

Office of the Minister of Housing

Office of the Minister of Health

Chair, Cabinet Legislation Committee

**Government Response to the Report of the Social Services and Community Committee on *Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care***

**Proposal**

- 1 This paper seeks approval of the government's response to the Social Services and Community Committee report on the *Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care*.

**The Petition: Retirement villages must have capacity when residents move to next level of care**

- 2 The *Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care* requested that the House of Representatives pass legislation so that it is a legal requirement for retirement village operators to ensure that they have the capacity to accommodate residents when they move from one level of care to the next (for example, from serviced apartments to rest-home, or to hospital level of care).
- 3 The Petitioner, Sue Brown, started the petition in response to her mother's treatment when she needed to move to a higher level of care in her retirement village. The retirement village did not advise the petitioner or the petitioner's mother of the lack of available hospital-level rooms prior to requiring her to undertake a support needs assessment.
- 4 Subsequent, to that assessment, the village advised the petitioner her mother would not be able to return to her existing room and would have to seek a room in another facility.
- 5 The petitioner presented the Petition to the House of Representatives on 03 July 2020.
- 6 The Social Services and Community Committee undertook an investigation of the Petition and produced a report on its findings. The report, entitled "*Report of Social Services and Community Committee on Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care*" explores whether the rights and needs of the elderly are being met by the current system. Several government agencies including Manatū Hauora (the Ministry of Health) and Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (HUD) were consulted in this process.

## **The Social Services and Community Committee findings and recommendation**

- 7 The Social Services and Community Committee presented its report on the Petition to the House of Representatives in June 2022.
- 8 The Committee considered that the petition raised a number of concerns about the retirement sector, particularly the interface between independent living within a retirement village, and aged residential care. Submissions from various organisations in the retirement sector were sought. The Committee identified four main concerns:
  - 8.1 Concern that communication between residents (including prospective residents) and retirement village operators is inadequate, particularly regarding the difference between rights of occupation, tenancy, and ownership; the process for transition to advanced care, and risks inherent within this; and in the way that access to advanced care within a village is advertised.
  - 8.2 Concern that the sector has struggled to cope with a growing shortage of nurses, which has created potential for poor outcomes like the petitioner's experience.
  - 8.3 Concerns about inconsistent access to externally sourced carers.
  - 8.4 Concern that the funding model and legislation is not adequate for the increasing demand for aged residential care and needs reviewing.
- 9 The Committee recommended that the Government conduct a full review of the legislation governing the retirement sector in due course. The Committee did not accept the petitioner's proposal that retirement villages be required to have capacity when residents move to next level of care. Adopting the petitioner's proposal would have substantially reduced aged residential care capacity because it would have required retirement villages to keep beds vacant.

## **The Government's response to the Social Services and Community Committee's recommendations**

- 10 There are two key legislative regimes governing the retirement sector, encompassing retirement villages and aged residential care facilities respectively. These are the Retirement Villages Act 2003 and Health Disability Services (Safety) Act 2001.

### ***Retirement Villages Act 2003***

- 11 The Retirement Villages Act 2003 (RVA) and associated regulations govern the operation of retirement villages, but not the provision of aged residential care (which is a health service). The RVA deals with, for example, what needs to be disclosed in the contracts that residents sign in order to 'buy in' to a village. The Act is administered by the Ministry.
- 12 The RVA was introduced almost twenty years ago and has not been reviewed in that time. Recently there have been calls to review the regime and address

a number of issues that were identified in the Retirement Commissioner's 2020 White Paper.

- 13 The White Paper set out options for change for the retirement sector, drawing more than 3000 responses from the public. A review of the Act is scheduled to begin in 2023.
- 14 There is potential for this review to consider whether the way in which the RVA protects residents in the transition to care could be improved. For example:
  - 14.1 Occupation right agreements (ORAs) are the contracts under which residents enter a retirement village. Currently, they must contain certain information about the village's transition to care process. The Committee noted that ORAs are often difficult to understand, and greater consistency is required across the retirement village sector about how ORAs for care and the practices surrounding them are described, applied, and disclosed.
  - 14.2 The report raised concerns that operators advertising a 'continuum of care' may potentially be misleading prospective residents about the reality of the transfer process, and the likelihood of care being available when needed. The Committee suggested that better information be provided to residents about the availability of care.
- 15 The review will be formally scoped later this year. The Committee's findings will be taken into account in formulating the scope of the review. In scoping the review, officials will also have regard to New Zealand's commitments under the United Nations Convention on the Rights of Persons with Disabilities, and obligations under the Human Rights Act 1993.
- 16 s 9(2)(f)(iv)

#### *Health and Disability Services (Safety) Act 2001*

- 17 The provision of aged residential care is governed by the Health and Disability Services (Safety) Act 2001. The regulations include a code of practice and a code of residents' rights. Manatū Hauora is responsible for certifying aged residential care facilities (including those facilities located within a wider retirement village) and auditing them for compliance with the Ngā Paerewa Health and Disability Services Standard.
- 18 Manatū Hauora does not consider that the Health and Disability Services (Safety) Act 2001 needs to be reviewed urgently as there are a range of quality assurance mechanisms provided for in the Act to ensure the safety of those services are working as intended, including setting the standards of care that

are regularly reviewed; and the auditing and certification of facilities, against the standards.

- 19 With the redesign of the health and disability system it is timely for Manatū Hauora to consider, in its enhanced role as kaitiaki, how to embed best practice regulatory stewardship.
- 20 Manatū Hauora has commenced a programme of work to ensure regulatory stewardship is built into all the new agencies with Manatū Hauora, Te Whatu Ora (Health New Zealand) and Te Aka Whai Ora (Māori Health Authority) sharing responsibility for the various regulatory systems. The Health and Disability Services (Safety) Act 2001 will be included in that programme of work.

#### *Further work related to aged care services*

- 21 Te Whatu Ora is in the early stages of developing a co-commissioning and funding model for aged care services that will be consistent with six key principles:
  - 21.1 Meeting Te Tiriti obligations – service funding decisions recognise Te Tiriti obligations across the five (Tribunal-endorsed) principles.
  - 21.2 Equitable – service funding decisions that actively address the inequities experienced by priority populations are preferred.
  - 21.3 Effective – funding decisions prioritise services that are effective in achieving outcomes valued by the recipients and their whanau.
  - 21.4 Sustainable – funding decisions that enable services to be clinically, culturally, financially and environmentally sustainable are preferred.
  - 21.5 Efficient – funding decisions are preferred that improve productivity and allocative efficiency.
  - 21.6 Acceptable – funding decisions prioritise services that are acceptable to patients, whānau and community.
- 22 The focus will be on addressing Te Tiriti obligations, equity of access, quality, efficiency, simplicity and transparency and will include consideration of client feedback, reporting, monitoring and auditing mechanisms, similar to those used across other older people services.
- 23 Whaikaha – Ministry of Disabled People is also currently undertaking a review of the placement and support of younger people with disabilities into aged residential care, to ensure that such placement is only used as a last resort, and that choice and control are exercised on the part of the person with a disability and their family and whanau.

#### **Timing of the government response**

- 24 The Government response should be presented to the House of Representatives as soon as practicable in accordance with Standing Order 252.

## Consultation

- 25 This Cabinet paper has been prepared by the Ministry in consultation with Manatū Hauora, Office for Seniors, Whaikaha – the Ministry of Disabled People, and the Department of the Prime Minister and Cabinet. The Ministry for Pacific Peoples, Te Puni Kōkiri, and Treasury were also consulted.

## Financial implications

- 26 There are no financial implications for this recommendation.

## Publicity

- 27 The Minister of Housing and Minister of Health will present the Government response to the Report of the Social Service and Community Committee to the House of Representatives. No further publicity is required.

## Proactive Release

- 28 This paper will be proactively released in accordance with Cabinet guidelines. Any redactions made will be consistent with the Official Information Act 1982.

## Recommendations

The Minister of Housing and Minister of Health recommend that the Cabinet Legislation Committee:

- 1 **note** that in June 2022 the Social Services and Community Committee presented its report to the House entitled “Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care”;
- 2 **note** that the Committee recommended that the Government “conduct a full review of the legislation governing the retirement sector in due course”;
- 3 **note** the submission of the Minister of Housing and the Minister of Health, and in particular the advice that:
  - 3.1 Te Tūāpapa Kura Kainga intends to begin a review of the Retirement Villages Act 2003 in early 2023;
  - 3.2 Manatū Hauora will participate in the review of the Retirement Villages Act 2003 with respect to aged residential care;
  - 3.3 Manatū Hauora will include the Health and Disability Services (Safety) Act 2001 as part of its work to embed best practice regulatory stewardship.
- 4 **approve** the Government response, attached to this submission, to the Report of the Social Services and Community Committee entitled “Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care”;

- 5     **note** that the Government response must be presented to the House by 25 August;
- 6     **invite** the Minister of Housing and Minister of Health to present the Government response to the House in accordance with Standing Order 252;
- 7     **invite** the Minister of Housing and Minister of Health to write to the petitioner enclosing a copy of the Government response to the report of the Social Services and Community Committee on the petition, after the response has been presented to the House.

Authorised for lodgement

Hon Dr Megan Woods  
Minister of Housing

Hon Andrew Little  
Minister of Health