



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:

Organisation (if applicable):

* Your email address:

Your phone number:

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
- ☐ Iwi/Māori organisation
- ☐ Lawyer/law firm
- ☐ Real estate agent
- ☐ Prefer not to say
- ☐ Other individual (please describe below)
- ☐ Other organisation (please describe below)

Other:

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)

Overseas:

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.

* ☐ 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:

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Follow up

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

☐ Yes

☐ No

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?

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)

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)

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.

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.

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)

☐ Yes

☐ No

☐ Not sure

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

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

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.

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.

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.

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?

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?

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?

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.

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 operator-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.

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.

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.

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.

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.

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

- ☐ Yes
- ☐ No
- ☐ Not sure

Please give us your reasons.

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

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.

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

- ☐ a dispute resolution scheme provider
- ☐ a government appointed commissioner
- ☐ neither of these?

Please give us your reasons.

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)?

- ☐ Yes
- ☐ No
- ☐ Not sure

If yes, what costs should residents contribute to?

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

- ☐ Yes
- ☐ No
- ☐ Not sure

If yes, how should it be limited?

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?

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.

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.

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
- ☐ Current occupancy levels at a clearly dated point in time
- ☐ Other information
- ☐ No information
- ☐ Not sure

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

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.

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.

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 it be capped or limited in some way.

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?
- Is it common practice for operators to charge a second fixed deduction or is there variability across the sector?
- Where a second fixed deduction is charged, does the percentage increase by length of stay, and at what percentage is it capped?
- 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?

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 any other issues with minimum building standards that we have not covered, please tell us about them.

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

- ☐ Yes
- ☐ No
- ☐ Not sure

If yes, please tell us about it.

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, insulation, ventilation, moisture ingress and drainage, and draught stopping.

- ☐ Yes
- ☐ No
- ☐ Not sure

Please give us your reasons.

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

- ☐ Yes
- ☐ No
- ☐ Not sure

If no, what changes would be needed?

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.

☐ 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.

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

☐ Neither or these (See paragraphs 208-213 of the discussion paper).

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

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

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

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?

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.

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.

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.

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

- ☐ Yes
- ☐ No
- ☐ Not sure

Please give us your reasons.

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.

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.

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.

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.



To read more about this topic, please refer to page 81 of the discussion paper.

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)

- ☐ Yes
- ☐ No
- ☐ Not sure

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

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

- ☐ Yes
- ☐ No
- ☐ Not sure

Why/why not?

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

- ☐ Yes
- ☐ No
- ☐ Not sure

Why/why not?

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

- ☐ Yes
- ☐ No
- ☐ Not sure

Why/why not?

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.

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

☐ Yes

☐ No

☐ Not sure

Please give us your reasons.

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.

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?

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?

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.
- ☐ 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.
- ☐ 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.

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?

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?

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.

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?

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

- ☐ Yes
- ☐ No
- ☐ Not sure

If yes, how?

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.

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?

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

Please tell us how.

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

If yes, please tell us how.

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.

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?

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?

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?

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)

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?

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?

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?

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

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 the 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.
- ☐ 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?

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

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

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?

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.

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.

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?

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?

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.

Q. 87: Please attach any additional supporting material.