



Stage 1 Cost Recovery Impact Statement:

Retirement Villages Act 2003 review – Dispute resolution scheme proposals

This cost recovery impact statement accompanies the *Retirement Villages Act 2003 review – Dispute resolution scheme proposals* regulatory impact statement.

Status quo

Current complaint and dispute resolution process

1. The Code of Residents' Rights in the Retirement Villages Act 2003 (the Act) gives residents the right to:
 - complain to the operator and to receive a response within a reasonable time; and
 - a speedy and efficient process for resolving disputes with the operator and other residents.
2. There is a two-tier process in the Act and Code of Practice for resolving complaints and disputes that occur in retirement villages between a resident and the operator, or between residents.
3. Retirement village operators must have a facility for dealing with resident complaints. The operator works directly with the resident to resolve a complaint. The process can involve the village's statutory supervisor for a recommended way forward, and external mediation. Either party to a complaint can issue a dispute notice. The operator must then appoint a panel to conduct a hearing and make a binding decision.
4. The Code of Practice requires each party to be responsible for paying any costs that they incur in preparing for and attending any mediation. For mediation between the operator and a resident, the operator will be responsible for paying the cost of the mediator's services. For mediation between residents, the operator and the residents involved will share the cost of the mediator's services equally (clause 36).
5. The Act requires that the operator is responsible for meeting all the costs incurred by the disputes panel, whether or not the operator is a party to the dispute (section 74(1)). The disputes panel can award costs and expenses to a party to the dispute.

The proposal is to establish a new dispute resolution scheme

6. Residents and their family members, 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.
7. The significant upheaval and financial consequences of moving out of a retirement village limits the options available to residents with a complaint or dispute. If residents are

unhappy with how complaints are addressed or cannot resolve disputes and enforce their rights, moving elsewhere is unlikely to be a feasible option. A dispute resolution scheme has a vital role in ensuring residents have adequate consumer protections.

8. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) has recommended parts of the current village complaint facility and all of the dispute panel process are replaced. The policy objective is to establish a new scheme for complaints and disputes that is:
 - accessible and user-friendly
 - independent and fair
 - efficient
 - effective
 - accountable.

Policy Rationale: Why a user charge? And what type is most appropriate?

The costs of the new scheme would be predominantly met by retirement village operators

9. The Ministry has recommended establishing a new scheme for retirement village complaints and disputes that is approved by the Minister and delivered by a contracted third party (a dispute resolution scheme provider). The full costs of establishing and operating a new scheme would be met by retirement village operators. There would be an exception for disputes between residents that cannot be resolved at an early stage in the process, where the residents who are parties to the dispute contribute to the costs.
10. We do not consider it would be appropriate to seek Crown funding for the new scheme for the following reasons:
 - The benefits accrue to a small proportion of the population. In 2024 there were 470 retirement villages providing 41,000 units. The number of residents was estimated to be around 53,000 (approximately 14 percent of the population over 75 years).
 - Many retirement village operators and for-profit businesses that benefit from residents entering into occupation right agreements and ongoing fees. It is reasonable that operators cover the costs of a scheme for resolving retirement village disputes.
 - Requiring operators to cover the costs helps to incentivise good quality services and facilities that meet resident expectations and needs, and effective processes for resolving resident issues and complaints at the earliest possible stage, before a third party scheme needs to be involved.
11. The scheme provider would be responsible for developing detailed rules of the scheme setting out the obligations of parties and the procedures for making and resolving complaints and disputes. The Act would set out matters that the rules must cover. While not a legislative instrument, the rules and any subsequent variations would be approved by the Minister.

12. The details of how costs are determined by the new scheme provider and paid by operators would be set out in the rules of the scheme. The Ministry has recommended that the rules are to cover:
- the amount payable (if any) to the scheme by parties to the complaint or dispute
 - where the amount payable involves a levy, how the levy would be calculated and apportioned across operators of different sizes.

Dispute resolution schemes in other sectors use a combination of levies and fees

13. In other comparable approved dispute resolution schemes, the scheme provider is responsible for estimating their costs for the upcoming financial year and recovering operating and establishment costs from the sector, with a reconciliation process at the end of the financial year.
14. The utilities schemes and financial service schemes are funded by the sector through a combination of annual levies and complaint fees. Broadly, the levy is sufficient for the scheme to take enquiries, triage complaints and resolve complaints through negotiation between the parties. Levy rates are typically differentiated based on provider size.
15. Scheme providers also charge complaint fees for complex complaints, with the fees covering the costs of mediation, a formal written evaluation, or a binding decision. Charging fees helps to incentivise the early resolution of complaints (the costs of which are covered by the levy) and ensures that operators who resolve complaints at the early stages do not face higher levies.
16. We consider that this model might be suitable for a new scheme for retirement villages, with levies apportioned by the number of units in a village. Levies and fees would need to be set at levels to recover establishment and operating costs, with transparency around the method for calculating and apportioning levies, and the amount of fees charged.
17. Unlike comparable schemes in other sectors, the scheme for retirement villages would need to be able to resolve complaints between residents. We consider there would be scope for the rules of the scheme to require a resident contribution to the complaint fees for complex complaints between residents. This reflects the status quo where mediation costs for a complaint between residents are shared between the residents involved and the operator. This will help to minimise vexatious complaints and incentivise early resolution.

Independent reviews would consider efficiency and value for money

18. Independent reviews would help to ensure the scheme is well aligned with its purpose, provides value and achieves the expectations of the sector and the government. The Ministry recommends the new scheme is independently reviewed no later than five years after it begins operating. Subsequent reviews would be undertaken no later than every five years. Among other matters, the reviews would need to consider if the scheme is efficient, effective and providing value for money, and would recommend areas of improvement. The costs of independent reviews would need to be paid by the scheme provider.

High level cost recovery model

19. The Ministry has not estimated the amount of annual levies or complaint fees as the new scheme provider will be required to estimate scheme costs and determine how the costs will be recovered.

20. The Ministry has estimated the overall costs of establishing and operating the scheme for the first year. These are indicative of the costs to operators, but it will be up to the scheme provider to decide, for example, if establishment costs will be recovered in the first year or over more than one year.
21. The overall costs are estimated to be in the range of s 9(2)(j) . This includes the following one-off establishment costs and operating costs:
- Establishment costs include costs associated with developing rules for the scheme, recruitment, establishing processes, IT costs, and promoting the new scheme. We have assumed the scheme provider already has a case management system that can be adapted for the new scheme.
 - Operating costs include staff salaries and overheads, legal advice, education and promotion, reporting and independent review.
22. The total estimated costs broadly align with the costs of consumer dispute resolution schemes in other sectors, although direct comparisons are not possible because of the varying nature and complexity of complaints and the different processes for resolving them.
23. The Ministry estimates marginal additional costs to the sector in the first year of operation would be between s 9(2)(j) per year, using assumptions based on the current volume and type of complaints.
24. We consider that marginal additional costs in the range of s 9(2)(j) per retirement village unit per year are proportionate and cost effective. Operator costs could be passed on to residents; for example, through weekly fees or the entry price. The impact of additional costs being passed on to residents is low.

Consultation

25. Key sector stakeholders representing residents and operators have provided considerable input to identifying on the key challenges with the current scheme, and the outcomes sought from a new scheme. The Retirement Villages Association supports the creation of a complaints and dispute resolution scheme for retirement villages that effectively balances the interests of both operators and residents. It acknowledges levies are likely to be passed on to residents (directly or indirectly) and suggests closely aligning the scheme with the infrastructure, resourcing and processes of existing providers to achieve efficiencies of scale.
26. Our cost estimates are based in part on information provided by the sector, but we have not engaged in the details of the costs. The new scheme provider will have the opportunity to engage with key sector stakeholders on the development of the detailed rules of the scheme.