Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Regulatory Impact Statement: Retirement Villages Act 2003 review – Insurance issues

Decision sought	The purpose of this analysis is to inform Cabinet decisions on changes to the Retirement Villages Act 2003 to modernise insurance provisions and mitigate financial risks for operators and residents.
Agency responsible	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
Proposing Ministers	Hon. Tama Potaka, Associate Minister of Housing
Date finalised	20/10/2025

The insurance provisions in the Retirement Villages Code of Practice 2008 (the Code) are no longer reflective of market practice, creating financial risks from unclear coverage, weak protections around excesses, and gaps in ensuring operators can meet their obligations.

To help address this the Minister is proposing legislative changes to:

- Restrict ability to pass on insurance excesses if related to operator property and where residents are not at fault;
- Require operators to maintain resources to meet their existing obligation to repay residents' capital sums; and
- Require operators to maintain insurance on a reinstatement basis.

Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (HUD) considers that the Minister's preferred package of legislative change is expected to provide improved consumer protections, including ensuring adequate insurance cover and preventing unfair behaviour. The expected costs and risks to operators are relatively low.

Summary: Problem definition and options

What is the policy problem?

Residents, representative organisations, and consumer groups have raised concerns for many years that the Retirement Villages Act 2003 (the Act) does not provide adequate protections for residents, especially given the potential vulnerability of some older people.

In terms of insurance, the Code insurance requirements no longer reflect market practice, creating financial risks from unclear coverage, weak protections around excesses, and gaps in ensuring operators can meet their obligations.

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 insurance, the objective is that requirements around cover for village operators provide adequate consumer protections to residents and prospective residents of retirement villages. This includes ensuring an adequate level of cover is obtained to protect residents' interests and ensure operators' obligations to residents are met.

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

<u>Issue one: Insurance excesses</u>

We have considered three options:

- Option one – Status quo.
- Option two – Prohibit passing on of any insurance excesses to residents.
- Option three – Restrict ability to pass on insurance excesses if related to operator property and where residents are not at fault.

Restricting ability to pass on insurance excesses if related to operator property and where residents are not at fault (option three) is both the Minister's and the Ministry's preferred option.

This clarifies that operators cannot include terms regarding excesses in ORAs that are potentially unfair, retains the ability for passing on excesses where there is fault, and has strong support from residents and operators

<u>Issue two: Capital sums</u>

We have considered three options:

- Option one – Status quo.
- Option two – Requiring operators to maintain resources to meet their existing obligation to repay residents' capital sums.
- Option three – Require operators to maintain resources to repay the current market value of the entire unit.

Requiring operators to maintain resources to meet their existing obligation to repay residents' capital sums (Option two) is both the Minister's and the Ministry's preferred option.

This provides protections for residents in the event of a disaster, is proportionate and clear, and is supported by stakeholders.

Issue three: Changing insurance market realities

We have considered two options:

- Option one – Status quo.
- Option two – Requiring operators to maintain insurance on a reinstatement basis.

Requiring operators to maintain insurance on a reinstatement basis (Option two) is both the Minister's and the Ministry's preferred option.

This would maintain the existing policy intent but update the wording of the obligation to provide for a modern, flexible and outcomes-based standard.

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 regularly 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 response to the discussion document, 94 percent of submitters and 35 percent of operators agreed with restricting villages' ability to pass on insurance excesses (issue one). Both the RVR and RVA supported the proposal.

79 percent of submitters and 63 percent of operators supported the proposal to require operators to maintain resources to meet obligations to repay capital sums (issue two). Both the RVR and RVA supported the proposal.

38 percent of submitters could foresee issues with the proposal to remove the requirement that operators have "full replacement cover" and instead obtain sum-insured and collective type insurance policies, 25 percent disagreed, and 37 percent were not sure. The RVR had some reservations about this proposal, whereas the RVA supported it.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs

Issue one: Insurance excesses

Costs are expected to be low for operators. They may pass through any increases to residents in the form of village charges or face marginal increases in overall costs.

Issue two: Capital sums

Will increase costs for any operator that does not currently have insurance policies or funds in place to meet their current obligations to repay capital sums in the event of a total loss. Pass through of costs may lead to marginal cost increases for residents.

Issue three: Changing insurance market realities

Not expected to significantly increase costs. Expected to better align legislation with widespread current practices.

Benefits

Issue one: Insurance excesses

Residents can expect to receive the benefit of increased clarity that they will not be subject to insurance excess charges where they are not at fault. Could also increase the attractiveness of retirement village living for prospective residents.

Issue two: Capital sums

There would be significant benefits to both operators and residents in the event of a total loss, protecting them from financial loss and avoiding disputes. For residents, the change protects their ability to secure housing following a disaster. For operators, the change protects against reputational loss following a disaster.

Issue three: changing insurance market realities

May provide a significant benefit to residents in the event of a total loss by protecting their financial position and ability to secure housing. Could prevent the need for costly and time-consuming disputes and / or litigation. May improve compliance burden on operators due to increased clarity and flexibility.

Balance of benefits and costs

We consider the benefits of the Minister's preferred package of legislative changes to insurance obligations are likely to outweigh the costs. As a package, they are expected to provide adequate consumer protections, including ensuring adequate insurance cover and preventing unfair behaviour. 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 2027.

For proposals 1 and 3, the Ministry recommends that the changes apply from the day after Royal assent of the Bill.

For proposal 2, the Ministry recommends requiring operators to meet the requirement no later than 18 months following the date of Royal assent of the Bill.

All changes would apply for all residents regardless of when the ORA was entered into.

We consider the overall risks associated with the package of policy changes recommended in this briefing to be relatively low, with no impact on the overall viability of the sector.

Post-enactment 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.

Statutory supervisors will continue to play a key role in overseeing and assessing the adequacy of insurance arrangements. The Retirement Commission and the Ministry will have roles in monitoring the new requirements.

Limitations and constraints on analysis

Accurate monetisation of the costs and benefits of these changes has not been possible.

There is a lack of data available on the incidence of these issues manifesting in the sector. The lack of visibility may be due in part to the discretion allowed under many of the relevant provisions in the Code. If the Ministry were to seek further data, much of this would likely be highly commercially sensitive.

The policy changes remove choices for operators to act in certain ways, but there are a number of remaining courses of action available to them and the ability to predict which one they will follow with any accuracy is not possible. Even if accurate choice prediction was possible, predicting costs accurately would still not be possible due to incomplete data.

The Ministry has therefore concluded that a narrative description of costs and benefits is more 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.

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
Claire Leadbetter
Policy Manager, Housing and Rental Markets

C.D. Leadbetter

Date: 20/10/2025

Quality Assurance Statement

Reviewing Agency: Ministry of Housing and Urban Development	**QA rating:** Meets

Panel Comment:
This RIS meets the criteria very well. It is clear, concise and based on good qualitative information (including consultation and information from different stakeholders/actors in the system). The options analysis is logical and robust, setting out clearly how and why recommended options have been developed, and how they will help improve certainty while maintaining flexibility in an evolving market.

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 occupation right agreement (ORA) spelling out each party's rights and obligations.

2. Residents pay an upfront capital sum to purchase an occupation right agreement for their retirement village unit as well as on-going weekly fees. Operators charge a fixed deduction from the capital sum when a unit is vacated of between 20 to 30 percent. The vast majority typically 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. Three of these large commercial operators are listed on the New Zealand stock exchange and have responsibilities to their shareholders. The legislation and regulations which govern the sector are being tested by the growth in size, value and complexity of the industry.

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.

A number of concerns with the Act have been raised by sector stakeholders

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 to negotiate terms.

7. In 2020 the Retirement Commission published the White paper: 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.

[1] According to the New Zealand retirement villages white paper produced by JLL, August 2024.

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, many related 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 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.

The Commerce Commission investigated unfair terms

12. The Commerce Commission launched an investigation into complaints that it received in late 2022 by the RVR concerning potentially unfair contract terms in a range of ORAs.

13. The Commerce Commission made some preliminary findings about the fairness of terms it investigated across the ORAs of six operators, this included terms relating to passing on insurance excesses.

14. Where operator-owned property is damaged and the resident is not at fault, passing on insurance excesses is likely to be unfair.

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

15. The RVA has launched a ‘Blueprint for New Zealand’s Retirement Villages Sector’ (the Blueprint) to help improve sector practices. This includes a commitment to making sure operators relicense vacant units as quickly as possible, stopping weekly fees once a unit is vacated, and pledging to address unfair clauses in ORAs. Without legislative change we expect some ongoing improvements in sector best practice.

16. 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.

17. 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 to the Commerce Commission regarding non-compliance with the Fair Trading Act 1986 relating to a range of unfair conduct offences that may require the Commission to take enforcement action through the courts.

The context of the insurance market has been changing

18. The Retirement Villages Code of Practice 2008 (the Code) includes provisions relating to insurance requirements for Retirement Villages. The Code is a legally binding instrument issued under the Act.

19. The intent behind the requirements is to ensure villages can be reinstated following a disaster. The intent to protect residents from prolonged displacement or financial loss remains unchanged. However, given changes in insurance market offerings, the specific legislative requirements may no longer be fit for purpose.

20. Prior to the Canterbury earthquakes, insurance policies commonly provided open-ended full replacement cover based on the size of the property, without a fixed monetary limit. Following the earthquakes, insurers have shifted to fixed sum-insured models to manage cost exposure. These policies still offer reinstatement cover, meaning the insurer will pay to rebuild or repair assets, but only up to a predetermined limit (the sum-insured). Larger and geographically dispersed operators may also use pooled or collective loss-limit[5] policies across multiple villages to reduce cost and manage risk. However, these arrangements, including sum-insured and collective loss-limit policies, do not clearly comply with the Code's outdated "full replacement" wording, which does not explicitly allow for these modern insurance structures.

21. In the absence of changes to insurance provisions, residents and operators are likely to experience risks of ongoing uncertainty as to expectations for insurance arrangements and risks of exposure to financial loss in the event of a disaster.

What is the policy problem or opportunity?

22. Residents, representative organisations, and consumer groups have raised concerns for many years that the Retirement Villages Act 2003 (the Act) does not provide adequate protections for residents, especially given the potential vulnerability of some older people.

23. The problem in respect of insurance arrangements is that the Code's insurance requirements no longer reflect market practice, creating financial risks from unclear coverage, weak protections around excesses, and gaps in ensuring operators can meet their obligations.

24. ORAs are generally considered to be standard form contracts and due to the nature in which residents have little to no bargaining power and must often take or leave the ORA as presented to them by the operator. This means that residents or would be residents have little or no influence over village insurance arrangements that potentially have large impacts on them. The complex and technical nature of these arrangements may also mean that it is not reasonable to expect residents to fully understand village insurance arrangements or keep abreast of any changes to them.

Issue one: Restricting operators from passing on insurance excesses

25. The Code currently allows operators to pass on insurance excesses to residents provided they disclose the circumstances in which this may occur.

26. In some cases, such as when a resident is clearly at fault for the damage, it may be reasonable for the operator to recover the excess. However, where operator-owned property is damaged and the resident is not at fault, passing on insurance excesses is likely to be unfair.

27. This creates a situation where residents may be unfairly charged for events outside their control, for example damage caused by natural disasters, accidental incidents involving no resident, or other unforeseen events affecting operator-owned property.

28. It is currently unclear how widely operators pass on insurance excesses, to who, and under what circumstances. This lack of visibility may be due in part to the discretion allowed under the Code, which does not limit or define the conditions under which excesses can be passed on.

29. A sample of ORA content relating to the passing on of insurance excesses is provided below. This indicates that there is likely a large degree of variability in respect of relevant insurance clauses. The Commerce Commission investigation into potentially unfair contract terms also identified examples of potentially unfair clauses relating to insurance excesses. However, passing on of insurance excesses where the resident is not at fault does not appear to be widespread.

<u>Random sample of ORA content relating to pass on of insurance excesses</u>

Village	**Relevant clause**
s 9(2)(b)(ii)	11.3 If we suffer any loss or damage as a result of your, or your visitors', carelessness or negligence, the following costs are payable by you to us upon our demand: (a) reimbursement for any insurance policy excess, where such loss or damage is covered by our insurance; or (b) compensation and reimbursement in full, where such loss or damage is not covered by our insurance.
	3.9 To pay certain costs for damage or loss: If you accidentally cause damage or loss to the Home or Village, we will cover the cost of this damage or loss ourselves or through our insurance policies. We may ask you to pay a sum of up to $250 towards the excess payable under our insurance in respect of damage or loss you cause. If you have an insurance policy that covers this damage or loss you agree to make a claim and pay the proceeds from this claim to us to reimburse us for repairing the Home or Village if we request you to do so. Our insurers have waived their right to recover from you any of their costs of repairing damage that you cause to the Home or Village.
	32.1 You will reimburse us for any loss or damage suffered by us as a result of your carelessness or negligence or that of your guests and invitees, except loss or damage by risks we have insured against. However, in any case where your acts or omissions (or those of your guests or invitees) have made any

s 9(2)(b)(ii)	such insurance void, you will, upon demand, compensate and reimburse us in full for such loss of damage. 32.2 Where the loss of damage is covered by our insurance we reserve the right to require you to pay any excess applicable to the claim.
	[we will] not charge you for any excess we have agreed with our insurer in relation to our insurance policies, unless you have deliberately caused the damage;
	The Resident will be liable to pay any insurance excess resulting from a claim under the Operator's insurance policies caused by the carelessness or negligence of the Resident. The amount of the excess to be paid by the Resident in the event of a claim as at the date of this Agreement being stated in the Disclosure Statement.
	(We will) not charge you for any excess we have agreed with our insurer in relation to our insurance policies, unless you have deliberately caused the damage.
	(a) Subject to paragraph (b) below, the Resident agrees to reimburse Oceania for any loss or damage caused to the Village or the Care Residence as a result of the carelessness or negligence of the Resident or his or her invitees. (b) The Resident will not be required to reimburse Oceania for any loss or damage that is covered by Oceania's insurance policy. In this case, Oceania will require the Resident to pay a contribution to the insurance excess. The current contribution which the Resident will be required to pay is $500.
	4.15 If we suffer any loss or damage as a result of your, or your guest's, deliberate acts, carelessness or negligence (but excluding any loss or damage for Fair Wear and Tear), we may require, acting reasonably, that you: (a) (b) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance (limited to a maximum amount of $500); or compensate and reimburse us in full, where the insurance monies have been rendered irrecoverable as a consequence of your or your guest's acts, carelessness or negligence or where such loss or damage is not covered by our insurance.
	If we suffer any loss or damage as a result of your, or your visitors', intentional act, accident, carelessness or negligence, you must upon our demand: (a) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance; or (b) compensate and reimburse us in full where such loss or damage is not covered by our insurance due to your, or your visitors', acts or omissions.
	If we suffer any loss or damage as a result of your, or your guests', intentional acts, carelessness or negligence, you must: (a) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance; or (b) compensate and reimburse us in full, where such loss or damage is not covered by our insurance.

Issue two: Strengthening operators' ability to repay capital sums following a total loss

30. While the Code currently creates an obligation for operators to repay capital sums if an ORA is terminated following destruction of a unit and no transfer[2] is offered, it does not require operators to demonstrate they are able to meet this obligation. This creates a risk that operators may be unable to meet their obligations in the event of widespread destruction.

31. The insurance requirement does not explicitly link to repayment of capital sums in a total loss scenario, creating a risk that this would not occur.

32. While a capital sum is not linked to the market value of the unit, it is still a substantial liability for operators. In isolated cases, where one or two units are affected, repayments are generally manageable. But if an entire village is destroyed, operators would need to simultaneously terminate all ORAs and repay all capital sums in full, which could be financially overwhelming without sufficient resources in place.

Issue three: updating legislation to reflect market realities

33. The current requirement for "full replacement" insurance is out of alignment with modern insurance structures. Operators have noted that full replacement policies are often not able to be obtained.

34. The Code requires operators to maintain comprehensive insurance policies, including "full replacement" cover to the satisfaction of the statutory supervisor, unless such cover is unavailable, in which case indemnity cover is permitted. While the intent behind this requirement, which is to ensure villages can be reinstated following a disaster, remains valid and reflects the objective of protecting residents from prolonged displacement or financial loss, the wording used no longer aligns with how insurance is structured today. This mismatch creates uncertainty for operators and statutory supervisors and limits the Code's ability to respond to changes in insurance structures and availability.

35. The shift in market insurance structures is reflective of changes post the Canterbury earthquakes.

The Retirement Villages Act review presents an opportunity to improve consumer protections and fairness for residents

36. The Act was developed over 20 years ago for a nascent industry. The retirement villages sector and what is considered best practice by operators has changed significantly since then.

37. The Government's review of the Act presents an opportunity to re-consider whether the balance is right between the financial rights and responsibilities of operators and residents and improve consumer protections and fairness for current and future retirement village residents and their whānau.

[2] The Code also requires operators to specify in the ORA whether temporary accommodation will be provided if a unit becomes uninhabitable, and how associated costs will be managed.

What objectives are sought in relation to the policy problem?

38. 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 ongoing 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.

39. For insurance issues specifically, the objective is that requirements around insurance cover for village operators provide adequate consumer protections to residents and intending residents of retirement villages. This includes ensuring an adequate level of cover is obtained to protect their interests and ensure operators' obligations to residents are met. As part of this, clarity on arrangements is expected to prevent potential disputes.

What consultation has been undertaken?

Public consultation

40. The Ministry released a discussion document on options for changes to the Act in early 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.

41. As part of this, three proposals were consulted on, each addressing critical aspects of insurance coverage for residents as follows:

    - restrict operators from passing on insurance excesses to residents when residents are not at fault;
    - ensure that operators maintain adequate insurance policies (along with other funds) to pay residents' capital sums in the event of a catastrophic loss; and
    - remove the mandatory requirement for 'full replacement cover' and allow 'sum-insured' or 'collective/loss-limit' policies.

<u>Proposal a – restriction on passing on insurance excesses</u>

42. Submitters were asked if they agreed with the proposal to restrict operators from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property; and if the resident was not at fault for the loss. A vast majority of submitters agreed with the proposal, with 94 percent of submitters agreeing with the proposed approach. 35 percent of operators (8 out of 23) disagreed with the proposal. Both the RVR and RVA supported the proposal. The Insurance Council of New Zealand see this as an issue about the contractual arrangements set by the operator so did not provide a comment.

Proposal b – ensuring ability to pay residents' capital sums in the event of catastrophic loss

43. Submitters were asked whether operators should have sufficient insurance alongside other funds to pay out all residents' capital sums if a village is destroyed. There was strong support for this proposal, including from the RVR and RVA. 79 percent of submitters agreed with the proposal and 63 percent of operators supported the proposal (17 of a total of 27).

44. While there was significant support for the proposal, many written comments indicated that the proposal did not go far enough to protect residents and ensure they could relocate if their village was destroyed. There was concern that only paying out capital sums for longer-term residents would not cover the cost of moving to another retirement village due to significant price increases since the original capital sum was paid. The RVR submitted that a resident should receive the greater of their capital payment or the fair market value of their unit if their village is destroyed.

45. The RVA submitted that the reference to "other funds" should be extended to "other funds/assets", any requirements should be flexible enough to accommodate changes in the insurance market, and the statutory supervisor should have a role in determining an adequate level of cover.

46. The Insurance Council of New Zealand noted that the insurance industry in New Zealand does not provide standalone cover for capital sums. However, there are insurance products available in the New Zealand market that do provide cover for deferred management fees and capital sums under a business interruption policy.

Proposal c – removing the mandatory requirement for 'full replacement cover'

47. Submitters were asked if they saw any issues with the proposal to remove the requirement that operators should have 'full replacement cover' and instead be able to obtain sum-insured and collective type insurance policies. Out of the three insurance questions that were included in the Discussion Document, this was the only question to have received a mixed response. However, the written comments suggested there might be some misunderstanding of insurance arrangements.

48. 38 percent of submitters could foresee issues with the proposal to remove the requirement that operators have "full replacement cover" and instead obtain sum-insured and collective type insurance policies, 25 percent disagreed and 37 percent were not sure.

49. A key concern from those who did not want the 'full replacement' requirement to be removed was that villages would be underinsured, providing less protection for residents. These views were mainly from residents. However, full replacement insurance is already unattainable for many operators, so the removal of the requirement is unlikely to change the status quo significantly. It is assumed that the RVR is concerned that removing the 'full replacement requirement' may encourage some operators to adopt less robust insurance policies (e.g., sum-insured policies with low caps) that do not fully cover rebuilding or residents' capital sums.

50. The RVA supported removing the requirement to have full replacement cover, specifically to reflect the fact that ‘true’ full replacement cover is very difficult (if not impossible) to obtain. The Insurance Council of New Zealand saw no issue with the proposal to remove the requirement as they acknowledged that replacement cover may not be available to operators.

51. There was some feedback that the requirements should focus on the objective or the outcome (e.g., insurance being sufficient to pay out residents’ capital sums) rather than specify a type of insurance policy which could become outdated. Other comments included noting the principal obligation on an operator is to repair or rebuild a village, and the need for other types of support for residents such as temporary accommodation after a disaster or other event damages or destroys a village.

52. Other matters raised in submissions included the need for transparency for residents of the type of cover held by the operator, and having appropriate checks and balances to ensure insurance policies are adequate (e.g., through the statutory supervisor).

Further stakeholder engagement

53. The Ministry undertook some further engagement with the RVR, RVA, Insurance Council New Zealand, and statutory supervisors in early 2025. Key points conveyed were:

- **RVR raised** concerns that operators not paying out the market value of units could leave residents unable to secure new housing after a disaster. It stressed the need for strong resident protections and clear operator accountability. It also argued that residents should not be expected to understand or manage complex insurance arrangements, which should instead sit with the statutory supervisor.

- **RVA** acknowledged the challenges some operators face in securing full replacement insurance but stated that, where available, full replacement insurance remains the most appropriate form of cover. Where full replacement cover cannot be obtained, it considered the alternative should be that operators are required to insure to the satisfaction of the statutory supervisor.

- **Statutory supervisors** backed a flexible approach to insurance cover. They said operators must stay responsible for holding enough insurance, with supervisors only checking and challenging, not running villages themselves. They warned that reserves or assets can vanish quickly and should not be relied on alone. They stressed insurance rules must be realistic, since cover is costly, hard to get, and in some areas no longer available at all.

Section 2: Assessing options to address the policy problem

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

54. To deliver against the overarching policy objectives of the Act review we have assessed all options against the following four equally weighted criteria:

- whether the option improves consumer protections (including in a scenario of recovery post-disaster) and fairness for residents;
- 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 clearly defines the rights and responsibilities of residents and operators.

55. In considering different options, there are trade-offs that need to be made between improving consumer protections and fairness for residents and impacts on sector viability. The options assessment process aims to reach an effective balance between these competing objectives.

What scope will options be considered within?

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

56. 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.

57. There is a clear desire to reform insurance requirements in the Act. There were generally high levels of support for these proposals in the discussion document process.

Non-regulatory options

58. Education to residents so that they are better informed about their insurance coverage rights was considered. This was ruled out as a standalone option; however, education will form part of the implementation package for this work.

59. As a standalone option, education alone would not address these issues because they stem primarily from the legal framework which does not provide the necessary protection to prevent the problems identified from manifesting. In addition, we have concluded that it is not reasonable for residents to be expected to fully understand and potentially also negotiate in relation to operators' complex insurance arrangements (particularly given the nature of many market offerings which leave residents or would be residents with little or no bargaining power).

What options are being considered?

60. For each of the three main issues identified in section one we have:

- described the various 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.

61. 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: Restricting operators from passing on insurance excesses

Option one – Status quo

62. This option would maintain the status quo whereby operators are able to pass on insurance excesses to residents, provided they disclose the circumstances in which this may occur.

Option two – Prohibit passing on of any insurance excesses to residents

63. This option would involve a wholesale prohibition on passing on any insurance excess.

Option three - Restrict ability to pass on insurance excesses if related to operator property and where residents are not at fault

64. This option would involve restricting the ability for operators to pass on any insurance excess amounts to residents[2] if:

- the loss, damage or destruction relates to retirement village property owned by the operator (including both individual units occupied under a licence to occupy and communal village facilities); and
- residents were not at fault for the loss, damage or destruction.

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

	Option one – Status quo	Option two – Prohibit passing on of any insurance excesses to residents	Option three - Restrict ability to pass on insurance excesses if related to operator property and where residents are not at fault
Improves consumer protections and fairness	0	+ Residents would never be specifically charged for insurance excesses in respect of operators' cover.	+ Residents would only be charged for insurance excesses in respect of operators' cover if they were found to be at fault.
Proportionate and cost effective	0	- - May create unfair allocation of costs where a specific resident is responsible for loss, damage or destruction. May create some increased costs for operators.	++ May create some increased costs for operators. In the case of no specific resident being at fault likely to mean excess costs are absorbed into the general cost of doing business. Where a resident is at fault this approach retains the ability for costs to be met by them.
Impact on the viability of the sector	0	0 No expected impact on viability.	0 No expected impact on viability.
Clearly defines rights and responsibilities	0	++ This approach would create a clear and easy to apply rule. No potential for uncertainty or disputes around allocation of fault.	+ Clear overall framework; however, may create some level of uncertainty or disputes around allocation of fault.
Overall assessment	0	0 While option two would protect residents, it is considered to create unfair impacts on fairness and to villages.	++ Option three is considered to be effective in protecting residents against unfair practices, while being proportionate and clear with minimal impacts on viability.

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

65. The Ministry's preferred approach is option three – Restricting the ability for operators to pass on insurance excesses if related to operator property and where residents are not at fault. This approach:

- Provides a clear improvement on protections for residents – prohibits the unfair practice of passing on excesses where these have been generated through no fault of the resident and outside of their control. For example, damage caused by natural disasters, accidental incidents involving no resident, or other unforeseen events affecting operator-owned property.
- Retains the ability for excesses to be passed on where a resident is at fault – this is considered proportionate and fair.
- Has strong support across a range of stakeholders – 94 percent of all submitters on the 2023 discussion document supported it, with 15 out of 23 operators supportive.

66. Where no resident is at fault for damage or where fault is unclear or unproven this may lead to the operator distributing costs across all residents through general village charges. Treating the repair of damage without a clear party at fault as a general cost of doing business is considered appropriate and fair.

67. In the first instance, operators will be able to determine fault and pass on excesses under their insurance policy if they consider this falls to a particular resident. In order to ensure this is administered fairly:

- "At fault" will be defined as including careless or intentional damage (aligning to the approach in tenancy);
- The Ministry (alongside other implementation agencies such as the Retirement Commissioner and the Registrar) will ensure information is provided to operators as part of implementation on determining fault; and
- Dispute resolution processes, including the new complaint and dispute resolution scheme proposed as part of this reform, will be available to resolve any disputes.

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

68. 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	Will mean a resident cannot be charged excess if legislative test is met. However, operators may distribute costs across all residents through general village charges.	Low	Medium
Current residents	Due to pass through of any increased costs, could lead to marginal increases in overall cost or village charges.	Low	Medium
Future residents	As above.	Low	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	Improved consumer protections may increase the attractiveness of retirement village living to prospective residents, resulting in more demand for units and/or greater willingness to pay higher costs.	Low	Low
Current residents	Current residents can expect a benefit of not being subject to insurance excess changes where they do not own the property and where they are not at fault.	Medium	Medium
Future residents	May increase attractiveness of retirement village living for prospective residents.	Low	Medium
Total monetised benefits		Not available	
Non-monetised benefits		Medium	Medium

Issue two: Strengthening operators' ability to repay capital sums following a total loss

Option one – Status quo

69. This option would maintain the status quo whereby operators must repay the capital sum[3] if an ORA is terminated following the destruction of a unit and no transfer is offered. There would be no requirement alongside this for operators to demonstrate they have the financial resources in place to meet this obligation.

Option two – Requiring operators to maintain resources to meet their existing obligation to repay residents' capital sums

70. This option involves keeping the existing obligation to repay the full capital sum, but also adding a requirement to maintain financial resources, such as through insurance and/or other funds that are sufficient at all times to meet this obligation if the village is destroyed.

Option three – Require operators to maintain resources to repay the current market value of the entire unit

71. This option involves increasing the status quo obligation so that operators must repay the current market value for the entire unit, plus maintain resources to allow them to meet this.

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

	Option one – Status quo	Option two – Requiring operators to maintain resources to meet their existing obligation to repay residents' capital sums	Option 3 - Require operators to maintain resources to repay the current market value of the entire unit
Improves consumer protections and fairness	0	+ Would protect residents' financial position to some degree in the event of a total loss by ensuring their ability to recoup capital sums. However, unlikely to meet full costs of relocation given likely gap between capital sum and cost of new unit, and taking into account any market inflation.	+ + Would ensure that residents could relocate in the event of a total loss.

[3] As per section 47 of the Code, the repayment to the resident will be calculated in accordance with the occupation right agreement. The repayment must be an amount at least equal to the capital sum paid by the resident, less any charges owed to the operator by the resident under the occupation right agreement. Those charges may not include any fixed deduction. The operator and resident may agree a higher repayment amount in the occupation right agreement.

Proportionate and cost effective	0	+ While this option only builds on the existing obligation to repay full capital sums, some retirement villages may not currently have insurance policies or funds in place in respect of these existing obligations. In these situations, this option will generate new costs, but we consider these new costs to be fair and proportionate.	- Likely to increase costs for retirement villages, as it would require them to hold significant reserves of funds or purchase insurance policies in respect of these. Would also likely require regular revaluations with moderate associated costs.[4]
Impact on the viability of the sector	0	0 This option would only have cost implications for those retirement villages that are currently not holding insurance or funds in respect of their current legislative obligations. We do not expect impacts to the viability of the sector.	- This option would increase cost burden on all retirement villages and may have some impacts on sector viability.
Clearly defines rights and responsibilities	0	+ + High degree of clarity on expectations, how to meet them, and amount of funds that villages must insure for or hold.	- - Uncertainty created by likely lack of insurance market offerings for coverage in respect of market value of unit.
Overall assessment	0	+ Option two would provide protections for residents in the event of a disaster, and is considered to be proportionate, cost effective and clear.	- Option three would provide the greatest consumer protections for residents but is not considered proportionate, cost effective or clear.

[4] The cost of a registered property valuation is usually in the range $500-$800 as indicated by Property Valuation NZ Cost of a Property Valuation NZ | Property Valuation NZ.

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

72. The Ministry's preferred option is option two – Requiring operators to maintain resources to meet their existing obligation to repay residents' capital sums. This approach:

- Provides protections for residents in the event of a disaster – residents could be assured that villages could meet their obligation to repay capital sums.
- Is proportionate and clear – because this option solidifies an existing legislative obligation, this would only have cost implications for villages that do not have arrangements in place to meet their obligations.
- Is supported by stakeholders – 79 percent of submitters and 63 percent of operators supported the proposal.

73. A capital sum is paid in exchange for the right to live in the village and is not subject to capital gains. Depending on when the capital sum was paid and changes in the housing market, it may not meet the costs of entering into a new ORA or buying a property. While it is acknowledged that this approach is not likely to provide sufficient protection to allow all residents to relocate following a disaster, it is considered to be proportionate and fair.

74. If an obligation was created to hold resources to repay full market value (or another proxy designed to allow for residents to relocate), this would likely create unreasonable costs and uncertainty. In addition, the associated costs may be passed on to residents.

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	Will increase costs for any operator that does not currently have insurance policies or funds in place to meet their current obligations to repay capital sums in the event of a total loss.	Low / medium	Medium
Current residents	Due to pass through of any increased costs, could lead to marginal increases in overall cost or village charges.	Low	Medium
Future residents	As above.	Low	Medium
s 9(2)(f)(iv) [redacted]			
Total monetised costs		Not available	
Non-monetised costs		Low	Medium
	Additional benefits of the preferred option compared to taking no action		
Operators	Significant benefit to operators in the event of a total loss, protecting them from financial risk and reputational loss. Could prevent the need for costly and time-consuming disputes/litigation. Could increase the attractiveness of retirement village living to prospective residents, resulting in more demand for units.	Medium (while a total loss is unlikely for any one operator, the benefits to them are high if this were to happen)	Medium

Current residents	Significant benefit to residents in the event of a total loss, protecting their financial position, ability to secure housing. Could prevent the need for costly and time-consuming disputes/litigation.	Medium (while a total loss is unlikely for any specific resident, the benefits to them are high if this were to happen)	Medium
Future residents	May increase attractiveness of retirement village living for prospective residents.	Medium	Medium
Total monetised benefits		Not available	
Non-monetised benefits		Medium	Medium

Issue three: updating legislation to reflect market realities

Option one – Status quo

76. This option would maintain the status quo whereby operators are required to hold comprehensive insurance policies, including "full replacement" cover to the satisfaction of the statutory supervisor, unless such cover is unavailable in which case indemnity cover is permitted.

77. Maintaining the status quo will likely result in operator behaviour not in line with the above requirements, due to the evolving realities of insurance market offerings.

Option two – Updating insurance requirements to reflect available cover

78. This option would require sum insured or collective cover on a reinstatement basis. This would codify what operators and trustees have told us is already common practice by requiring a village to take out a sum insured (policy clearly identifies the maximum loss that could be incurred) or collective policy (otherwise called a "loss limit" policy, setting a maximum payout for multiple assets under one policy).

Option three – Require operators to maintain insurance on a reinstatement basis

79. This option would require operators to maintain insurance on a reinstatement basis that is sufficient, either individually or collectively to meet the estimated cost of rebuilding or repairing village assets to their original condition, as far as reasonably practicable. Where full reinstatement cover is not available, operators would be expected to obtain the maximum level of cover reasonably obtainable to the satisfaction of the statutory supervisor. This insurance is intended to support reinstatement of the village. If reinstatement is not possible, operators would instead need to meet their obligation to repay capital sums, as outlined under Issue two.

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

	Option one – Status quo	Option two – Updating insurance requirements to reflect available cover	Option three – Require operators to maintain insurance on a reinstatement basis
Improves consumer protections and fairness	0	+ While the policy intent will remain the same, updating the provisions to reflect available cover will increase consumer protection by improving alignment with the current insurance market. Likely to improve operator compliance as it will improve operator perceptions of the legitimacy of the law.	+ While the policy intent will remain the same, modernising provisions will increase consumer protection by improving alignment with the current insurance market. Likely to improve operator compliance as it will improve operator perceptions of the legitimacy of the law.
Proportionate and cost effective	0	0 We do not expect the recommended approach to significantly increase costs for operators or residents. The Code already requires a high level of insurance coverage, and we have heard from the RVA that many operators currently use sum-insured or collective policies that approximate reinstatement value.	0 We do not expect the recommended approach to significantly increase costs for operators or residents. The Code already requires a high level of insurance coverage, and we have heard from the RVA that many operators currently use sum-insured or collective policies that approximate reinstatement value.
Impact on the viability of the sector	0	0 We do not expect any impacts to sector viability.	0 We do not expect any impacts to sector viability.
Clearly defines rights and responsibilities	0	- Expected to increase clarity on expectations in the shorter term. However, tying legislation too closely to specific products creates a risk that these specific products become obsolete over time.	+ Expected to increase clarity on expectations. Outcome-based standard is expected to provide appropriate levels of flexibility and future proofing. May introduce some complexity in assessing compliance.

Overall assessment	0	**0** While option two would improve alignment with current market practice, it does not provide a future proof option because it is tied closely to specific insurance products.	+ Option three would provide the benefits of modernising and improving clarity. The outcome-based standard provides for future proofing and flexibility alongside a clear standard for operators to meet.

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

80. The Ministry's preferred option is option three – Require operators to maintain insurance on a reinstatement basis. This would update the wording of the obligation to provide for a modern, flexible and outcomes-based standard.

81. The final wording of this recommended option will be refined through further technical testing with insurance experts and during the drafting stage. Any adjustments would reflect the same underlying policy intent, maintaining reinstatement as the expected outcome rather than representing a substantive change in direction.

82. Statutory supervisors would continue to play a key role in overseeing the adequacy of insurance arrangements. Operators would be required to disclose their insurance cover and explain how any potential shortfall would be managed if reinstatement is not possible and all ORAs must be terminated.

83. Requiring operators to hold insurance sufficient to reinstate village assets, either through individual or collective arrangements, provides a strong minimum expectation while allowing flexibility in how cover is structured. Not all operators will be able to always obtain full reinstatement cover, but the proposal sets a clear expectation that they must pursue the highest level of insurance cover reasonably available.

84. While the new approach may introduce some additional complexity in assessing compliance, this is primarily due to the shift from a single, prescriptive standard ("full replacement") to a more flexible, outcome-based one. We consider that this complexity can be sufficiently addressed in the implementation plan for these changes.

85. We do not expect the recommended approach to significantly increase costs for operators or residents. The Code already requires a high-level of insurance coverage, and we have heard from the RVA that many operators currently use sum-insured or collective policies that approximate reinstatement value.

86. This insurance requirement also complements the broader financial resilience obligation outlined in issue two. While operators may meet that obligation through reserves or access to credit, insurance remains a critical component. Insurance payouts are externally assessed, contractually defined, and less dependent on an operator's internal financial decision-making, providing greater certainty and transparency.

87. Overall, the recommended approach provides clearer benefits across the sector. Residents gain stronger assurance that villages can be reinstated or capital sums repaid. Operators benefit from flexibility to structure cover in line with market practice, and statutory supervisors are equipped with a clearer and more consistent standard to assess adequacy.

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

88. 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	Not expected to significantly increase costs, expected to better align legislation with widespread current practices.	Low	Medium
Current residents	No cost increase anticipated.	Low	Medium
Future residents	No cost increase anticipated.	Low	Medium
s 9(2)(f)(iv) [redacted]			
Total monetised costs		Not available	
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Operators	May improve compliance burden through increased clarity, flexibility and relevance to current market.	Medium	Medium
Current residents	Significant benefit to residents in the event of a total loss, protecting their financial position, ability to secure housing. Could prevent the need for costly and time-consuming disputes/litigation.	Medium (while a total loss is unlikely for any specific resident, the benefits to them are high if this were to happen)	Medium

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

89. 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.

90. 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.[5] 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.[6]

91. Māori as a population group have relatively low rates of homeownership[7], 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.[8] Retirement village living may also not fit with the aspirations of many Māori to live alongside whānau, within their community, and/or on land with ancestral or cultural significance.

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[5] As noted in this recent article Outlook on NZ's retirement village sector | JLL.

[6] 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.

[7] 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.

[8] 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?

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

93. This set of changes to insurance provisions would also be moved from the Code to the Act. The Ministry considers that it is more appropriate for provisions of this nature to be in primary legislation because they articulate minimum standards and implement more than minor policy objectives.[9]

Managing the transition

94. 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.

95. For each change we propose transition plans as follows.

<u>Issue one: Restricting ability to pass on insurance excesses if related to operator property and where residents are not at fault.</u>

96. The Ministry recommends that this change apply from the day after Royal assent of the Bill and to all ORAs entered into prior to legislative changes coming into effect. It is important that these changes come into force in a timely manner given the fairness issues identified. Given many operators already appear to be meeting this requirement, we do not expect that changes would be required to the majority of ORAs. For those that will need to adjust their ORAs, we consider that changes can reasonably be made in anticipation of the passage of a Bill.

<u>Issue two: Requiring operators to maintain resources to meet their existing obligation to repay capital sums</u>

97. The proposed implementation approach is to require operators to meet this requirement no later than 18 months following the date of Royal Assent for all residents regardless of when their ORAs were entered into.

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[9] This approach is supported by the Legislation Design and Advisory Committee Legislation Guidelines (2021).

98. The Ministry recommends an 18-month lead in time for operators to meet this requirement. The Ministry considers that this approach strikes the appropriate balance between timeliness of implementation while also allowing for operators to make arrangements to meet this obligation. Operators will need to update their insurance arrangements in order to meet this obligation. Stakeholders have advised that many operator insurance policies are on a 12-month renewal cycle.

99. The discussion document asked whether submitters considered a 12-month transitional period to be sufficient. Feedback received is summarised as follows:

- **The RVR**: Answered yes. They considered that it was more than likely the collective bargaining power of operators working with the insurance industry would lead to a significant corporatised package bespoke for the retirement village industry within 12 months.

- **The RVA**: Answered no. They stated that most operators' insurance policies are on a 12-month renewal cycle and operators will therefore have limited ability to make any changes to their policy outside of the annual renewal and to do so is likely to incur additional costs. They also stated that consideration needed to be given to the fact that most insurance for retirement villages is managed by a small number of specialised brokers and they are also unlikely to have the capacity to manage such change in a short time period. The RVA proposed a 24 month implementation period.

- **The Insurance Council of New Zealand:** Answered yes, stating that they thought a 12-month transition period should be sufficient.

- **Statutory supervisors:** Answered no. They stated that a 12-month transition period would be insufficient because most insurance contracts run for a 12-month period and changes need to be agreed in advance. They shared that the CTA had discussed a suitable transition period with retirement village insurance experts and suggest a transition period of two years (24 months).

<u>Issue three: Requiring operators to maintain insurance on a reinstatement basis.</u>

100. The Ministry recommends that this applies from the day after Royal assent of the Bill and apply to all existing ORAs. This is only a tidy up to align the legislative framework to market realities and widespread current practice. The changes are not expected to impose any significant costs. Operators should not need significant lead in time.

Applicability to existing ORAs

101. The Ministry's recommended approach is to have the above set of changes apply to all ORAs including those entered into prior to legislative changes coming into effect. s 9(2)(h) [redacted]

102. This approach ensures fairness and consistency between existing and new residents. The Ministry considers that it is important that the issues identified are addressed for both groups.

Information dissemination

103. 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.

Unit Titles Act issues

104. s 9(2)(f)(iv) [redacted]

Enforcement

105. Village statutory supervisors have a legislated function to monitor the financial position of their village and ensure that the security interests of the residents and the management of the village are adequate. As such they will play a key oversight role of villages, for example to monitor how villages are meeting their insurance obligations.

106. Where any operators are not meeting new requirements, residents or their whanau are able to raise a complaint with the operator, raise the issue through the disputes process, or bring the matter to the attention of another party e.g. the Retirement Commission, the Registrar, the RVA, or (if they are a member) the RVR. Further steps to enforce compliance can then be taken. Information on dispute resolution processes will be developed as part of implementation.

107. Insurance specific dispute resolution pathways such as the insurance ombudsman and the Insurance Council of New Zealand dispute resolution may also be relevant if any issues arise in respect of insurance contracts.

108. The RVA, which represents around 95% of retirement village operators, also requires all accredited members to undergo regular audits every three years which assess compliance with the Act, the related regulations under that Act, the Code, and the Code of Residents' Rights.

Statutory supervisors

109. Statutory supervisors are responsible under the Act for monitoring the financial position of the village and the security of residents' interests. They will continue to play a key role in overseeing and assessing the adequacy of insurance arrangements. In particular, where full reinstatement cover is not available, operators would be expected to obtain the maximum level of cover reasonably obtainable to the satisfaction of the statutory supervisor. Operators would be required to disclose their insurance cover and explain how any potential shortfall would be managed if reinstatement is not possible and all ORAs must be terminated. The statutory supervisors will exercise their judgement in assessing insurance arrangements against the flexible, outcome-based standard. The Registrar and residents receive annual reports from statutory supervisors on the performance of their duties.

110. Statutory supervisors will assess a broad range of insurance arrangements, such as sum-insured, pooled, or collective policies, and determine whether these are reasonably sufficient to support reinstatement. This flexibility introduces more judgment into the assessment process, but the risks can be managed through clear disclosure requirements to statutory supervisors.

111. If there are increased costs involved given the above role for statutory supervisors, this would likely be passed on to the operators.

112. The Corporate Trustees Association will also play a role as the industry association for statutory supervisors.

<u>The Retirement Villages Registrar</u>

113. The Registrar, which sits within the Ministry of Business, Innovation and Employment, is responsible for the registration of retirement villages and the maintenance of the Retirement Villages Register. All retirement villages are required to be registered if they wish to operate in New Zealand.

114. The Registrar ensures that operators appoint statutory supervisors in their villages, who ensure retirement villages are complying with their obligations. The Registrar holds the power to deregister a village if it is not adhering to legislative requirements and will have additional powers to take action against non-compliant villages. The Registrar will also raise any concerns they may have with the Ministry.

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

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

<u>Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development</u>

116. The Ministry, as lead policy agency responsible for the Act, has an ongoing stewardship role. The Ministry maintains relationships with sector stakeholders such as the RVA which represents operators, and the RVR which represents residents. Officials are in regular correspondence with representatives of these organisations and will consider any concerns they raise.

<u>The Retirement Commission</u>

117. 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.

118. 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.

119. 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.

Note that the statement in paragraph 114 is incorrect. The Registrar can only cancel the registration of a retirement village on request from an operator where the requirements in Section 19 of the Act are met.