

In Confidence

Office of the Associate Minister of Housing

Cabinet Economic Policy Committee

Review of the Retirement Villages Act 2003: legislative reform proposals

Proposal

- 1 This paper seeks agreement to changes to the Retirement Villages Act 2003 (the Act) and its associated regulations and codes.

Relation to government priorities

- 2 The Coalition Agreement between the National and New Zealand First parties includes a commitment to progress the review of the Act and to liaise with retirement village owners and occupiers to seek a mutually agreed way forward to safeguard the interests of the 50,000 plus New Zealanders living in retirement villages.

Executive Summary

Review of the Act

- 3 I seek agreement to a comprehensive suite of policy proposals to amend the retirement village legislative regime. The proposals are the culmination of an extensive review of the Act, building on the work and previous public consultation undertaken by Te Ara Ahunga Ora Retirement Commission, which monitors the retirement village legislative framework. In 2023, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) also consulted on a discussion document proposing changes to the Act, receiving over 11,000 submissions.
- 4 I have listened to the views of different stakeholders and consulted with the Minister for Seniors and the Retirement Commissioner. There is a need to address consumer protection issues and to rebalance the rights and responsibilities of operators and residents through legislative changes, as underscored by the outcome of the Commerce Commission's recent investigation into the retirement village sector.
- 5 The retirement village industry plays a key role in catering to the needs of our growing older population. Residents consistently report high satisfaction levels, largely because of the companionship, community, and care the villages provide. Critically, many villages also offer aged residential care services, a major factor for retirees in choosing to move in to a retirement village. Therefore, in reaching my decisions, I have been mindful of ensuring the legislative settings will continue to enable growth, innovation, and consumer choice within the sector.
- 6 I am recommending proposals for which there is broad agreement among the sector and those which address three priority areas for residents. These changes span the moving in, living in, moving out phases of retirement village

living, as well as addressing minor matters to bring the Act up to date. I consider the suite of changes are fair, balanced and sustainable for the sector going forward.

Moving in

- 7 I propose changes to improve transparency and disclosure for residents prior to moving into a village. It is important that residents know what they are signing up for, and that operators are clear about future facilities. These proposals will mean legal documents are made more user-friendly and accessible, strengthen disclosure obligations and help address potentially unfair contract terms.

Living in

- 8 I propose changes to provisions which relate to a resident's experience of living in a village. Firstly, I recommend making the legislation clearer about resident/operator responsibilities for chattels and fixtures. Operators will be assigned responsibility for the maintenance, repair and replacement of all chattels and fixtures that they own. Secondly, I recommend a new disputes scheme be established, operated by an independent third-party provider and designed to be accessible and user-friendly for residents.

Moving out

- 9 Under the Act, there is no requirement for operators to pay a former resident or their estate their net termination proceeds (the capital sum paid on entry to the village minus a fixed deduction¹) before their unit is relicensed to the incoming resident. While most Licence to Occupy retirement village units are relicensed within nine months, some residents have to wait for much longer periods after vacating their unit and have no certainty as to when they will receive their funds. This is the key issue of the review for residents, and peak bodies have polarised views about introducing a statutory timeframe for repaying residents' funds.
- 10 I have weighed up the different interests and concerns of stakeholders carefully and considered the costs and benefits of different options. I have landed on a balanced package of changes which addresses fairness for residents, takes into account costs and risks for operators, and ensures the on-going supply and choice of retirement village options for future residents.
- 11 The package includes an application scheme for the early release of funds to a former resident where they demonstrate specific needs (such as needing to transfer to aged residential care), an operator requirement to pay interest on the former resident's net termination proceeds from six months after a resident vacates their unit, and the introduction of a statutory maximum repayment timeframe to repay the former resident or their estate their net termination proceeds.

¹ Fixed deductions, typically around 25 percent to 30 percent of the upfront capital sum paid by a resident, is deducted from a resident's capital sum when they move out of their unit. Villages use different terms such as 'deferred management fee', 'village fee' or 'village contribution'. The funds help cover the costs of maintaining and upgrading the retirement village and its facilities.

- 12 Introducing a maximum repayment timeframe will give certainty to residents but increase costs for some operators (for example, to maintain a capital adequacy buffer) and may present viability risks for some villages. For these reasons I recommend a 12-month statutory timeframe. A very high proportion of units are relicensed by 12 months and therefore the costs and risks will be manageable for the sector.
- 13 To further address risks and to address fairness, I recommend exemptions to the mandatory repayment timeframe and application scheme, for villages with less than 50 units and villages which share capital gains with residents. I also recommend operators could apply for an extension to the maximum repayment timeframe on certain grounds (for example, hardship). These changes will apply to new contracts entered into after a transition period. I consider the package feasible and fair.
- 14 Proposals to address other financial exit matters are in line with sector best practice, such as stopping weekly fees and stopping fixed deductions from accruing further when a resident moves out of their unit.

Changes to bring the regime up to date

- 15 I am also proposing a number of changes to update the Act and improve workability. These include issues relating to retirement village insurance requirements, the operation of the retirement villages register and the prohibited conduct regime.

Bill to be introduced by July 2026

- 16 Subject to Cabinet agreement, I aim to introduce an amendment Bill by July 2026. Select committee will present a further opportunity for stakeholders and the public to comment on the details of the Bill and make further sensible improvements to the legislative changes.

Background

Retirement villages are an important part of the housing system and demand is forecast to grow

- 17 A retirement village is a purpose-built community for older people, offering independent living in self-contained villas or apartments, along with shared amenities like swimming pools, cafés and communal lounges, and organised activities which support social connection. Some operators offer services such as welfare checks, medication support and first aid services for people living in independent units. Many villages offer aged residential care facilities - often a key part of a retiree's decision to move into a village.
- 18 Since 2003, when the Act commenced, the retirement village sector has grown substantially. In December 2023 there were 470 registered retirement villages providing over 41,000 villas and apartments. An estimated 53,400 residents live in retirement villages – fourteen percent of New Zealanders aged over 75.

Based on significant forecast growth of the over 75 population, it is estimated that 18,500 additional retirement village units will be required by 2033.²

- 19 The six largest commercial operators collectively provide two-thirds of total units and will deliver most of the forecast expansion.³ Other villages are operated by private commercial owners and not-for-profit organisations. The Retirement Villages Association's (RVA) information on villages indicates that around ten percent of units are provided by smaller villages that have less than 50 units.

The retirement villages legislative regime aims to balance the interests of residents with enabling the sector to develop

- 20 Retirement villages are governed by the Act, a code of practice, and three sets of regulations. The key purposes of the Act are to protect the interests of current and future residents and enable the development of retirement villages under a legal framework that is readily understandable by residents, intending residents and operators.

Retirement villages legislative framework

Retirement Villages Act 2003			
Regulates and monitors operators and provides legal protections for residents and intending residents, including a code of residents' rights			
Retirement Villages Code of Practice 2008 Sets out further minimum requirements	Retirement Villages (General) Regulations 2006 Regulates disclosure, ORAs, registration and statutory supervision	Retirement Villages (Dispute Panel) Regulations 2006 Regulates the process for dispute panel hearings	Retirement Villages (Fees) Regulations 2006 Regulates fees related to registration

The legislation allows for different contractual models, however most operators offer a licence to occupy a unit

- 21 Approximately 95 percent of retirement villages units are offered under a 'licence to occupy' model.⁴ This means residents purchase the right to live in their unit but do not own it. Residents pay an upfront capital sum to the operator (commonly paid for by selling their home) and ongoing weekly fees. On exit, a fixed deduction of around 25 percent to 30 percent of the upfront capital sum is subtracted from their repayment. A small number of villages offer different financial models or capital gains-sharing with residents.

Retirement village and aged residential care sectors can be interconnected

- 22 Around two-thirds of New Zealand's retirement villages have on-site or affiliated aged residential care facilities and generally offer residents priority access should they need higher levels of care in the future.⁵ Most new aged residential

² JLL New Zealand, *New Zealand retirement villages whitepaper*, 2024, <https://www.jll.com/en-au/insights/retirement-villages-market-review>

³ Ryman Healthcare, Metlifecare, Arvida, Summerset Retirement Villages, Bupa, and Oceania.

⁴ Other villages use unit title, cross lease, or company share models.

⁵ JLL New Zealand, *New Zealand retirement villages whitepaper*, 2024, <https://www.jll.com/en-au/insights/retirement-villages-market-review>

care facilities are developed by retirement village operators. Aged residential care is part of the health system. Where residents in aged residential care pay an upfront capital sum and have an occupation right agreement (ORA) for their accommodation, both retirement village and health legislation applies.

The case for reviewing retirement village legislation

- 23 When deciding to move into a retirement village, most retirees only consider villages within their community, to remain close to family and friends. This limits their choices, particularly in smaller towns. By the time a prospective resident has made their decision to move into a village, going through the 'paperwork' with a lawyer is largely a formality. Operators are therefore not incentivised to differentiate their offerings, and there is little scope for the negotiation of terms by an intending resident. The sector has introduced voluntary reforms to address consumer protection issues, but not all operators have adopted best practice. Legislative change is needed to ensure all residents benefit from lifting minimum standards and increased consumer protection. In addition, the Act is over 20 years old and there is a need to bring it up to date to ensure it remains fit for purpose.

Refocusing the review on priority issues and making final policy decisions

- 24 The Ministry began a review of the Act in late 2022, drawing on the Retirement Commission's 2020 white paper and summary report in 2021. In 2023 the Ministry consulted on a discussion document on options for change, which received over 11,000 submissions.
- 25 The objectives of the review are to ensure:
- 25.1 adequate consumer protections for residents and intending residents,
 - 25.2 an effective balance between the rights and responsibilities of residents and operators,
 - 25.3 the on-going viability of the sector and its ability to provide a range of retirement housing options and consumer choice, and
 - 25.4 the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights.
- 26 After receiving advice on submissions, in October 2024 I refocused the review on areas of general agreement among stakeholders and the three priority issues for residents:
- 26.1 maintenance and repair of operator-owned chattels and fixtures,
 - 26.2 managing complaints and disputes, and
 - 26.3 options for incentivising or requiring earlier capital repayments when residents move out of a village.

Part A: Moving into a retirement village

- 27 Disclosure statements and ORAs are legal documents which include the terms, conditions, costs, services and facilities offered by a retirement village. These documents are part of a package of information that operators must provide to prospective residents (called “intending residents”) to inform their decision to move into a retirement village.

Making legal documents easier to access, understand and compare across villages

- 28 Given the weight of the decision to enter a retirement village, it is important that residents know what they are signing up to. Despite the requirement to get independent legal advice before signing an ORA, intending residents often feel overwhelmed by the amount of information they need to read and understand. I recommend changes to make legal documents easier to access and understand by amending the Act to require villages publish their current disclosure statement on their website, or provide it on request (if they do not have a website). I am proposing to make breach of this requirement a civil liability event with an appropriate maximum pecuniary penalty.

- 29 s 9(2)(f)(iv)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Strengthening the disclosure regime

- 30 To address issues with the disclosure regime, I recommend amending the Act to:
- 30.1 strengthen the obligations on operators to ensure disclosure statements and other forms of advertisements are not misleading or deceptive,
 - 30.2 require disclosure statements to include estimated completion dates for planned services and facilities, and
 - 30.3 require an ORA term that is inconsistent with a disclosure statement term to be interpreted in favour of the resident (as far as practicable)
 - 30.4 enable residents to take proceedings to the retirement village disputes scheme or court if, after relying on information contained in a disclosure statement or advertisement, they suffer inconvenience, detriment or loss.
- 31 To complement existing registration suspension powers, I recommend the Registrar is given additional powers to issue stop or direction orders. These will be similar to the kinds of tools available to the Financial Markets Authority when dealing with misleading or deceptive conduct and, will allow for more proportionate and tailored responses by the Registrar to deal with misleading or deceptive disclosure statements and other advertisements.

Occupation right agreement terms

Addressing unfair contract terms through regulations to prohibit certain terms

- 32 To address unfair contract terms and to complement the FTA regime, I recommend including a regulation-making power in the Act which enables prescribing terms which are prohibited from being included in new ORAs - an approach used in several Australian states. Unfair terms in ORAs can be difficult to identify, as retirement village contracts are unique and lengthy - unlike tenancy agreements or house sale and purchase agreements, which people are more familiar with.
- 33 This is a pragmatic approach, as under the FTA only the Commerce Commission can apply to the courts for a declaration that a term in a 'standard form consumer contract' is an unfair contract term. s 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 34 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED] The
Commerce Commission will not be excluded from investigating unfair terms in response to complaints about ORA terms in the future.

Part B: Living in a retirement village

- 35 Two of the priority issues for residents under review are the responsibility for maintaining and repairing chattels and fixtures in retirement village units, and the process for raising and resolving complaints.

Chattels and fixtures in resident units

Fairer and transparent rules for maintenance and repairs

- 36 Operators currently set terms relating to the maintenance, repair and replacement of operator-owned chattels and fixtures in residents' units and there are different practices across the sector. Some operators pass on costs to residents, which means they can sometimes face large and unanticipated costs for items they do not own, and which may have been in used condition when they moved into their unit.
- 37 The Commerce Commission considers these terms may cause a significant imbalance in favour of the operator and could cause financial detriment to residents, as the resident has no ownership rights or interests under the licence

⁶ Following its investigation in 2023/24, the Commerce Commission expressed a preliminary view that around 38 terms across six ORAs were potentially unfair under the Fair Trading Act 1986, because they appeared to create a significant power imbalance between the parties' rights and obligations, and could cause detriment to a party if relied on. In coming to this preliminary view, the Commission did not consider operators' views on whether the terms were reasonably necessary in order to protect their legitimate interests. s 9(2)(g)(i) [REDACTED]
[REDACTED]

to occupy model. Some operators changed their terms following the Commission's investigation, but others have not.

- 38 After considering stakeholder views and the outcomes of the Commerce Commission's investigation, I recommend:
- 38.1 assigning responsibility, including direct costs, for the maintenance, repair and replacement of operator-owned chattels and fixtures to operators in licence to occupy villages *except* where operators share capital gains with residents (in which case responsibility can be shared proportionately between the operator and resident),
 - 38.2 requiring operators to provide a list of operator-owned chattels to intending residents,
 - 38.3 allowing the gifting of chattels where it means transferring full ownership to the resident and the resident agrees to accept the gift, and
 - 38.4 clarifying the definition of fair wear and tear to better reflect the types of marks in units that can reasonably be expected as residents age in place.
- 39 I recommend the new rules apply to new contracts immediately after Royal assent, and after a 12-month transitional period to all contracts. Operators might either chose to absorb the costs or pass them on to residents collectively through increased fees. However, I consider the benefits of increased transparency, certainty and fairness for residents outweigh the additional costs residents will face.

Complaints and disputes

The current process is slow and adversarial and is perceived to lack independence

- 40 Concerns about the current process for dealing with retirement village complaints and disputes have been raised over many years by residents, the (Retirement Villages Residents' Association) RVR and consumer advocates. Key concerns with the current process include:
- 40.1 the process is intimidating for residents and does not address the power imbalance between residents and operators,
 - 40.2 there is no independent body to resolve complaints - creating conflicts of interest,
 - 40.3 residents can contact a range of agencies about a complaint - creating complexity and slowing the process, and
 - 40.4 the dispute panel process used to reach a binding decision takes a long time and hearings are expensive, legalistic and adversarial.
- 41 The discussion document proposed the establishment of a new sector-specific scheme that would be accessible and user friendly, independent and fair,

efficient, effective and accountable. The proposal received high levels of support from residents and their family members, who want a simple and effective scheme with adequate support for those navigating the process. Operators also agree an improved, cost-effective, principles-based complaints and dispute resolution scheme would benefit both residents and operators.

Establishing a new, principles based scheme for complaints and disputes

- 42 I propose to establish a new scheme that replaces parts of the current retirement village complaint process and all of the dispute panel process, which draws on the framework developed by the Retirement Commission earlier this year and which reflected feedback from resident and operator representative groups.
- 43 Retirement villages will continue to provide a complaint facility for residents' issues and complaints. Unresolved complaints could be referred to the new scheme. The scheme provider will support residents to understand their options, make a complaint and navigate the process. The scheme provider will attempt to resolve complaints as early as possible through a negotiated settlement between the parties, with flexibility to take an approach that best suits the parties and the nature of the complaint. The scheme provider will be able to make a binding decision in cases where a negotiated resolution cannot be reached.
- 44 Establishing a new scheme requires significant changes to the Act and repealing the existing dispute panel regulations. The legislative framework to establish a new scheme is set out in **Appendix A**.
- 45 After the Act is amended, the Ministry will run a procurement process and identify a provider to operate the scheme. The Minister will be required to approve the scheme and its associated rules. Independent reviews, reporting and ongoing contract management of the provider will ensure the scheme is aligned with its purpose, provides value and achieves the expectations of the sector and the government.
- 46 The scheme will be free for residents, with all establishment and operating costs met by operators. The Ministry estimates the marginal additional costs to the sector will be between s 9(2)(j) per year, based on the current volume and type of complaints. I consider that costs to the sector in the range of s 9(2)(j) per unit per year is proportionate and cost effective. The impact of additional costs being passed on to residents is low.

Part C: Moving out of a retirement village

Repayment timeframes for residents' net termination proceeds is the key issue under review

- 47 There is currently no legislative obligation for a village operator to repay a resident's net termination proceeds until their unit has been relicensed and paid for by the incoming resident. Reporting by retirement villages across New Zealand (provided by the RVA) shows that between 2021 to 2023, of the retirement units which were empty or became empty in each year:

- 47.1 between 63 and 77 percent of units were relicensed within 6 months and
- 47.2 between 85 and 91 percent of units were relicensed within 9 months.
- 48 There was a significant increase in relicensing times in 2023 compared with previous years, reflecting the slower housing market in recent times.
- 49 Notwithstanding the reasonably high proportion of units relicensed within nine months of vacation, some former residents (or their estates) have had to wait over a year to receive their net termination proceeds, and in extreme cases have had to wait over two years.
- 50 The potential length of time and the uncertainty of not knowing how long it will take to receive their net termination proceeds when they move out of a village is the biggest concern in the review for residents. It can cause significant financial and emotional stress for former residents and their families, often at a difficult time in their lives. This issue is particularly acute where the funds are needed to help pay for a resident's transition into aged care, or alternative accommodation in another village or in the community.
- 51 Operators have legal obligations to try to sell a vacant unit. However, these obligations do not appear to have been effective in incentivising a sale in some cases.
- 52 I have met with retirement village stakeholders to understand their perspectives on potential changes to the regime to incentivise earlier repayments to residents. Peak bodies, the RVR and the RVA, have not been able to agree on the issue of a mandatory repayment timeframe: the RVR want the Act to include a three month timeframe for repayment of a resident's net termination proceeds after they vacate their unit, while the RVA does not want any statutory timeframe at all.

Package of repayment proposals will improve certainty and fairness for residents

- 53 After carefully weighing up stakeholder views and considering the estimated costs and benefits of different options, I now recommend a balanced package of changes to address this key issue as follows:
- 53.1 an application scheme for the early release of funds to a former resident (but not their estate) where they demonstrate specific needs, with details as set out in **Appendix B**
- 53.2 a requirement that if a former resident's unit is not relicensed within six months of the ORA termination date, the retirement village operator will pay interest on the former resident's net termination proceeds from six months after the ORA termination date until the resident (or their estate) is repaid their funds and
- 53.3 a requirement that operators repay a resident's net termination proceeds within a 12-month timeframe after ORA termination (mandatory repayment timeframe) to the former resident or their estate.

Interest payments

- 54 I recommend interest payments are paid as a single lump sum as part of the former resident's net termination proceeds, with the applicable interest rate determined by the Interest on Money Claims Act 2016. This is sensible and reduces administrative complexity. Costs to the sector of this change are expected to be relatively low because current data shows a majority of units are relicensed by six months, and it has become more common for operators to pay interest either six or nine months after exit if the unit has not been relicensed. Modelling on the estimated costs for the sector and potential increases to residents of mandating interest payments after six months are set out in the table below.

Table 1: Estimated costs to operators and residents of mandated interest payments

Current status	Indicative cost per annum for the sector as a whole	Indicative cost per annum per affected unit	Potential increase in capital sum/fixed deduction per unit (if operator passed on all costs)
Operator currently pays interest after 9 months	\$0.956 - \$2.967 million	\$75 - \$233	\$659 - 2,046
Operator does not currently pay interest	\$1.502 - \$4.317 million	\$118 - \$388	\$1,035 - 2,976

- 55 A number of operators already pay interest around six months after exit if the unit has not been relicensed. I expect minimal impacts for these operators.

12-month mandatory repayment timeframe

- 56 I recommend a 12-month mandatory repayment period. The main benefit of this proposal is to increase certainty for residents as to how long they (or their estate) will potentially have to wait until they can access their net termination proceeds when exiting their retirement village unit. It will also provide tangible financial benefits to those residents who would otherwise have waited for longer than a year to receive their funds. This number is estimated to be between 275 and 687 residents (approximately 5 to 10 percent of exiting residents per annum).
- 57 My officials have undertaken modelling comparing different mandatory repayment timeframes (see table 2 below for costs of nine and twelve month timeframes). I ruled out a shorter timeframe. For example, for a nine month timeframe, if operators passed on all increased costs, residents would pay approximately double the increased costs likely under a 12-month repayment timeframe. Similarly, the opportunity costs to operators of a nine month

mandatory repayment timeframe are estimated to be approximately double those of a 12-month repayment period, per unit per annum.⁷

- 58 While it is unlikely that operators would pass all increased costs to residents through the upfront capital sum (as retirement village unit prices are generally influenced by, and correlated with, the wider housing market), I consider a nine month timeframe to be too high risk.

Table 2: Estimated costs to operators and residents of mandatory repayment timeframes⁸

Mandatory repayment timeframe	Potential increase in capital sum/fixed deduction to resident per unit (if operator passed on all costs)	Indicative opportunity cost per unit per annum (per operator)
9 months	\$12,928 - \$24,239	\$1,469 – \$2,755
12 months	\$6,466 - \$12,120	\$735 - \$1,378

Exemptions and extensions will mitigate risks

- 59 Even with a 12-month mandatory repayment timeframe, I am concerned about the increased costs to the sector and the possible slowdown of the development of new villages and aged residential care facilities. In a worst case scenario, a mandatory repayment timeframe could potentially result in the failure of some villages. The protection of current residents and ongoing choice for future residents must not be compromised by any changes.
- 60 To address these concerns, ensure feasibility and make the proposals equitable across different operating models, I propose exemptions and the ability to apply for an extension in certain circumstances. For the application scheme and the mandatory repayment timeframe, I propose exemptions apply in situations where:
- 60.1 the resident is responsible for finding a new resident for the unit and setting the price that the unit is marketed for - on the basis that, in these situations, any delay in the resale cannot be attributed to the operator's decisions, or
 - 60.2 50 percent or more capital gains made from the sale of the unit are shared with the outgoing resident or their estate - to help maintain diversity of choice for residents in the retirement village sector, or
 - 60.3 the village is in receivership - as the receiver acts as an operator but will not be able to sell units, or

⁷ The opportunity cost is the cost to operators of losing the ability to use the funds elsewhere, for example investing them (e.g. in village upgrades or new units) or providing returns to shareholders. It is important to note that these figures provide an indication of average costs. However, costs for individual villages and residents would differ depending on the size of the village, its ORA prices, relicensing rates, how well-capitalised the village is and the cost of borrowing.

⁸ Note these costs are calculated based on the assumption the legislation is passed in 2027 and the changes apply to new contracts from 2029.

- 60.4 the village has less than 50 total units - as there are heightened concerns about their ability to access sufficient capital and either pass on or absorb additional costs.
- 61 I also recommend the following mitigations to the potential financial stress which operators may be exposed to as a result of the proposals:
- 61.1 For the application scheme, I recommend the decision maker (the statutory supervisor of the village) be able to decline an application in part or in full, or defer payment to the resident, if the amount requested would cause the operator undue hardship, put the operator at risk of insolvency, or risk the continued provision of key services and amenities to village residents.
- 61.2 For the mandatory repayment timeframe, I recommend an operator could apply to the statutory supervisor for an extension beyond the maximum repayment timeframe of up to six months. In deciding whether to grant an extension, the statutory supervisor will need to consider whether compliance will leave the operator in undue hardship, at risk of insolvency, or risk the continued provision of key services and amenities to village residents. A further reason for allowing an extension will be that a force majeure event has impacted the operator's ability to comply, for example, a major unforeseeable event such as a pandemic, severe influenza outbreak, natural disaster, fire, etc. The decision maker will only be able to grant an extension where they are satisfied the operator has taken all reasonable steps to sell and that the extension will not be unfair to the former resident.
- 62 To encourage operator compliance with a mandatory repayment timeframe, I recommend including a new civil liability event in the Act, where an operator (who is not an exempt operator or who has not been granted an extension) fails to repay a former resident within the specified mandatory repayment timeframe and who unreasonably delays repayment. The maximum penalty for misconduct will be \$25,000 for an individual or \$50,000 for a body corporate.

New rules for treatment of residents' net termination proceeds will not apply to existing contracts and will have a one year transition period

- 63 Residents have lobbied for the introduction of a mandatory repayment timeframe to apply to existing contracts. I consider applying such a significant change to previously signed contracts is not justified and would result in substantial uncertainty and increased costs for operators. To ensure the viability of the retirement village sector, I recommend the above proposals (application scheme, interest payments, and mandatory repayment timeframe) only apply to ORAs signed one year after the Bill receives Royal assent.
- 64 This approach to commencement and transition will provide operators time to adjust their business models, for example, by making financial arrangements or building up capital reserves. Because residents typically live in villages for around eight years, operators would not face the full financial impact of the mandatory repayment timeframe until about ten years after the legislation passing.

Introduce enhanced reporting requirements and access to dispute resolution

- 65 To support this set of changes and improve consumer protection, I recommend introducing a single simplified reporting requirement for operators on effects to market and sell a former resident's unit. I also recommend removing the current time restriction on former residents giving a dispute notice relating to the relicensing or disposal of the unit formerly occupied by the resident.

Weekly fee payments

Stopping weekly fees immediately after exit

- 66 Weekly fees generally cover village day-to-day operating costs and services such as rates, insurance, gardening, maintenance, and staff salaries. Operators can continue to charge weekly fees to former residents until their units have been relicensed (albeit discounted by 50 per cent after six months).
- 67 The ability of operators to continue charging fees to a resident (or their estate) after a resident's ORA termination date is considered by many in the sector to be unfair, as former residents no longer receive the benefits of the services paid for by these charges.
- 68 I recommend weekly fees stop immediately after an ORA has been terminated and the unit has been fully vacated. An exception will apply, where the resident is responsible for finding a new resident for the unit and/or setting the price that the unit is marketed for.

Requiring fixed deductions to stop accruing immediately after exit

- 69 The amount of the fixed deduction and the rate of accrual varies across villages. A typical maximum is 25 percent of a resident's capital sum. In a village where the fixed deduction accrues at five percent per year, the maximum 25 percent deduction will be reached after five years.

- 70 Residents and other stakeholders have raised concerns that fixed deductions can continue to accrue in the period between a resident vacating a unit and the unit being relicensed. This is despite the resident no longer receiving the benefit of the facilities that the deduction is being charged for.
- 71 I recommend that fixed deductions stop accruing after an ORA has been terminated and the unit has been fully vacated. This option is aligned with a beneficiary pays approach, ensuring that any fixed deduction charged only accrues while the resident is living in the village and benefitting from the amenities that the fixed deduction is paying for.

Limiting circumstances where residents can be liable for capital losses

- 72 A capital gain or loss is possible when a unit is re-licensed. I am aware that a small number of operators make an outgoing resident liable (in part or full) for any capital loss from relicensing the resident's unit, even where the resident is not eligible to share any potential capital gains. Placing the risk of capital loss on residents whilst only the operator stands to benefit from capital gains is one-sided and unfair.
- 73 I recommend that residents can only be held liable for a capital loss to the same extent as they will be entitled to any share of the capital gains. For example, if a resident was entitled to fifty percent of any capital gain, they could be liable for up to fifty percent of any capital loss.

Part D: Other topics under review

Civil liability events, pecuniary penalties, offences and fines

- 74 There has been a consistent trend towards civil liability regimes to enforce commercial and consumer-protection legislation, because the nature of the prohibited conduct generally does not warrant a criminal conviction or imprisonment. As the retirement village legislation fits within this category, I propose the prohibited conduct regime in the Act be changed to a largely civil liability regime. Breaches that occur before a village is registered will remain criminal offences.

- 75 I also propose updating the current fines and penalties so they reflect the severity and potential harm of prohibited conduct, as set out in **Appendix C**.

s 9(2)(h)

I also propose removing several outdated offences from the Act.

Note: Reference to Appendix C above should be reference to Appendix D.

Minor matters

- 76 I recommend a range of changes to address other more minor matters, and clarify, update, and improve workability of the Act. These are set out in **Appendix D**.

Note: This should refer to Appendix C, instead of Appendix D.

Commencement and transitional provisions

- 77 The amendments will commence after Royal assent according to different timeframes, depending on whether implementation time is needed. The timeframes will take into account fairness and consumer protection for residents, whether the change codifies best practice or presents low or minor costs for operators and sufficient time for agencies and operators to implement and comply with the changes.

- 78 s 9(2)(g)(i), s 9(2)(h)

I seek Cabinet's authorisation to make final decisions on commencement and transitional provisions.

Cost-of-living Implications

- 79 Where the changes result in increased cost to operators, these may be passed on to existing residents through increased weekly fees. Where retirement villages do not offer fixed weekly fees, fee increases for residents are subject to consultation requirements set out in the Code of Residents' Rights and the Code of Practice.
- 80 Future residents will have choice as to whether collective and ongoing costs (the entry price, fixed deduction and weekly fees) of the retirement village are acceptable.

Financial Implications

- 81 The proposed additional Registrar powers may have resourcing implications in terms of monitoring, investigating and enforcing compliance for MBIE. While it is difficult to estimate the impact and demand on the Registrar's time and costs, MBIE anticipates the new direction and stop orders are likely to only be needed in serious limited situations and may be utilised instead of suspension powers. MBIE will prioritise its existing resources accordingly.
- 82 The functions of the Retirement Commissioner under the Act include promoting education and publishing information about retirement villages. The Retirement Commission will use its baseline funding to contribute to promoting awareness and providing information about the changes proposed in this paper, including the new dispute resolution scheme. Given budget limitations, this will be mostly through information on the Retirement Commission website.
- 83 The initial procurement process for a new dispute resolution scheme will have resourcing implications for the Ministry. There will be ongoing costs associated with contract management and renewal. s 9(2)(f)(iv)

84 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

85 The increased maximum pecuniary penalties will increase the potential costs on operators of villages that breach the Act. However, courts will retain discretion to set penalty levels within maximum amounts based on the nature of the conduct.

Legislative Implications

86 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]

87 I propose that the Retirement Villages Amendment Bill be introduced by July 2026.

Impact Analysis

88 Impact analysis requirements apply to the proposals in this paper. Accompanying Regulatory Impact Statements have been prepared on the topics listed below. Panels made up of officials from the Ministry reviewed these and provided commentary against the Ministry for Regulation's Impact Analysis requirements as indicated:

- 88.1 Financial exit matters (assessed as meeting the RIS criteria);
- 88.2 Dispute resolution scheme (assessed as meeting the RIS criteria);
- 88.3 Insurance (assessed as meeting the RIS criteria);
- 88.4 Chattels and fixtures (assessed as meeting the RIS criteria);
- 88.5 Disclosure regime (assessed as meeting the RIS criteria);
- 88.6 Unfair contract clauses (assessed as meeting the RIS criteria); and
- 88.7 Prohibited conduct regime (assessed as meeting the RIS criteria).

89 The Ministry for Regulation's Regulatory Impact Analysis team has determined that some of the proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals and not-for profit entities.

90 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms the CIPA requirements do not apply to these proposals.

Population Implications

- 91 The target population for retirement villages is generally people aged 75 and over, though some residents are younger. The proposals in this Cabinet paper seek to improve consumer protections for people who choose to make a retirement village their home, while maintaining the viability of the sector to continue its role in providing secure, connected, and supported housing options for older people.
- 92 Stats NZ estimates that approximately 60 percent of people aged over 75 have a disability. Retirement villages can support people to live independently while they are able, and with increasing support as they need it.
- 93 Women have longer overall life expectancy than men and make up a larger proportion of the over-75 age group. Although women tend to have lower retirement savings, demographic trends and sector insights indicate women make up the majority of residents in retirement villages.
- 94 Māori and Pacific Peoples make up a very small percentage of retirement village residents. Cultural conceptions around land and housing (such as living alongside whānau on land with whakapapa or cultural significance) make retirement village living less appealing. Lower rates of home ownership and shorter average life expectancy further impact entry to retirement villages.
- 95 Rural retirement village residents may be disproportionately impacted by the issues identified in this paper. Rural retirement villages are more likely to be small. A higher portion of rural retirement villages may therefore be eligible for the exemption from the mandatory repayment timeframe proposals on the basis of having 50 or less total units.

Human Rights

- 96 These proposals are consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Formal vetting will be undertaken during the drafting of the Bill.

Use of External Resources

- 97 The Ministry engaged a contractor for approximately two months to assist in the preparation of policy advice related to the proposals in this paper.

Consultation

- 98 The following government agencies have assisted in the development of the policy proposals and were consulted on this Cabinet paper: Te Ara Ahunga Ora – Retirement Commission, Ministry of Business, Innovation and Employment, Ministry of Justice, Ministry for Primary Industries, Ministry for Regulation, Ministry of Social Development, Office for Seniors, Whaikaha – Ministry of Disabled People, Ministry of Health, Te Whatu Ora – Health NZ, the Treasury, Health and Disability Commission, Commerce Commission, Financial Markets Authority and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet was informed.

- 99 The Ministry for Regulation (MfR) is generally supportive of the proposed amendments to the Retirement Villages Act. However it does not recommend provisions to prohibit contract terms through secondary legislation. The MfR considers the provisions risk a disproportionate response to the issues they address and could unintentionally limit mutually beneficial agreements. The MfR considers these provisions would duplicate aspects of the Fair Trading Act.

Communications

- 100 I propose to publicise decisions in this paper through a Ministerial press release.

Proactive Release

- 101 I propose proactively releasing this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, with any appropriate redactions. Redactions will be applied as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister for Housing recommends that the Committee:

- 1 **note** the Retirement Villages Act 2003 has been reviewed to ensure the rights and responsibilities of retirement village operators and residents are appropriately balanced and the Act is up to date and fit for purpose;
- 2 **note** significant consultation has been undertaken, including through a public discussion document in 2023 and extensive engagement with resident and operator peak bodies;

Moving into a retirement village

- 3 **agree** to amend the Retirement Villages Act 2003 (the Act) to improve the accessibility and transparency of legal documents, improve the effectiveness of the disclosure regime and provide protections against unfair contract terms by:
 - 3.1 requiring retirement village operators to publish their disclosure statement on the retirement village website or provide them within a reasonable time (if they do not have a website);
 - 3.2 requiring disclosure statements and occupation right agreements to be available in a searchable format;
 - 3.3 amending the regulation-making power to enable regulations to:
 - 3.3.1 partially standardise the form of disclosure statements and occupation right agreements;
 - 3.3.2 prescribe terms that are prohibited in occupation right agreements;

- 3.4 strengthening the obligation on operators to ensure disclosure statements and other advertisements are not misleading or deceptive;
- 3.5 enabling a person who suffers inconvenience, loss, or detriment as a result of relying on information contained in a disclosure statement to make a complaint to the disputes scheme or take a proceeding to court;
- 3.6 providing the Registrar of Retirement Villages with discretion to make a direction order or a stop order if an advertisement, registered document, or offer of occupation is false, misleading or inaccurate;
- 3.7 providing a contravention of an order made by a Registrar without reasonable excuse is a civil liability event (subject to ensuring consistency with other regimes);

Living in a retirement village

- 4 **agree** to amend the Act to make obligations relating to chattels and fixtures in retirement village units clear and consistent and to ensure there is a suitable process for raising and resolving resident complaints and disputes by:
 - 4.1 assigning responsibility, including the direct costs, for the maintenance, repair and replacement of operator-owned chattels and fixtures to operators for new contracts and, after a 12-month transitional period, existing contracts (except where operators share capital gains with residents in which case responsibility can be shared proportionately between the operator and resident);
 - 4.2 requiring operators to provide a list of operator-owned chattels to intending residents;
 - 4.3 establishing a new scheme for retirement village complaints and disputes that:
 - 4.3.1 is accessible and user friendly, independent and fair, efficient, effective and accountable;
 - 4.3.2 is a scheme approved by the Minister and delivered by a contracted third party dispute resolution scheme provider (or a regulated scheme if there is no scheme approved by the Minister);
 - 4.3.3 has the scope and powers, and scheme provider obligations set out in this paper and in **Appendix A**;

Moving out of a retirement village

- 5 **agree** to amend the Act to provide former residents with early access to funds in limited circumstances, certainty over the maximum time for repayment, and improved transparency over the relicensing process by:

- 5.1 establishing an application scheme for early repayment of residents' funds with details as set out in **Appendix B**;
 - 5.2 requiring that if a former resident's unit remains vacant after six months, the operator will be required to pay interest on the former resident's net termination proceeds;
 - 5.3 introducing a 12-month maximum repayment timeframe for residents' net proceeds after occupation right agreement termination for new contracts entered into after a one year transition period (with extensions and exemptions to mitigate financial risks to villages and ensure fairness);
 - 5.4 strengthening operator reporting requirements to former residents and removing the time restriction on raising a complaint about the relicensing process.
- 6 **agree** the proposals in recommendations 5.1, 5.2, and 5.3 above apply to occupation right agreements signed one year after the Bill receives Royal assent.
- 7 **agree** to amend the Act to align minimum standards with sector best practice and ensure fairness for all residents by:
- 7.1 requiring weekly fees to stop being charged immediately after a unit has been vacated;
 - 7.2 requiring that fixed deductions stop accruing immediately after a unit has been vacated;
 - 7.3 requiring that residents can only be held liable for a capital loss from the relicensing of their unit to the same extent as they are entitled to any share of capital gains;

Other matters under review

- 8 **agree** to the proposed amendments to the Act set out in **Appendix C** to:
- 8.1 clarify the types of villages that are excluded from the definition of 'retirement village';
 - 8.2 update insurance provisions and require operators to maintain resources to repay residents' capital sums if a village is destroyed and cannot be reinstated;
 - 8.3 support statutory supervisors to protect the collective financial interests of residents through discretion to require securities and through requiring auditors to report matters relevant to the statutory supervisor's duties;

- 8.4 update the retirement villages register provisions in the Act to better reflect how the register is operated in practice and to provide the Registrar with powers to support the efficient operation of the register;
- 8.5 align the process for making and varying the code of practice with the standard process for making and varying secondary legislation;
- 8.6 amend the code of residents' rights to include the right to be free from harassment and intimidation, and the obligation to respect the peace, comfort and privacy of other residents;

Civil liabilities, pecuniary penalties, offences and penalties

- 9 **agree** to amend the Act to include the prohibited conduct and associated maximum fines and pecuniary penalties, as set out in **Appendix D**;
- 10 **authorise** the Associate Minister of Housing to make any further decisions needed to adjust fines and penalties, consistent with the policy intent of this paper;

Commencement and transitional provisions

- 11 **agree** commencement timeframes for the changes are determined by fairness and consumer protection for residents, whether the change codifies best practice or presents low or minor costs for operators, and sufficient time for agencies and operators to implement and comply with the changes;

Next steps

- 12 **invite** the Associate Minister of Housing to issue drafting instructions to the Parliamentary Counsel Office for a Retirement Villages Amendment Bill, including any minor, technical, or consequential changes that arise during drafting to ensure workability;
- 13 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
- 14 **authorise** the Associate Minister of Housing to make further policy decisions consistent with the policy proposals in this paper and final decisions on commencement and transitional provisions;
- 15 **note** that the Associate Minister of Housing intends to issue a press release and inform key stakeholders about the policy decisions at an appropriate time;
- 16 **note** that subject to Cabinet agreement the Associate Minister of Housing will aim to introduce an amendment Bill by July 2026.

Authorised for lodgement

Hon Tama Potaka
Associate Minister for Housing

Appendix A: Legislative provisions for a new dispute resolution scheme

The table summarises the key legislative provisions for a new complaint and dispute resolution scheme.

PROVISION	KEY REQUIREMENTS IN LEGISLATION
Principles of the new scheme	The new scheme is user-focussed and accessible, independent and fair, efficient, effective and accountable.
Approved scheme or regulated scheme	A new scheme will be approved by the Minister and delivered by a third party provider; if there is no approved scheme a regulated scheme can be established.
Approved scheme: approval and withdrawal of approval	<p>The Minister is responsible for approving the new scheme. Considerations for approval include:</p> <ul style="list-style-type: none"> • whether the scheme can resolve the different types of complaints that arise in retirement villages • whether the scheme has the capacity to resolve complaints in a timely and cost effective way (including being able to adjust to a higher or lower volume of complaints) • whether the rules of the scheme developed by the scheme provider comply with all applicable requirements in the Act. <p>The Minister can withdraw scheme approval, including if the scheme has failed to comply with legal requirements or the rules of the scheme.</p>
Who can make a complaint to the new scheme	A resident (including a former resident) or a personal representative. An operator can refer a complaint made by a resident.
Scope of the new scheme	<p>The new scheme is a mandatory scheme for complaints and disputes related to rights and obligations under ORAs, disclosure statements, the Code of Residents' Rights or the Code of Practice. A resident can make a complaint about the operator or another resident in their village.</p> <p>The new scheme has the jurisdiction of dispute panels under the current process; that is:</p> <ul style="list-style-type: none"> • there are no limits on the monetary values of disputes • the new scheme can hear the types of disputes for which residents and operators can currently issue disputes notices (sections 53 and 54 of the Act) • the powers and remedies available to dispute panels carry over (unless specified otherwise).

PROVISION	KEY REQUIREMENTS IN LEGISLATION
	<p>The new scheme also has the jurisdiction currently granted to the Disputes Tribunal to make specified orders (section 78 of the Act). The new scheme will have additional powers to:</p> <ul style="list-style-type: none"> • order a party to make an apology • require a payment of up to \$10,000 where the resident has experienced undue distress and/or significant inconvenience relating to the dispute. <p>Decisions of the new scheme will bind the parties.</p>
Awarding legal costs and expenses	The scheme will not award legal costs and expenses against a resident.
Enforcement	A decision made by the new scheme is enforceable as if it were an order of a court.
Appeals	Parties have the right to take one appeal on a question of law through the District or High Court.
Rules of an approved scheme	The provider and retirement village operators are required to comply with the rules of the scheme.
Obligations of an approved scheme: annual report and independent reviews	<p>The scheme provider must prepare and publish an annual report and provide it to the Minister.</p> <p>The scheme must be reviewed by an independent reviewer no later than every five years. The Minister can give directions including providing for when and how the review is carried out, the reviewer, the terms of reference and requirements for the form and content of the report. The independent report must be made publicly available.</p>
Regulation making powers: approved scheme	<p>Regulations may prescribe other matters relating to the operation of an approved scheme, including:</p> <ul style="list-style-type: none"> • requirements for the scheme rules • compliance with the scheme rules • approval or withdrawal of approval of the scheme • requirements for annual reports and independent reviews • the calculation of levies or fees • other matters necessary for the operation of the scheme.
Regulated scheme: regulation making powers	The Act will empower regulations to be made which would set out the requirements and rules for a regulated scheme. This would be a backup option if the sector does not put forward a suitable scheme to be an approved scheme.

Appendix B: Application scheme for early release of funds

The proposed design of the application scheme for early release of funds (to the resident but not the estate) is as follows.

1. The applicant will need to demonstrate that the funds are needed to:
 - a. enable the resident to move into or remain in aged residential care
 - b. alleviate financial hardship or
 - c. meet a resident's need to access more suitable alternative accommodation.
2. The decision maker will direct the release of a monetary amount sufficient to meet the identified need, up to a maximum of the former resident's full net termination proceeds.
3. An exemption will apply where:
 - a. the resident is responsible for finding a new resident for the unit and setting the price that the unit is marketed for
 - b. 50 percent or more of capital gains from the sale of the unit are shared with the outgoing resident or their estate
 - c. the village is in receivership or
 - d. the village has fewer than 50 total units.
4. The grounds for early repayment on financial hardship grounds will be where the decision maker is satisfied that not releasing the funds will mean the applicant is unable to meet any of the following:
 - a. reasonable living expenses
 - b. mortgage repayments on the principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence
 - c. the cost of modifying a residence to meet special needs arising from a disability
 - d. expenses related to a serious illness
 - e. the cost of medical treatment for an illness or injury
 - f. the cost of palliative care.
5. If the statutory criteria are met the operator will only be able to decline an application in part or in full, or defer payment to the resident, if the amount requested will cause the operator undue hardship, put the operator at risk of insolvency, or risk the continued provision of key services and amenities to village residents.
6. If an application is declined the applicant will be able to take a complaint through the retirement village disputes process.

Appendix C – Minor matters

Adjusting the exclusion to the definition of ‘retirement village’

1. The definition of retirement village in the Act excludes owner-occupied developments that do not offer services or facilities beyond what would typically be found in similar developments for non-retired people. The Registrar has advised that this exception is difficult to apply, as there is no accepted concept of the services that are offered in similar developments.
2. I recommend clarifying the exclusion to focus on whether *personal care services* are offered, as those services are most likely to be offered by developments that should be registered retirement villages.

Insurance cover for retirement village operators

3. Insurance provisions have not kept pace with changes in the insurance market. The provisions use outdated terminology and do not clearly require operators to hold sufficient financial means to repay capital sums if a village is destroyed and cannot be rebuilt. They do not prevent operators from passing excesses on to residents even when the resident is not at fault.
4. I propose to update the insurance provisions to require operators to hold insurance on a reinstatement basis, clarify that operators must maintain sufficient financial resources (insurance or other funds) to repay capital sums if a village is destroyed, and restrict excesses from being passed on where residents are not at fault. These changes will ensure the legislation reflects market conditions and strengthen protections for residents.

Changes to address issues raised by statutory supervisors

5. Statutory supervisors commonly hold land and/or personal property securities to protect the sums owed to residents should a village get into financial difficulty or become insolvent. This is currently negotiated between statutory supervisors and operators; there are no requirements in the Act. I recommend that a new provision be added to the Act to enable a statutory supervisor to hold securities over village land and/or personal property, in order to improve protections for residents.
6. I also recommend that auditors be required to report to the statutory supervisor within seven working days of becoming aware of a matter relevant to the statutory supervisor’s duties under the Act.

The operation of the Retirement Villages Register

7. The Registrar is responsible for the registration of villages and the operation of the register. The register is accessible through the Companies Office website and can be searched by any member of the public. It holds information and documents about registered retirement villages, including their registration status, disclosure statement and ORA.

8. I recommend a number of changes so requirements relating to the register are up to date, fit for purpose and reflect operational realities. The changes include providing the Registrar with powers to correct minor errors and specify how documents are provided so the register can operate efficiently.

Changes to the Retirement Villages Code of Practice 2008

9. The Act sets out matters that must be included in the code of practice, which is secondary legislation that sets out further rights and obligations of operators and residents.
10. The code of practice is not easy for some residents to understand and navigate. It duplicates information in other documents and has a mix of minimum standards, specific and general requirements for village policies, and references to requirements in other legislation. Some details are now outdated.
11. The current process for making and varying the code of practice doesn't align with standard processes for secondary legislation. Experience has shown the process to be problematic where key stakeholders do not agree on proposed changes.
12. To address issues with the code of practice, I propose:
 - a. minimum standards are lifted into primary legislation (e.g. requirements related to chattels and fixtures, financial exit matters, and insurance)
 - b. amending code of practice provisions in the Act to bring them up to date and to improve clarity and consistency with other proposed changes
 - c. the process in the Act for making the code of practice is aligned with the standard process for amending secondary legislation.
13. The code of practice will be restructured, rationalised and redrafted with input from the sector as part of the work to update and amend secondary legislation.

Clarifying resident rights and obligations in the Code of Residents' Rights

14. The code of residents' rights is a summary of the minimum rights conferred on residents by the Act. It places an obligation on residents to respect the rights of others in the village and treat them with courtesy. I recommend the code of residents' rights is amended to clarify that:
 - a. resident rights include the right not to be harassed or intimidated
 - b. resident obligations include respecting the peace, comfort and privacy of other residents.
15. Feedback from public consultation that the code of residents' rights is challenging to enforce will be addressed through the new dispute resolution scheme.

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Appendix D: Updated prohibited conduct and associated maximum fines and pecuniary penalties

Section in act and description of prohibited conduct	Current max. penalty individual	Current max. penalty body corp.	Proposed max. penalty individual	Proposed max. penalty body corp.	Civil or criminal
New civil liability events					
Operator failure to publish a current version of their village's disclosure statement on the village's website, or operator failure to provide a current version of their village's disclosure statement to a person who requests it within a reasonable time			\$10,000	\$20,000	Civil
Including a term which is prohibited by regulations in an occupation right agreement			\$20,000	\$50,000	Civil
Contravention of a stop or direction order made by the Registrar, without reasonable excuse			\$200,000	\$300,000	Civil
Auditor failure to report to a statutory supervisor within seven working days if the auditor becomes aware of a matter that is relevant to the statutory supervisor's duties			\$25,000	\$50,000	Civil
Operator, who is not an exempt operator or who has not been granted an extension, failure to repay a former resident's capital sum payment within the specified timeframe and who unreasonably delays repayment			\$25,000	\$50,000	Civil
Existing offences and civil liability events					
S10: Retirement village operator failure to lodge an application for registration	\$5,000	\$5,000	\$200,000	\$300,000	Criminal
S13: Failure to meet requirements related to annual returns	\$5,000	\$10,000	\$30,000	\$100,000	Civil
S16: Operator failure to lodge certificate with Registrar confirming registered documents are current and correct	\$5,000	\$10,000	\$10,000	\$25,000	Civil
S17: Operator failure to notify the Registrar of change of circumstances and documentation	\$15,000	\$50,000	\$30,000	\$100,000	Civil
S18(3): Advertising or entering into an occupation right agreement while suspended	\$30,000	\$100,000	\$200,000	\$300,000	Criminal
S19(3): Operator failure to take action upon cancellation of registration	\$15,000	\$50,000	\$50,000	\$100,000	Criminal

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Section in act and description of prohibited conduct	Current max. penalty individual	Current max. penalty body corp.	Proposed max. penalty individual	Proposed max. penalty body corp.	Civil or criminal
S22(1): Non-compliance with effect of memorial, disposal of a retirement village other than as a going concern, disclaiming an occupation right agreement as onerous property, or evicting/excluding a resident by holder of security interest	\$30,000	\$100,000	\$100,000	\$250,000	Criminal
S25(1): Advertising or offer of occupation while unregistered	\$30,000	\$100,000	\$200,000	\$300,000	Criminal
S26(1): Failure to take all practicable steps to ensure an advertisement is not misleading or deceptive	\$15,000	\$50,000	\$50,000	\$200,000	Civil
S27(1): Failure to meet certain requirements when offering occupation	\$15,000	\$50,000	\$50,000	\$100,000	Civil
S28(1): Failure to meet certain requirements when offering occupation	\$15,000	\$50,000	\$50,000	\$100,000	Civil
S29: Failure for deposits and other payments to be independently held	\$15,000	\$50,000	\$100,000	\$300,000	Civil
S30(1): Operator failure to provide intending resident with disclosure statement, code of residents' rights, code of practice, and occupation right agreement	\$15,000	\$50,000	\$20,000	\$50,000	Civil
S34(2): Operator failure to notify the statutory supervisor of matters in section 34(3)	\$15,000	\$50,000	\$50,000	\$100,000	Civil
S35: Legal impediment to a resident's occupation of a unit	\$30,000	\$100,000	\$30,000	\$100,000	Criminal
S38(1): Operator failure to appoint a statutory supervisor	\$30,000	\$100,000	\$100,000	\$300,000	Civil
S39: Terminating a statutory supervisor without Registrar's consent	\$30,000	\$100,000	\$100,000	\$200,000	Civil
S41: False or misleading information in application for exemption from requirement for statutory supervisor	\$30,000	\$100,000	\$50,000	\$200,000	Civil

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Section in act and description of prohibited conduct	Current max. penalty individual	Current max. penalty body corp.	Proposed max. penalty individual	Proposed max. penalty body corp.	Civil or criminal
S46: Operator failure to comply with a section 46 request	\$10,000	\$10,000	\$25,000	\$50,000	Civil
S47: Auditor failure to comply with a section 47 request	\$10,000	\$10,000	\$25,000	\$50,000	Civil
S92(2): Operator failure to comply with the Code of Practice	\$15,000	\$50,000	\$20,000	\$50,000	Civil
S93: False or misleading information in application for an exemption from the requirement to comply with the code of practice	\$30,000	\$100,000	\$50,000	\$200,000	Criminal
S95(2): Operator failure to notify the Registrar of change of registered office	\$5,000	\$10,000	\$10,000	\$20,000	Civil
S96(4): Operator failure to notify Registrar of change of address	\$5,000	\$10,000	\$10,000	\$20,000	Civil
S97(3): Obstructing or hindering the Registrar or a person authorised by the Registrar while exercising a power conferred by section 97(1)	\$30,000	\$100,000	\$100,000	\$300,000	Civil
S98(2): Person authorised by the Registrar for the purpose of section 97 failing to disclose information when directed to do so by the Registrar	\$5,000	\$10,000	\$25,000	\$25,000	Civil
S98(3): Person authorised by the Registrar, during an inspection or report, failing to give information to the Registrar after being directed to do so by the Registrar	\$5,000	\$10,000	\$25,000	\$25,000	Civil
S98(5): Further disclosure of documents obtained through section 97 Registrar powers of inspection	\$15,000	\$50,000	\$20,000	\$100,000	Civil
Person who contravenes any other provision in the Act	\$5,000	\$5,000	\$5,000	\$5,000	Civil

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