriptive and flexible on buy-backs. Legislation could be written to ensure extraordinary events don't cause a crisis in the industry.

- **Force Majeure event**: an example would be a pandemic. This could allow statutory supervisors to invoke an industry wide buy-back suspension.
- **Liquidation event**: if a company appoints liquidators, buy-backs could be suspended to allow for a restructuring and allow the owner to trade back into a position where they have funding lines in place to allow buy-backs, or sell the business.
- **Small operators / Non-profits or Charities**: could be given a longer run-in period to get fully operational with buy-backs.
- **Operators who share capital gains**: if gain sharing is part of a contract, a buy-back exemption could apply.

Capital Gains vs Capital Losses on a 1:1 Ratio

MHUD state that capital gains and capital losses can exist on a 1:1 ratio. If an operator takes 50% of the gains, they only need to take 50% of any capital losses. While this appears to be common sense, it's mathematically incorrect when pricing a risk structure. Operators will need to take all the losses.

Academically, when rearranging these risks and returns in a pricing model, the *probability* of those events occurring is part of the equation. In cases of property market pricing, the probability of losses is a fraction of the probability of making gains i.e. the odds are excessively higher that gains will be made.

An Operator taking 50% of the gains would need to meet all of the losses in a correctly priced structure. This is why we see companies in the New Zealand market like Fletchers (Vivid Living) offering this. While they are a small new entrant, they understand the correct risk-based pricing structure.

Legislation can't reflect a structure which is mathematically and academically incorrect or unfair to consumers. In all scenarios, (even less than 50%), operators would need to take all the losses.

9. Example of capital returned to residents' families on termination

The following table provides a comparison of money returned to families by different operators on termination. In line with Martin Jenkins base assumptions there is an average 8-year tenure (12% death rate) with an average unit price of $600,000. We have also used Martin Jenkins growth assumptions of unit prices rising 8 percent a year for 8 years, compounding (i.e. capital gains of 85%)

The table shows how both Fletchers and Karaka Pines operators are returning significantly more money to families, than the traditional operators (known as the Big-6).

The difference is due to the sharing of gains and lower Deferred Management Fees. There is ample room for those who don't share capital gains to incur the 28-day average buy-back cost of $13,535.

$600,000.00 unit price

Business model	Big 6	Fletchers/Vivid	Karaka Pines
Purchase price	$600,000	$600,000	$600,000
Capital gain +85%	$510,000	$510,000	$510,000
Sale price	$1,110,000	$1,110,000	$1,110,000
Deferred Management Fee (DMF)	25% of purchase price $150,000	15% $90,000	12.5% $75,000
Purchase price less DMF	$450,000	$510,000	$525,000
Capital gains	$0	$255,000(50%)	$510,000 (100%)
Family receive:	**$450,000**	**$765,000**	**$1,035,000**

Residents with Fletchers / Vivid receive back **70%** more capital on termination than those in a Big-6 village.

Residents with Karaka Pines receive back **130%** more capital than those in a Big-6 village.

It is noted residents of Fletchers/Vivid/Karaka Pines have to meet maintenance, repair and refurbishment costs, but deferred management fees are significantly lower, along with the sharing of gains.

The transfer of intergeneration family wealth to operators under the Big-6 model, with high deferred management fees and no sharing of capital gains, amounts to hundreds of thousands dollars. The difference between 50% gain-sharing and no-gain is over $300,000 per family.

This has a material wealth impact on the ability of the next generation to house themselves, pay off debt and cope with their own retirement costs. Even market cycles where gains are half this level, the impact between a family receiving a share of gains and no share, is still material.

APPENDIX: Removing errors from the Martin Jenkins Model

1. Adjust the model to remove the disproportionally excessive margins of error.
2. Apply the cost of capital based on the sales distribution model.

Martin Jenkins base model used:

- $450,000 unit ($600,000 less 25% DMF)
- 12% death rate
- 10% cost of capital
- Sales distribution: 77% sold at 6 months / 91% sold at 9 months/ 95% sold at 12 months.
- Add assumption that 100% sold at 18 months.

4862 units vacated annually (total units x deaths)
40517 total units in New Zealand

	28-day buy-back. Opportunity cost of capital for operator	**6-month buy-back** Opportunity cost of capital for operator	**12-month buy-back** Opportunity cost of capital for operator
Corrected model	$65.8 million per year $13,535 per unit	$15.3 million per year $3150 per unit	$2.7 million per year $562 per unit
Martin Jenkins Model Including 10% margin of error	218 million per year $45,000 per unit Calculated using MJ methodology.	$72.2 million per year $14,849 per unit Per unit costs not specified in MJ Report. Calculated by dividing by annual vacated units of 4862.	$32.8 million per year $6746 per unit Per unit costs not specified in MJ Report. Calculated by dividing by annual vacated units of 4862.
Error size	**330% overstated**	**471% overstated**	**1200% overstated**

The Martin Jenkins model could be misinterpreted. When looking at the "per unit" numbers, the average reader will think this is the cost an operator faces of a real buy-back. But the model is dividing total costs by 40,000 units (the full stock of units with 5% annual increases in unit numbers). This isn't a reflection of the buy-back cost per unit. The point of this cost per unit appears to be for operators. They can multiply by their village size to get a quick picture of their 3–12-month opportunity cost of the solvency threshold.

1. Total Opportunity Cost (Year 2 – 10)

Using the Martin Jenkins assumptions of 8% house price growth and 5%-unit volume growth, the corrected model can be compared to the Martin Jenkins Model

	28 days buy-back. 10-year opportunity cost of capital (undiscounted)	**6-month buy-back** 10-year opportunity cost of capital (undiscounted)	**12-month buy-back** 10-year opportunity cost of capital (undiscounted)
Corrected model	$1.393 billion	$324 million	$58 million
Martin Jenkins Model Including 10% margin of error	Not calculated	$1.527 billion	$694 million

2. Corrected Model

To demonstrate the true cost of a buy-back to operators, we can start with the base case in the Martin Jenkins Report: of a unit price of $450,000, 40517 units in New Zealand, death rate of 12%, 10% cost of capital and a sales distribution curve as specified below.

Buy-back	Units unsold	Cost of unit	Buyback value	Distribution of sales	Cost of capital	Buy-back cost
28 days	4862[a]	$450,000	$2.187b	77% of units sell in 0-6 months = 3744 units 14% of units sell in 6-9 months = 680 units 4% of units sell in 9-12 months = 195 units 5% of units sell in 12-18months = 243 units Subtotal Less operator benefits of 28 days	2.5% 6.25% 8.75% 12.5% 0.767%	$42.1m $19.1m $7.6m $13.7m $82.6m ($16.8m)
Total 28-day buy-back cost. **Cost per unit / 4862** Note: using the Martin Jenkins methodology the cost of capital for a 28-day buy-back will be $218 million (**over 300% higher**) i.e., $45,000 per unit. This is perhaps why MHUD dismissed it from consideration. No margin of error can be added to a 28-day buyback as we assume 100% of units will be repurchased by operators.						**$65.8m** **$13,535**
Buy-back	Units unsold	Cost of unit	Buyback value	Distribution of sales	Cost of capital	Buy-back cost
6 mths	1118[b]	$450,000	$503m	77% of units sell in 6 months = 3744 units 14% of units sell in 6-9 months = 680 units 4% of units sell in 9-12 months = 195 units 5% of units sell in 12-18months = 243 units	0% 1.25% 3.75% 7.5%	$0 $3.8m $3.3m $8.2m
Total 6-month buy-back cost. **Cost per unit / 4862** Note: using the Martin Jenkins model the cost of capital for a 6-month buy-back was $722 million x 10% = $72 million with the margin of error. And, $503 million x 10% = $50 million without a margin of error (not given in the report, but this is reworked).						**$15.3m** **$3,150**

This is 470% higher due to impact of a 40% margin of error (raw 10% added) and charging 10% cost of capital for a full year and not following the sales distribution pattern.						
Buy-back	Units unsold	Cost of unit	Buyback value	Distribution of sales	Cost of capital	Buy-back cost
12 mths	243[c]	$450,000	$109m	95% of units sell in 12 months = 4619 units 5% of units sell in 12-18months = 243 units	0% 2.5%	$0 $2.7m
Total 12 month buy-back cost. **Cost per unit / 4862** Note: using the Martin Jenkins model the cost of capital for a 12-month buy-back was $328 million x 10% = $32 million with the margin of error. And, $109 million x 10% = $10.9 million without a margin of error (not given in the report, but this is reworked). This is <u>1200% higher </u>due to the impact of the margin of error and charging 10% for a full year and not following the sales distribution pattern.						**$2.7m** **$562**

3. Workings

Buy-back	Cost of capital (10%) with even distribution of sales	
28 days	**Formula for cost of capital** 0-6 months: $450,000 x 3744 units = $1,684,800,00 x 2.5% = $42,120,000 6-9 months: $450,000 x 680 units = $306,000,000 x 6.25% = $19,125,000 9-12 months: $450,000 x 195 units = $ 87,750,000 x 8.75 = $7,678,125 <u>12-18 months: $450,000 x 243 units = $109,350,000 x 12.5% = $13,668,750</u> **Sub Total:** Less: Operators 28 days free on all units = $2,187,900,000 x 0.767% **Total Cost of 28-day Buy-back.** Cost per unit (divide by 4862) **Formula for cost of capital, using the distribution of sales.** 1: Formula 0-6 months - 3/12th x 10% = 2.5%* 2: Formula 6-9 months - 7.5/12th x 10% = 6.25% 3: Formula 9-12 months - 10.5/12th x 10% =8.75% 4: Formula 12-18 months - 15/12th x 10% = 12.5% 5: Formula – operator benefit 28/365 x 10% = 0.767% *Explanation: Units sell evenly over 6 months, halving the cost of capital. A unit selling in one month only has a cost of capital of 1/12th of 10%. A unit in month 6 is 6/12th. The mid-point of 3 months, achieves a formula which recognises even distribution of sales (3/12th of 10%) **Unsold unit calculation** a) 40517 x 12% = 4862 units unsold	 $82,591,875 ($16,781,193) **$65,810,682** **$13,535**
6 mths	**Formula for cost of capital** 0-6 months: $450,000 x 3744 units = $1,684,800,000 x 0% = $0 6-9 months: $450,000 x 680 units = $306,000,000 x 1.25% = $3,825,000 9-12 months: $450,000 x 195 units = $ 87,750,000 x 3.75 = $3,290,000	

	12-18 months: $450,000 x 243 units = $109,350,000 x 7.5% = $8,201,250 **Total Cost of 6-month buy-back.** **Cost per unit (divide by 4862)** **Formula for the cost of capital, using the distribution of sales.** 1: Formula 0-6 months – 0% *No cost to operator* 2: Formula 6-9 months – 1.5/12th x 10% = 1.25% *First 6 months free + 3 months evenly distributed = 1.5 months interest charge* 3: Formula 9-12 months – 4.5/12th x 10% = 3.75% *First 6 months free + 3-6 months evenly distributed = 4.5 months interest charge* 4: Formula 12-18 months - 9/12th x 10% = 7.5% *First 6 months free + 6-12 months evenly distributed = 9 months interest charge* **Unsold unit calculation** b) 40517 x 12% x 23% = 1118 units unsold	 **$15,316,250** **$3,150**
12 mths	**Formula for cost of capital** 0-12 months: $450,000 x 4619 units = $2,078,550,000 x 0% = $0 12-18 months: $450,000 x 243 units = $109,350,000 x 2.5% = $2,733,750 **Total Cost of 12 month buy-back.** **Cost per unit (divide by 4862)** **Formula for cost of capital, using the distribution of sales.** 1: Formula 0-12 months – 0% *No cost to operator, first 12 months free* 2: Formula 12-18 months - 3/12th x 10% = 2.5% *First 12 months free + 6 months evenly distributed = 3 months interest charge* **Unsold unit calculation** c) 40517 x 12% x 5% = 243 units unsold	 $2,733,750 $562

4. Inputs into the Martin Jenkins Model

Unit price • $600,000 less 25% DMF. • $450,000 repaid to family in 8 years. • Annual unit price increase 8%.	**$600,000 less Deferred Management Fee of 25% = $450,000** Need to compound two years of house price growth at 8% to get the starting point at year 2. This is what was required to generate the output shown on the table. Q: why was $600,000 used? Is that the average unit price today? If buy-backs start in year two as indicated, prices being funded will be roughly 8 years ago. Does $600,000 overstate the starting point and carry through the model with an accumulation of 8% growth adding to this? Year 2: $524,880 Year 3: $566,870 Year 4: $612,220 Year 5: $661,198 Year 6: $714,093 Year 7: $771,221 Year 8: $832,919 Year 9: $899,552 Year 10: $971,516

Number of units in the NZ market Annual increase 5%	**40,517** – need to compound three years of unit numbers growing at 5% to get to the starting point of 46903. Unit numbers aren't given, but reversed engineered them and they line up with the outputs. Q: Is the starting point indicated at year two actually 2026? Q: Why do the unit price numbers have 2 years of growth added, but the unit numbers have 3 years of growth added, prior to the start point of the model? Units x death rate (12%) = number of buybacks Year 2: 46903 x 12% = 5628 Year 3: 49249 x 12% = 5910 Year 4: 51711 x 12% = 6205 Year 5: 54297 x 12% = 6516 Year 6: 57011 x 12% = 6841 Year 7: 59862 x 12% = 7183 Year 8: 62855 x 12% = 7543 Year 9: 65998 x 12% = 7920 Year 10: 69298 x 12% = 8316 (22000 new units in 10 years-time). Q: Is there a reference to cross check this is the build rate, or is it based on a rough assumption?
Death rate/buybacks	12% (8-year life span averaged over unit types)
Sales Distribution	• 77% sell in 0-6 months (6.416% a month) • 91% sell in 9 months. • 95% sell in 12 months. Therefore: between 6-9 months 14% of units sell between 9-12 months 4% of units sell between 12 and x (18) months, 5% of units sell. In the corrected model we assume all units sell in 18 months. Q: After 12 months 5% of units remain, but how long do they take to sell? We have assumed an equally distributed spread over the next 6 months is valid.
Margin of error	10%

Martin Jenkins Model – creation of proof – 6-month buy-back.

We have reverse engineered the Martin Jenkins Model to create the proof of output.
Small technical issue – to get the "per unit" numbers to work, and replicate the Martin Jenkins model, it requires we divide by total units from the previous year. This isn't explainable.

A	B	C	D	E	F	G	H
Year	Units in NZ	12% Deaths (units)	Unit value to family	Value of buybacks	unsold in 6 months	Cost of capital	Per unit
	Increase annually 5%	Life span 8 years	$600,000.00	Column C x D	Add 10% Buffer	Operator opportunity cost	G/C
	5%	12%	25%	billions	77% of units are sold	12 months solvency	uses units from year
			House price rise 8%p.a.		23%		previous
			8%		33%	10%	
2022	40517	4862	$ 450,000	$ 2,187,918,000	$ 722,012,940	$ 72,201,294	
2023	42543	5105	$ 450,000	$ 2,297,313,900	$ 758,113,587	$ 75,811,359	
Year 1	44670	5360	$ 486,000	$ 2,605,153,963	$ 859,700,808	$ 85,970,081	
Year 2	46903	5628	$ 524,880	$ 2,954,244,594	$ 974,900,716	$ 97,490,072	$ 2,182
Year 3	49249	5910	$ 566,870	$ 3,350,113,369	$ 1,105,537,412	$ 110,553,741	$ 2,357
Year 4	51711	6205	$ 612,220	$ 3,799,028,561	$ 1,253,679,425	$ 125,367,942	$ 2,546
Year 5	54297	6516	$ 661,198	$ 4,308,098,388	$ 1,421,672,468	$ 142,167,247	$ 2,749
Year 6	57011	6841	$ 714,093	$ 4,885,383,572	$ 1,612,176,579	$ 161,217,658	$ 2,969
Year 7	59862	7183	$ 771,221	$ 5,540,024,970	$ 1,828,208,240	$ 182,820,824	$ 3,207
Year 8	62855	7543	$ 832,919	$ 6,282,388,316	$ 2,073,188,144	$ 207,318,814	$ 3,463
Year 9	65998	7920	$ 899,552	$ 7,124,228,351	$ 2,350,995,356	$ 235,099,536	$ 3,740
Year 10	69298	8316	$ 971,516	$ 8,078,874,950	$ 2,666,028,733	$ 266,602,873	$ 4,040
Total opportunity cost over years 2-10 (9 years)						$ 1,528,638,707	

Martin Jenkins Model – creation of proof – 12-month buy-back.

A	B	C	D	E	F	G	H
Year	Units in NZ	12% Deaths (units)	Unit value to family	Value of buybacks	unsold in 12 months	Cost of capital	Per unit
	Increase annually 5%	Life span 8 years	$600,000.00	Column C x D	Add 10% Buffer	Operator opportunity cost	G/C
	5%	12%	25%	billions	95% of units are sold	12 months solvency	uses units from year
			House price rise 8%p.a.		5%		previous
			8%		15%	10%	
2022	40517	4862	$ 450,000	$ 2,187,918,000	$ 328,187,700	$ 32,818,770	
2023	42543	5105	$ 450,000	$ 2,297,313,900	$ 344,597,085	$ 34,459,709	
Year 1	44670	5360	$ 486,000	$ 2,605,153,963	$ 390,773,094	$ 39,077,309	
Year 2	46903	5628	$ 524,880	$ 2,954,244,594	$ 443,136,689	$ 44,313,669	$ 992
Year 3	49249	5910	$ 566,870	$ 3,350,113,369	$ 502,517,005	$ 50,251,701	$ 1,071
Year 4	51711	6205	$ 612,220	$ 3,799,028,561	$ 569,854,284	$ 56,985,428	$ 1,157
Year 5	54297	6516	$ 661,198	$ 4,308,098,388	$ 646,214,758	$ 64,621,476	$ 1,250
Year 6	57011	6841	$ 714,093	$ 4,885,383,572	$ 732,807,536	$ 73,280,754	$ 1,350
Year 7	59862	7183	$ 771,221	$ 5,540,024,970	$ 831,003,746	$ 83,100,375	$ 1,458
Year 8	62855	7543	$ 832,919	$ 6,282,388,316	$ 942,358,247	$ 94,235,825	$ 1,574
Year 9	65998	7920	$ 899,552	$ 7,124,228,351	$ 1,068,634,253	$ 106,863,425	$ 1,700
Year 10	69298	8316	$ 971,516	$ 8,078,874,950	$ 1,211,831,242	$ 121,183,124	$ 1,836
Total opportunity cost over years 2-10 (9 years)						$ 694,835,776	

Corrected Model using no margin of error and weighted cost of capital: 28-day buy-back.

A	B	C	D	E	F	G	H
Year	Units in NZ	12% Deaths (units)	Unit value to family	Value of buybacks	Unsold in 28 days	Cost of capital	Per unit
	Increase annually 5%	Life span 8 years	$600,000.00	Column C x D	No buffer	Operator opportunity cost	G/C
	5%	12%	25%	billions	100% of units unsold	12 months solvency	Total units in stock
			House price rise 8%p.a.				
			8%		23%	10% weighted	
2022	40517	4862	$ 450,000	$ 2,187,918,000	$ 503,221,140	$ 65,812,573	
2023	42543	5105	$ 450,000	$ 2,297,313,900	$ 528,382,197	$ 69,103,202	
Year 1	44670	5360	$ 486,000	$ 2,605,153,963	$ 599,185,411	$ 78,363,031	
Year 2	46903	5628	$ 524,880	$ 2,954,244,594	$ 679,476,257	$ 88,863,677	$ 1,895
Year 3	49249	5910	$ 566,870	$ 3,350,113,369	$ 770,526,075	$ 100,771,410	$ 2,046
Year 4	51711	6205	$ 612,220	$ 3,799,028,561	$ 873,776,569	$ 114,274,779	$ 2,210
Year 5	54297	6516	$ 661,198	$ 4,308,098,388	$ 990,862,629	$ 129,587,600	$ 2,387
Year 6	57011	6841	$ 714,093	$ 4,885,383,572	$ 1,123,638,221	$ 146,952,338	$ 2,578
Year 7	59862	7183	$ 771,221	$ 5,540,024,970	$ 1,274,205,743	$ 166,643,951	$ 2,784
Year 8	62855	7543	$ 832,919	$ 6,282,388,316	$ 1,444,949,313	$ 188,974,241	$ 3,007
Year 9	65998	7920	$ 899,552	$ 7,124,228,351	$ 1,638,572,521	$ 214,296,789	$ 3,247
Year 10	69298	8316	$ 971,516	$ 8,078,874,950	$ 1,858,141,238	$ 243,012,558	$ 3,507
Total opportunity cost over years 2-10 (9 years)						$ 1,393,377,343	
	Units sold						
	0-6 m	6-9m	9-12m	12-18m	Cost of capital	Less operator benefit of 28 days	
Cost of cap	2.50%	6.25%	8.75%	12.50%		0.77%	

Corrected Model using no margin of error and weighted cost of capital:
6-month buy-back.

A	B	Formula Bar	D	E	F	G	H
Year	Units in NZ	12% Deaths (units)	Unit value to family	Value of buybacks	unsold in 6 months	Cost of capital	Per unit
	Increase annually 5%	Life span 8 years	$600,000.00	Column C x D	No buffer	Operator opportunity cost	G/C
	5%	12%	25%	billions	77% of units are sold	12 months solvency	Total units in stock
			House price rise 8%p.a.				
			8%		23%	10% weighted	
2022	40517	4862	$ 450,000	$ 2,187,918,000	$ 503,221,140	$ 15,315,426	
2023	42543	5105	$ 450,000	$ 2,297,313,900	$ 528,382,197	$ 16,081,197	
Year 1	44670	5360	$ 486,000	$ 2,605,153,963	$ 599,185,411	$ 18,236,078	
Year 2	46903	5628	$ 524,880	$ 2,954,244,594	$ 679,476,257	$ 20,679,712	$ 441
Year 3	49249	5910	$ 566,870	$ 3,350,113,369	$ 770,526,075	$ 23,450,794	$ 476
Year 4	51711	6205	$ 612,220	$ 3,799,028,561	$ 873,776,569	$ 26,593,200	$ 514
Year 5	54297	6516	$ 661,198	$ 4,308,098,388	$ 990,862,629	$ 30,156,689	$ 555
Year 6	57011	6841	$ 714,093	$ 4,885,383,572	$ 1,123,638,221	$ 34,197,685	$ 600
Year 7	59862	7183	$ 771,221	$ 5,540,024,970	$ 1,274,205,743	$ 38,780,175	$ 648
Year 8	62855	7543	$ 832,919	$ 6,282,388,316	$ 1,444,949,313	$ 43,976,718	$ 700
Year 9	65998	7920	$ 899,552	$ 7,124,228,351	$ 1,638,572,521	$ 49,869,598	$ 756
Year 10	69298	8316	$ 971,516	$ 8,078,874,950	$ 1,858,141,238	$ 56,552,125	$ 816
Total opportunity cost over years 2-10 (9 years)						$ 324,256,695	
6-9m	9-12m	12-18m					
1.25%	3.75%	7.50%					
Cost of capital weighted							

Corrected Model using no margin of error and weighted cost of capital:
12-month buy-back.

A	B	C	D	E	F	G	H
Year	Units in NZ	12% Deaths (units)	Unit value to family	Value of buybacks	unsold in 12 months	Cost of capital	Per unit
	Increase annually 5%	Life span 8 years	$600,000.00	Column C x D	Add 10% Buffer	Operator opportunity cost	G/C
	5%	12%	25%	billions	95% of units are sold	12 months solvency	uses units from year
			House price rise 8%p.a.		5%		previous
			8%		15%	10% weighted	
2022	40517	4862	$ 450,000	$ 2,187,918,000	$ 328,187,700	$ 2,734,898	
2023	42543	5105	$ 450,000	$ 2,297,313,900	$ 344,597,085	$ 2,871,642	
Year 1	44670	5360	$ 486,000	$ 2,605,153,963	$ 390,773,094	$ 3,256,442	
Year 2	46903	5628	$ 524,880	$ 2,954,244,594	$ 443,136,689	$ 3,692,806	$ 83
Year 3	49249	5910	$ 566,870	$ 3,350,113,369	$ 502,517,005	$ 4,187,642	$ 89
Year 4	51711	6205	$ 612,220	$ 3,799,028,561	$ 569,854,284	$ 4,748,786	$ 96
Year 5	54297	6516	$ 661,198	$ 4,308,098,388	$ 646,214,758	$ 5,385,123	$ 104
Year 6	57011	6841	$ 714,093	$ 4,885,383,572	$ 732,807,536	$ 6,106,729	$ 112
Year 7	59862	7183	$ 771,221	$ 5,540,024,970	$ 831,003,746	$ 6,925,031	$ 121
Year 8	62855	7543	$ 832,919	$ 6,282,388,316	$ 942,358,247	$ 7,852,985	$ 131
Year 9	65998	7920	$ 899,552	$ 7,124,228,351	$ 1,068,634,253	$ 8,905,285	$ 142
Year 10	69298	8316	$ 971,516	$ 8,078,874,950	$ 1,211,831,242	$ 10,098,594	$ 153
Total opportunity cost over years 2-10 (9 years)						$ 57,902,981	
Cost of cap	2.50%						

Margin of error models should be designed from this base model.

e) Peer review statement: Economic analysis and cost buyback - Shamubeel Eaqub

EAQUB & EAQUB

To: Whom it may concern

From: Shamubeel Eaqub

Date: Monday 6th November 2023

Re: Review of the Retirement Villages Act 2003: Options for Change

RVResidents have asked me to review the model. First, and foremost, I agree with Janine Stark's analysis that: "the Martin Jenkins cost benefit analysis contains substantial errors and bias in favour of operators over residents to such an extent that it should not be relied upon for policy decision making."

The analysis surprisingly pays little attention to the distribution of time to sell units in New Zealand, compared to longer time periods in their Australian comparator. By not incorporating the relatively quick time to sell units in New Zealand, the analysis significantly inflates the cost to providers. This inflates the true vacancy rate with turnover, which confuses the issue at hand.

By using excessively large sensitivity analysis on vacancy rates, the model gives an appearance of insurmountable cost to providers. This is not consistent with the distribution of New Zealand unit sales data referenced in their report. True distribution of costs is likely to be much smaller.

The counterfactual is also not more of the same, rather the counterfactual is very strong incentives to sell quicker than the buy-back period. By presenting the costs of benefits of imposing buy-backs without substantial behaviour change from providers misses the obvious commercial incentives for business.

The analysis also assumes residents' opportunity cost of capital at the prevailing (rather than long term average, as would be normal) deposit rate at the time of the report, rather than the weighted average cost of capital, or the opportunity cost of that capital for the recipients (that is the recipient who may choose to invest of spend that capital). To somehow suggest that the cost of capital for the investors of the retirement villages are so markedly different from the recipients of the money is incomprehensible.

Martin Jenkins analysis amplifies costs to the providers and minimises costs to the resident. This is not, in my view, balanced analysis suitable to inform policy making decisions.

Policy makers have a responsibility to take a boarder and more accurate view of the costs and opportunities to all parties, relative to the current situation, and also from a first principles perspective.

The first principles approach is to recognise that the contract between provider and the resident is an exchange, within the available choices in the market (existing market choices are not necessarily optimal).
The exchange, in broad terms, is to pay upfront capital for use of units, 75% of which is returned at the end of contract. The provider enjoys the use of this capital through the

duration of occupation and the capital gains on the property. The resident enjoys the use of the property and related services through the duration of occupation.

At the end of a contract, it is normal for most transactions to have settlements terms, that are relatively short and reasonable, and have penalties for late payment. Most will be familiar with residential property sales and purchase agreement. A recent property sale I was involved in recently had settlement terms of three weeks or 10%pa penalty rate. Residents do not enjoy these terms at the end of their contract.

The question is if there is symmetry of fairness in the rights and responsibilities in this contract. Arguably, the incentives are heavily in favour of the providers, which has made them so attractive as investment propositions. And demand is high because the service provision is generally very good, but the financial arrangements are very much not in their favour. Nevertheless, current and future residents have few choices in the market, as this is the prevailing contracting model.

This means that the market will not, of its own volition move to a different model with mandatory buybacks that imposes additional obligations and potential costs to their business model. It would not be *efficient* for them. If a provider does move to such a model, it could enjoy lesser access to capital and may financially underperform peers, although it may have greater incentives to speed up sales and suffer relatively small consequences. The market is trapped in the status quo.

But these avoided obligations and costs are borne by residents. That is, the current model is not *equitable* to residents. Imposing a common buy back period would create a level playing field, where all providers would be bound by the same approach. By having a reasonable buy-back period based on local evidence, and a penalty rate referenced to the 10 year bond yield (for example 10 year government bond yield + x%) in a schedule would allow all providers to approach this on a level playing field. Creating exemptions based on open book policy on grounds of financial hardship should be considered.

For the policy makers, the focus should be on both efficiency and equity. Policy setting should imagine a future where there is substantial behaviour change as a result of the policy. It should consider the effect of policy relative to the status quo, but also from first principles with a careful analysis of efficiency and equity. In my view this has not been demonstrated yet and should be rectified.

Yours sincerely

Shamubeel Eaqub
shamubeel@eaqub.com
021 573 218

110 Frederick Street
Hillsborough
Auckland 1042

f) RVResidents revised MHUD questionnaire - data summary

Questionnaire Results and Tally Sheet Explanation

Executive Summary

From the 5th September 2023 RVResidents began to distribute 50,000 questionnaires that followed the majority of questions asked by Te Tūāpapa Kura Kāinga - the Ministry of Housing and Urban Development (MHUD). The purpose was to gather quantitative feedback from primarily existing residents. Over 10,500 questionnaires were received, tallied and collated by RVResidents utilising approximately 3000 paid and volunteer hours. The results of which are included in the attached pages.

Key points from the results include;

- 97% believe the responsibility for maintenance and repairs (including the direct cost of these) should be assigned to the operator, except where there's intentional or careless damage or loss? Responses related to other chattel questions were 73% - 95% for Yes, including that these proposals should apply to existing ORA's.
- 81% believe there should be a new dispute resolution scheme that is independent of retirement village operators, with only 3% disagreeing. 51% were unsure on whether legal representation should be limited in a new scheme?
- 83% said a clear statement that a suitable aged residential care unit cannot be guaranteed be included in one of the new disclosure documents, while only 3% disagreed.
- 68% said operators should NOT be allowed to charge aged residential care residents in ORA care suites a second fixed deduction, while 6% were fine with it.
- 95% said retirement villages should be upgraded to meet certain building standards, such as the healthy homes standards. 1% disagreed.
- 96% believe operators should have to repay a former resident's capital sum within a fixed period. 56% said within 28 days, 33% said within 3 months, 7% in 6 months, and less than .5% said 12 months.
- 96% agreed operators should have to pay interest on a former resident's capital sum if the unit remains vacant after six months, with 76% of respondents saying from vacant possession or from 28 days.
- 89% said a mandatory repayment timeframe for residents' capital sums should apply to existing ORAs while only 1% disagreed.
- 80% said operators should stop charging weekly fees when a unit is vacated, and 1% disagreed.
- 96% said fixed deductions should stop accruing when a unit is vacated or very shortly after.
- 74% said limits should be placed on the size of the fixed deduction with 6% disagreeing.
- 84% said these changes should apply to existing ORAs.
- 94% said operators should have to maintain insurance policies that are sufficient to pay out all residents' capital sums and 74% said operators should be restricted from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property and the resident was not at fault.
- 78% said a government agency should be tasked with monitoring and auditing retirement villages' compliance with the legislative framework, and 78% also believed one agency should have an overall leadership role.
- Most (69%) were unsure of any issues with the current provisions for offences, penalties, and enforcement tools under the Act.
- 88% said sales and transfers of retirement village units have the same consumer protections as the Real Estate Agents Act 2008.

Overview
When the Discussion Document was publicly announced in August 2023, residents were given the opportunity to complete an online questionnaire of 48 pages OR to download the questionnaire, print it out and then post or email it back. While there were options for the public to simply email MHUD or send in a letter, RVResidents were keen for as many existing residents as possible to have their say.

RVResidents expressed concern over the following:

- The length of the MHUD questionnaire
- Complexity of some of the questions
- Relevance to their current situation (ie. the proposal of standardising ORA's would have no impact on many of them)
- The lack of a Freepost option
- Some proposals either not taking into account villages that share in capital gain, or proposals that seemed too narrow.

Methodology
To assist with addressing the above concerns, RVResidents proposed a cutdown version of the questionnaire, removing questions that would not impact most existing residents (but still referring them to the topic, should they wish to comment or read up on it in the Discussion Document). An early copy was then submitted to MHUD for comment, and revisions made.

The result was a 6 page A4 panel document, with the additional proposals (in italics) and a freepost address, at RVResidents cost.

50,000 were then printed (invoice attached) and distributed to village contacts throughout NZ. A list of all villages and the quantities marked for distribution is attached. A multiplier (x1.25) was applied to the number of units in each village to allow for couples to submit one each, should they choose to do so. The objective was to get a questionnaire into the hands of EVERY Retirement or Lifestyle Village Resident in New Zealand. When tallying questionnaires, we also marked down if a couple or single had responded by checking if one or two names had been recorded on the questionnaires.

RVResidents has Village Contacts in over 75% of the villages, and where there are villages without a contact, quantities were sent to a nearby volunteer contact to deliver to letterboxes in those villages. Note: Some Village Contacts reported that their supply of Questionnaire's had 'disappeared' from Reception, even though photos or signatures by the courier showed them being dropped off. Extra supplies were then sent out.

<u>We estimate over 95% of the total units in 90+% of the villages were covered.</u>

An online version of the Questionnaire was also made available, and a link emailed to the 6700+ members, associate members and silent supporters that we have email addresses for.

Some village contacts reported that they had calls from local residents not understanding some of the questions. To assist residents who needed help understanding the questions, a Powerpoint Presentation was made available as a resource with information for each group of questions outlining:
• What are the issues?
• To address these issues, the proposals are to…
• RVResidents believe…

As well, Village Contacts were available to assist, and some set up a table in the common lounge at set times of the week, offering to help those with questions, should they need it.

Receiving Questionnaires
These came in a Private Bag, which was delivered to a home office 3 times per week. While we offered the Freepost option (so that there was no financial cost for anyone that wanted to respond) many residents either supplied a $2 stamp, and in some cases Village Contacts received the sealed questionnaires and then posted them to us (at their cost) in a Courier Post bag.

On the 20th October 2023, we had received 10,000+ questionnaires. To allow for people posting their responses on the day, we extended the collection period until 30th October 2023.

Tallying Questionnaires
To make this job as easy as possible, a ‘tally form’ was developed using the actual questionnaire layout. This meant that recording tallies would follow the same flow and positioning of questions and answers, reducing the chance of manual error.

The form was then beta tested with volunteers and changes made (ie. larger spaces assigned to specific answers) based on early answer patterns showing. We also discovered that tallying 100 questionnaires took approx. 8-10 volunteer hours. That meant finding volunteers to assist in over 1000 hours of collation and tallying. RVR Exec and Village Contacts in the Canterbury and Otago regions took the responsibility of coordinating the collation of the completed questionnaires. An instruction sheet was included with each tally form.

The following was also taken into account:

- A ‘not answered’ option was added to question tallies to allow us to capture an error rate for any answers not recorded. While very useful, it is the only tick box that does not visually prompt the tally recorder, and invariably, tallies recorded that did not add up to the total tally count were more likely to be due to this ‘not answered’ tally being missed.
- If a question did not tally, we endeavoured to recheck counting and update tally forms, however, this proved very time-consuming and therefore RVResidents decided to accept a margin of error of up to 1%.
- Where possible, questionnaires that were from a particular village were tallied by people in a different village.

Audit checks and error capture
Recording the results into a spreadsheet was handled by 5 people. Each tally form entered into the spreadsheet (irrespective of the number of questionnaires) took between 10-15 minutes. While volunteers were instructed to tally up answers for each question, and that this number should total the number of questionnaires recorded, this did not always happen. You will see any margin of error with tallying associated with each tally form in the printout. While we have not corrected these due to time and resource constraints, we’ve ensured recounting respective answers in the questionnaire bundles under the tally form is possible, should MHUD wish to.

The average margin of error for recording is less than +/- .5%

Questions with answers that did not fit the standard error capture
Some questions allowed for multiple options, or offered ‘Yes’ and ‘Yes, up to…’. We’ve noted them below and commented on the approach taken.
Q.21 Comments… This showed a higher degree of variance in recording as it did not follow the standard pattern.
Q.28 Multiple answers are allowed, and therefore we are unable to apply a cross check with the total number of questionnaires counted per tally form. Assume a higher error margin.
Q.19 & 58b had the RVR option added of *‘Yes, up to the proportion of capital gain kept by the operator’* AND Q.45 & 46 had the RVR option added of *‘Yes, where there is no share of capital gain to the resident’’*. In both cases we found some respondents had ticked *‘Yes’*, and then ticked *‘Yes, …’*. In these situations Tally Recorders were advised to select one option (usually the *‘Yes, …’* and then circle it on the questionnaire to identify which answer was recorded - however, this was not always consistent and therefore a higher error margin is likely on these questions. We therefore suggest totalling the two *‘Yes’* answers together to give a combined score. NOTE: Where a question like this exceeded the total tally count, early checking showed that invariably, both “Yes’s” had been tallied giving a higher answer count for that question.

RVResidents response to possible questions over collection method
Was the questionnaire sent to just RVResidents members?
No. 50,000 were printed for the approx 50,000 residents, as per latest JLL Reports. Approx. 90% of villages (constituting approx 95% of residents) were delivered or offered questionnaires.

Was an independent firm used to collect or collate data?
No. This was due to:
1. Cost. If we were to apply even a base rate of $25 per hour to our volunteer hours we would be estimating $75,000.
2. Time. Over 1000 hours just to collate the results into the tally forms.
3. We had able volunteers willing to offer their time and skills.
4. Achieving a response level from 10,000+ people (over 20% of the total target market) making any perceived skew or error margin insignificant.

What about respondents' comments or any additional material attached?
Broad themes to comments are included on most of the tally forms, and questionnaires with additional material attached should be grouped together (but not recorded) under each tally form. Therefore, we encourage MHUD to read any additional material attached as though it was sent in as a separate letter.

Does RVResidents want all Questionnaires and Tally Forms returned when MHUD have finished with them?
Yes.

What were the final costs for the Questionnaires and associated results?

Actual costs:	$27,000+	Design, Print, Distribution, Freepost, Collation overflow, Data entry
Saved costs:	$75,000	Packing, Assistance, Collation, Data entry

Questionnaire for residents regarding possible Changes to the Retirement Village Legislation - Summary Results 31/10/2023

	Full Question Description	Margin of Error	%	Yes	%	No	%	Not Sure		Other	%	No Answer
Single			**93%**	9,864								
Couple			**8%**	707								
NZ European			**77%**	7,892								
Maori			**1%**	70								
Pacific			**0%**	12								
Asian			**1%**	76								
European/UK			**14%**	1,481								
ME/LA			**0%**	2								
Other			**1%**	109								
No Ans			**6%**	591								
Village Res			**97%**	9,774								
Family of Res			**3%**	262								
Other			**1%**	70								
Main Section												
Q15	Should the definition of 'retirement village property' include operator-owned unit chattels and fixtures?	-0.21%	**91%**	9,645	**3%**	282	**4%**	419			**2%**	209
Q16	Should operators provide a list of operator-owned chattels and fixtures and their condition to intending residents of that unit?	-0.14%	**96%**	10,171	**1%**	122	**2%**	175			**1%**	94
Q17	Should the responsibility for maintenance and repairs (including the direct cost of these) be assigned to the operator, except where there's intentional or careless damage or loss?	-0.29%	**97%**	10,188	**1%**	151	**1%**	139			**1%**	68
Q18	Should marks due to use of mobility aids and incontinence be classified as 'fair wear and tear'?	-0.52%	**73%**	7,729	**11%**	1,159	**14%**	1,473			**2%**	161
Q19	Should operators meet the cost of replacing or upgrading operator-owned unit chattels and fixtures when they wear out?	0.09%	**91%**	9,662	**2%**	229	**2%**	179			**1%**	76
Q19	Yes up to the proportion of capital gain kept by the operator								**4%**	**440**		
Q20	If introduced, should these proposals apply to existing ORAs?	-0.74%	**90%**	9,401	**2%**	233	**6%**	635			**2%**	230

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Questionnaire for residents regarding possible Changes to the Retirement Village Legislation - Summary Results 31/10/2023

	Full Question Description	Margin of Error	%	Yes	%	No	%	Not Sure		Other	%	No Answer		
Q21	Any other issues with maintenance and repairs that we should be aware of? **(Comments made)**	**-2.59%**	**0%**	0	**0%**	0	**0%**	0	**14%**	**1,465**	**86%**	8,838		
Q22	Should there be a new dispute resolution scheme that is independent of retirement village operators?	**-0.17%**	**81%**	8,527	**3%**	303	**13%**	1,369			**3%**	360		
Q24	Should residents be required to contribute to the costs of resolving disputes between each other? If yes, what costs should residents contribute to?	**0.04%**	**38%**	3,983	**27%**	2,825	**31%**	3,299			**4%**	474		
Q25	Should legal representation be limited in a new scheme? If yes, how should it be limited?	**-0.13%**	**17%**	1,757	**24%**	2,511	**52%**	5,495			**8%**	800		
Q27	Would independent advocacy support that is free for residents be needed under a new dispute resolution scheme? If yes, please give your reasons and suggestions for how it might work.	**-0.16%**	**41%**	4,318	**8%**	797	**43%**	4,584			**8%**	861		
Q28				Avg Occ		Current Occ				Other Info				No Info
Q28	What information on occupancy levels of aged residential care should be provided to intending residents:	**5.95%**	**37%**	4,116	**32%**	3,543	**16%**	1,796	**4%**	469	**7%**	828	0%	0
Q29	Should a clear statement that a suitable aged residential care unit cannot be guaranteed be included in one of the new disclosure documents?	**-0.05%**	**83%**	8,784	**3%**	349	**8%**	884			**5%**	555		
Q31	Should operators be allowed to charge aged residential care residents in ORA care suites a second fixed deduction ('deferred management fee')? Please give your reasons, including if it should it be capped or limited in some way.	**-0.15%**	**6%**	587	**68%**	7,197	**18%**	1,938			**8%**	839		
Q34	Do you or someone you know live in a retirement village unit that is regularly cold or damp?	**-0.26%**	**10%**	1,029	**83%**	8,712	**4%**	435			**4%**	374		
Q35	Should retirement villages be upgraded to meet certain building standards, such as the healthy homes standards?	**-0.56%**	**95%**	10,004	**1%**	136	**2%**	171			**2%**	207		
Q36	Is the design of your retirement village age-friendly and accessible to support residents to age in place? If no, what changes would be needed?	**-0.10%**	**79%**	8,368	**11%**	1,202	**6%**	617			**4%**	379		

Questionnaire for residents regarding possible Changes to the Retirement Village Legislation - Summary Results

31/10/2023

	Full Question Description	Margin of Error	%	Yes	%	No	%	Not Sure	%	Other	%	No Answer
Q37	Should operators have to repay a former resident's capital sum within a fixed period after the ORA has been terminated and the unit has been fully vacated, and if so, how long should the fixed period be?	-0.06%	**96%**	10,119	**1%**	91	**2%**	170			**2%**	191
Q37 if yes				28 Days		3 Months		6 Months		12 Months		
Q37 if yes	If Yes, by the earlier of (a) the former resident's unit being relicensed OR (b) within:	-0.50%	**56%**	5,886	**33%**	3,446	**7%**	708	**0%**	50	**4%**	434
Q37 cont	(continued) Should operators have to pay interest on a former resident's capital sum if the unit remains vacant after six months?	-0.23%	**96%**	10,119	**1%**	91	**2%**	170			**2%**	191
Q42				Vacant Pos'n		28 Days		6 Months		9 Months		
Q42	How long should operators have to relicense a unit before they need to start paying interest to the former resident?	1.25%	**24%**	2,595	**52%**	5,578	**16%**	1,686	**1%**	77	**0%**	0
Q44	Should a mandatory repayment timeframe for residents' capital sums apply to existing ORAs?	-1.01%	**89%**	9,369	**2%**	158	**5%**	542			**4%**	401
Q45	If introduced, should the requirement to pay interest on former residents' capital sums apply to existing ORAs?	5.56%	**63%**	7,014	**3%**	347	**7%**	767		Yes no CG	**5%**	508
	Yes, where there is no share of capital gain to the resident 9,543								**23%**	2,529		
Q46	Should operators stop charging weekly fees when a unit is vacated or shortly after?	4.25%	**80%**	8,859	**1%**	60	**1%**	62			**2%**	170
	Yes, where there is no share of capital gain to the resident 10,735								**17%**	1,876		
Q47	If introduced, should this apply to existing ORAs?	-0.32%	**93%**	9,835	**1%**	111	**3%**	286			**3%**	311
Q48	Should fixed deductions stop accruing when a unit is vacated or very shortly after?	-0.29%	**96%**	10,072	**0%**	49	**2%**	218			**2%**	207
Q49	Should limits be placed on the size of the fixed deduction? Why/why not?	-0.43%	**74%**	7,796	**6%**	652	**15%**	1,563			**5%**	520
Q51	If introduced, should these changes apply to existing ORAs? Why/why not?	-0.15%	**84%**	8,827	**3%**	324	**9%**	949			**4%**	461
Q52a	(a) Do you agree that operators should only make a resident liable for a capital loss on resale of their unit to the same extent as they would be entitled to any share of the capital gains?	-0.16%	**51%**	5,375	**20%**	2,118	**22%**	2,347			**7%**	720

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Questionnaire for residents regarding possible Changes to the Retirement Village Legislation - Summary Results 31/10/2023

	Full Question Description	Margin of Error	%	Yes	%	No	%	Not Sure		Other	%	No Answer
Q52b	(b) Do you agree that operators that share capital gains with residents would not be required to make residents liable for capital losses to the same extent?	-0.43%	**45%**	4,741	**19%**	1,950	**28%**	2,967			**8%**	874
Q53	If introduced, should this apply to existing ORAs? Why/why not?	-0.21%	**65%**	6,839	**6%**	676	**21%**	2,246			**8%**	794
Q54	If there are any other issues with capital gains or losses from the relicensing of a unit in a retirement village that should be addressed in the review please tell us about them **(Comments made)**	-1.64%	**0%**	0	**0%**	0	**0%**	0	**10%**	**1,073**	**90%**	9,331
Q58a	(a) Should operators have to maintain insurance policies that, at all times, are sufficient (alongside other funds) to pay out all residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated?	-0.28%	**94%**	9,962	**1%**	67	**3%**	280			**2%**	238
Q58b	b) Should operators be restricted from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property; and if the resident was not at fault for the loss, damage or destruction?	2.49%	**74%**	7,998	**8%**	911	**4%**	438			**4%**	396
Q58b	Yes up to the proportion of capital gain kept by the operator								**10%**	**1,097**		
Q62	Should statutory supervisors have the ability to hold both land and personal property security on behalf of residents? Why/why not?	0.12%	**45%**	4,774	**16%**	1,673	**31%**	3,299			**8%**	844
Q66	Does your retirement village provide a culturally responsive environment and/or services?	-0.26%	**48%**	5,067	**12%**	1,241	**34%**	3,562			**6%**	679
Q67	Are there any changes you would like to see in how retirement villages provide a culturally responsive environment and/or services?	-0.28%	**7%**	790	**44%**	4,680	**40%**	4,169			**9%**	908
Q69	Do you think government agencies have sufficient powers to carry out their functions within the retirement villages system? Why/why not?	-0.28%	**17%**	1,768	**34%**	3,622	**43%**	4,555			**6%**	606
Q70	Should a government agency be tasked with monitoring and auditing retirement villages' compliance with the legislative framework? Why/why not?	-0.17%	**77%**	8,178	**6%**	650	**12%**	1,306			**4%**	425

Questionnaire for residents regarding possible Changes to the Retirement Village Legislation - Summary Results 31/10/2023

	Full Question Description	Margin of Error	%	Yes	%	No	%	Not Sure	Other	%	No Answer
Q71	Roles are currently spread across a range of government agencies, and stakeholders have observed that there is no clear system leader. Do you think one agency should have an overall leadership role?	-0.04%	**78%**	8,208	**6%**	606	**12%**	1,316		**4%**	443
Q83	Are there any issues with the current provisions for offences, penalties, and enforcement tools under the Act?	-0.14%	**10%**	1,048	**12%**	1,224	**69%**	7,258		**10%**	1,032
Q84	Should all sales and transfers of retirement village units have the same consumer protections?	-0.09%	**88%**	9,304	**1%**	58	**5%**	483		**7%**	723
Q85	Do you think the retirement village operator or an independent third party facilitating the sale or transfer of a retirement village unit should have a general fiduciary duty to act in the best interests of the outgoing resident? Please give us your reasons	-0.60%	**84%**	8,822	**1%**	118	**8%**	802		**7%**	772

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