



## Cabinet paper: Retirement Villages (Fees) Regulations 2006

### Proposal

1. I seek agreement to amend the Retirement Villages (Fees) Regulations 2006 to:

- align the land transfer fees charged under the Retirement Villages (Fees) Regulations 2006 with those charged under the Land Transfer Regulations 2002 (revised by Cabinet Domestic Policy Committee on 6 April 2011 [DOM Min (11) 5/4 refers])
- reduce the surplus in the memorandum account by:

- introducing a flat rate registration fee for retirement villages
- retaining the three tier fee structure for the annual return fee
- reducing the annual return fee for all retirement villages.

### Executive summary

2. The memorandum account in February 2011 showed a surplus of \$112,000. Under the Legislative Advisory Committee, Office of the Auditor-General and Treasury guidelines, we have a duty to reduce the surplus.

3. The retirement villages' fees are made up of two components:

- the first component is the fees paid by retirement village operators to the Registrar of Retirement Villages (the Registrar) to cover all costs incurred of setting up and maintaining the retirement villages register and all of the duties and functions required by the Retirement Villages Act 2003 (the Act)
- the second component is the land transfer fees enabling the Registrar to notify the Registrar-General of Land of a retirement villages' registration. The notification is the trigger for the Registrar-General of Land to place a memorial on land titles providing priority for the rights of residents ahead of the rights of holders of security interests.

4. Cabinet Domestic Policy Committee on 6 April 2011 agreed to raise the land transfer fees by a 30 per cent weighted average, following a further decline in the number of land transfer transactions in 2010/11 [DOM Min (11) 5/4 refers].

5. I propose to amend the land transfer fees in the Retirement Villages (Fees) Regulations 2006 to match those charged under the Land Transfer Regulations 2002.

The new land transfer rate is:

Registrar-General component	\$176
For each notice of the memorial on computer registers under section 21(4) of the Retirement Villages Act	\$5
<b>Total</b>	<b>\$181</b>

6. The Companies Office incorporating the Registrar has requested I amend its fees. The proposal is to:

- introduce a flat rate registration fee of \$900 including GST
- retain the three tier fee structure for annual return charges and decrease the amount charged in each tier.

7. Introducing a flat rate fee for registration reflects the minimal difference in processing retirement village applications between the smallest and largest retirement villages.

8. The proposed fee is set at an under-recovery of the Registrar's costs. Officials in the Department of Building and Housing (the Department) and Registrar's office would off-set the under-recovery from the existing surplus in the memorandum account.

9. The surplus is \$112,000 which can support another 18 retirement villages registering at the proposed fee of \$900. I am informed that the eradication of the surplus is dependent on the numbers of new retirement villages registering. If five new retirement villages registered each year, the surplus would be reduced in three years. If only two new retirement villages registered each year, the surplus would be reduced in nine years.

10 The calculated recovery cost for annual returns for each retirement village is \$650 including GST. The current fees over-recover the costs significantly. Under the Legislative Advisory Committee, Office of the Auditor-General and Treasury guidelines, the Registrar needs to reduce the fees collected. Officials therefore propose to under recover costs from small retirement villages and off set this under recovery by over recovering costs from the large retirement villages:

Registration fee	Rate (including GST) (\$)
All retirement villages	900
Annual Return fee for retirement villages with:	
No more than 34 residential units (small)	400
At least 35 and no more than 84 residential units (medium)	650
At least 85 residential units (large)	1,300

11. The overall effect of my proposals is to reduce compliance costs for fully completed registered retirement villages as they are only required to pay annual returns to retain their registration.

12. Some partially complete or unit title registered retirement villages may incur higher land transfer fees (especially unit title retirement villages at the point of the purchase of a residential unit).

13. Increases in the land transfer fees will be covered by the decrease in annual return fees. I anticipate that small unit title villages will only be able to off set part of the additional costs, but medium and large retirement villages will off set all of the additional cost of the land transfer fees from the reduction in annual return fees (see table for an illustration):

Current rate			
	Registration fee (\$)	Land Transfer fee (\$)	Total (\$)
No more than 34 residential units (small)	552	50 + plus 10 <sup>[2]</sup>	612
At least 35 and no more than 84 residential units (medium)	1,738	50 + plus 10	1,798

At least 85 residential units (large)	4,508	50 + plus 10	4,568
Proposed			
No more than 34 residential units (small)	900	176 + plus 5 <sup>[3]</sup>	1,081
At least 35 and no more than 84 residential units (medium)	900	176 + plus 5	1,081
At least 85 residential units (large)	900	176 + plus 5	1,081
Differential between the current registration costs and proposed			
	Current (\$)	Proposed (\$)	+/- (\$)
No more than 34 residential units (small)	612	1,081	+469
At least 35 and no more than 84 residential units (medium)	1,798	1,081	-717
At least 85 residential units (large)	4,568	1,081	-3,487

## Background

### The Retirement Villages (Fees) Regulations 2006

14. Both Land Information New Zealand and the Registrar of Retirement Villages are required to set fees to recover their respective costs.

#### Registrar of Retirement Villages

15. Prior to the Act passing, registration of retirement villages was governed by the Securities Act 1978. Unit title retirement villages and many religious, welfare and charitable retirement villages were excluded from the Securities Act 1978 regime.

16. As a result, the Registrar only had partial information on which to estimate the fee levels required to recover its costs of fulfilling its functions and duties under the Act.

17. The original estimates were that once initial registration was completed, 350 retirement villages would file an annual return in any given year. There would be 25 retirement villages registering and 25 retirement villages de-registering a year.

18. The estimate for the number of retirement villages submitting annual returns in comparison to the actual number is close to the estimate. There are now 330 registered retirement villages. However, the number of new retirement villages registering is much lower than the estimated 25 with fewer than five new retirement villages registering a year. The number of de-registrations is even lower.

19. As a result the Registrar under-estimated the costs of registering retirement villages when registration came into force on 1 May 2007, and the fees charged did not recover its costs. The under-recovery has been balanced out by the Registrar over-recovering its costs for annual returns. The annual return fees for medium and large retirement villages are higher than needed. Even with the under recovery of annual return fees for small retirement villages, the memorandum account now has a surplus of \$112,000 (figure to February 2011).

#### Land Transfer Fees

20. The Registrar-General of Land has a duty to place a memorial on [land] titles to protect the tenure and financial position of residents in registered retirement villages. This duty can only be fulfilled when a retirement village operator submits to the Registrar of Retirement Villages a full legal description of the property comprising the retirement village. There is a fee for this transaction to be fulfilled.

21. The authority to collect fees for land transfers is given under the Land Transfer Act 1952 (as at 1 January 2011). The administering agency for the Land Transfer Act 1952 and its associated regulations is Land Information New Zealand.

22. Due to an unprecedented decline in property transactions, other savings made by Land Information New Zealand (including operating systems) and a move to almost full online functions, Cabinet agreed to revise land transfer fees on 11 April 2011 [DOM Min (11) 5/4 refers].

23. As a result of these reviews and amendments it is now time to amend the Retirement Villages (Fees) Regulations 2006.

## Comment

### Registrar of Retirement Villages

24. It was anticipated that smaller retirement villages would produce simpler and less complex documentation in comparison to larger retirement villages. In anticipation of the differing levels of complexities, Government decided to introduce a three tier fee structure.

25. The work requirements and overhead costs of the Registrar were reviewed by Deloitte in 2010 to develop a sound base on which to set future fees. As part of this review, Deloitte compared the level and type of documentation provided by retirement villages of varying sizes and concluded the differential is not enough to continue a three tier fee structure for retirement village registration fees.

26. The Registrar spends \$34,637 including GST on processing new registrations, which works out to be \$6,927 including GST based on an average of five new retirement villages registering a year.

27. If Government were to agree to this the proposed fee would be higher than the current registration fee for new retirement villages with at least 85 residential units (current fee is \$4,410).

28. As we are committed to reducing compliance costs not raising them, the Registrar is proposing a partial recovery of fees set at \$900 including GST. The \$900 is calculated on a ten per cent registration rate of the existing registered retirement villages. There are 330 registered retirement villages so ten percent is 33. \$34,637 divided by 33 equals \$900.

29. If registering retirement villages pay \$900, the Crown would under-recover its costs by approximately \$6,000. The under-recovery can be subsidised from the surplus in the memorandum account. The surplus is \$112,000 and would enable 18 new retirement villages to register without returning the Crown account to a deficit.

30. Furthermore, the Registrar is proposing to review the retirement villages' fees again in 2013. It is anticipated there will still be a surplus in the memorandum account when this review begins.

31. The proposed fee change will only affect retirement villages applying to register.

32. There are a number of small unit titled retirement villages which are not registered as they dispute the Registrar's view that they are required to register under the Act. If these retirement villages register after the fee change, the operators and quite possibly their residents <sup>[4]</sup> will have to wear the increased fee.

### Registrar of Retirement Villages – Annual return fees

33. There are 330 registered retirement villages submitting annual returns each year.

34. The work load to process an annual return is lower than processing a registration. On the Deloitte calculation, the unit cost is \$650 including GST. Even though the difference in work load to process an annual return is again minimal when comparing small retirement villages to large retirement villages, the Registrar is proposing to retain the three tier fee structure.

35. The fee proposal is:

Annual returns (Registrar)	Current fee charged (\$)	Proposed fee (\$)	Decrease (\$)
At least 2 residential units and not more than 34	460	400	60
At least 35 residential units and not more than 84	1,543.56	650	893.56
At least 85	3,935.56	1,300	2,635.56

36. With this proposal cross subsidy will continue. It is proposed the cross subsidy comes from the retirement villages industry itself. The cross subsidy would have larger retirement villages paying a higher than needed fee to offset the under recovery from small retirement villages.

37. The Registrar spends \$215,351 a year directly and indirectly on annual returns. Under this proposal the Registrar would receive a total of \$218,750 a year.

38. I believe this is a sustainable fee level that meets guidance on the setting and collecting of fees, especially as the next fees review is due in 2013.

### Land Transfer Fees agreed by Cabinet

39. From 1 July 2011 the fees for land transfers will be:

Changes to Land Transfer Fees at the manual filing rate <sup>[5]</sup>	
Registrar-General component	\$176
For each notice [6] of the memorial on computer registers under section 21(4) of the Retirement Villages Act	\$5
<b>Total</b>	<b>\$181</b>

40. For the majority of registered retirement village operators, the land transfer fees were paid at registration and this fee increase will have no impact.

41. Registered retirement villages under a staged construction, or registered retirement villages undertaking further building work on recently purchased land will be affected and required to pay the new land transfer fees.

42. Unit title retirement villages who have so far avoided their obligations under the Act will have to pay the higher rate when they register.

43. A new feature of the land transfer fees is to offer a differential rate if filing information using Land Online (completely electronic) rather than manually filing the information. Those using Land Online pay a lower fee than those filing manually.

44. On consulting with the Retirement Commissioner and the Retirement Villages Association about the proposed changes in 2010, both organisations requested officials purchase Land Online to lower compliance costs for operators.

45. Officials undertook a thorough cost/benefit analysis in 2010 and 2011, each time concluding that the costs of purchasing Land Online would outweigh the saving for individual operators.

46. I am comfortable with setting the land transfer fees at the manual filing rate.

### Consultation

47. The following departments were consulted: Treasury, Ministry of Justice, Office for Senior Citizens, Ministry of Health, Ministry of Economic Development, Veteran's Affairs, Office of the Auditor-General, Officials Economic Growth and Infrastructure Committee and the Retirement Commissioner. The Department of Prime Minister and Cabinet was informed.

48. The Department also consulted the Retirement Villages Association (the Association), retirement village residents associations representing Auckland, the Waikato, Bay of Plenty and Wellington region, Age Concern New Zealand, Grey Power and the New Zealand Law society.

49. The residents' groups welcomed the reduction in compliance costs. Age Concern New Zealand notes that residents in small villages will be disproportionately affected by the change. It does acknowledge that setting a fee based on the number of residents is not feasible at this stage. Residents in the Bay of Plenty were pleased to see reduced fees, but were disappointed the reduction was not greater. There was no opposition to the introduction of a flat rate registration fee.

50. The Association compared the other costs of building a new retirement village to the proposed registration fee and note it is not unreasonable, even though small retirement villages will have a fee increase. The Association supports a reduction of annual return fees for all sizes of retirement villages.

51. The Ministry of Social Development (the Ministry) note the introduction of a flat rate for registration creates a significant disincentive for small villages to apply for registration. This is because the proposed fee is almost double that of the current fee. The Ministry would not support a move to a flat rate fee for annual returns. The Ministry does note retaining the three tier fee structure would mitigate some of the additional costs imposed by a flat rate registration fee.

52. Comments from the Department of Prime Minister and Cabinet have been addressed in the body of the paper, most notably when the surplus could turn back into a revenue shortfall and how this will be addressed.

### Financial implications

53. This paper contains proposals to ensure the registration and annual return fees remain fiscally neutral for the Crown.

### Human rights

54. I do not consider these proposals to be inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

55. The Ministry of Justice confirm the proposals in the paper appear to be consistent with the rights and freedoms in the Bill of Rights Act 1990 and Human Rights Act 1993. A final view will be possible when the draft regulation is ready for comment.

### Legislative implications

56. Regulations are required to give effect to the proposals in this paper. Amendments to the Retirement Villages (Fees) Regulations 2006 are required.

### Regulatory impact analysis

57. The Department confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation Regulatory Impact Statement requirements, have been complied with.

58. A Regulatory Impact Statement is attached as Appendix One

59. The final Regulatory Impact Statement was circulated with the Cabinet paper for Departmental consultation.

### Consistency with Government Statement on Regulation

60. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement. I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest
- will deliver the highest net benefits of the practical options available, and
- are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

## Publicity

61. No publicity is planned at this stage, as I am simply seeking Cabinet's agreement to amend the fees.

## Recommendations

62. I recommend that the Committee:

1. note there is a surplus in the retirement villages memorandum account
2. note both the Registrar of Retirement Villages and Land Information New Zealand have reviewed their fees
3. note Cabinet Domestic Policy Committee agreed to revising the Land Transfer Regulations 2002 [DOM Min (11) 5/4 refers]
4. agree to increase expenditure to provide for costs associated with administering the land transfer register, with the following impact on income:

Land Transfer Fee	Amount (\$ including GST)
Registrar-General component	\$176
For each notice <sup>[7]</sup> of the memorial on computer registers under section 21(4) of the Retirement Villages Act	\$5
<b>Total</b>	<b>\$181</b>

5. agree to amend the fees collected to cover the Registrar of Retirement Villages' costs.

6. agree to the new fees structure as set out below:

Registration fee	Amount (\$ including GST)
All retirement villages	900
<b>Annual return fee</b>	
Retirement villages with at least two residential units and not more than 34	400
Retirement villages with at least 35 residential units and not more than 84	650
Retirement villages with at least 85 residential units	1,300

7. agree that I issue drafting instructions to bring these amendments into effect.

8. agree to the Department of Building and Housing placing this Cabinet paper and the accompanying Regulatory Impact Statement on its website.

Hon Maurice Williamson  
Building and Construction

### Notes

[1] The Registrar-General of Land must give notice to each security holder. If there are no security holders, no notice is required and the \$5 fee will not be charged.

[2] The Registrar-General of Land must give notice to each security holder. If there are no security holders, no notice is required and the \$10 fee will not be charged. In given example, only one notice must be served so the charge is \$10.

[3] If there are no security holders, no notice is required and the \$5 fee will not be charged. In given example, only one notice must be served so the charge is \$5.

[4] Operators work on a cost recovery model. Therefore any costs incurred by operators are passed on to residents in their weekly fees.

[5] I am only showing the new rates as they would apply to retirement villages.

[6] The Registrar-General of Land must give notice to each security holder. If there are no security holders, no notice is required and the \$5 fee is not charged.

[7] The Registrar-General of Land must give notice to each security holder. If there are no security holders, no notice is required and the \$5 fee is not charged.

[Add, edit or remove a portlet below the content](#)