



Regulatory Impact Statement: Retirement Villages Act Review – Proposals for changes to the prohibited conduct regime

Decision sought	Analysis to inform Cabinet decisions on legislative changes to address issues related to the offences, penalties and enforcement regime in the Retirement Villages Act 2003.
Agency responsible	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
Proposing Ministers	Hon Tama Potaka, Associate Minister of Housing
Date finalised	12/11/2025

Proposals would amend the prohibited conduct and penalties regime in the Retirement Villages Act 2003 to improve the efficacy of the maximum penalties and align the regime with similar consumer protection legislation by:

- increasing penalties for prohibited conduct, and
- shifting current offences, where appropriate, to a new civil liability regime.

Summary: Problem definition and options

What is the policy problem?

The prohibited conduct and penalties regime in the Retirement Villages Act 2003 (the Act) has not been reviewed since the legislation came into force in 2003. Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (the Ministry) and the Retirement Villages Registrar (the Registrar) have identified several issues with the current regime.

Firstly, many of the fines do not reflect the severity of the associated prohibited conduct. Furthermore, the retirement village sector has grown significantly in value, size and complexity since 2003 - most of the largest retirement village operators (who account for the majority of villages and units in New Zealand) are publicly traded on the NZX, and the rate of CPI inflation has roughly halved the real-terms value of the penalties. These factors have brought the Act into misalignment with similar consumer protection and commercial legislation. § 9(2)(g)(i)

Secondly, the Act currently uses a criminal offence regime to address breaches. Applying a criminal regime is no longer appropriate, as it does not align with other legislation such as the Fair Trading Act 1986, and does not adhere to the Legislation Advisory and Design Committee's (LDAC) guidelines.

Civil liability regimes are more appropriate to enforce consumer protection and commercial legislation. This is because corporate entities are not affected by criminal convictions in the same manner as individuals, and pecuniary penalties are more suitable than criminal offences to address misconduct. Furthermore, the threshold for criminal conviction (beyond a reasonable doubt) is greater than that of a civil liability (on the balance of probabilities).

The Ministry considers that the ongoing review of the Act is an opportunity to exercise regulatory stewardship by updating the prohibited conduct and penalties regime so that it remains appropriate as New Zealand's older population and the retirement villages sector continues to grow.

What is the policy objective?

The objective for these proposals is that the penalties for offences reflect the severity of the associated prohibited conduct and are better aligned with penalties for similar misconduct in comparable consumer protection legislation. The nature of the regime (i.e., whether it is civil or criminal law) should also reflect comparable consumer protection legislation and the guidelines provided for by LDAC. The overall purpose of this is to effectively deter prohibited conduct.

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

The Ministry has considered four options:

- Option One – Status quo
- Option Two – Adjust penalties to account for inflation
- Option Three – Adjust penalties to account for inflation and improve alignment of penalties with penalties in similar consumer protection legislation
- Option Four – Adjust penalties to account for inflation, improve alignment with similar consumer protection legislation, and shift offences to civil liabilities (recommended option)

Adjusting the existing penalties to account for inflation since 2003, improving the alignment of the penalties with penalties in comparable legislation, and shifting existing offences (where appropriate), to a new civil liability regime is both the Ministry's and the Minister's preferred option. Increases to penalties would improve alignment with the severity of the prohibited conduct and with penalties for comparable prohibited acts in similar consumer-protection legislation.

Shifting appropriate offences to civil liabilities would align the Act with similar consumer protection legislation and adheres to LDAC's guidelines.

What consultation has been undertaken?

The Ministry released a discussion document on options for changes to the Retirement Villages Act in early August 2023 that received over 11,000 public submissions. Submissions were received from residents and their families, operators, lawyers, advocacy groups, consumer advocates, industry professionals, stakeholders and government agencies.

The 2023 discussion paper sought feedback on issues with the current offences, penalties and enforcement regime in the Act. Among those who raised concerns in submissions, the main issues related to a lack of enforcement and ineffective penalties. Common suggested areas for improvement included revising the penalties, enhancing protections for residents and strengthening provisions in the Act.

The Ministry has had ongoing engagement with key stakeholders, including the Retirement Villages Residents' Association (RVR) which represents residents, the Retirement Villages Association (RVA), which represents operators, and the Corporate Trustees Association (CTA), which represents retirement village statutory supervisors.

The Registrar is appointed under the Act and is a role within the Ministry for Business, Innovation and Employment (MBIE). They have the primary responsibility of maintaining the register of retirement villages. The Ministry has had ongoing engagement with the Registrar, and they have contributed their views throughout this process.


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**

Costs are expected to remain the same for the vast majority of operators. Only non-compliant operators will face increased costs in the form of pecuniary penalties.

s 9(2)(f)(iv) and s9(2)(g)(i)



Benefits

Retirement village residents would receive increased consumer protections as the strengthened penalties are expected to encourage operator compliance. The vast majority of operators, who have and will likely continue to comply with their legal obligations, would receive enhanced reputational benefits because of the increased scrutiny placed upon them by the proposed changes.

This would ensure the Act remains effective as New Zealand's older population and the retirement village sector grows. The evidential threshold under a civil liability regime is lower than that for criminal offences, improving agencies' ability to pursue legal action against alleged misconduct.

Balance of benefits and costs

The Ministry considers the benefits of the Minister's preferred package of legislative changes to the prohibited conduct and penalties regime are likely to outweigh the costs. The changes do not introduce any additional costs to compliant operators, who represent the vast majority of all operators, and should bring non-compliant operators to the required standard. As a package, they are expected to improve industry standards and provide residents with enhanced protections.

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.

The Ministry considers 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.

Responsibility for raising awareness regarding the details of changes will likely be shared by the Ministry and the Retirement Commission. Regular reporting on and monitoring of the sector, including on the impact of changes, will be conducted jointly by the Ministry and the Retirement Commission.

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.

There is limited data on how current penalties influence operator behaviour, what penalty levels are most effective, and enforcement of current penalties. 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.

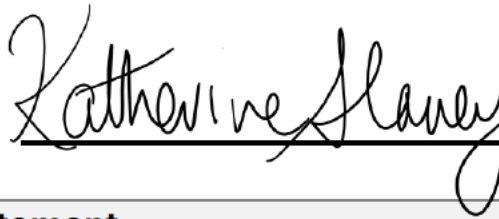
LDAC guidance on pecuniary penalties informed the proposed changes to the Act. This supports shifting the majority of breaches from criminal to civil enforcement.

Regimes for other consumer protection legislation were used to inform appropriate penalties under the Act and the category of offences. This supports consistency across regimes but may not reflect the unique conditions of the Act.

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: 12/11/2025

Quality Assurance Statement

Reviewing Agency: Ministry of Housing and Urban Development

QA rating: Meets

Panel Comment:

The RIA Panel at Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development has reviewed the regulatory impact statement for *Retirement Villages Act 2003 Review – Proposals for changes to the prohibited conduct regime* and confirmed that it meets the requirements.

Analysis is robust, proportionate to the size of the issue and informed by stakeholder engagement. While constrained by a lack of quantitative data regarding the effectiveness of the current regime as deterrent to poor operator conduct, it does provide appropriate qualitative assessments of how the changes proposed compare with the current regime. This is aided by the fact that each option builds on the previous.

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 Retirement Villages Act 2003 (the Act) has two main purposes. First, to protect the interests of residents and intending residents and second, to enable retirement villages to develop under a legal framework readily understandable by residents, intending residents and operators. The Act requires the operator and residents to enter into a detailed occupation right agreement (ORA) spelling out each party's rights and obligations.¹
2. Residents pay an upfront capital sum to purchase an ORA for their retirement village unit as well as ongoing 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 resold or relicensed. The fixed deduction usually accrues over the first few years of occupancy.
3. The initial intention of the Act 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.² 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 2048.³
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.⁴ Four 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 of practice, no wholesale review has been conducted to assess whether the balance of power between operators and residents is appropriate. The legislative framework is being reviewed to ensure it remains fit for purpose given the growth in size, value and complexity of the industry.

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 largely on a take it or leave it basis with very limited room to negotiate terms.

¹ Approximately 95 percent of retirement village units are offered under a licence to occupy model.

² New Zealand retirement villages White Paper, JLL, August 2024.

³ *Ibid.*

⁴ *Ibid.*

7. In 2020, the Retirement Commission published the *White Paper: Retirement villages legislative framework: Assessment of 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, 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.

In response, the Government initiated a wide-ranging review

9. Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (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.
10. In October 2024 the 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
 - 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

11. In 2021 the Retirement Villages Association (the RVA) launched a 'Blueprint for New Zealand's Retirement Villages Sector' (the Blueprint) to help improve sector practices. The Blueprint included commitments to making sure operators relicence vacant units as quickly as possible, stop weekly fees once a unit is vacated, and to clearly set out responsibilities for repairs and maintenance of operator-owned chattels. The Ministry expects, therefore, that without legislative change there may be some ongoing improvements in sector best practice.
12. However, not all registered retirement villages are members of the RVA, and not all operators are likely to voluntarily adopt sector best practice. The Blueprint does not address a number of key issues raised by residents and other stakeholders.
13. Without legislative change, issues raised by stakeholders are unlikely to be fully addressed and the Ministry expects 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.

What is the policy problem or opportunity?


14. Residents, representative organisations, and consumer groups have raised concerns for many years that the Act does not provide adequate protections for residents, especially given the potential vulnerability of some older people.
15. The prohibited conduct and penalties regime in the Act has not been reviewed since the legislation came into force in 2003. the Ministry and the Retirement Villages Registrar (the Registrar) have identified several issues with the current regime.
16. All the current prohibited conduct in the Act is criminal, with maximum fines for bodies corporate and individuals. These maximum fines range from \$5,000 to \$100,000. There is little evidence to suggest that there have been prosecutions for alleged breaches of the Act. However, this does not necessarily indicate the regime is fit for purpose and effectively deters prohibited conduct.
17. The Act currently uses a criminal offence regime, so it can be difficult for agencies and regulators to investigate and successfully prosecute alleged breach of the Act. To date, the Registrar has favoured the use of other regulatory tools available under the Act over prosecution.⁵
18. Furthermore, the review of the Act has created five new civil liability events to enforce proposed new obligations:
 - operator failure to publish a current version of their village's disclosure statement on the village's website, or operator failure to provide a current version of their village's disclosure statement to a person who requests it within a reasonable time
 - including a term which is prohibited by regulations in an ORA
 - contravention of a stop or direction order made by the Registrar, without reasonable excuse
 - auditor failure to report to a statutory supervisor within seven working days if the auditor becomes aware of a matter that is relevant to the statutory supervisor's duties
 - operator, who is not an exempt operator or who has not been granted an extension, failure to repay a former resident's capital sum within the specified timeframe and who unreasonably delays repayment.

⁵ The Registrar has the ability to suspend operator registration for failure to comply with the Act or if a registered document is likely to be deceptive or misleading

19. As part of the ongoing review of the Act, the Ministry identified issues with the current prohibited conduct and penalties regime:
- maximum fines are misaligned with the maximum fines for similar breaches in comparable consumer protection legislation⁶
 - many of the maximum fines do not reflect the severity of the prohibited conduct, with section 10 being particularly problematic⁷
 - many of the maximum fines do not cohere with one another
 - the Act's criminal regime is out of step with the guidelines of the Legislation Design and Advisory Committee (LDAC) and with similar consumer protection legislation, which use civil liability regimes.
20. s 9(2)(g)(i)
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21. The prohibited conduct and penalties regime has not been reviewed or amended since the Act was introduced in 2003. Since then, the sector has grown significantly in value, size and complexity. Furthermore, the average rate of CPI inflation has approximately halved the real-terms value of all the maximum fines. These factors risk future non-compliance with the Act, s 9(2)(g)(i)
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- This could seriously harm residents and damage the reputation of the sector.
22. The review of the Act provides an opportunity to future-proof the prohibited conduct and penalties regime, to ensure it remains effective as New Zealand's older population and retirement village sector grows.

⁶ The Ministry made comparisons, where appropriate, with the Financial Markets Conduct Act 2013, Financial Service Providers (Registration and Dispute Resolution) Act 2008, Credit Contract and Consumer Finance Act 2003, and the Companies Act 1993.

⁷ Section 10: Retirement village to be registered. (1) The operator of a retirement village must ensure that it is registered. Failure to lodge an application for registration is a serious offence, which the current maximum penalty of \$5,000 for both individuals and body corporates does not reflect.



Adjusting penalties to reflect changes in the sector since 2003

23. Although there is no evidence to suggest widespread non-compliance in the sector,⁹ the Ministry has identified issues with the current prohibited conduct and penalties regime:
- Some fines do not reflect the severity of, and the potential harm caused by, the prohibited conduct and are low relative to other fines in the Act or to similar penalties in other consumer-protection legislation.
 - Many of the penalties do not cohere with one another - some of the penalties for arguably less severe conduct are high, while some of the penalties for arguably more severe conduct are low.
 - The rate of inflation since 2003 has roughly halved the real-terms value of the penalties.
 - The value of the maximum fines does not reflect the current value of the sector. Most of the large operators (which account for the majority of villages and units in New Zealand) are publicly traded on the NZX. Given the growth in size and value of the sector, the Ministry considers many of the fines may not act as a sufficient deterrent to non-compliance with the Act.
24. Insufficient or low fines present a risk of non-compliance with legal obligations. s 9(2)(g)(i)
- This could cause damage to residents and the reputation of the retirement village sector. Fines should be strong enough to effectively deter prohibited conduct in the near and distant future.
25. Having considered all prohibited conduct and penalties covered by the Act and the penalties for similar misconduct in other comparable consumer protection legislation, the Ministry considers that changes would better align fines with the severity and impact of the offences.

⁹ There is limited data on the number, if any, of cases brought to, or penalties imposed by, the Courts under the Act. In July 2025 the Ministry requested case volume outcomes data regarding prosecutions under the Act from the Ministry of Justice. However, the Ministry of Justice had no such specific data available. Furthermore, the Registrar currently has a clear preference to use suspension powers over other penalties, so data from them is also limited.

26. Examples of current offences and associated penalties under the Act and other comparable consumer protection legislation are included below:

Act	Description of offence	current or proposed max. fine (ind. / corp.)
Retirement Villages Act 2003	S 97(3): Obstructing or hindering the Registrar	\$30,000 / \$100,000
Fair Trading Act 1986	S 47F: Obstructing or delaying authorised persons acting upon a warrant	\$60,000 / \$200,000 ¹⁰
Financial Markets Conduct Act 2013	S 206(3): Supervisor or issuer refusal or failure to comply with a Financial Markets Authority directive, without reasonable excuse	\$300,000

Act	Description of offence	Current or proposed max. fine (ind. / corp.)
Retirement Villages Act 2003	S 41: Providing false or misleading information in an application for an exemption from the requirement for a village to appoint a statutory supervisor	\$30,000 / \$100,000
Fair Trading Act 1986	S 47J: Refusal or failure to comply with s 47G powers of the Commerce Commission, without reasonable excuse	\$60,000 / \$200,000 ¹¹
Financial Markets Conduct Act 2013	S 264: Knowingly providing false or misleading statements in required documents	5 years prison, \$500,000, or both / \$2,500,000

Note: In the above two tables, the max. fines in the final column for the RVA 2003 and FMCA 2013 are current (not proposed) max. fines.

Transition appropriate offences to civil liabilities regime

27. Currently, the Act currently uses a criminal offence regime to address prohibited conduct. This is out of step with the recent shift towards civil regimes in commercial and consumer protection legislation and does not align with LDAC's guidelines.
28. Furthermore, agencies generally take prosecution action for regulatory regimes they are responsible for administering. However, it is difficult for government agencies and regulators to successfully prosecute criminal charges because the conviction threshold (beyond a reasonable doubt) is higher than that of civil regimes (on the balance of probabilities).

¹⁰ Cabinet recently agreed to changes to these maximum penalties in the Fair Trading Act 1986.

¹¹ As above, Cabinet recently agreed to changes to these maximum penalties in the Fair Trading Act 1986.

29. There has been a shift towards civil regimes to prosecute commercial misconduct. It is appropriate to apply civil regimes to commercial and consumer protection legislation because the nature of the prohibited conduct is not “truly criminal”.¹² Furthermore, bodies corporate are affected by criminal convictions in a different way than individuals are.
30. Civil regimes are an appropriate alternative to criminal offences because pecuniary penalties deter breaches of a regulatory regime and the nature of the offending conduct does not warrant the denunciatory effects of a criminal conviction or imprisonment (note, the current regime in the Act does not contain terms of imprisonment).
31. Transitioning to a civil liability regime brings the Act into alignment with the Financial Markets Conduct Act 2013 and the Commerce Act 1986 and provides for greater financial penalties to deter breaches of the Act. This is consistent with LDAC guidance which states that:
- criminal offences are appropriate to address conduct which is “truly criminal” in nature (including that which is emotionally harmful, harmful to property, the economy, the environment or the administration of law and justice)
 - civil pecuniary penalties may be “an appropriate alternative to criminal offences when a monetary penalty would deter breaches of a regulatory regime and the nature of the offending conduct does not warrant the denunciatory and stigmatising effects of a criminal conviction or imprisonment.”
32. A complete list of changes to penalties, and offences transitioning from criminal offences to civil liabilities is included below.

¹² LDAC guidelines state that ‘truly criminal’ conduct includes ‘violence, emotional harm, or significant harm to property, the economy, the environment, or the administration of law and justice.’

CURRENT OFFENCES AND PENALTIES + RATIONALES FOR CHANGES TO PENALTIES AND REGIME TYPE						
SECTION IN ACT AND DESCRIPTION OF PROHIBITED CONDUCT	CURRENT MAX. PENALTY PERSON	CURRENT MAX. PENALTY BODY CORP.	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORP	SEVERITY	CRIMINAL OFFENCE OR CIVIL LIABILITY - RATIONALE
S10: Retirement village operator failure to lodge an application for registration.	\$5,000	\$5,000	\$200,000	\$300,000	<p>This penalty should be increased because the conduct is extremely severe. This is a serious offence, given that most of the consumer protections in the Act only apply if a village is registered.</p> <p>s 9(2)(g)(i)</p> <p>This offence is currently penalised by the catch-all provision and does not carry a specific penalty. The catch all penalty – a maximum fine of \$5,000 – is the lowest penalty available under the Act. The severe harm this conduct could cause to residents and the reputation of the sector is not currently reflected by this section.</p>	Criminal (pre-registration) – all the legal protections residents receive stem from a village being registered. Keeping this as an offence would further incentivise operators to register their villages.
S13: Failure to meet requirements related to annual returns.	\$5,000	\$10,000	\$30,000	\$100,000	<p>This penalty should be increased to better reflect the severity of the prohibited conduct. Retirement villages cater exclusively to older people, many of whom are vulnerable. Therefore, deterring prohibited conduct which involves residents' funds is paramount. The Registrar has previously suspended some villages for failing to file their annual returns.</p>	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal” (e.g., violence, emotional harm, significant harm to property, the economy, the environment, or the administration of law and justice).
S16: Operator failure to lodge certificate with Registrar confirming registered documents are current and correct.	\$5,000	\$10,000	\$10,000	\$25,000	<p>This penalty should be increased to better reflect the severity of the prohibited conduct. Operators must keep current and correct information lodged with the Registrar of Retirement Villages to maintain their operating status.</p>	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S17: Operator failure to notify Registrar of change of circumstances and documentation.	\$15,000	\$50,000	\$30,000	\$100,000	<p>This penalty should be increased to account for inflation and better to align with the penalty for a similar offence in the Financial Markets Conduct Act 2013 (FMCA). Failure to notify the Registrar of changes to documents may mislead residents, intending residents or the public.</p>	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”. The maximum fines for this section were doubled to compensate for inflation, as no appropriate comparisons could be made with other legislation and the fines broadly matched the severity of the prohibited conduct.

CURRENT OFFENCES AND PENALTIES + RATIONALES FOR CHANGES TO PENALTIES AND REGIME TYPE						
SECTION IN ACT AND DESCRIPTION OF PROHIBITED CONDUCT	CURRENT MAX. PENALTY PERSON	CURRENT MAX. PENALTY BODY CORP.	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORP.	SEVERITY	CRIMINAL OFFENCE OR CIVIL LIABILITY - RATIONALE
S18(3): Advertising or entering into an occupation right agreement (ORA) while suspended.	\$30,000	\$100,000	\$200,000	\$300,000	<p>This penalty should be increased to better reflect the severity of the prohibited conduct. If a retirement village's registration is suspended, they cannot legally engage new residents. Continuing to operate while suspended is a severe offence because suspension is an important regulatory tool and is effectively the same as operating while unregistered (section 10).</p> <p>s 9(2)(g)(i)</p> <p>The proposed penalties are better aligned with the penalties for a comparable offence in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP).</p>	Criminal - continuing to operate while suspended is a serious offence which could harm residents and the reputation of the sector more broadly.
S19(3): Operator failure to take action upon cancellation of registration.	\$15,000	\$50,000	\$50,000	\$100,000	This penalty should be increased to account for inflation and to better reflect the severity of the prohibited conduct. Continuing to operate while suspended is a significant offence, and suspension of registration is an important regulatory tool.	Criminal – cancellation of registration has the same effect, under the Act, as suspension of registration. Because an operator who contravenes this section is essentially unregistered, contravention of this section should remain an offence, so it is consistent with section 10.
S22(1): Non-compliance with effect of memorial, disposal of a retirement village other than as a going concern, disclaiming an ORA as onerous property, or evicting/excluding a resident by holder of security interest.	\$30,000	\$100,000	\$100,000	\$250,000	This penalty should be increased to better reflect the severity of the prohibited conduct. The misconduct presents significant harms to residents and their property.	Criminal – because this offence may inflict significant harm to property, and because people other than operators may be liable under this section, it should remain an offence.
S25(1): Advertising or offer of occupation while unregistered.	\$30,000	\$100,000	\$200,000	\$300,000	This penalty should be increased to better reflect the severity of the prohibited conduct. Continuing to operate while suspended is a significant offence, and suspension of registration is an important regulatory tool. The penalty for this section should be greater than the potential gains a non-compliant operator could make by engaging in the misconduct.	Criminal – this should remain a criminal offence for similar reasons as sections 10 and 18(3).

CURRENT OFFENCES AND PENALTIES + RATIONALES FOR CHANGES TO PENALTIES AND REGIME TYPE						
SECTION IN ACT AND DESCRIPTION OF PROHIBITED CONDUCT	CURRENT MAX. PENALTY PERSON	CURRENT MAX. PENALTY BODY CORP.	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORP	SEVERITY	CRIMINAL OFFENCE OR CIVIL LIABILITY - RATIONALE
S26(1): Failure to take all practicable steps to ensure an advertisement is not misleading or deceptive.	\$15,000	\$50,000	\$50,000	\$200,000	This penalty should be increased to better reflect the severity of the prohibited conduct and to better align with the penalty for a similar offence in the FSP. Residents and their representative organisations have made frequent complaints about operators giving advertisements or promising to construct future units which never eventuate. Failure to deter this conduct means many residents could sign an ORA under false assumptions, which would have serious negative effects for residents' lives and the reputation of the sector.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S27(1): Failure to meet certain requirements when offering occupation.	\$15,000	\$50,000	\$50,000	\$100,000	This penalty should be increased to better reflect the severity of the prohibited conduct. The Act contains rules around what must be provided to a resident before they commit to paying to live in a retirement village - due to the significant sums of money involved and the power imbalances which exist. Failure to deter this conduct means many residents may be induced to sign ORAs with incomplete information, which would have serious negative effects for residents' lives and the reputation of the sector.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S28(1): Failure to have cooling off period provision in ORA.	\$15,000	\$50,000	\$50,000	\$100,000	This penalty should be increased to account for inflation, to better reflect the severity of the prohibited conduct, and to better align with the penalty for a similar offence in the Credit Contract and Consumer Finance Act 2003.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S29: Failure for deposits and other payments to be independently held.	\$15,000	\$50,000	\$100,000	\$300,000	This penalty should be increased to better reflect the severity of the prohibited conduct and to better align with the penalty for a similar offence in the FMCA. Operators failing to hold deposits and other monies paid by residents in discrete accounts is a significant breach.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S30(1): Operator failure to provide intending resident with disclosure statement, code of residents' rights, code of practice, and occupation right agreement.	\$15,000	\$50,000	\$20,000	\$50,000	The Ministry considers the current penalty to be broadly appropriate, as the misconduct does not present a significant risk to residents or the sector. The Code of Practice and Residents' Rights are publicly available documents and, furthermore, failure to provide these documents to residents can be easily rectified by operators. Therefore, to future proof this section, only minor adjustments are proposed to the penalty for individuals.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”. No major change has been made to this section, as the prohibited conduct is not severe and does not represent significant harm to residents or the sector.

CURRENT OFFENCES AND PENALTIES + RATIONALES FOR CHANGES TO PENALTIES AND REGIME TYPE						
SECTION IN ACT AND DESCRIPTION OF PROHIBITED CONDUCT	CURRENT MAX. PENALTY PERSON	CURRENT MAX. PENALTY BODY CORP.	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORP	SEVERITY	CRIMINAL OFFENCE OR CIVIL LIABILITY - RATIONALE
S34(2): Operator failure to notify the statutory supervisor of matters in s34(3).	\$15,000	\$50,000	\$50,000	\$100,000	This penalty should be increased to account for inflation, to better reflect the severity of the prohibited conduct, and to align with the penalty for a similar offence in the Companies Act 1993. The misconduct is significant because statutory supervisors play a crucial role in ensuring operators are complying with their legal obligations.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S35: Legal impediment to a resident’s occupation of a unit.	\$30,000	\$100,000	\$30,000	\$100,000	The Ministry considers the current penalties for this offence reflect the severity of the prohibited conduct and no changes to the penalty are proposed.	Criminal – because the prohibited conduct could inflict emotional harm to residents, or damage to their property, this should remain an offence. Although this is not a ‘pre-registration’ offence, the prohibited conduct presents significant harm to residents and should therefore remain in the existing criminal regime.
S38(1): Operator failure to appoint a statutory supervisor.	\$30,000	\$100,000	\$100,000	\$300,000	This penalty should be increased to reflect the severity of the prohibited conduct. Statutory supervisors monitor compliance with legal obligations. Failure to appoint a statutory supervisor is a significant breach.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S39: Terminating a statutory supervisor without Registrar’s consent.	\$30,000	\$100,000	\$100,000	\$200,000	This penalty should be increased to account for inflation and to reflect the severity of the prohibited conduct. The prohibited conduct should be deterred as statutory supervisors play a crucial role in the oversight of villages.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S41: False or misleading information in application for exemption from requirement for statutory supervisor.	\$30,000	\$100,000	\$50,000	\$200,000	This penalty should be increased to account for inflation, to reflect the severity of the prohibited conduct and better align with penalties for similar offences in the FMCA. Statutory supervisors play a key role in retirement villages, and legitimate exemptions should apply in limited circumstances.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S46: Operator failure to comply with a s46 request.	\$10,000	\$10,000	\$25,000	\$50,000	This penalty should be increased to account for inflation and to better reflect the severity of the prohibited conduct.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S47: Auditor failure to comply with a s47 request.	\$10,000	\$10,000	\$25,000	\$50,000	This penalty should be increased to account for inflation and to better reflect the severity of the prohibited conduct.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S92(2): Operator failure to comply with the Code of Practice.	\$15,000	\$50,000	\$20,000	\$50,000	The Ministry considers the current penalties for this offence reflect the severity of the prohibited conduct, and only the individual penalty should be moderately increased as a future-proofing measure.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.

CURRENT OFFENCES AND PENALTIES + RATIONALES FOR CHANGES TO PENALTIES AND REGIME TYPE						
SECTION IN ACT AND DESCRIPTION OF PROHIBITED CONDUCT	CURRENT MAX. PENALTY PERSON	CURRENT MAX. PENALTY BODY CORP.	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORP	SEVERITY	CRIMINAL OFFENCE OR CIVIL LIABILITY - RATIONALE
S93: False or misleading information in application for an exemption from the requirement to comply with the Code of Practice.	\$30,000	\$100,000	\$50,000	\$200,000	This penalty should be increased to account for inflation and to better reflect the severity of the prohibited conduct. The Code of Practice provides residents with protections and sets out minimum standards which operators must adhere to. Misleading the Registrar in order to avoid compliance with the code should be effectively deterred.	Criminal – because the Code of Practice provides residents with a large number of rights and protections, it is important that operators are dissuaded from engaging in the prohibited conduct. Although this is not a ‘pre-registration’ offence, the prohibited conduct presents significant harm to residents and should therefore remain in the existing criminal regime.
S95(2): Operator failure to notify Registrar of change of registered office.	\$5,000	\$10,000	\$10,000	\$20,000	This penalty should be increased to account for inflation. This would future-proof the penalty	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S96(4): Operator failure to notify Registrar of change of address.	\$5,000	\$10,000	\$10,000	\$20,000	This penalty should be increased to account for inflation. This would future-proof the penalty.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S97(3): Obstructing or hindering the Registrar or a person authorised by the Registrar while exercising a power conferred by s97(1).	\$30,000	\$100,000	\$100,000	\$300,000	This penalty should be increased to account for inflation and to reflect the severity of the prohibited conduct. Obstructing the Registrar is a serious breach and should be effectively deterred. This would future proof the penalty.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S98(2): Person authorised by the Registrar for the purpose of s97 failing to disclose information when directed to do so by the Registrar.	\$5,000	\$10,000	\$25,000	\$25,000	This penalty should be increased to account for inflation and to reflect the severity of the prohibited conduct. Failing to disclose information when directed to do so by the Registrar is a serious breach and should be effectively deterred. This would future proof the penalty.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S98(3): Person authorised by the Registrar, during an inspection or report, failing to give information to the Registrar after being directed to do so by the Registrar.	\$5,000	\$10,000	\$25,000	\$25,000	This penalty should be increased to account for inflation and to reflect the severity of the prohibited conduct. Failing to give information to the Registrar is a serious breach and should be effectively deterred. This would future proof the penalty.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S98(5): Further disclosure of documents obtained through s97 Registrar powers of inspection.	\$15,000	\$50,000	\$20,000	\$100,000	This penalty should be increased to account for inflation and to reflect the severity of the prohibited conduct.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.
S79(6): Person who contravenes any other provision of the Act. Currently, this includes contravention of section 10 – operator failure to register a retirement village.	\$5,000	\$5,000	\$5,000	\$5,000	The Ministry proposes retaining the status quo as it would apply to very few sections and considers that repealing this section may have negative unforeseen consequences.	Civil – per LDAC guidelines, the prohibited conduct is not “truly criminal”.

What objectives are sought in relation to the policy problem?

33. 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
 - the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights.
34. For the prohibited conduct and penalties regime the objective is that the penalties for offences reflect the severity of the associated prohibited conduct and are better aligned with penalties for similar misconduct in comparable consumer protection legislation. The nature of the regime – that is, whether it is civil or criminal law – should also reflect comparable consumer protection legislation and the guidelines provided for by LDAC. The overall purpose of this is to effectively deter prohibited conduct.

What consultation has been undertaken?

Discussion document 2023

35. 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. 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. The Ministry also engaged with key stakeholders, including the Retirement Village Residents' Association (RVR), the RVA, and the Corporate Trustees Association (CTA), which represents retirement village statutory supervisors.
36. Among those who raised concerns in submissions, the main issues related to a lack of enforcement and ineffective penalties. Common suggested areas for improvement included revising the penalties, enhancing protections for residents and strengthening provisions in the Act.

Key stakeholder submissions on the discussion document are summarised as follows:

- The RVA considered the current range of offences, penalties, and enforcement powers are sufficient and therefore do not require change.
- The RVR considered the extent of a dispute panel's power to award remedies to be a limit on what a resident might achieve. They also considered the jurisdiction, powers, and remedial options for the current dispute panel should be broadened so resident could be more easily compensated through exemplary and penal damages for a wide range of operator misconduct – not just delays in relicensing of the former resident's unit.

- s 9(2)(g)(i)

37. Villages are legally obliged to register their villages. The rights and protections residents receive from the Act stem from a village being registered. Therefore, failure to register is a significant offence, s 9(2)(g)(i)

Other stakeholder engagement

38. The Ministry has had ongoing engagement with key stakeholders, including the RVR the RVA, and the CTA.

Section 2: Assessing options to address the policy problem

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

39. To deliver against the overarching policy objectives of the Act review, the Ministry has assessed all options against the following three equally weighted criteria:
- whether the option allows for proportionate fines which effectively deter prohibited conduct
 - whether the option provides greater consistency across similar consumer protection legislation
 - whether the option future-proofs the Act.

What scope will options be considered within?

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

40. 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 three areas which are priority issues for residents.

Non-regulatory options

41. No non-regulatory options have been considered as the identified issues are legislative in nature.

What options are being considered?

42. For each of the three main issues identified in section one, the Ministry has:
- described the various options that have been considered
 - analysed the options against the criteria set out above
 - outlined in more detail the expected costs, risks and benefits of the preferred option.
43. 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

Option One – Status quo

44. This option would retain the status quo, keeping the current penalties in place.

Option Two – Adjust penalties to account for inflation

45. This option would increase the penalties for existing offences in alignment with the increase in CPI inflation since the regime was introduced in 2003.

Option Three – Adjust penalties to account for inflation and improve alignment of penalties with penalties in similar consumer protection legislation

46. This option would align penalties for offences with comparable penalties in other consumer protection legislation, in addition to the changes in Option Two.

Option Four – Adjust penalties to account for inflation, improve alignment with similar consumer protection legislation, and shift offences to civil liabilities

47. Option Four includes changing appropriate offences under the Act from criminal offences to civil liabilities in addition to all changes in Option Three.
48. Under this option, amendment legislation will shift most (but not all) criminal offences under the act to pecuniary penalties. Pecuniary penalties are defined as (non-criminal) monetary penalties imposed by a court under civil procedure where:
- liability is established on the civil standard of proof ('on the balance of probabilities')
 - the pecuniary penalty can be substantial
 - no criminal conviction or imprisonment results
 - penalties are paid to the Crown, rather than any victim, i.e. pecuniary penalties are generally not intended or designed to compensate.¹³
49. Some offences will remain criminal, these offences relate to pre-registration misconduct or present serious risk of harm to residents. The logic for retaining 'pre-registration' offences is similar to offences for unregistered builders under the Building Act 2004. Unregistered builders engaging in prohibited conduct are subject to criminal penalties, whereas registered builders are subject to a civil regime. Examples are:
- retirement village operator failure to lodge an application for registration
 - advertising or entering into an occupation right agreement (ORA) while suspended
 - advertising or offer of occupation while unregistered.

¹³ Law Commission "Pecuniary Penalties: Guidance for Legislative Design", Report 133 (August 2014) at p. 14, para 1.1, [R133 Pecuniary Penalties](#). The Ministry notes that compensation to a resident may be incentivised by the proposed new offence of failing to comply with an order from the Registrar, where this is used to direct an operator regarding compensation.

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

Criteria	Option One – Status Quo	Option Two – Adjust penalties to account for inflation	Option Three – Adjust penalties to account for inflation and improve alignment of penalties with penalties in similar consumer protection legislation	Option Four – Adjust penalties to account for inflation, improve alignment with similar consumer protection legislation, and shift offences to civil liabilities
Proportionate & deterrence effectiveness	0	<p>+</p> <p>The penalties for offences under the Act have not changed since being introduced in 2003. Penalties will be increased in line with increase to CPI inflation since 2003 and are expected to better encourage compliance.</p>	<p>++</p> <p>Other comparable consumer protection legislation has greater penalties for similar offences. This point of comparison for assessing proportionality of a penalty to the corresponding behaviour suggests that penalties under this regime are currently too low and would benefit from alignment. However, criminal regimes are more difficult to prosecute and achieve convictions in than a civil regime. This is in addition to the benefits of Option Two.</p>	<p>++</p> <p>Expected to achieve a more fit-for-purpose regulatory toolkit. Expected to increase proportionality by ensuring offences and penalties can be effectively deployed when appropriate. Allows for a more proportionate response to the policy problem. Improved powers to prosecute are expected to better encourage operator compliance. This is in addition to the benefits of Option Three.</p>
Consistency across legislation	0	<p>0</p> <p>Penalties are not aligned with other Acts.</p>	<p>+</p> <p>Penalties for offences will be brought in line with similar offences in other consumer protection legislation.</p>	<p>++</p> <p>Regulatory toolkit and nature of available offences and penalties expected to achieve greater consistency with other consumer protection legislation and align with current best practice. This is in addition to the benefits of Option Three.</p>

Criteria	Option One – Status Quo	Option Two – Adjust penalties to account for inflation	Option Three – Adjust penalties to account for inflation and improve alignment of penalties with penalties in similar consumer protection legislation	Option Four – Adjust penalties to account for inflation, improve alignment with similar consumer protection legislation, and shift offences to civil liabilities
Future proofing	0	0 Not future proofed due to internal inconsistencies. Increased penalties are also likely to become out-of-date again in the future as market conditions continue to change.	++ Limited future proofing by modernising penalties in line with current market conditions. Increasing penalties to compensate only for the rate of inflation presents a greater risk of them becoming out-of-date again.	++ Expected to bring the regime in line with modern, best practice regulatory practice and provide a more appropriate regulatory toolkit. Although inflation will erode the penalties in the future, this option allows for increases above the rate of inflation, to further future proof the regime.
Overall assessment	0	+ Option Two is expected to marginally improve deterrence with increases accounting for changes in inflation expected to bring penalties in line with their original intent.	+4 Option Three is expected to improve consistency across legislation, bringing penalties in line with similar offences in other legislation. Penalties aligned with other acts and changes in inflation are expected to improve deterrence.	+8 Option Four is expected to provide greater consistency with other consumer legislation by introducing a civil regime alongside penalty alignment with other legislation and changes in inflation. In addition, the civil regime is expected to be more effective as the industry continues to grow.

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

50. The Ministry's preferred approach is Option Four. This approach will:

1. Adjust penalties accounting for increases to CPI inflation since the regime's introduction. Penalties for offences under the Act have not changed since first introduced. Increased penalties should increase deterrence for non-compliant operator behaviour.
2. Increase penalties to similar levels as those found in other consumer protection legislation, bringing the Act into alignment with current regulatory standards for penalty regimes.
3. Transition appropriate offences from criminal offences to civil liabilities. This improves the compliance toolkit by providing more fit for purpose offences for the consumer protection context.

New civil liability events

51. During the review of the Act, the Minister has agreed to provide additional powers to the Registrar and new legal obligations for operators and auditors as follows:

- Enabling the Registrar to make stop or direction orders to address false and misleading advertisements and registered documents.
- Requiring operators to publish a current version of the disclosure statements for their village on the retirement village website in a searchable format.
- Requiring retirement village operators to provide a current version of the disclosure statement to a person who requests it within a reasonable time after receiving the request (if the operator does not have a website) and, if provided electronically, in a searchable format.
- Including a regulation-making power to enable regulations to prescribe terms which are prohibited from being included in an occupation right agreement.
- Requiring the auditor of a retirement village to report to the village's statutory supervisor if the auditor becomes aware of a matter that is relevant to the statutory supervisor's duties within seven working days of becoming aware of the matter.
- Requiring operators, who are not exempt or who have not been granted an extension, to repay a former resident's capital sum payment within a specified timeframe.

52. To enforce these new requirements and powers, the Minister has agreed to create five new civil liability events:
- Contravention of a stop or direction order made by the Registrar of Retirement Villages, without reasonable excuse.¹⁴
 - Operator failure to publish a current version of their village's disclosure statement on the village's website, or operator failure to provide a current version of their village's disclosure statement to a person who requests it within a reasonable time.¹⁵
 - Including a term which is prohibited by regulations in an occupation right agreement.¹⁶
 - Auditor failure to report to a statutory supervisor within seven working days if the auditor becomes aware of a matter that is relevant to the statutory supervisor's duties,¹⁷ (granted an exemption from Regulatory Impact Statement requirements by the Ministry for Regulation on the grounds that it has no or only minor economic, social, or environmental impacts).
 - Operator, who is not an exempt operator or who has not been granted an extension, failure to repay a former resident's capital sum payment within the specified timeframe and who unreasonably delays repayment.¹⁸

¹⁴ Further analysis on this topic is included in the accompanying Regulatory Impact Statement '*Disclosure regime and Registrar powers.*'

¹⁵ *Ibid.*

¹⁶ Further analysis on this topic is included in the accompanying Regulatory Impact Statement '*Unfair Contract Terms in Occupation Right Agreements.*'

¹⁷ This proposed requirement was granted an exemption from Regulatory Impact Statement requirements by the Ministry for Regulation, on the grounds that it has no or only minor economic, social, or environmental impacts.

¹⁸ Further analysis on this topic is included in the accompanying Regulatory Impact Statement '*Financial exit matters.*'

NEW CIVIL LIABILITIES				
PROPOSED NEW OFFENCE	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORPORATE	SEVERITY	RATIONALE
Operator contravention of a stop or direction order made by the Registrar of Retirement Villages, without reasonable excuse	\$200,000	\$300,000	<p>The penalty is high to reflect the severity of the proposed prohibited conduct.</p> <p>Residents face potentially significant costs where their decisions to sign an ORA was materially impacted by unclear, incomplete or misleading information (e.g. monetary cost of moving or opportunity cost an alternative choice not taken).</p> <p>Misconduct also poses risk of inflicting significant reputational damage on the sector.</p>	<p>The Ministry is proposing to provide the Registrar with discretion to deliver stop or direction orders to retirement village operators if the Registrar is satisfied that:</p> <ul style="list-style-type: none"> a. an advertisement for an occupation right agreement or any registered document: <ul style="list-style-type: none"> i. is false or misleading; or ii. contains any inaccurate or erroneous information; or iii. is likely to mislead or deceive any resident, any intending resident, or the public; b. a communication relating to an occupation right agreement offer or intended offer is: <ul style="list-style-type: none"> i. false or misleading, or is likely to mislead or deceive; or ii. materially inconsistent with the corresponding disclosure statement or occupation right agreement for the retirement village unit. <p>To enforce this new section, the Ministry proposes that contravention of this section be made a civil liability event, carrying a maximum pecuniary penalty of \$300,000 for bodies corporate, and \$200,000 for individuals.</p>
Operator failure to publish a current version of a disclosure statement online, or failure to provide a current version of a disclosure statement within a reasonable time after receiving the request	\$10,000	\$20,000	<p>Disclosure statements set out the main terms of an offer for intending residents to buy into a retirement village and are designed to protect the interests of residents and intending residents. Disclosure statements are often not available on retirement village websites and electronic versions are often not in a searchable format. Submitters raised as part of the consultation process that they wanted the register to be made more user friendly.</p> <p>The penalty aligns with the penalty for contravention of S30(1) due to alignment of the two prohibited conducts.</p>	<p>The Ministry is proposing to require retirement village operators to publish a current version of the disclosure statement for their village on the retirement village's website (if they have a website). If a retirement village does not have a website, the Ministry proposes that operators be required to provide a current disclosure statement for their village to a person who requests it, within a reasonable time after receiving the request.</p> <p>To enforce this new section, the Ministry proposes that contravention of this section be made an offence, carrying a maximum pecuniary penalty of \$50,000 for bodies corporate, and \$20,000 for individuals.</p>

NEW CIVIL LIABILITIES				
PROPOSED NEW OFFENCE	PROPOSED MAX. PENALTY PERSON	PROPOSED MAX. PENALTY BODY CORPORATE	SEVERITY	RATIONALE
Contravention of regulations that prohibit certain matters from being included ORAs	\$20,000	\$50,000	<p>There is some evidence that ORAs can contain arguably unfair contract terms. Residents currently have limited ability to remove or address these terms and have limited legal avenues for recourse. These penalties were developed to be proportionate to the harm caused by a breach.</p> <p>Specific regulations describing prohibited terms will be drafted at a later date.</p>	<p>The Ministry is proposing to amend the Act to include a regulation-making power to enable regulations to prescribe terms which are prohibited from being included in an ORA. This proposed list of prohibited terms will not be exhaustive and shall not prevent court declarations that an ORA term not prohibited under the regulations is not an unfair contract term under the Fair-Trading Act 1986. Such regulations exist in New South Wales, Victoria and the Australian Capital Territories.</p> <p>To enforce these new regulations, the Ministry proposes that contravention of the regulations be made an offence, carrying a maximum pecuniary penalty of \$50,000 for bodies corporate, and \$20,000 for individuals. Contravention of these regulations carries a penalty of 60 penalty units in Victoria (AUD \$12,210 = NZD \$13,723). The proposed maximum penalty, therefore, aligns with the existing penalty in Victoria. Note: The last two sentences were included in error.</p>
Retirement village auditor failure to report to village's statutory supervisor within seven days if they become aware of a matter that is relevant to the statutory supervisor's duties	\$25,000	\$50,000	This prohibited conduct and associated penalty aligns with the requirements for financial markets. The penalty for contravention is comparable to penalties under the Financial Markets Conduct Act 2013.	The Ministry is proposing to require statutory supervisors to take securities over village land and/or property, where they consider this would strengthen the protections for residents' capital sum payments. The proposed new requirement for an auditor to report to the village's statutory supervisor, if they become aware of a matter relevant to the statutory supervisor's duties, will align with the requirements for financial markets and strengthen consumer protections for residents. This is comparable to the Financial Markets Conduct Act 2013.
Operator, who is not an exempt operator or who has not been granted an extension, failure to repay a former resident's capital sum payment within the specified timeframe and who unreasonably delays repayment	\$25,000	\$50,000	Operators maintain interest-free use of former residents' capital sums until repayment is made. Former residents and/or their estates can be disadvantaged due to inaccessibility of their money.	The Ministry is proposing to introduce a 12-month maximum repayment timeframe for former residents' capital sum payments, to establish an application scheme for the early release of funds to a former resident where they demonstrate specific needs, and to require operators to pay interest on former residents' net termination proceeds from six months after a resident vacates their unit. Lengthy wait times for repayment of residents' funds is the key issue under review, because it can cause significant financial and emotional distress for former residents and their whānau, often at a difficult period in their lives. This is particularly acute where the funds are needed to help pay for a resident's transition into aged care, or alternative accommodation in another village, or in the community. This change strengthens operators' existing legal obligations to try to relicence vacant units as quickly as possible.

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

53. 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	This proposal introduces no new costs for the vast majority of operators, who are compliant with all of their obligations. Only operators found by the Court to be in breach of their requirements will be subject to increased costs in the form of pecuniary penalties.	Low	Medium
Current residents	This proposal presents no cost implications.	None	Not applicable
Future residents	This proposal presents no cost implications.	None	Not applicable

s 9(2)(f)(iv)

Affected groups	Comment	Impact	Evidence Certainty
Non-monetised costs	<p>If penalties are an effective deterrent against prohibited conduct, there should be no increased costs to operators.</p> <p>Non-compliant operators found liable or guilty for breaches of the Act will face increased costs in the form of pecuniary penalties imposed by the Court.</p> <p>The Registrar of Retirement Villages could see an increase in costs due to increased enforcement activities.</p>	Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Operators	Increased compliance and improved overall consumer protections may provide reputational benefits, increasing the attractiveness of retirement village living to prospective residents, resulting in more demand for units and/or greater willingness to pay higher costs. Impact to operator reputations from criminal prosecution is largely removed as a result of these changes.	Low	Medium
Current residents	Villages will be disincentivised from engaging in non-compliant behaviour, ensuring residents continue being provided the rights and protections afforded to them under the Act.	Low	Medium
Future residents	Certainty of compliance may marginally increase attractiveness of retirement village living for intending residents.	Low	Medium
Regulators, the Registrar and statutory supervisors	Benefits from having access to a more effective, efficient and flexible regulatory toolkit means the Registrar can take the most appropriate course of action for many breaches.	Medium	Low
Total monetised benefits	Under a civil regime the Crown will receive any fines against operators.	None	Not applicable

Affected groups	Comment	Impact	Evidence Certainty
Non-monetised benefits	Residents would likely receive enhanced protections under the Act. Operators, the vast majority of whom would likely continue to comply with their legal obligations, would receive enhanced reputational benefits as the increased scrutiny will demonstrate that they are engaging in appropriate conduct.	Low	Low

Impacts on Māori

54. 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.
55. 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.¹⁹ 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.²⁰
56. Māori as a population group have relatively low rates of homeownership,²¹ 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 75.²² 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.

¹⁹ As noted in this recent article [Outlook on NZ's retirement village sector | JLL](#).

²⁰ Broad, JB, 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.

²¹ 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.

²² Average life expectancy at birth based on death rates at 2017-2019 were 73.4 percent 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?

57. 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.

Enforcement

58. 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.
59. The RVA, which represents around 95 percent of retirement village operators, also requires all accredited members to undergo audits every three years which assess compliance with the Act, the related regulations under the Act, the Code of Practice and the Code of Residents' Rights.
60. If an operator contravenes the Act the Registrar can seek enforcement action. Where individuals have been impacted by breaches, the dispute resolution pathway will be available for them to seek remedies.

Courts

61. The Courts will adjudicate any prosecutions brought against parties who are accused of breaching their legal requirements under the Act. If the accused are found liable or guilty, depending on the nature of the misconduct, the Courts can apply a penalty up to the maximum level set out in legislation.
62. The Courts shall have full discretion regarding the appropriate total value of the pecuniary penalties to be imposed by guilty and/or liable parties.
63. Parties can appeal court decisions, as per the usual process.

The role of the new dispute resolution scheme for retirement villages

64. The dispute resolution scheme for retirement village complaints and disputes is focused on resolving individual complaints and providing remedies to affected parties. It does not have a role in overseeing the whole sector, ensuring compliance and enforcing legal requirements.
65. However, the dispute resolution scheme may have some interaction with the regulator. The regulator may use the outcomes of complaints and disputes to identify systemic issues or patterns of non-compliance to inform enforcement action. The dispute resolution scheme provider will be able to bring issues to the regulator's attention where enforcement action might be required.

Managing the transition

66. Phased transition planning has been considered across the package of reforms. The approach to transition and implementation of the proposals throughout the review account for a range of factors:
- fairness and consumer protection for residents (including the views of the Commerce Commission)
 - whether the change codifies best practice or presents low or minor costs for operators
 - sufficient time for agencies to update public guidance and for operators to adjust their business practice to comply with the changes.
67. The Ministry recommends that the changes in this Regulatory Impact Statement be implemented the day after Royal assent of the amendment Bill.

Information dissemination

68. The Ministry will work with the Retirement Commission 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.
69. The Retirement Commission has highlighted the need for printed materials to be published, given some older people's access to digital resources may be limited. However, the Retirement Commission would require additional funding to print and distribute these materials.

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

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

The Ministry of Housing and Urban Development

71. 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.

The Retirement Commission

72. 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.
73. 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. The new dispute resolution scheme for retirement villages will be required to report on complaint data and trends when it is established.

74. 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.