



Regulatory Impact Statement: Retirement Villages Act 2003 review – Disclosure regime and Registrar powers

Decision sought	The purpose of this analysis is to inform Cabinet decisions on changes to the Retirement Villages Act 2003 to address issues related to the disclosure regime and Registrar powers.
Agency responsible	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
Proposing Ministers	Hon Tama Potaka, Associate Minister of Housing
Date finalised	06/11/ 2025

A disclosure statement sets out key information and the main terms of an offer for prospective residents to buy into a retirement village under the Retirement Villages Act 2003 (The Act). The disclosure statement and the associated disputes and enforcement mechanisms make up the disclosure regime.

The Act's disclosure regime currently:

- Does not provide for transparency and ease of access to disclosure statements;
- Has problems with transparency and consistency of undertakings and the associated dispute resolution pathways; and
- Includes Registrar tools to deal with misleading or deceptive advertisements/statements, but they can be disproportionate or lead to protracted processes.

To help address these issues the Minister is proposing legislative changes to:

- Require operators to publish disclosure statements on their websites or (if the village does not have a website) provide a current version to a person who requests it within a reasonable time after receiving the request;
- Require disclosure statements to include expected completion dates for planned services and facilities,
- Require that where occupation right agreement (ORA) terms and disclosure regime information are inconsistent (to the detriment of the resident) the ORA term is to be interpreted as if it contained the disclosure statement information (instead of the inconsistent term).
- enable the disputes scheme or a court to hear proceedings where disclosure statement undertakings do not eventuate; and
- Provide the Registrar with powers to enable stop and direction orders to deal with misleading or confusing disclosures.

Summary: Problem definition and options

What is the policy problem?

The Act's disclosure regime has the following problems:

- Disclosure statements can be hard to access;
- Residents can be persuaded to sign an ORA by undertakings in advertisements and disclosure statements which are not realised or are inconsistent with ORA terms. When this happens, dispute resolution and enforcement can be difficult; and
- The Registrar's tools to deal with misleading or deceptive advertisements/statements do not provide a full spectrum of appropriate responses (i.e. tools available are often too heavy handed).

What is the policy objective?

The overarching objectives of the Act review are to ensure adequate consumer protections, a balance between the rights and responsibilities of residents and operators of retirement villages, the on-going viability of the retirement village sector, and clarity on the rights and responsibilities of residents and operators.

For the disclosure regime, the key objectives are to ensure that disclosure statements are accessible, clear, accurate and enforceable. Achieving these objectives requires an effective and graduated regulatory enforcement toolkit and an accessible dispute resolution pathway.

What policy options have been considered, including any alternatives to regulation?

Issue one: Disclosure statements can be hard to access

We have considered two options:

- Option one – Status quo – Operators not required to publish disclosure statements on their websites.
- Option two – Require operators to publish disclosure statements on their websites or (if they do not have a website) provide a current version to a person who requests it within a reasonable timeframe after receiving the request.

Requiring operators to publish disclosure statements on their websites and provide a current version to a person who requests it within a reasonable timeframe after receiving the request (option two) is the preferred option of both the Minister and Te Tūāpapa Kura Kāinga- Ministry of Housing and Urban Development (the Ministry).

This is expected to improve accessibility and transparency for people searching operator websites or for anyone who makes a request. It would standardise the method of requesting disclosure statements without any expected significant costs.

This proposal is part of a package of changes expected to support overall ease of access and ability to understand key retirement village legal documents. The package includes amending the current regulation-making power to allow for the partial standardisation of disclosure statements and ORAs. This accompanying change has received an exemption from Regulatory Impact Statement analysis.

Issue two: Problems with transparency and consistency of undertakings in disclosure statements and associated dispute resolution pathways

We have considered three options:

- Option one – Status quo – Limited dispute resolution pathways.
- Option two –
 - require estimated timeframes for completion of planned services or facilities to be included in disclosure statements; and
 - require that where ORA terms and disclosure regime information are inconsistent (to the detriment of the resident) the ORA term is to be interpreted as if it contained the disclosure statement information (instead of the inconsistent term). The new dispute scheme for retirement villages would have powers to specify the way in which the term is to be interpreted.
- Option three – Alongside the option two changes, also enable the disputes scheme or court to hear proceedings where disclosure statement undertakings do not eventuate.

The Minister and the Ministry's preferred option is option three. However, the Ministry's preferred option for the disclosure regime proceedings is that a proceeding must be taken within three years after the date on which the inconvenience, loss, or detriment was discovered. The Minister's preference is that a proceeding must be taken within two years after the date on which the inconvenience, loss, or detriment was discovered.

Collectively, these changes would increase clarity and fairness, and are considered proportionate. They are expected to increase compliant operator behaviour, ultimately improving consumer protection without introducing unreasonable costs.

Issue three: Registrar tools to deal with misleading or deceptive advertisements/statements can be disproportionate or protracted

We have considered two options:

- Option one – Status quo – Registrar tools that can be disproportionate, for example, suspension of village registration.
- Option two – Provide the Registrar with additional powers to enable stop and direction orders.

Providing the Registrar with powers to enable stop and direction orders (option two) is both the Minister and the Ministry's preferred option.

Option two would enhance the Registrar's regulatory toolkit and ultimately improve consumer protection.

What consultation has been undertaken?

The Ministry released a discussion document on options for changes to the Act in early August 2023 that received over 11,000 public submissions. The Ministry also engaged throughout the review with key stakeholders including the Retirement Villages Residents' Association (the RVR), the Retirement Villages Association (the RVA) and the Corporate Trustees Association (the CTA), which represents retirement village statutory supervisors.

In general, a majority of submitters agreed with the disclosure statement proposals. Alternative suggestions for improving the disclosure regime were also proposed by submitters.

<p>Most submitters (77.9 percent) did not think government agencies had sufficient powers to carry out functions or were unsure whether this was the case.</p> <p>59.2 percent of submitters agreed the proposals for improving regulatory tools to deal with false and misleading statements and inconsistencies with ORAs would address the issues outlined.</p>
<p>Is the preferred option in the Cabinet paper the same as preferred option in the RIS?</p> <p>Yes.</p>

Summary: Minister's preferred option in the Cabinet paper

<p>Costs</p> <p><u>Issue one: Disclosure statements</u></p> <p>Overall costs are expected to be low for operators, comprising minor one-off costs and a minor ongoing administrative burden. Penalties are likely to be rare and considered a justified cost to operators that breach obligations.</p> <p><u>Issue two: Undertakings in disclosure statements and dispute resolution pathways</u></p> <p>This policy change is only expected to increase costs to operators where they are currently engaging in misleading, unclear or inconsistent conduct. Costs may be incurred where remedies are granted in favour of residents.</p> <p>The approach may increase the expected number of disputes directed to the disputes scheme proposed via these reforms. Analysis on the disputes scheme is provided in an accompanying Regulatory Impact Statement on this package of reforms.</p> <p>Cost burden is considered minimal and justified given impacts to residents and given mitigations built into proposed legislative tests.</p> <p><u>Issue three: Registrar tools for misleading or deceptive advertisements/statements</u></p> <p>The Registrar expects to incur additional costs and intends to meet these within their existing funding.</p> <p>Operators may incur costs in amending documents where direction or stop orders are issued. Penalties are likely to be rare and are considered a justified cost to operators that breach obligations.</p>
<p>Benefits</p> <p><u>Issue one: Disclosure statements</u></p> <p>Expected to improve prospective residents' ability to access disclosure statements, therefore improving information availability and transparency as to village offerings.</p>

Issue two: Undertakings in disclosure statements and dispute resolution pathways

Benefits expected for residents where misleading, unclear or inconsistent conduct would have otherwise impacted them negatively. Likely to increase upfront transparency for future residents. Expected to provide clearer dispute resolution pathways and increased access to remedies.

Issue three: Registrar tools for misleading or deceptive advertisements/statements

Expected to prevent or stop misleading conduct that could negatively impact residents. In particular, prevents potentially significant costs to residents where their decision to sign an ORA was materially impacted by unclear, incomplete or misleading information (e.g. monetary cost of moving or opportunity cost of alternative choice not taken). Likely to increase upfront transparency for future residents. May prevent disputes escalating and becoming more costly (e.g. court proceedings).

Balance of benefits and costs

We consider the benefits of the Minister's preferred package of legislative changes to the disclosure regime are likely to outweigh the costs. As a package, they are expected to support clarity, accuracy and transparency. The package will increase accessibility in the dispute resolution pathway and increase effectiveness of the regulatory enforcement toolkit. The expected costs and risks to operators are relatively low. This package of changes represents a marked improvement over the status quo.

Implementation

If Cabinet agrees to the package of proposed legislative changes, an amendment bill is expected to be introduced by July 2026 and enacted in the second quarter of 2027.

We recommend the proposed legislative changes come into effect six months after the date of Royal assent. This would allow time for the development of public guidance and education, and for operators to update their business systems, disclosure statements, and guidance.

We recommend that the new dispute resolution pathway comes into effect once the new dispute resolution scheme enabled by this reform process is set up.

Post-enactment, the Ministry officials will work with the Retirement Commission, the Registrar of Retirement Villages and representative groups such as the RVA, RVR and CTA to get information out to operators, statutory supervisors and residents on changes to the Act and what this means for them.

The Ministry and the Retirement Villages Registrar will have roles in implementing the changes. The Retirement Commission and the Ministry will monitor the new requirements.

Limitations and constraints on analysis

Accurate monetisation of the costs and benefits of these changes has not been possible. The Ministry has concluded that a narrative description of costs and benefits is appropriate. Narrative analysis of costs and benefits has allowed us to assess whether the changes will result in fairer allocation of costs and benefits to the relevant parties.

Prediction of operator behaviour under these proposals in a robust manner has not been possible. Even if accurate prediction of behaviour was possible, predicting costs accurately would still not be possible due to incomplete data.

For issue one, disclosure statements, the Ministry anticipates that costs will be minimal overall. Given that there will be high variability due to differences in how operators will go about implementing the change estimating monetary costs would not likely be accurate. Benefits of accessibility and transparency were not monetised due to their indirect nature.

For issue two, the disclosure regime, the data that is available is included in this Regulatory Impact Statement. We have used complaints data from the Retirement Commissioner's regular reporting as a proxy. However, due to its limited nature, estimating the number of possible complaints and their associated costs has not been possible. Lack of data may be in part due to the lack of clear current avenues for complaints to be directed towards. The Regulatory Impact Statement focusing on the proposed dispute resolution scheme includes estimated costs for the overall scheme.

For issue three, new Registrar tools, benefits are best described in narrative format given the wide range of possible benefits that are dependent on the individual circumstances.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

**Signed by the
responsible
Manager**

Katherine Slaney
Acting Policy Manager,
Housing and
Rental Markets



Date: 06/11/2025

Quality Assurance Statement

Reviewing Agency: Ministry of Housing and Urban Development

QA rating: Meets

Panel Comment:

This RIS meets the criteria very well. It presents a clear picture of the issues in relation to the disclosure regime and puts forward options (which are presented as additions to the status quo) to achieve and improve outcomes. The analysis is logical and robust – informed by evidence and insight (when available) and good explanation of costs and benefits in relation to the options that have been developed. The conclusions are supported by the analytical framework.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The retirement villages sector is governed by the Retirement Villages Act 2003

1. The Act has two main purposes. Firstly, to protect the interests of residents and intending residents, and secondly to enable retirement villages to develop under a legal framework readily understandable by residents, intending residents and operators. The Act requires the operator and resident to enter into a detailed ORA spelling out each party's rights and obligations.
2. Residents pay an upfront capital sum to purchase an ORA for their retirement village unit as well as on-going weekly fees. Operators charge a fixed deduction of between 20 to 30 percent from the capital sum when a unit is vacated. The vast majority retain any capital gain when a unit is re-sold or re-licensed. The fixed deduction usually accrues over the first few years of occupancy.
3. The initial intention of the legislation was to provide a framework for retirement living options in a then-nascent industry. The industry has grown in scope and complexity since 2003 when the Act was introduced and projections are for further significant growth. An estimated 53,400 residents now live in 470 retirement villages across New Zealand.¹ This equates to 14 percent of the 383,000 New Zealanders aged over 75. The number of residents in retirement villages is expected to increase to 77,494 residents by 2033, and to 112,624 residents by 2048.
4. In the early years, retirement village providers were typically not-for-profit organisations with links to churches or charitable foundations. Commercial operators now dominate the sector. The largest six commercial operators currently own 67 percent of all units.² Three of these large commercial operators are listed on the New Zealand stock exchange and have responsibilities to their shareholders.
5. Other than some revisions to the Code, no wholesale review has been conducted to assess whether the balance of power between operator and consumer is appropriate.

Sector stakeholders have raised a number of concerns with the Act

6. Residents, representative organisations and consumer groups have raised concerns for many years that the legal framework that covers the rights and obligations of residents and operators of retirement villages does not provide adequate protections for residents, especially given the potential vulnerability of older people. ORAs are offered with very limited room for residents to negotiate terms with operators.
7. In 2020 the Retirement Commission published 'Retirement villages legislative framework: Assessment and options for change' (the White Paper), seeking submissions on the effectiveness of the legislative framework and how it balances the interests of operators and residents.
8. The Retirement Commission received over 3,000 submissions on the White Paper. In its subsequent submissions summary and recommendations report in 2021, the Retirement Commission highlighted issues and concerns with the retirement villages regime, with

¹ JLL New Zealand retirement villages white paper, August 2024.

² Ibid.

many relating to consumer protection and the need to rebalance the rights and responsibilities of operators and residents. The Retirement Commission called for the government to undertake a full review of the legislative framework.

9. Petitions calling for change have also been brought to Parliament.

In response, the Government initiated a wide-ranging review

10. The Ministry started a review of the Act in late 2022 under the sixth Labour Government with a broad scope covering the three main phases of retirement village living – moving in, living in, and moving out – as well as other general topics. A discussion paper was released in August 2023 and received over 11,000 submissions on options for change.
11. In October 2024 the new coalition Government announced it would continue to progress the work on the Act review focusing on the areas of highest importance. This covers proposals in the 2023 discussion paper with high levels of support and three priority areas for residents:
 - maintenance and repairs of operator-owned chattels and fixtures;
 - managing complaints and disputes; and
 - options for incentivising or requiring earlier capital repayments when residents move out of a village.

Without legislative change the issues raised by stakeholders will not be fully addressed

12. Without legislative change we would expect some ongoing improvements in sector best practice. For example, the RVA launched a ‘Blueprint for New Zealand’s Retirement Villages Sector’ (the Blueprint) in 2021 to help improve sector practices.
13. However, not all registered retirement villages are members of the RVA, and not all operators are likely to voluntarily adopt sector best practice. In addition, the Blueprint does not address a number of key issues raised by residents and other stakeholders.
14. Without legislative change the issues raised by stakeholders will not be fully addressed, and we expect ongoing concerns to be raised about unfair practices, a lack of consumer protections and the perceived imbalance between the rights and responsibilities of residents and operators of retirement villages. We may also see more complaints made to the Commerce Commission regarding non-compliance with provisions of the Fair Trading Act 1986 with the requirement for enforcement action to be taken through the courts.

Elements of the disclosure regime lack transparency and proportionate enforcement options

The disclosure regime is a key way that residents understand village offerings

15. The purpose of a disclosure statement is to set out the main terms of an offer for an intending resident to buy into a retirement village. The disclosure statement and the associated disputes and enforcement mechanisms make up the disclosure regime.
16. Disclosure requirements are a key feature of the retirement villages regime, which is designed to protect the interests of residents and intending residents. Therefore, it is important that these requirements are effective.
17. A substantial amount of information is required to be included in a disclosure statement. The required information is set out in the Act, the Retirement Villages (General)

Regulations 2006 (the Regulations), and Retirement Villages Code of Practice 2008 (the Code of Practice). This information includes the state of the village, services and facilities offered, charges and billing, who the statutory supervisors are, maintenance responsibilities, the estimated financial return to the resident if they were to sell or dispose of a unit, and options for moving into rest home or hospital care within the village.

18. The Act requires operators to provide intending residents with a disclosure statement before they can sign an ORA. A disclosure statement is included in the definition of “advertisement” in the Act, and it is an offence if it is misleading or deceptive. A resident, a statutory supervisor, or the Registrar can take proceedings against an operator if they believe a disclosure statement is misleading or deceptive and the court can order a remedy, such as prohibiting the advertisement, ordering a correction, payment of compensation, or requiring specific services to be provided. Where a registered document is likely to be misleading, the Registrar can exercise a power to suspend registration of a village. Operators must also meet obligations under the Fair Trading Act 1986.

What is the policy problem or opportunity?

Issue one: Disclosure statements can be hard to access

19. Disclosure statements are legal documents which include the terms, conditions, costs, services and facilities offered by a retirement village. Given the weight of the decision to enter a retirement village, it is important that these documents are accessible.
20. Disclosure statements are often not available on retirement village websites and electronic versions are often not in a searchable format. We understand a small number of villages may not have websites.
21. The Registrar maintains a register of retirement villages operating in New Zealand on the New Zealand Companies Office website. Disclosure statements are part of the package of information made available via this platform. However, the Ministry understands that intending or prospective residents are not commonly using the register to find and/or compare disclosure statements. Many prospective residents and their families do not know about the register. Documents on the register can also be difficult to find and download.
22. Submitters raised as part of the consultation process that they wanted the register to be made more user friendly. As part of this process, issues were raised around ability to access, search, and distinguish between current versions of documents on the register. In addition, searching the register creates an extra step on top of searching operator websites, which intending or prospective residents are very likely already doing.
23. Lack of availability of disclosure statements can also be an issue when prospective residents are looking to compare village offerings. Intending residents often only gain access to disclosure statements when they are nearing the point of considering signing an ORA, at which point they may have already developed a level of commitment to their preferred retirement village. This inaccessibility when a resident is at the early stages of considering the various options available may not support optimal choice and competition in the market.
24. As part of the package of reform proposals for this legislative regime, we are also proposing to amend the current regulation-making provision to enable regulations to be made to partially standardise disclosure statements and ORAs. This includes prescribing

requirements relating to the information, format, and word/page limit of disclosure statements and ORAs. This is intended to make it easier for residents and their families to understand and compare villages. This accompanying change has received an exemption from Regulatory Impact Statement analysis.

Issue two: Problems with undertakings in disclosure statements and with dispute resolution pathways

25. The Act currently provides a system of obligations, rights and remedies in relation to the disclosure system.
26. Schedule 2 of the Act provides that a disclosure statement requires information on various matters to be compliant including in relation to ownership, management and supervision, the state of the village, services, charges and accounts, ORAs, terminations, deductions and estimated financial returns.
27. Section 26 of the Act requires that “Before any advertisement for occupation rights in a retirement village is published, the operator and promoter of the village must take all practicable steps to ensure that the advertisement is not misleading or deceptive”.
28. However, residents still experience issues with the disclosure regime as outlined below.
29. Four percent of complaints to operators for the period 1 October 2024 to 31 March 2025 were related to ORA and disclosure interpretation.³

Uncertainty on delivery of planned services and facilities

30. Planned services or facilities can be part of the attractiveness of a village for a prospective resident. They may sometimes base their decision to move into a village on a representation, which may turn out to be unclear, inaccurate or misleading. Planned services or facilities sometimes do not eventuate at all, or not within the timeframe that the resident expected. In this scenario residents have few options: it is difficult to enforce undertakings, and not realistic or practical to move out because of the significant upheaval of moving out and the financial cost of terminating their ORA.
31. There is a wide spectrum of the kinds of services and facilities that may be promised, with varying impacts on residents depending on both the service or facility and the residents’ individual circumstances. An indicative list is provided below:
 - Shared facilities (gym, pool, libraries, meeting rooms, café, hair salon or gardens). These are often the reason for choosing retirement village living and a key component of weekly fees;
 - Individual services and facilities;
 - Cosmetic improvements; and
 - On site Aged Residential Care⁴ facilities.
32. Regulation 19 of the Retirement Villages (General) Regulations includes a requirement that disclosure statements include details of planned services and when they will be available to residents. This has not resulted in the transparency intended and does not provide the specificity required. We therefore propose including a requirement that a

³ Retirement Commission Six-monthly Complaint Reporting Summary 1 October 2024 to 31 March 2025.

⁴ These facilities provide a higher level of care for those no longer able to live independently or needing long term care.

timeframe for completion of planned services or facilities be included in disclosure statements.

Inconsistent ORAs and disclosure statements

33. An ORA sets out the contractual terms for moving into a village. Disclosure statements on the other hand are not strictly contractual documents. The Ministry is aware of scenarios where disclosure statements contain undertakings that are not consistent with terms in ORAs and residents are relying on these undertakings to their detriment.

Unclear dispute resolution pathways

34. Remedies for a breach of an undertaking are currently unclear or difficult to pursue. Residents may rely on undertakings in a disclosure statement or a retirement village advertisement when deciding to move into a retirement village. For example, a resident might buy into a village based on promises made about future development plans for the village. If these plans do not eventuate it can be hard for a resident to enforce the undertaking or obtain remedies because disclosure statements and advertisements are not contractual documents.

Issue three: Registrar tools to deal with misleading or deceptive advertisements/statements can be disproportionate or lead to protracted processes

35. s 9(2)(g)(i)

Suspension is used sparingly, as consequences are serious

36. The Registrar, within the Ministry of Business, Innovation and Employment (MBIE), is responsible for the registration of villages, maintaining the retirement villages register (the register) and approving exemptions from statutory supervision.
37. The Registrar has broad discretionary powers under the Act to suspend the registration of any village if:
- any registered document is likely to mislead or deceive any resident, any intending resident, or the public;
 - the operator is failing to comply with the Act or any regulations made under the Act; or
 - any prescribed fee required to be paid by the operator of the retirement village is not paid.⁶
38. The power to suspend registration helps drive operator compliance with obligations and is an appropriate tool if the above grounds are met and a breach is assessed as sufficiently serious to warrant suspension. However, usually the Registrar does not need to resort to suspension as it is generally able to successfully work with the operator and statutory supervisor to address the issue as a first step and achieve compliance.

s 9(2)(g)(i)

⁶ Section 18(1).

39. The Registrar does not exercise its suspension power where it considers a breach would be better addressed through the complaints and disputes process or where it considers the statutory supervisor has powers available to address the issues.
40. The Registrar will only consider suspension if it is necessary to protect residents' interests. While suspended, an operator is prohibited from signing any further ORAs until corrective action has been taken. The Registrar has only suspended a village's registration for failure to deliver an annual return on time on around 12 occasions since 2013. In all instances, suspension was lifted on delivery of the annual return or the village's registration was cancelled by the Registrar on application by the Operator.

The Registrar can also apply to the court for orders or injunctions

41. If suspension of a retirement village's registration does not result in the desired compliance, the Registrar could consider taking proceedings for contravention of certain sections of the Act, including breach of operator obligations to notify the Registrar of any change in circumstance that makes a registered document likely to be misleading or deceptive (section 17(3)) and to take all practicable steps to ensure an advertisement is not misleading or deceptive, prior to publishing (section 26(1)).⁷
42. The Registrar could apply to the court for an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention of any of sections 25 to 33 of the Act (which includes section 26(1) obligations as well as other obligations⁸) or orders (in circumstances where contravention of certain provisions has or is likely to cause loss or damage). Orders may include declaring an ORA void, varying an ORA, or directing a person to refund money, pay money, or supply specified services to the person who suffered the loss or damage.

What objectives are sought in relation to the policy problem?

43. The overarching objectives of the Act review are to ensure:
 - adequate consumer protections for residents and intending residents of retirement villages;
 - an effective balance between the rights and responsibilities of residents and operators of retirement villages;
 - the on-going viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice; and
 - the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights.

⁷ The Act makes it an offence under section 79 for a person to contravene these provisions. If convicted, a court could award penalties up to a maximum fine of \$5,000 for a person and \$10,000 for a body corporate for breach of section 16, and a maximum fine of \$15,000 for a person and \$50,000 for a body corporate for breach of section 26(1).

⁸ Other obligations in sections 25 to 33 include: complying with ORA requirements (e.g. including required information and a statement that resident must get legal advice before entering an ORA), including term in ORA relating to cooling-off period/cancellation for delay, ensuring residents' deposits, payments, etc. are held in a trust account, giving intending residents and residents a copy of code of residents' rights before signing ORA or on request etc.

44. For the disclosure regime, the key objective is to ensure that disclosure statements are accessible, clear, accurate and enforceable. Achieving the objective requires an accessible dispute resolution pathway and effective regulatory enforcement toolkit.

What consultation has been undertaken?

Public consultation

45. The Ministry released a discussion document on options for changes to the Act in August 2023. The consultation period ran until late November 2023, and over this timeframe the Ministry received over 11,000 public submissions from a range of people and groups including residents and their families, retirement village operators, lawyers, advocacy groups and sector associations.
46. The Ministry consulted on the following issues for the disclosure regime:
- proposed options for new disclosure documents:
 - option 1 – two documents: a village comparison and information statement;
 - option 2 – a new shorter disclosure statement; or
 - neither of these;
 - whether any information was missing from proposed documents (provided in appendices to the 2023 discussion paper);
 - whether proposals to deal with false and misleading statements and inconsistency between disclosure documents and ORAs would address key issues; and
 - other suggestions for improving the disclosure regime.

There was support for shorter, simpler disclosure documents but mixed views on the options

47. We received responses from 194 submitters on options for disclosure statements. Of those, 34 percent of submitters preferred option one, 53.1 percent preferred option two, 4.1 percent preferred either/both and 8.8 percent did not agree with either option.
48. The main theme from written comments was strong support across all stakeholder types for disclosure statements that were shorter, easier to understand, transparent and more user-friendly than many existing disclosure statements. For example, Consumer NZ submitted that to serve its intended purpose, a disclosure statement needed to be in plain language without complex legal jargon, and only contain key information that was necessary and relevant. The Retirement Commission noted it needed to be easy to compare the terms of different villages.
49. Submitters who preferred option 1 highlighted advantages of a shorter overview document that could be used to more easily compare different village offerings and terms. Those who preferred option 2 considered that two separate documents could lead to duplication and increase the volume of information intending residents would need to engage with.
50. Sector peak bodies had different views on proposed options.
- The Retirement Villages Residents' Association (RVR) supported option 1 to provide intending residents with easy access to comparable information in the early stages of decision making. It noted the importance of the documents being made available online.

- The Retirement Villages Association (RVA) preferred option 2. It submitted that the suggested village comparison form, provided by the Ministry, required too much information for intending residents to compare different village offerings easily. However, the RVA said it did not object in principle to having a summary document and referred to the two-page key terms summary it encouraged RVA members to use.
51. A common theme in submissions from operators (and the RVA) was concern that any standardised format would not work for villages with non-standard offerings as it could reduce operators' ability to offer bespoke products, and any page or word limit could lead to important information being left out. The RVA noted that reducing the duplication of information contained in ORAs would reduce the length of disclosure statements.

There were mixed views on information to be included in disclosure documents

52. We received responses from 161 submitters to the question of whether information was missing from the proposed documents provided in appendices to the discussion paper. Of those, 28 percent felt information was missing, 30.4 percent did not consider there was information missing, and 41.6 percent were not sure.
53. There were a wide variety of suggestions for additional information that submitters thought should be included in these documents.

There was support for the proposals to deal with false or misleading statements

54. We asked whether proposals to deal with false and misleading statements and inconsistency between a disclosure document and an ORA address the issues we have outlined. We received responses from 169 submitters to this question. Of those, 59.2 percent agreed the Ministry's proposals for improving regulatory tools to deal with false and misleading statements and inconsistencies with ORAs would address the issues outlined, 16 percent did not agree and 24.9 percent were not sure.
55. Submitters who supported the proposals said that enhanced regulatory tools for addressing false or misleading statements would help residents hold operators to account, and current penalties were an insufficient deterrent. Submitters who did not support the proposals said they were unnecessary and replicated existing provisions in the Fair Trading Act 1986.
56. Sector peak bodies did not support the Ministry's proposals, but for differing reasons:
- The RVR submitted the proposals did not go far enough to ensure adequate protections for residents and the Act needed stronger remedial options for misleading statements or undertakings, such as the right to cancel an ORA and/or receive compensation.
 - The RVA considered the status quo should remain, as action relating to misleading statements can be made through the dispute resolution process, the Disputes Tribunal or the courts, in addition to action under the Fair Trading Act 1986. It noted the Registrar and statutory supervisors already had powers to deal with advertising that was inconsistent with legislation. This view was broadly shared by operators who provided submissions.

Additional suggestions for improving the disclosure regime

57. We received suggestions from around 60 submitters about ways to enhance the retirement villages disclosure regime. Suggestions included:
- including a timeline for the completion of any future buildings and facilities;
 - minimising duplication between disclosure statements and the Code of Practice; and
 - improving training for salespeople to ensure they are well-informed and provide accurate information.
58. The RVA suggested disclosure documents include a statement that the information was correct at the time of publication but subject to change because operators need flexibility to adjust and develop village amenities and facilities over time.
59. The RVR supported strengthened remedial options where undertakings that do not eventuate cause residents' loss or harm. In particular, the RVR said there must be clarity around the current status of any actual or proposed new care facility and what it will offer in the way of care. They also advocated for a right to be compensated if care facilities do not eventuate in a reasonable time.

Other stakeholder engagement

60. Ministry officials also facilitated a series of standardisation working group meetings over October to December 2023 to work on ways disclosure statements and ORAs could be shortened and standardised to make them simpler and more accessible. The working group, which comprised of representatives from the RVR, the RVA, and lawyers who specialise in retirement villages, made good progress on working through which information and terms should go into which legal documents.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

61. To deliver against the overarching policy objectives of the Act review we have assessed all options against the following four equally weighted criteria:
- expected effectiveness in stopping problematic behaviours (including deterrence before they occur and effectively stopping them from continuing if they have manifested) and improving consumer protections;
 - whether it is proportionate and cost effective in response to the perceived problem;
 - the expected impact on the viability of the sector, including its ability to provide a range of retirement housing options and choice; and
 - whether the option provides clarity, predictability and certainty to parties.

What scope will options be considered within?

Priority issues and proposals with high levels of support are in-scope

62. In September 2024 Ministers agreed that the scope of the review should cover proposals from the 2023 discussion document that had high levels of support and were priority issues for residents.
63. There is a clear overall desire to reform the disclosure regime in the Act. There were high levels of support for improving the disclosure regime expressed in the context of the Ministry's formal consultation process.

Non-regulatory options

64. Providing additional education and information for residents is not considered to be sufficient as a standalone option, however, education will form part of the implementation package for this work. Because of the identified nature of the issues around transparency and access to information, and around the ability to seek redress if a resident considers that their rights have been infringed, making residents more aware of current rights alone would not be effective.

What options are being considered?

65. For each of the three main issues identified in section one we have:
- described the options that have been considered;
 - analysed the options against the criteria set out above; and
 - outlined in more detail the expected costs, risks and benefits of the preferred option.

66. Options are analysed using the following key:

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

Issue one: Disclosure statements can be hard to access

Option one – Status quo

67. This option would maintain the status quo whereby operators are not required to publish disclosure statements on their websites or provide them following a request. Disclosure statements may be provided in a non-searchable format.

Option two – Require operators to publish disclosure statements on their websites and provide a current version to a person who requests it within a reasonable time after receiving the request

68. This option would require operators to publish disclosure statements on their websites in a searchable format, or, if they do not have a website, provide the disclosure statement to any person who requests it within a reasonable time after receiving the request.

How do the options compare to the status quo/counterfactual?

	Option one – Status quo	Option two - Require disclosure statements be published on websites or provided to requestors
Effectively stop problematic behaviours and improve consumer protections	0	++ Improves accessibility and transparency for anyone searching operator websites and anyone who makes a request
Proportionate and cost effective	0	+ May impose minor one-off costs, and a minor ongoing administrative burden. Considered proportionate. Issuing of penalties likely to be rare and considered a justified cost to operators who breach obligations
Impact on the viability of the sector	0	0 No expected impact on sector viability
Provides clarity, predictability and certainty	0	++ Standardises and simplifies the method of accessing disclosure statements
Overall assessment	0	+5 Option two would improve accessibility and transparency for people searching operator websites and anyone who makes a request. It would standardise and simplify the method of accessing disclosure statements with no significant costs anticipated

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

69. The Ministry's preferred approach is option two – to require operators to publish current disclosure statements on their websites or to provide them to a person who requests it within a reasonable time after receiving the request.
70. If the disclosure statement is published on the operator's website or provided to a person electronically (e.g. by email), it must be in a searchable format.
71. If an operator has a website, they must publish a current disclosure statement on it. They will not be subject to the obligation to provide a statement when requested, but in this case they may choose to provide the requestor with a link to the website location.
72. If an operator does not have a website, they will have to provide their current disclosure statements to anyone that requests one within a reasonable time.

73. This approach would improve accessibility and transparency for people searching operator websites and anyone who makes a request. It would standardise the method of requesting disclosure statements with no significant cost.

Enforcement

74. To encourage compliance, we recommend a breach of these obligations should be a civil liability event, with a maximum pecuniary penalty of \$50,000 for bodies corporate, and \$20,000 for individuals.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

75. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Operators	May impose minor one-off costs, and a minor ongoing administrative burden. Issuing of penalties likely to be rare and considered a justified cost to operators who breach obligations.	Low	Medium
Current residents	No expected costs.	Nil	Medium
Future residents	No expected costs.	Nil	Medium
s 9(2)(f)(iv)			
Total monetised costs		Not available	
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Operators	May streamline systems for providing disclosure statements.	Low	Medium
Current residents	No expected impacts, given current residents will be subject to the disclosure statement provided when they moved in.	Medium	High

Future residents	Expected to improve accessibility of disclosure statements.	Medium	Medium
Total monetised benefits		Not available	
Non-monetised benefits		Medium	Medium

Issue two: Problems with undertakings in disclosure statements and with dispute resolution pathways

Option one – Status quo

76. Under this option, the current system of obligations, rights and remedies for the disclosure system in the Act would remain.
77. Schedule 2 of the Act provides that a disclosure statement requires information on various matters to be compliant including in relation to ownership, management and supervision, the state of the village, services, charges and accounts, ORAs, terminations, deductions and estimated financial returns. The Act empowers regulations to be made around the terms and form of disclosure statements for the purposes of the Act. The General Regulations prescribe what specific detail is required to be included in the disclosure for each of these matters.
78. Section 26 of the Act requires that before any advertisement for occupation rights in a retirement village is published, the operator and promoter of the village must take all practicable steps to ensure that the advertisement is not misleading or deceptive. An advertisement includes a disclosure statement.
79. However, there would be no legislative requirement to specify estimated completion dates for planned services and facilities in disclosure statements. ORAs would also overrule disclosure statements (as ORAs are the contractual document) even where there are inconsistencies and a resident has relied on information in the disclosure statement to their detriment.
80. A resident, a statutory supervisor, or the Registrar can take court proceedings against an operator if they believe a disclosure statement is misleading or deceptive and the court can order a remedy, such as prohibiting the advertisement, ordering a correction, payment of compensation, or requiring specific services to be provided. Where a registered document is likely to be misleading, the Registrar can exercise a power to suspend registration of a village. Feedback provided to the Ministry indicates that these current pathways are difficult to use and rarely pursued.
81. Operators must also meet obligations under the Fair Trading Act 1986. This legislation is enforced by the Commerce Commission and individuals are not able to pursue remedies.

Option two – Address problems with undertakings in disclosure statements

82. This option would involve requiring that where a disclosure statement contains details about planned new services or facilities, the disclosure statement must specify the estimated dates on which those services or facilities are to be made available.

83. Alongside this, where ORA terms and disclosure regime information are inconsistent (to the detriment of the resident) the ORA term is to be interpreted as if it contained the disclosure statement information (instead of the inconsistent term).

Option three– Address problems with undertakings in disclosure statements and enable the disputes scheme or court able to hear proceedings where disclosure statement undertakings do not eventuate

84. This option would include both changes in option two – specifying dates of new service or facility availability – and clarification of inconsistent terms.
85. In addition, it would also provide that where a person suffers inconvenience, loss or detriment due to information contained in a disclosure statement, they would be able to take a proceeding and the disputes scheme or court could make any of the orders set out in the Act.

	Option one – Status quo	Option two – Address problems with undertakings in disclosure statements	Option three – Address problems with undertakings in disclosure statements and enable disputes scheme or court to hear proceedings where disclosure statement undertakings do not eventuate
Effectively stop problematic behaviours and improve consumer protections	0	<p>+</p> <p>Expected to reduce problems with undertakings in disclosure statements. Likely to increase compliant operator behaviour, ultimately improving consumer protection</p>	<p>++</p> <p>Expected to reduce problems with undertakings in disclosure statements. Improves resolution where there has been a breach in obligations. Likely to increase compliant operator behaviour, ultimately improving consumer protection</p>
Proportionate and cost effective	0	<p>+</p> <p>Any costs considered proportionate to benefits of increased clarity and transparency</p>	<p>+</p> <p>Any costs considered proportionate to benefits of increased clarity and transparency and of remediation where content of undertakings is not realised</p>
Impact on the viability of the sector	0	<p>0</p> <p>Not expected to impact sector viability</p>	<p>0</p> <p>Not expected to impact sector viability</p>
Provides clarity, predictability and certainty	0	<p>+</p> <p>Will increase visibility of timelines for planned services and facilities, and</p>	<p>++</p> <p>Expected to significantly improve clarity, predictability and certainty across timelines for planned services and facilities, outcomes</p>

		on outcomes where there is inconsistency in terms	where there is inconsistency in terms and dispute resolution pathways
Overall assessment	0	<p>+3</p> <p>Option two would address issues with undertakings in disclosure statements, would increase clarity, and is considered proportionate</p>	<p>+5</p> <p>Option three would address issues with undertakings in disclosure statements, would increase clarity, and is considered proportionate. It would also improve dispute resolution. It is likely to increase compliant operator behaviour, ultimately improving consumer protection without introducing unreasonable costs</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

86. The Ministry's preferred approach is option three – addressing problems with undertakings in disclosure statements and enabling the disputes scheme or court to hear proceedings where disclosure statement undertakings do not eventuate.
87. This set of proposals builds on the existing system of obligations and remedies in the Act as outlined above. In particular, the existing obligation at section 26 of the Act states that before any advertisement for occupation rights in a retirement village is published, the operator and promoter of the village must take all practicable steps to ensure that the advertisement is not misleading or deceptive.

Specifying expected completion dates for planned services and facilities

88. While disclosure statements are not contractually binding, we propose they include estimated completion dates for planned services and facilities (as disclosure documents in Australian states are required to) so that residents can make more informed choices when moving into a retirement village. If a resident relies on an estimated completion date and suffers inconvenience, loss or detriment, the resident would be able to take a proceeding under the Act as set out below.

Interpreting inconsistent ORAs and disclosure statements

89. We propose that where ORA terms and disclosure regime information are inconsistent (to the detriment of the resident) the ORA term is to be interpreted as if it contained the disclosure statement information (instead of the inconsistent term). The new dispute scheme for retirement villages would have powers to specify the way in which the term is to be interpreted.

Dispute resolution pathways

90. We propose to add the ability for a dispute to be taken to the disputes scheme or court where, as a result of relying on information contained in a disclosure statement or a breach of the obligations in section 26, the complainant has suffered inconvenience, loss, or detriment.

91. A proceeding would only be able to be made within three years after the date on which the inconvenience, loss, or detriment or the likelihood of inconvenience, loss, or detriment, was discovered or ought reasonably to have been discovered. This approach aligns with the approach taken in the Fair Trading Act 1986 in respect of limiting applications to the Disputes Tribunal or court under that Act.
92. In deciding whether to make an order, the disputes body or court would be required to consider:
 - whether the operator or their agent:
 - reasonably relied on information or legal advice provided by another person;
 - took reasonable precautions and exercised due diligence to avoid the contravention; or
 - made a reasonable mistake;
 - the special circumstances and seriousness of the matter, including the nature of the new services or facilities promised and any relevant factors outside of the operator's control;
 - the extent to which the resident relied on the information in making their decision to sign an ORA with the retirement village;
 - the actual or potential effects of the contravention on the resident, including loss of expected benefits.

Enforcement

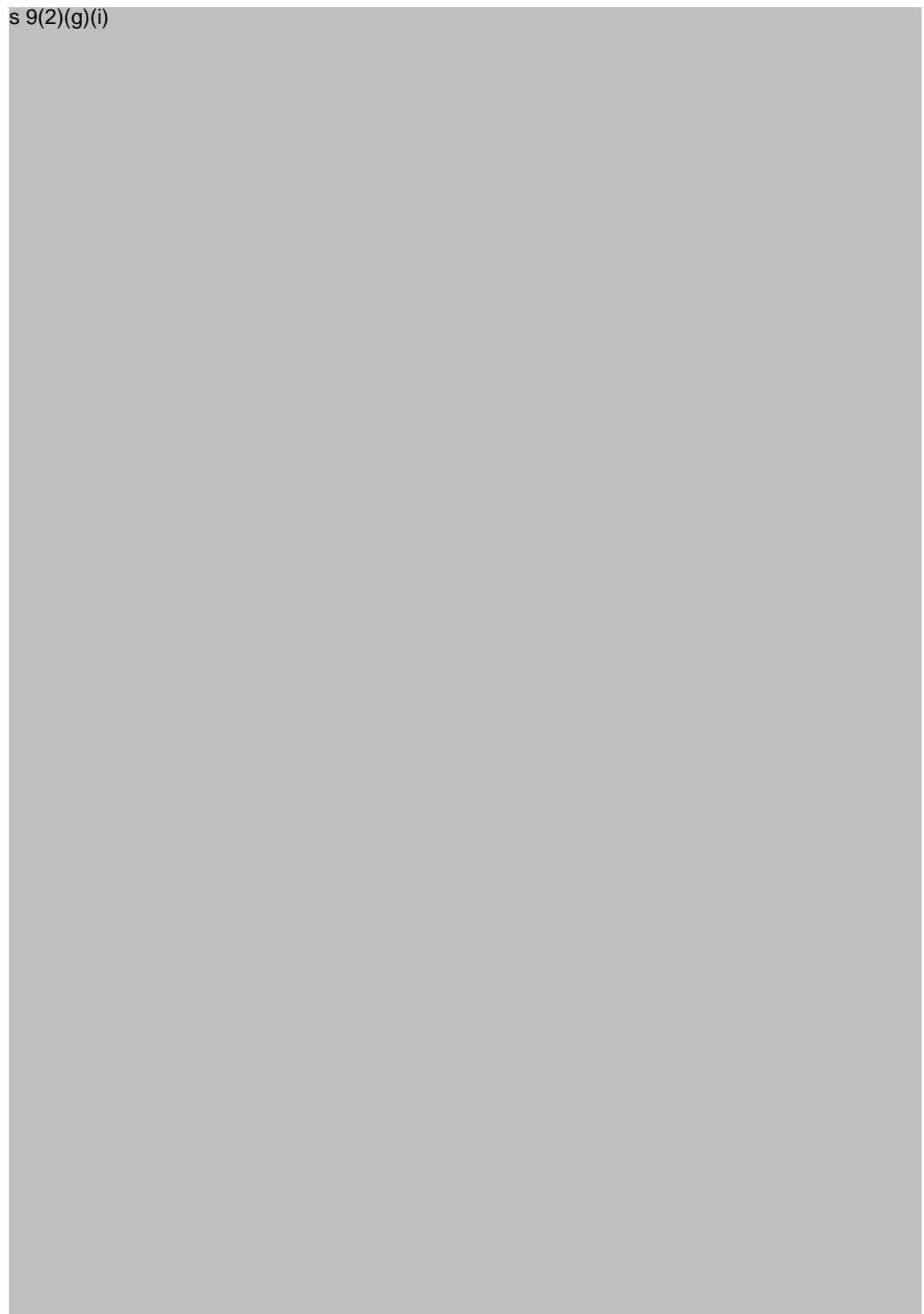
93. Where there is a dispute in relation to a person suffering inconvenience, loss or detriment due to a breach of disclosure obligations or reliance on disclosure information (including a breach of any of the obligations above), the following options for pursuing remedies would be available:

Dispute resolution scheme (introduced as part of this reform)
<p>Negotiation (facilitated by the scheme provider):</p> <ul style="list-style-type: none"> • Pathway available based on negotiation and voluntary agreement of the parties. • Broad discretion as to what may be appropriate. Options that may be considered include, for example: <ul style="list-style-type: none"> ○ Monetary compensation; ○ Exit from village with negotiated return of capital; ○ Reduction of weekly fees; or ○ Payments for specific costs, for example for regular taxis to visit partner in nearby ARC facility (where on-site ARC facility has not been delivered).
<p>Binding remedies (issued by the scheme provider):</p> <ul style="list-style-type: none"> • The disputes scheme would have legislated remedies available where there is a deadlock between the parties and a negotiated resolution cannot be reached. • Before the scheme issues a final binding decision, it would first issue a preliminary decision.

<ul style="list-style-type: none"> • Where operator conduct amounts to misleading or deceptive conduct as per section 26 of the Act, the scheme could utilise the following remedies: <ul style="list-style-type: none"> - Section 82 (c) of the Act – refund of money or return of property; - Section 82 (d) of the Act – payment of the amount of the loss or damage; or - Section 82 (e) of the Act – supply of specified services. • The Ministry has recommended, and the Minister has agreed, that the three remedies above (previously only available to a court) be made available for the new disputes scheme to exercise. • These remedies will be subject to a maximum monetary limit of \$60,000. This will align with the jurisdiction of the Disputes Tribunal. Additional more significant remedies (without maximum monetary limits) are available in the court setting as outlined below. • There will also be a new remedy available under the disputes scheme to require a payment of up to \$10,000 to a resident where the resident has experienced undue distress and/or significant inconvenience relating to the dispute.
Parties could also choose to enter a mediation process if suitable in the circumstances.
Court
<p>Binding remedies:</p> <ul style="list-style-type: none"> • Where operator conduct amounts to misleading or deceptive conduct as per section 26 of the Act, a court could utilise the following remedies: <ul style="list-style-type: none"> ○ Section 82 (a) of the Act – declare whole or part of an ORA void; ○ Section 82 (b) of the Act – vary all or part of an ORA; ○ Section 82 (c) of the Act – refund of money or return of property; ○ Section 82 (d) of the Act – payment of the amount of the loss or damage; ○ Section 82 (e) of the Act – supply of specified services; or <p>These are existing penalties available to a court under the Act.</p>
Parties could appeal court decisions as per the usual process.

94. There are a number of potential scenarios and corresponding available remedies for the proposal to require operators to specify expected completion dates for planned services and facilities. Indicative potential outcomes provided below:

s 9(2)(g)(i)



Expected impacts

95. This set of policy changes may increase the expected number of disputes directed to the disputes scheme proposed via these reforms. Analysis on the disputes scheme is provided in an accompanying Regulatory Impact Statement. The latest Retirement Commission six monthly summary of complaints to retirement villages shows four percent of the 355 reported formal complaints related to ORA and disclosure interpretation. While this provides some indication of the current volume of complaints related to disclosure, it is still difficult to predict the potential volume of complaints under this policy change given the proposed test is intended to create a new dispute resolution pathway.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

96. The Ministry's preferred option for disclosure regime proceedings is that a proceeding must be taken within three years after the date on which the inconvenience, loss, or detriment was discovered. The Minister's preference is that a proceeding must be taken within two years after the date on which the inconvenience, loss, or detriment was discovered. This detail is considered to be within the power sought for the Minister to make minor decisions relating to this reform package. For this reason, it is not included in the Cabinet paper.

97. The Minister and the Ministry's preferred options align on all other proposals above.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Operators	<p>Changes addressing problems with undertakings in disclosure statements are only expected to impose costs where operators are currently engaging in misleading, unclear or inconsistent conduct. There may be some costs to operators in terms of the risk of specifying a timeframe for completion if the timeframe is not met.</p> <p>Costs may be incurred where remedies are granted in favour of residents. Mitigated by requirement to take into account any relevant factors outside of operators' control (e.g. significant market downturn, supply challenges arising from pandemic). Any cost burden is considered justified given impacts to residents.</p> <p>This set of policy changes may increase the expected number of disputes directed to the scheme. Costs related to proposed dispute resolution scheme are detailed in accompanying Regulatory Impact Statement.</p>	Low	Medium

Current residents	No expected costs.	Nil	High
Future residents	No expected costs.	Nil	High
s 9(2)(f)(iv)			
Total monetised costs		Not available	
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Operators	Increased clarity in regulatory regime.	Low	Medium
Current residents	No expected impacts, given current residents will be subject to the disclosure information provided when they moved in.	Nil	High
Future residents	Benefits to residents where misleading, unclear or inconsistent conduct would have impacted them negatively. Increased upfront transparency on expected timeframes for planned services or facilities. Avoids potentially significant costs associated with expected services or facilities that do not eventuate (for example, costs of moving). Likely to increase upfront transparency. May increase attractiveness of retirement village living for prospective residents. Clearer dispute resolution pathways and increased access to remedies.	Medium	Medium
Total monetised benefits		Not available	
Non-monetised benefits		Medium	

Issue three: Registrar tools to deal with misleading or deceptive advertisements/ statements can be disproportionate or protracted

Option one – Status quo

98. This would maintain the status quo Registrar toolkit including suspension of village registration or application to court for orders or injunctions.

Option two – Provide the Registrar with powers to enable stop and direction orders to deal with misleading or confusing disclosures

99. This option would retain the status quo and add stop and direction orders to the Registrar's toolkit if they consider an advertisement or a registered document is likely to mislead or deceive.

Option three – Provide the Registrar with powers to enable stop and direction orders to deal with misleading or confusing disclosures and any failure to comply with requirements under the Act, Regulations or Code

100. This option would add stop and direction orders to the Registrar's toolkit for misleading or deceptive conduct (as in option 2 above). In addition, stop and direction order powers could be used for any breach under the Act, Regulations or Code. For example, the orders could be used where there were breaches of the code of residents' rights.

How do the options compare to the status quo/counterfactual?

	Option one – Status quo	Option two – Stop and direction orders to deal with misleading or confusing disclosures	Option three – Stop and direction orders to deal with misleading or confusing disclosures and any failure to comply with requirements under the Act, Regulations or Code
Effectively stop problematic behaviours and improve consumer protections	0	++ Fills a gap in Registrar toolkit, likely to increase compliant operator behaviour, ultimately improving consumer protection	+ Fills a gap in Registrar toolkit, likely to increase compliant operator behaviour, ultimately improving consumer protection. However, Registrar intervention on issues with interpersonal dimensions may be inappropriate and/or ineffective
Proportionate and cost effective	0	+ Considered to be a proportionate response to the behaviour. Issuing of penalties likely to be rare and considered a justified cost to operators	- May lead to unreasonable costs to the Registrar who would be tasked with administering a very broad power

Impact on the viability of the sector	0	0 No expected impacts to viability of the sector	0 No expected impacts to viability of the sector
Provides clarity, predictability and certainty	0	+ Improves clarity, predictability and certainty by supporting compliant operator behaviour	- Likely to duplicate pathways available for remediation of issues, including via the new proposed dispute resolution scheme
Overall assessment	0	+4 Option two would complete the Registrar's regulatory toolkit, leading to increased clarity, predictability, certainty and ultimately improving consumer protection	- May not be appropriate tool for interpersonal issues, costs may be disproportionate, likely to duplicate pathways available for remediation of issues via the new proposed dispute resolution scheme

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

101. The Ministry's preferred approach is option two – providing the Registrar with powers to enable stop and direction orders. This approach would address an identified gap in the regime. It is expected to lead to a more effective Registrar function by providing them with a more graduated suite of powers, therefore increasing compliant operator behaviour, and ultimately improving consumer protection.
102. The stop and direction order powers would be in addition to the current mechanisms the Registrar has. They would allow the Registrar to manage situations in a timely, tailored and proportionate way, for example where suspension of a retirement village's registration was too drastic, and taking a court injunction was not an efficient or appropriate approach. The powers would enable the Registrar to take action to enforce compliance where earlier, less formal engagement (feedback and warnings) had not brought about the desired outcome and more formal direction or stop orders were appropriate.
103. The Ministry considered recommending providing additional powers to the Registrar to address breaches of other requirements under the legislative regime, for example to encourage compliance with the code of practice and code of residents' rights. However, we have concluded it is more appropriate for these kinds of disputes to be resolved through the new disputes and complaints scheme. The proposed dispute resolution scheme (the subject of an accompanying Regulatory Impact Statement) is designed with the full spectrum of disputes in mind, including those with interpersonal dimensions.

Criteria for stop and direction orders

104. The Registrar would have the discretion to make a direction order or a stop order if they are satisfied that:
- an advertisement for an ORA or any registered document:
 - is false or misleading;
 - contains any inaccurate or erroneous information; or
 - is likely to mislead or deceive any resident, any intending resident, or the public; or
 - a communication relating to an ORA offer or intended offer is:
 - false or misleading, or is likely to deceive or mislead; or
 - is materially inconsistent with the corresponding disclosure statement or ORA for the retirement village.
105. The direction order would be able to (but would not be limited to):
- direct the relevant person to amend an advertisement for an ORA or a registered document so it is not misleading or deceptive;
 - stipulate any reasonable steps the relevant person or operator must take to comply with the provision or avoid/mitigate any adverse effects of non-compliance; or
 - require the operator or relevant person to report to the Registrar within a time specified in the order stating how and when the order will be implemented.
106. A stop order may prohibit (but is not limited to) specified communications or the distribution of a disclosure statement. For example, a document or communication reasonably likely to induce an intending resident to enter an ORA authorised by or on behalf of a retirement village operator.
107. Before issuing a stop order, the Registrar must notify the operator of its intention to do so by outlining:
- the conduct it believes breaches or risks breaching the Act;
 - the proposed terms of the stop order; and
 - the reasons for considering the stop order necessary.
108. The Registrar must give the operator at least five working days to make written submissions and an opportunity to be heard before a decision is made. The Registrar must consider any submissions before deciding whether to proceed and may revise or withdraw the proposed stop order based on the information provided. If the Registrar decides to proceed, it can issue a final stop order.
109. The new powers would include a provision clarifying that a person cannot be ordered to pay a penalty or be liable for a fine under the Retirement Villages Act 2003 or the Fair Trading Act 1986 for the same conduct.
110. The contravention of an order made by a Registrar without reasonable excuse is a civil liability event.

Enforcement

111. To enable enforcement, we propose that non-compliance with a stop order would be a civil liability event, attracting a potential civil pecuniary penalty up to a maximum of \$200,000 for a person and \$300,000 for a body corporate.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

112. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Operators	May incur minor costs in amending documents where direction or stop order issued. Issuing of penalties (maximum \$200,000 for a person, Maximum \$300,000 for a body corporate) likely to be rare and considered a justified cost to operators who breach obligations.	Low	Medium
Current residents	No expected costs	Low	Medium
Future residents	No expected costs	Low	High
s 9(2)(f)(iv)			
Registrar	The Registrar expects to incur additional costs and intends to meet these within their existing funding.	Low	High
Total monetised costs		Not available	
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Operators	May prevent disputes escalating and becoming more costly (E.g. court proceedings).	Low	Medium
Current residents	May prevent or stop misleading conduct that could negatively impact them. In particular, prevents potentially significant costs where a resident's decision to sign an ORA was materially impacted by misleading conduct (monetary cost of moving or opportunity cost of preferred choice not taken).	Medium	Medium

Future residents	Likely to increase upfront transparency for future residents. May increase attractiveness of retirement village living for prospective residents.	Medium	Medium
Total monetised benefits		Not available	
Non-monetised benefits		Medium	Medium

Impacts on Māori

113. The preferred package of options is expected to have no direct impacts on Māori beyond those applying to other groups, or associated implications for the Crown's responsibilities under Te Tiriti o Waitangi.
114. While there is limited information available, several operators have commented that Māori, Polynesian and Asian communities make up a very small percentage of retirement village occupancy.⁹ In a research survey conducted between June 2016 and August 2018 which sought views from a cross-section of over 500 village residents in Auckland only 1% of residents self-identified as Māori.¹⁰
115. Māori as a population group have relatively low rates of homeownership¹¹, impacting the likelihood that whānau Māori will have sufficient assets to fund the upfront capital sum to buy into a retirement village. Lower life expectancy and poorer health outcomes mean Māori are also less likely to reach the standard minimum age of entry for a retirement village of 75.¹² Retirement village living may also not fit with the aspirations of many Māori to live alongside whānau, within their community, or on land with ancestral or cultural significance.

⁹ As noted in this recent article [Outlook on NZ's retirement village sector | JLL](#).

¹⁰ Broad JB, Wu Z, Bloomfield K, Hikaka J, Bramley D, Boyd M, Tatton A, Calvert C, Peri K, Higgins AM, Connolly MJ. Health profile of residents of retirement villages in Auckland, New Zealand: findings from a cross-sectional survey with health assessment. *BMJ Open*. 2020 Sep 18;10(9):e035876. doi: 10.1136/bmjopen-2019-035876. PMID: 32948550; PMCID: PMC7511621.

¹¹ People of European ethnicity are much more likely to own their home or hold it in a family trust than other ethnic groups, at 57.9 percent. People of Asian ethnicity were second highest at 39.9 percent, followed by Māori at 31.0 percent. Stats NZ (2020). Housing in Aotearoa: 2020. Retrieved from www.stats.govt.nz.

¹² Average life expectancy at birth based on death rates at 2017-2019 were 73.4 for Māori males, 77.1 for Māori females, compared with 81 for male European/other and 84.5 for female European/other. See Tatauranga Aotearoa – Stats NZ, “Growth in life expectancy slows,” updated 20 April 2021, <https://www.stats.govt.nz/news/growth-in-life-expectancy-slows/>.

Section 3: Delivering an option

How will the proposal be implemented?

116. If Cabinet agrees to the package of proposed legislative changes, an amendment bill is expected to be introduced by July 2026 and enacted in the second quarter of 2027.

Managing the transition

117. Phased transition planning has been considered across the reform. The recommended approach takes into account:

- fairness and consumer protection for residents;
- whether the change codifies best practice or presents low or minor costs for operators;
- allowing time for agencies (primarily the Ministry and the Retirement Commission) to update public guidance; and
- allowing time for operators to make changes to their ORAs and any other arrangements to reflect changes to legislative minimum requirements and adjust their business practices e.g. amend pricing and/or arrange access to more working capital as necessary.'

Proposal one: Requiring operators to publish disclosure statements on their websites and provide a current version to a person who requests it

118. We recommend the proposed legislative change comes into effect six months after the date of Royal assent. This would allow time for operators to update their business systems.

Proposal two: Enabling the retirement villages disputes scheme or court to hear proceedings where disclosure statement undertakings do not eventuate

Uncertainty on delivery of planned services and facilities

119. We recommend that the change to require operators to stipulate timeframes for expected delivery of services and facilities comes into effect six months after the date of Royal assent. This would allow time for operators to update their business systems, disclosure statements, and guidance.

120. This change would apply only to new disclosure statements provided following legislative changes coming into effect.

Inconsistent ORAs and disclosure statements

121. We recommend that the change to provide that where ORA terms and disclosure regime information are inconsistent (to the detriment of the resident), the ORA term is to be interpreted as if it contained the disclosure statement information (instead of the inconsistent term) comes into effect six months after the date of Royal assent. This would allow time for operators to update their business systems, ORAs, disclosure statements, and guidance, as necessary.

122. This change would apply only to new ORAs entered into or provided following legislative changes coming into effect.

Dispute resolution pathways

123. We recommend that the new dispute resolution pathway comes into force once the new dispute resolution scheme enabled by this reform process is set up.
124. It would not be appropriate for the new provision to apply in respect of the current disputes panel, because they will not have the requisite powers and processes to take effective action. It would also not be efficient for the current system to adjust its processes for a new provision when a replacement system is being set up.
125. The new disputes scheme will commence on a date set via an Order in Council. We propose that the new provisions come into force via that process. We anticipate the earliest a new scheme could be operating is 12 to 18 months after an amendment bill receives Royal assent.
126. Existing disputes pathways including enforcement of section 26 and the accompanying remedies available to a court in section 82 of the Act will continue to be available throughout enactment of the new dispute resolution scheme.

Proposal three: Providing the Registrar with powers to enable stop and direction orders

127. We recommend the proposed legislative changes come into effect six months after the date of Royal assent. This would allow time for the Registrar to develop the appropriate operational systems and procedures.

Information dissemination

128. Ministry officials will work with the Retirement Commission, the Registrar of Retirement Villages and representative groups such as the RVA, RVR and CTA to get information out to operators, statutory supervisors and residents on changes to the Act and what this means for them.

How will the proposal be monitored, evaluated, and reviewed?

129. Changes made following completion of the Act review will be jointly monitored by agencies' pre-existing systems and processes for monitoring and review.

Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development

130. The Ministry, as lead policy agency responsible for the Act, has an ongoing regulatory stewardship role. The Ministry maintains relationships across the retirement villages system, including with the Registrar and other government agencies with a role in the retirement village system. Officials are also in regular correspondence with representatives of organisations such as the RVA and RVR and will consider any concerns they raise.

The Retirement Commission

131. The Retirement Commissioner, under the Act, holds responsibility for monitoring the effects of the legislative framework for retirement villages to ensure it remains effective. The Retirement Commission has run an independent monitoring programme since 2008, with an annual investigation and report into different aspects of the sector produced each year.
132. The Commission currently receives biannual information from retirement village operators regarding any formal complaints they have received from residents. These reports allow the Commissioner to monitor trends and concerns in the sector.

133. The Commission will be able to use its current monitoring framework to investigate and monitor the effects of legislative changes and will consider establishing benchmarks to better understand the impacts on the sector.

The Commerce Commission

134. As an independent Crown Entity, the Commerce Commission enforces laws relating to fair trading, competition, consumer credit contracts and economic regulation. The Commerce Commission cannot investigate breaches of the Act, but it can investigate breaches of the Fair Trading Act 1986. The Commerce Commission recently exercised this authority when it investigated potentially unfair contract terms in a range of ORAs. There may be instances where the subject matter of issues under the disclosure regime and the Fair Trading Act 1986 have overlap. In these cases, agencies will work together as needed.