



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Review of the Retirement Villages Act 2003: Options for change

Discussion paper

August 2023

Te Kāwanatanga o Aotearoa
New Zealand Government



Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development

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- b. increase public and private housing supply
- c. make existing homes warmer and healthier
- d. make housing affordable for people to rent and buy
- e. support quality urban development and thriving communities.

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August 2023

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Foreword

Retirement villages play an important role in New Zealand's housing system, providing an option for older New Zealanders that balances independence with support. A relatively small but growing number of older New Zealanders are choosing retirement village living – attracted by the offer of a safe, secure, and vibrant community, along with a low-maintenance independent lifestyle, and tailored services and recreational facilities.

Retirement Villages are governed by the Retirement Villages Act 2003 (the Act), the Code of Practice and three sets of regulations. The Act has two main purposes: protecting the interests of residents and intending residents and enabling retirement villages to develop under a simple legal framework that is easy for residents, intending residents, and village operators to understand. A further purpose of the Act is to regulate and monitor operators and define the roles of the Retirement Commissioner, statutory supervisors, and the Registrar of Retirement Villages.

Since the Act was introduced 20 years ago the retirement village sector, as well as New Zealand's older population, has grown significantly. The proportion of New Zealanders aged 65 years and older has increased steadily over recent decades, and this trend is set to continue. The retirement village industry has responded to this growth – between 2012 and 2021 there was a 24 percent increase in villages, from 343 to 425, and a 65 percent increase in unit numbers, from 21,815 to over 36,000.¹

The retirement village industry plays a key role in catering for the needs of our growing older population, so it is important that the regulatory settings underpinning the retirement villages regime can continue to enable growth, innovation, and consumer choice within the sector. As our population ages, and average life expectancy increases, it is more important than ever that the retirement villages system is fit for purpose.

This review, undertaken by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development with input from the retirement sector, draws on the findings and recommendations of Te Ara Ahunga Ora - Retirement Commission. The review is considering whether the retirement villages regime strikes an effective balance between the rights and responsibilities of residents and operators of retirement villages. It also aims to make sure protections for residents and intending residents are robust, given the nature of retirement village contracts and the large investment retirees make when moving into a village.

This discussion paper is the first step in the review. We encourage you to have your say during the consultation. Your feedback will help us to better understand the issues facing retirement village residents, their families, operators and sector stakeholders, and whether the proposals in this paper would improve the retirement villages system. Your feedback will inform further work and recommendations on the details of any changes to the retirement villages legislative framework.

¹ JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>.

Making a submission

We welcome your input

We invite written submissions on the issues, proposals and questions in this discussion paper.

The review is comprehensive and covers many topic areas. You are welcome to comment on any or all the topics raised and submit other relevant information, evidence, and examples.

You can find a summary of this discussion paper at <https://consult.hud.govt.nz/policy-and-legislation-design/review-of-retirement-villages-act-2003/>.

How to have your say

Please include your name, the name of your organisation (if relevant), and contact details. You can make a submission by:

- filling in the online survey available at: <https://consult.hud.govt.nz/policy-and-legislation-design/review-of-retirement-villages-act-2003/>
- emailing your submission to: RVAreview@hud.govt.nz
- posting your submission to:
Retirement Villages Act Review
Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
PO Box 82
Wellington 6140
New Zealand

Closing date to share your views

The closing date for all submissions is **5pm on Monday 20 November 2023**. If this closing date might affect or prevent your participation, please let us know.

After consultation closes, officials will summarise and consider submissions, before advising the relevant Minister on any proposals to change the legislation.

Use of information

Your submission will help us develop policy proposals to change legislation. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

We may publish our analysis of submissions. This could include a summary of submitters' views and the names of individuals or organisations that have made submissions.

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry. Any personal information you supply to us in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues in this discussion paper. Please clearly state in the online survey or your written submission if you do not wish your name, or any other personal information, to be included in the summary of submissions.

Submissions may be requested under the Official Information Act 1982. Please set out clearly in the online survey or your written submission if you have any objection to the release of information contained in your submission, and in particular which parts you consider should be withheld, together with the reasons for withholding the information. We will take these objections into account and will consult with submitters when responding to requests under the Official Information Act.

Further information

If you have any questions or would like more information about the process for making submissions, please email RVAreview@hud.govt.nz.

How this discussion paper works

This table outlines the structure of this paper, what each part covers, and specific topic areas should you be interested only in certain topics.

PART	WHAT THIS PART COVERS	YOU SHOULD READ THIS SECTION IF YOU ARE INTERESTED IN
A. Overview	The retirement village landscape, the retirement villages legislative framework, why the Act is being reviewed, scope and objectives of the review, relevance of proposals for Māori, and next steps.	The context of the review, how we are approaching the review, the relevance of the proposals for Māori, and next steps in the review, including how changes would be turned into law and implemented.
B. Moving in	Proposals related to the documents a prospective resident receives before moving into a retirement village.	Proposed changes for: <ul style="list-style-type: none"> ▪ the disclosure regime ▪ occupation right agreements (ORAs).
C. Living in	Proposals related to day-to-day retirement village living and moving to aged residential care.	Proposed changes for: <ul style="list-style-type: none"> ▪ repairs and maintenance of operator-owned chattels and fixtures ▪ complaint and dispute processes ▪ moving from independent living to aged residential care ▪ minimum building standards.
D. Moving out	Financial matters between an outgoing resident (or their estate) and the village operator after a unit is vacated.	Proposed changes for: <ul style="list-style-type: none"> ▪ the repayment of residents' capital sums ▪ stopping outgoings and other fees ▪ fixed deductions (also known as deferred management fees) ▪ the treatment of capital gains and losses.

PART	WHAT THIS PART COVERS	YOU SHOULD READ THIS SECTION IF YOU ARE INTERESTED IN
E. Definition of Retirement Village	Issues with the current definition of retirement village under the Act and whether it is fit for the future.	How the definition could be changed to allow for other types of retirement housing options.
F. Other issues	Additional matters relating to retirement villages.	<p>Proposals and questions on:</p> <ul style="list-style-type: none"> ▪ insurance cover for retirement villages ▪ security of residents' capital sums ▪ culturally responsive services and models of care ▪ the roles of government agencies in the retirement villages system ▪ the operation of the Retirement Villages Register ▪ the Code of Practice and Code of Residents' Rights ▪ offences and penalties ▪ application of the Real Estate Agents Act 2008 to the transfer of a retirement village unit.
Glossary	The terms, abbreviations, and acronyms used throughout the discussion paper.	A better understanding of what we mean by certain terms, and a handy list of abbreviations used throughout the paper.
Appendices	Proposed templates for disclosure documents and ORAs and the full definition of retirement village in the Act.	<p>Proposed templates for the:</p> <ul style="list-style-type: none"> ▪ Village Comparison ▪ Information Statement ▪ new Disclosure Statement ▪ standardised ORA. <p>A table of terms which can, could, or cannot be standardised for ORAs.</p> <p>The full definition of retirement village in the Act.</p>

Questions

We have included questions in this discussion paper to help you structure your submission. The same questions are provided in the online survey for responses. If you are not using the survey, please refer to the question number in your written submission when responding to a question in this discussion paper.

Answering the questions is optional. You can choose to answer some or all of the questions. You can also write to us about retirement village matters that are not covered in this discussion paper.

All questions are in boxes (as below) to make them easier to find in the discussion paper.

Tell us what you think

QUESTIONS ON...	
Q1	
Q2	

Summary of proposals

This paper proposes changes and seeks your feedback

We invite feedback on proposals relating to the three phases of retirement village living: moving in, living in, and moving out. The proposals are summarised in the table below.

We also seek feedback on proposals and questions on additional matters relating to retirement villages and the legislative regime. These are also summarised in the table below.

You can find more detailed information on each of these topics in parts B, C, D, E and F of this discussion paper.

PART B: MOVING IN	
Disclosure statement	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ replace the disclosure statement with new plain language documents (with prescribed headings and maximum page/word counts), with either: <ol style="list-style-type: none"> a. two documents - a 'Village Comparison' and a 'Retirement Village Information Statement' or b. one new, shorter 'Disclosure Statement'. ■ make it easier for residents to make a complaint against an operator (or its agent) for making a misleading or false statement to an intending resident, either verbally or in writing ■ strengthen the power of the Registrar to act against an operator if they consider a registered document or advertisement is likely to mislead or confuse ■ require that if a term in an ORA is inconsistent to the detriment of the resident with information in a disclosure document, the term should be interpreted (as far as is practicable) in favour of the resident.

PART B: MOVING IN	
Occupation right agreements (ORAs)	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ introduce a partially standardised ORA document, either by: <ul style="list-style-type: none"> a. standardising the format (that is, the headings and layout) or b. standardising both the format and some of the terms. <p>We seek feedback on whether:</p> <ul style="list-style-type: none"> ■ a power should be included in the Act or regulations to declare certain terms to be unfair, over and above the power in the Fair Trading Act 1986 ■ additional measures are needed to address privacy concerns that may arise from terms in ORAs ■ conveyancers should be able to provide legal advice on ORAs.
PART C: LIVING IN	
Maintenance and repair of operator-owned chattels and fixtures	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ amend the definition of ‘retirement village property’ to include operator-owned chattels and fixtures in units ■ require that operators provide a list of their chattels and fixtures and their condition to intending residents ■ require operators to meet the direct cost of maintenance and repairs for their chattels and fixtures (unless intentionally or carelessly damaged by residents) ■ clarify that marks due to mobility aids and incontinence are classified as ‘fair wear and tear’ ■ require operators to replace chattels and fixtures when they wear out or reach the end of their economic life. <p>We seek views on whether proposals should apply to new and existing ORAs.</p>
Complaints and disputes regime	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ replace the current complaints and disputes scheme with a new, independent, accessible scheme, provided by either: <ul style="list-style-type: none"> a. an appointed private dispute resolution scheme provider or b. a commissioner. <p>We seek views on whether a free advocacy support service for residents would be required under a new scheme.</p>

PART B: MOVING IN	
Moving from retirement village living into aged residential care	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ require operators to provide comprehensive information in disclosure documents on aged residential care services offered by the retirement village and the financial implications of transferring into aged residential care ■ require operators to provide a clear, upfront statement in disclosure information that they may not be able guarantee a suitable room will be available at the time a resident needs to transfer to aged residential care. <p>We seek views on ORAs for aged residential care and residents paying a second fixed deduction ('deferred management fee').</p>
Minimum building standards for villages	<p>We seek information and views on building quality issues, and whether retirement villages are warm and dry, built or upgraded to a high standard, and accessible for disabled people.</p>
PART D: MOVING OUT	
Repayment of capital sum when a resident moves out	<p>We seek feedback on proposals to introduce requirements for the repayment of capital sums, which could be introduced either on their own or in combination:</p> <ul style="list-style-type: none"> ■ a mandatory timeframe for repayment of the capital sum (e.g., within six or 12 months of the unit being vacated) with potential exemptions to protect the financial viability of retirement villages relating to: <ul style="list-style-type: none"> □ undue financial hardship □ certain classes of operators, e.g., not-for-profit □ arrangements where capital gains are shared ■ an obligation on operators to pay interest on unpaid capital sums after six months of the unit being vacated.
Outgoings and other fees	<p>We seek feedback on a proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after.</p> <p>We seek feedback on whether this proposal should apply to new and existing ORAs.</p>
Repayment of fixed deductions (deferred management fees)	<p>We seek feedback on a proposal to require fixed deductions to stop accruing upon a unit being vacated or shortly thereafter.</p> <p>We seek views on whether:</p> <ul style="list-style-type: none"> ■ the above proposal should apply to new and existing ORAs ■ there should be limits on fixed deductions ■ greater transparency is needed on what fixed deductions can cover.

PART B: MOVING IN	
Treatment of capital gains/losses	<p>We seek feedback on a proposal to require that a resident can only be liable for a capital loss on resale of their unit to the same extent as they would be entitled to any capital gains.</p> <p>We seek feedback on whether this proposal should apply to new and existing ORAs.</p>
PART E: FUTURE-PROOFING THE DEFINITION OF RETIREMENT VILLAGE	
Definition of retirement village	<p>We seek information and views on whether the definition:</p> <ul style="list-style-type: none"> ■ is easy to understand and contains no unnecessary or redundant aspects ■ enables operators to respond to changing demographic and housing needs.
PART F: OTHER TOPICS	
Insurance cover for retirement villages	<p>We seek feedback on proposals to:</p> <ul style="list-style-type: none"> ■ allow operators to have sum-insured and collective type insurance policies instead of full replacement cover ■ require operators to have insurance policies that at all times are sufficient, alongside other funds, to pay out residents' capital sums if a village is destroyed, unable to be reinstated and all ORAs are terminated ■ restrict operators from passing on any insurance excess amounts to residents if the loss, damage or destruction relates to retirement village property, and the resident was not at fault.
Security for residents' capital sums	<p>We seek feedback on a proposal to require statutory supervisors to hold both land and personal property securities.</p>
Culturally responsive services	<p>We seek information and views on what retirement villages could do to provide more culturally responsive services and models of care.</p>
Roles of government agencies in the retirement villages system	<p>We seek information and views on whether:</p> <ul style="list-style-type: none"> ■ government agencies have sufficient powers to carry out their roles within the retirement villages system ■ a government agency should be tasked with auditing villages' compliance with the legislative framework.
Operation of the Retirement Villages Register	<p>We seek feedback on updating the Registrar provisions to ensure they are fit for purpose and consistent with how the Register is operated in practice.</p>

PART B: MOVING IN	
Code of Practice and Code of Residents' Rights	We seek information and views on issues regarding the Code of Practice and the Code of Residents' Rights, including whether any changes to the Codes are needed, such as to consultation requirements.
Offences and Penalties	We seek information and views on the range of offences, penalties and enforcement mechanisms under the Act and whether any changes are needed.
Application of the Real Estate Agents Act 2008	We seek feedback on whether the consumer protections that apply to real estate agents need to be applied to retirement village operators for sales and transfers of retirement village units.

Part A – Overview of the review

1. This section has information on the retirement village landscape, the legislative framework for retirement villages, why the Act is being reviewed, the scope and objectives of the review, relevance of proposals for Māori, and next steps after we receive feedback on this discussion paper.

What are retirement villages?

2. Retirement villages are residential housing complexes predominantly for retirees, which have multiple residential units (e.g., villas, apartments, or studio units), and provide services and shared facilities. Residents pay a capital sum in return for their right to live in the village, and the terms and conditions of their occupancy are set out in a retirement village contract called an occupation right agreement.
3. A relatively small but growing number of older New Zealanders are choosing retirement village living.² Retirement villages offer residents the opportunity to live in a safe, secure, and vibrant community, along with a low-maintenance lifestyle, the ability to maintain a degree of independence, and tailored recreational facilities and activities. In addition, many residents choose a retirement village for the continuum of care it offers through on-site aged residential care facilities. Industry surveys demonstrate a high level of resident satisfaction with their experience of retirement village living.
4. There are three types of retirement village operators: not-for-profit organisations,³ private commercial owners,⁴ and large commercial operators. In the early years, retirement village providers were typically not-for-profit organisations with links to churches or charitable foundations. Commercial operators began entering the market in the 1980s and now dominate the sector. The largest six commercial operators⁵ currently own 47 percent of all villages (63 percent of all units).⁶
5. All three types of operators use a similar business model where they receive payment from residents through an upfront capital sum and weekly fees. Most operators charge a fixed deduction when a unit is vacated and retain part or all of any capital gain when a unit is re-sold or re-licensed. Some commercial operators are listed on the New Zealand stock exchange and have responsibilities to their shareholders.

2 Approximately 14 percent of the population aged over 75 years live in retirement villages. JLL Research estimated there were 48,736 retirement village residents in New Zealand in 2022 (JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>).

3 These are mainly linked to charitable foundations and/or churches.

4 These are retirement villages independently owned by individuals or a stand-alone entity.

5 These are Ryman, Metlifecare, Arvida, Summerset, Bupa, and Oceania.

6 JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>

Retirement villages legislative framework

6. The Act was introduced in 2003 to strengthen legal protections for residents and intending residents of retirement villages, and to regulate and monitor operators. The legislative framework for retirement villages is set out below.

RETIREMENT VILLAGES ACT 2003

The purpose of the Act is to protect the interests of residents and intending residents and enable retirement villages to develop under a simple, easy-to-understand legal framework. The Act includes the Code of Residents' Rights.

Retirement of Villages Code of Practice 2008

Sets out the minimum requirements for operators of retirement villages.

Retirement Villages (General) Regulations 2006

Regulates disclosure of information, ORAs, registration, statutory supervisors and other matters.

Retirement Villages (Disputes Panel) Regulations 2006

Sets out the process for panel hearings to resolve disputes.

Retirement Villages (Fees) Regulations 2006

Sets out fees and penalties.

Purposes of the Retirement Villages Act 2003

7. 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 also has the following purposes:
- a. to promote understanding of the financial and occupancy interests of residents and intending residents
 - b. to provide an industry-focused regulatory and monitoring regime for retirement villages that keeps compliance costs to a minimum
 - c. to provide a way to introduce rules and procedures to give effect to the regime
 - d. to oversee the conditions in which operators enter the sector and run retirement villages
 - e. to create a secure environment for residents and protect their rights
 - f. to provide the Registrar and the Retirement Commissioner with powers, functions, and duties relating to the Act.

Protections in the Act

8. The Act protects the interests of residents and intending residents through:
 - a. compulsory registration of each retirement village
 - b. appointment of a statutory supervisor to oversee that the operations of each registered retirement village are lawful
 - c. registration of a memorial against the title to all of the retirement village land, ensuring the village cannot be wound up without consent of the residents
 - d. requiring the operator and a resident to enter into a detailed occupation right agreement spelling out each party's rights and obligations
 - e. requiring a detailed disclosure regime and mandatory independent legal advice for all intending residents before they sign an occupation right agreement
 - f. providing a Code of Practice establishing minimum operating standards for every village
 - g. providing a Code of Residents' Rights with minimum rights of every resident
 - h. establishing an extensive two-tiered complaints and disputes resolution scheme.

Why we are reviewing the Retirement Villages Act 2003

Te Ara Ahunga Ora — Retirement Commission reports and recommendations

9. In 2020 the Te Ara Ahunga Ora — Retirement Commission (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.⁷
10. 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.⁸ The Retirement Commission called for the government to undertake a full review of the legislative framework.

7 Te Ara Ahunga Ora: Retirement Commission, *White Paper: Retirement Villages Legislative Framework: Assessment and Options for Change*, 2020, <https://assets.retirement.govt.nz/public/Uploads/Retirement-Villages/Documents-and-white-papers/CFFC-RV-whitepaper-2020-Final.pdf>

8 Te Ara Ahunga Ora: Retirement Commission, *Retirement Villages Legislative Framework: Assessment and Options for Change Submissions Summary and Recommendations*, 2021, <https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/Legal-framework-report-2021/RC-RV-White-Paper-Report-2021-.pdf>

11. Concerns identified for the 'moving in' phase related to the purchase process and legal documentation. Themes raised in submissions included that legal documents need to be simplified, disclosure documents did not seem to be binding on operators, and residents were forced to accept occupation right agreement (ORA) terms that were potentially unfair.
12. In the 'living in' phase, a key issue was residents paying to repair and maintain operator-owned chattels. Other issues raised included the need for a simpler complaints system that accounted for the imbalance in the resident-operator relationship, the financial implications of transferring between units or into aged residential care, and the number of different government entities with a role under the legislation.
13. Many of the key concerns raised in submissions related to the 'moving out' of a retirement village phase. The main themes related to the process and timeframe for repaying capital sums, the treatment of capital gains and fixed deductions (often known as deferred management fees) and continuing to charge fees after a resident has moved out.
14. The Submissions summary and recommendations report confirmed many issues remain unresolved and problematic. The Retirement Commission commented:

“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 then and projections are for further significant growth. Other than some revisions to the code, no review has been conducted to assess whether the balance of power between operator and consumer is appropriate. We therefore recommend that a full review of the legislative framework is carried out as a matter of urgency.”

Contracts need to be fair and clear for both parties

15. Over recent years, consumer protection issues have been raised by resident advocates, Consumer NZ and in Parliamentary enquiries. Given the increasing vulnerability of residents as they age, it is appropriate to assess whether legal protections for residents and intending residents are strong enough. There are a number of reasons why this assessment is important:
- a. The retirement villages legislative framework is complicated. The number, length and complexity of the documents that residents and their families need to read and understand before buying into a retirement village can be overwhelming, and key terms can get 'buried'. This is despite the requirement that residents obtain legal advice before signing an ORA.
 - b. Residents have little negotiating power when entering into an ORA. While in theory ORAs are negotiable contracts between parties, in reality they are largely offered on a 'take it or leave it' basis, meaning that prospective residents have little choice or ability to negotiate the terms of their occupancy. When legal documents are difficult to understand, it is hard to spot potentially unfair terms or compare villages.
 - c. Many residents choose a retirement village for the continuum of care it offers – the ability to move from independent living to aged residential care within the village should it be required in the future. Residents may have expectations that transitions will be seamless, but this can depend on whether a suitable room is available. The interface between the retirement village and aged residential care regimes lacks clarity and is difficult to understand and navigate not only for residents, intending residents and their families, but also for the wider sector, including legal advisers, social service agencies, and health providers.
 - d. Once in a retirement village, residents have less financial agency and mobility. If they are unhappy at their village or unable to have a dispute satisfactorily resolved, residents cannot easily move out, because of the significant upheaval of moving and the financial cost of terminating their ORA. With the value of their capital significantly reduced, residents have less ability to buy into another village or a property elsewhere.

Legislation needs to be able to respond to changing context

16. Reviewing legislation over time is good practice to ensure it remains fit for purpose and can respond to a changing context. Since the Act was introduced, the retirement village sector has grown substantially. Between 2012 and 2021 there has been:
 - a 24 percent increase in villages, from 343 to 425
 - a 65 percent increase in unit numbers, from 21,815 to over 36,000.⁹
17. New Zealand's older population is also increasing. The number of New Zealanders aged over 75 is estimated to more than double by 2048 to over 800,000.¹⁰ The changing composition of our population will exacerbate existing challenges for our housing and urban systems, including provision of suitable homes for the diverse cultural and economic cohorts within the older population. Increasingly, a larger proportion of people reaching retirement age are renting, or still have mortgages to pay on their homes.¹¹
18. It is important the legislative settings underpinning the retirement village industry can continue to enable growth, innovation, and consumer choice within the sector.

The sector needs to be able to respond to future demand

19. The retirement village sector plays an important role in meeting the housing needs of older New Zealanders and will need to respond to future demand as this population increases. Over 48,000 people currently live in retirement villages in New Zealand, and this is projected to grow to over 81,000 by 2033 (a 69 percent increase). On this basis, 24,413 new retirement village units will be required by 2033 to meet this demand.¹²

9 The increase in unit numbers compared to the overall increase in village numbers reflects that modern villages are generally large in scale and have intensified (JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>).

10 JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>.

11 Te Ara Ahunga Ora – Retirement Commission, 2022 Review of Retirement Income Policies, [RRIP_2022.pdf \(retirement.govt.nz\)](#); Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, Long Term Insights Briefing 2023, <https://www.hud.govt.nz/assets/Uploads/Documents/Long-term-Insights-Briefing/Long-term-Insights-Briefing-2023-PDF-version.pdf>.

12 JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>.

Scope and objectives of the review

20. The scope of the review announced by the Ministry in December 2022 is substantial, given the size and complexity of the Act and regulations. The scope covers most of the issues raised in Retirement Commission reports as well as issues raised by sector stakeholders.
21. This review considers whether the Act, its regulations and its codes remain fit for purpose to ensure:
 - a. adequate consumer protections to residents and intending residents of retirement villages
 - b. an effective balance between the rights and responsibilities of residents and operators of retirement villages
 - c. the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice
 - d. the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights.

Proposals would take effect through legislative changes

22. Where we consider the legislative regime is not meeting these objectives, we have proposed changes to provide better outcomes. These changes would be given effect through amendments to the Act, regulations, and codes. The main proposals on which we seek feedback relate to the three main stages of retirement village living: moving in, living in, and moving out. On other general topics we seek feedback on proposals or information to inform further policy work.
23. Not all the above objectives are relevant to all proposals, and sometimes the objectives overlap. For example, where we consider consumer protections for residents should be strengthened, this may require a re-balancing of the rights and responsibilities of residents and operators. For the main proposals, this document uses different criteria to assess whether the proposals would achieve the relevant objectives. For some proposals, we have considered whether they may affect small, not-for-profit, or rural villages differently.

Some matters touch on retirement villages but are not in scope of the review

24. The review does not cover the following:
- a. Wider systemic issues in the aged residential care sector. The aged residential care sector is administered by health agencies under the Residential Care and Disability Support Services Act 2018, and issues such as staffing levels and increased aged residential care costs are therefore not within the scope of the retirement villages legislative framework.
 - b. Solutions to address Māori housing needs for older people, including kaumātua housing.
 - c. The Commerce Commission investigation into complaints it has received. The complaints allege breaches by retirement villages operators of certain Fair Trading Act 1986 provisions including the unfair contract term provision.

Potential impact of proposals

25. We are interested in views on the impact of the proposed changes, by themselves and collectively, on those within the retirement village sector such as operators, residents, intending residents, residents' families, advising lawyers, statutory supervisors, and the Registrar. These impacts could be quantifiable or non-quantifiable costs and benefits, for example, financial costs, legal costs, more efficient processes, greater clarity, or increased wellbeing.
26. Most of the financial costs of the proposed changes would fall on operators, particularly in the short-to-medium-term. Operators have been clear that any changes to financial exit matters, and in particular a mandatory repayment time period would impact their business model.
27. We are interested in the impact of proposals on smaller, not-for-profit or rural villages, and whether there might be a need to treat these types of villages differently. Larger operators typically have bigger cash reserves to draw from than smaller operators. Smaller operators may be more constrained in their ability to access capital, particularly in market downturns, and may be disproportionately affected by some of the proposals, such as those related to financial exit matters in the 'Moving out' section of this document.
28. Cost-benefit analysis has been undertaken for two sets of proposals: those related to the complaints and disputes resolution scheme, and those related to financial exit matters.¹³ While fiscal costs have been calculated it has been difficult to quantify many of the benefits such as reduced stress and greater certainty for residents and their families. If required, further cost benefit analysis will be undertaken on other proposals later, based on the outcome of consultation and submissions received.

13 MartinJenkins, *Costs and benefits of proposed changes to the Retirement Villages Act 2003*, July 2023, <https://www.hud.govt.nz/our-work/retirement-villages-act-regulations-and-codes/>.

Relevance of proposals for Māori

29. The Ministry is committed to honouring Te Tiriti o Waitangi. Te Maihi o te Whare Māori – the Māori and Iwi Housing Innovation Framework for Action (MAIHI) is our system wide response to achieving Māori housing aspirations. Critically, it places whānau Māori at the heart of developing solutions for Māori, by Māori.
30. While there is limited information available, we understand that relatively few Māori reside in retirement villages. A legacy of land dispossession and cultural alienation means Māori are more likely to rent their homes, and less likely to have sufficient assets and income 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 75.¹⁴ Importantly, retirement villages may not fit with the aspirations of many Māori to live alongside whānau, within their community, or on land with ancestral or cultural significance.
31. As such, many of the solutions to address Māori housing needs for older people sit outside the scope of this review. We understand that dedicated efforts in the right areas coupled with sufficient resourcing are the best way to achieve Māori housing aspirations. For example, kaumātua flats and papakāinga offer many of the features of retirement villages (connection, security, engagement) with added benefits of being amongst mixed age groups with whom to pass on knowledge and share experiences, and without the significant capital sum required for entry into a retirement village. Within the context of this review, ensuring Māori retain the authority and agency to achieve their own housing aspirations is of primary consideration.
32. Given the diversity within population groups, we know that retirement village living will meet the needs of some Māori. If you are Māori and are in a retirement village now, or see yourself in one in the future, or there are other ways in which a retirement village impacts you or your whānau, we want to hear from you. Gathering knowledge on the experiences and aspirations of Māori in relation to retirement villages will be critical to informing what we should consider in the review and the implications of any changes.

14 Average life expectancy at birth based on death rates at 2017-2019 were 73.4 for Māori males, 77.1 for Māori females, 75.4 for Pacific males 75.4, and 79 for Pacific 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/>.

Next steps – submissions analysis and potential law changes

33. After the consultation period closes on 20 November 2023, we will analyse the submissions we receive and provide advice to the responsible Minister. Depending on the feedback we get, there may be further consultation on the detail of any proposed changes.
34. The Minister may then seek policy decisions from Cabinet to amend the Act, and a Bill would be drafted and introduced to Parliament.
35. Once a Bill is introduced to Parliament and it passes its first reading, it is referred to a Select Committee for consideration. At that stage, sector organisations, operators, residents and the public will have another opportunity to comment on the proposed law changes.

Implementing any changes

36. If the proposed changes are adopted and implemented through legislation, there will be a transition period between when the legislation is passed (or regulations are made) and when the various changes take effect. This is to allow the sector time to adjust to the new laws. Where relevant, we have set out a suggested implementation period for each of the proposals in this document.

Tell us what you think

QUESTIONS ON THE OVERVIEW OF THE REVIEW

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

Q.1	Do you agree with the scope and objectives of the review? Why/why not?
Q.2	Do you have any comments on how the proposed changes, by themselves and collectively, might affect different parts of the sector (such as different types of villages, residents and other stakeholders)?
Q.3	Do you have any information you could share on Māori interests in and experiences of retirement villages that we should take into account in the review?

Part B – Moving In

37. This section covers the phase before a resident moves into a retirement village. At this stage, a prospective resident (called an ‘intending’ resident in the Act) is provided with a package of documents setting out the terms, conditions, costs, services and facilities offered by the village. These documents are a disclosure statement, an occupation right agreement (ORA), the Code of Practice, and the Code of Residents’ Rights. Intending residents must get independent legal advice before signing an ORA.

Disclosure statements

38. The purpose of a disclosure statement is to set out the main terms of an offer for an intending resident to buy into a retirement village. Disclosure requirements are a key feature of the retirement villages regime, designed to protect the interests of residents and intending residents. Therefore, it is important that this regime is effective.
39. The Act requires operators to provide intending residents with a disclosure statement before they can sign an ORA. A disclosure statement is included in the definition of “advertisement” in the Act, and it is an offence if it is misleading or deceptive. A resident, a statutory supervisor, or the Registrar can take proceedings against an operator if they believe a disclosure statement is misleading or deceptive and the court can order a remedy, such as prohibiting the advertisement, ordering a correction, payment of compensation, or requiring specific services to be provided. Where a registered document is likely to be misleading, the Registrar can exercise a power to suspend registration of a village. Operators must also meet obligations under the Fair Trading Act 1986.
40. A substantial amount of information is required to be included in a disclosure statement. The required information is set out in the Act, the General Regulations, and the Code of Practice. This information includes the state of the village, services and facilities offered, charges and billing, who the statutory supervisors are, maintenance responsibilities, the estimated financial return to the resident if they were to sell or dispose of a unit, and moving into rest home or hospital care within the village.

Problems with the disclosure regime

Disclosure statements are hard to understand and access

41. Disclosure statements are not easy to understand because they are often long, complicated, and legalistic, and this also makes it hard to compare like-for-like across villages. They are not readily available to intending residents on retirement village websites and electronic versions are often not in a searchable format. The Retirement Commission and the Retirement Villages Residents’ Association have commented on the length and complexity of disclosure statements and ORAs and called for them to be simplified and standardised where possible.

There is too much information, the wrong kind of information, and duplication

42. Some of the information included in disclosure statements, which might be relevant to investment products, may not be relevant or useful to residents, as buying a retirement village unit or the right to occupy a unit is not an investment in the usual sense. This includes, for example, details relating to preparation, auditing, and disclosure of financial accounts.
43. At the same time, some information residents might find helpful is missing, for example the different types of care facilities offered and the number of rooms available for each type of aged residential care facility. Other information which might be valuable to know is how much the total cost (including regular outgoings/weekly fees) to a resident would be to live in a retirement village for a period of time, for example one year, three years, and seven years.
44. There is some information which is duplicated in both the disclosure statement and the ORA, for example the requirement for an operator to give a copy of audited financial statements to a resident on request.

Undertakings in disclosure statements and advertisements can be hard to enforce

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

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING THE DISCLOSURE REGIME PROPOSALS
Adequate consumer protections for residents and intending residents of retirement villages.	<p>Disclosure documents should:</p> <ul style="list-style-type: none"> ▪ be clear and easy to understand (including by being not too long) ▪ make it easy to compare the terms of different villages ▪ have all relevant information included ▪ not overlap too much or be inconsistent with other documents. <p>Retirement villages disclosure documents and advertisements should:</p> <ul style="list-style-type: none"> ▪ be able to be relied on ▪ not mislead or confuse.
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	<p>Proposals should:</p> <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ not stifle competition ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.

Changes we are proposing to the disclosure regime

Introducing shorter and simpler disclosure documents

46. To address the problems with the disclosure regime we propose replacing the current requirements for disclosure statements with prescribed new shorter disclosure documents. We are proposing two options, as below.

Option 1 – A Village Comparison and Retirement Village Information Statement (two documents)

47. Under this option, the purpose of the **Village Comparison** would be to provide key terms about a retirement village, including fees and costs associated with living in the village, along with aged residential care options, so that residents can easily compare these key terms with other villages. This is based on the ‘Summary of Key Terms’ form, which the Retirement Villages Association has provided to the sector to use for a similar purpose.
48. The Village Comparison would be in an approved (standardised) form, of no more than three pages. ‘Approved form’ means that the chief executive of the responsible government department would approve the form for use by the sector.
49. We have developed a Village Comparison template which sets out the proposed content to be included by an operator. This is in [Appendix 1](#).

50. The purpose of the **Retirement Village Information Statement** (Information Statement) would be to disclose general information about the village and the way it is managed to a resident prior to them taking the next step and considering an ORA.
51. We propose that the headings/questions and their order for the Information Statement would be prescribed in regulations (a standardised format). In addition, the Information Statement would be required to be:
 - a. no more than twelve pages long with no more than 5,000 words, and
 - b. drafted in plain language (writing that is clear, concise, and well-organised).
52. We have developed an Information Statement template which sets out the proposed form and content to be included by an operator. This is in [Appendix 2](#).
53. The idea for having two prescribed and shorter disclosure documents comes from the New South Wales retirement villages legislative regime¹⁵ and the product disclosure statement regime under the Financial Markets Conduct Act 2013 and Financial Markets Conduct Regulations 2014.¹⁶

Option 2 – A new shorter Disclosure Statement (one document)

54. Under this option, there would only be one **Disclosure Statement** which would include the same information proposed for both the Village Comparison and Information Statement above. We have developed a new Disclosure Statement template which sets out the proposed form and content to be included by an operator. This is in [Appendix 3](#).
55. Like the documents proposed under option 1, the headings/questions and their order for the new Disclosure Statement would be prescribed in regulations (a standardised format). In addition, the new Disclosure Statement would be required to be:
 - a. no more than fifteen pages long with no more than 6,000 words, and
 - b. drafted in plain language (writing that is clear, concise, and well-organised).

¹⁵ Under the New South Wales Retirement Villages Act 1999, operators have obligations related to providing prospective residents with a ‘general inquiry’ document in a prescribed form (which has a basic explanation of the residential premises, services and facilities available within a retirement village) and a disclosure statement, also in a prescribed form (with specific details of the village, including fees and charges).

¹⁶ Under the Financial Markets Conduct Regulations 2014, product disclosure statements must be easily readable, contain a key information summary, and comply with prescribed page and word lengths.

Requirements which would apply to both options

56. The following elements would apply to both option 1 and option 2:
- a. Operators would be required to provide these documents to a resident before they consider the village's ORA.
 - b. The content requirements for the new documents would be prescribed in regulations, rather than across the Act, the Code of Practice, and regulations.
 - c. Electronic versions of the new documents would be required to be in a searchable format and published on the village's website in a prominent place.
57. In [Part C](#) we discuss the interaction between the retirement village and aged residential care sectors, and proposed additional aged residential care information requirements for disclosure documents.

Improved regulatory tools for dealing with false, misleading, or confusing statements

58. We propose changes to the Act to improve how false and misleading statements are dealt with. Firstly, we propose making it easier for residents to make a complaint against an operator (or its agent) for making a misleading or false statement, either verbally or in writing, to an intending resident. This would mean that if an operator or their salesperson made a statement either verbally to a resident or in writing in a disclosure document that did not eventuate, then a resident who relied on that statement would be able to make a complaint or take a dispute against the operator through the retirement villages disputes resolution regime.¹⁷
59. Secondly, we are also seeking feedback on whether we should strengthen or amend the power of the Registrar to take action against an operator if they consider that a registered document or advertisement is likely to mislead or confuse. For example, the Registrar could direct an operator not to publish an advertisement or registered document that is likely to mislead or confuse. This could be a similar power to that of the Financial Markets Authority to make stop orders.¹⁸ The power is intended to complement the existing powers of the Registrar and statutory supervisors in the Act.¹⁹

¹⁷ This proposal is intended to complement the existing obligation and associated offence in sections 26 and 79 of the Act.

¹⁸ The FMA may issue a stop order if it is satisfied that certain documents are false or misleading or likely to mislead or confuse. See Financial Markets Conduct Act 2013, s 462.

¹⁹ For example, the Registrar may suspend the registration of any retirement village if they consider that a registered document is likely to mislead or deceive. The statutory supervisor can also direct an operator not to publish or distribute an advertisement that they consider is inconsistent with the legislation, the disclosure statement or ORA.

Where there is inconsistency between documents, information should be interpreted in favour of the resident

60. We propose amending the Act to say that if a term in an ORA is inconsistent with the information contained in a disclosure document, to the detriment of the resident, the term should be interpreted (as far as is practicable) in favour of the resident.
61. If there is a dispute between a resident and the operator of the village as to whether there is an inconsistency, the resident would be able to apply to the retirement villages disputes resolution scheme for an order determining the dispute.

How would these changes meet our objectives?

62. The proposed changes would increase consumer protections for residents and intending residents by reducing legalistic language, simplifying documents, and making them easier to understand. The ability for residents to enforce undertakings made in disclosure documents and advertisements, or to claim compensation if they do not eventuate, would be strengthened.
63. We do not think the changes would affect the ongoing viability of the retirement village sector and its ability to provide consumer choice: operators could continue offering and advertising the unique terms and conditions of their village services and facilities, but they would have to set this information out in a clearer and more standardised way. The new regime would make it easier for the industry, residents, and residents' families to compare the terms of different villages.
64. Over time, both options should reduce costs for operators because the documents would be more straightforward to draft. Cost reductions and efficiencies may be greater for smaller and not-for-profit villages who have less legal resource at their disposal for drafting legal documents.
65. Under option 1, residents would be able to compare retirement villages more easily (through the Village Comparison document) than option 2. However, option 2 has the advantage of having all initial key information in one document and minimising the potential for repetition and inconsistency of information, as some of the same information may be required for both the Village Comparison and the Information Statement.

Transition to new arrangements

66. We propose a transition period of one year from the time the legislation is changed to when the new documents must be used. This is to allow time for the sector to adjust to the new rules and for operators to update their systems and develop documents to comply with the new disclosure regime.
67. During the transition period, operators would be able to use their existing disclosure statements while they migrate to the new prescribed format. After the transition period, operators would only be able to use and register documents that comply with the new prescribed format for disclosure documents.
68. The Ministry would work with the sector to monitor how the changeover is managed.

Interaction with other proposals

69. Proposals for disclosure statements have links to other topics in this discussion paper:
- [Occupation right agreements](#)
 - [Moving from retirement village living into aged residential care](#)
 - [Offences and Penalties](#)

Tell us what you think

QUESTIONS ON THE DISCLOSURE REGIME PROPOSALS	
These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.	
Q.4	<p>Which of the proposed options for new disclosure documents do you agree with?</p> <ul style="list-style-type: none"> ▪ Option 1 – Two documents: A Village Comparison and Information Statement ▪ Option 2 – A new shorter Disclosure Statement ▪ Neither of these <p>Please give reasons for your answer, including any alternative suggestions about how the issues with disclosure documents could be addressed.</p>
Q.5	<p>Is any information missing from the proposed documents? (Appendix 1, Appendix 2, Appendix 3) If yes, please tell us what this is.</p>
Q.6	<p>Would the proposals to deal with false and misleading statements and inconsistency between a disclosure document and an ORA address the issues we have outlined?</p> <p>Please give reasons for your answer, including any alternative suggestions about how these issues could be addressed.</p>
Q.7	<p>Please add any other suggestions you have for improving the retirement villages disclosure regime.</p>

Occupation right agreements

70. An ORA is a signed written contract between an operator and resident that gives a resident the right to occupy a unit in a retirement village. It sets out the rights and obligations of each party.
71. The definition of an ORA is broad, which means it can cover a variety of ownership and occupation arrangements, such as unit titles, cross-lease titles, and licences to occupy. In practice, most retirement village units, approximately 95 percent, are sold under a 'licence to occupy' agreement. This means residents buy the right to live in their unit until termination of the agreement, but do not own their home outright. For a licence to occupy agreement, only one contract - the ORA - is required. For other ownership models, other documents may be required such as body corporate rules.

What needs to be included in an ORA

72. The information required in an ORA is set out in the Act, the General Regulations, and the Code of Practice. Important terms include the ORA termination process, entry payment, weekly fees, and other costs, including the fixed deduction when the unit is vacated.²⁰ Other details include the operators' duties to run the village properly, provide financial statements, and call meetings.
73. The Act has some protections for residents, reflecting the complex nature of ORAs and the importance of the financial decision to purchase an ORA. These protections include:
 - a. a requirement that an intending resident must get independent legal advice before signing an ORA
 - b. a mandatory 'cooling-off period' of 15 days after signing an ORA (during which a resident can cancel and receive a full refund of any fees paid) and
 - c. a right for a resident to cancel if the unit is not finished within six months of the proposed date for completion or in certain circumstances (e.g., if resident does not receive all the documents required).

²⁰ When the unit is vacated, residents, or their estate, pay a fixed deduction fee (often called a 'deferred management fee') which goes towards the capital costs of the village (for further development, upgrade works etc.). For residents with a licence to occupy, the fixed deduction fee is typically between 20 – 30 percent of their capital sum, depending on how long they have lived in the village.

Problems with occupation right agreements

ORAs can be complex, long, and difficult to understand

74. Some ORAs are clear and simple to understand. However, many are not, containing complex and legalistic clauses and terms. This is contrary to the aim of the Act, that the regime should be ‘readily understandable’. ORAs across the sector also use different terms for the same condition, even if the substance of the condition is the same (e.g., ‘licence to occupy’ is explained in many different ways).
75. The length and structure of ORAs varies. Most are long (up to 50 or more pages) and some important terms, such as the financial terms, are obscured by other prescribed, but less important, details. Operators also give different terms prominence. For example, some put the cooling-off provision or the key terms and definitions at the start of the ORA, while others have these as an attachment at the end. As a result, an intending resident may not be aware of key terms of their contract, such as what their ownership rights are.
76. The varied length, complexity, and layout of some ORAs makes it challenging for lawyers to convey the information to intending residents in a succinct manner. It is also harder to explain or translate into other languages for residents whose first language is not English.

ORAs can duplicate information

77. Some of the same information is required in ORAs, disclosure statements, and in the Code of Practice. Sometimes the legislation prescribes more detail on a subject in a disclosure statement, compared to what must be included on the same subject in an ORA, so there is potential for inconsistency.²¹ Duplication can cause confusion as to the rights and obligations parties have under the ORA, and which document is enforceable.

ORAs are generally not negotiable, and can contain unfair terms

78. While in theory ORAs are negotiable contracts between the parties, in practice they are largely presented by operators to intending residents as a set contract and offered on a ‘take it or leave it’ basis. An intending resident must get legal advice to understand the terms of the contract but not with the intention of having the ability to negotiate any key terms of the contract.²²
79. We have seen many ORAs that appear to have fair and reasonable terms, but we have also come across terms in some ORAs that are arguably unfair to the resident. This includes, for example, terms which require a resident to allow a village representative to enter their home

21 For example, the following information is duplicated in both the disclosure statements and ORAs: type of interests, rights and responsibilities a resident has in relation to their unit; rights of operators on sale of the unit; and charges.

22 Under the Fair Trading Act 1986, a court can determine a consumer contract to be a ‘standard form contract’ if there is little or no opportunity for a customer to negotiate the terms of the contract with the business owner. The Fair Trading Act 1986 prohibits the use of unfair contract terms in standard form consumer contracts. The Commerce Commission has published guidance identifying the retirement village sector as one that uses standard form consumer contracts.

with no or very little notice, or which allow operators to let new residents occupy a unit before they have repaid the outgoing resident's capital sum. We have also identified other terms which may breach privacy rights by requiring access to a resident's personal health information directly from health agencies.

80. Consumer NZ has also looked into and reported on the issue of unfair terms contained in ORAs. Because some ORAs are long and difficult to understand, it is hard to spot potentially unfair terms. In other parts of this paper, we discuss terms that raise fairness issues, such as who should be responsible for maintaining and repairing operator-owned chattels and fixtures (Part C) and when operators should stop charging weekly fees after a unit is vacated (Part D). The legislation currently allows operators to charge residents for maintenance, repair and replacement of chattels they do not own and for charging weekly fees (or a proportion of weekly fees) after a unit is vacated.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING ORA PROPOSALS
Adequate consumer protections for residents and intending residents of retirement villages.	ORAs should: <ul style="list-style-type: none"> ▪ be easy to read and understand ▪ have clear and consistent terminology ▪ minimise repetition of information ▪ allow flexibility and choice for residents.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	ORAs should: <ul style="list-style-type: none"> ▪ not be able to include unfair terms ▪ protect the privacy of residents.
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	Proposals should: <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ allow operators flexibility to offer choice and be competitive ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.
Ensure appropriately defined rights and responsibilities of residents and operators, including where they may differ for different occupancy rights.	ORA proposals should improve clarity of the rights and responsibilities of each party in relation to different occupancy rights, where relevant.

Changes we are proposing to ORAs

Introducing a partially standardised ORA

81. To address the problems with ORAs, we propose introducing a partially standardised ORA which could contain elements that need to be consistent across ORAs, but would still allow operators the flexibility to offer unique terms reflecting the bespoke nature of their facilities, services, and various ownership models. We are proposing two options, as below.

Option 1 – Standardised format only

82. Under this option, the format of an ORA would be standardised and prescribed, including topic headings and the order of the headings, and operators would fill in the content. Terms and information to be included in an ORA would be grouped under topic headings to assist operators when drafting ORAs. The headings would be written in plain language to make the ORA clear and easy to understand. We have developed an example of a standardised format for an ORA. This is in [Appendix 4](#).

83. The format is structured to provide information and terms in a consistent and logical way for intending residents to follow and understand. For example, more prominent issues are at the beginning and schedules, the lawyer’s certificate, and the signature section at the end. A section for bespoke terms is proposed to be placed after the required terms (called ‘Additional terms’). It would be up to operators to draft the content of the terms themselves. If you agree with this option, we seek feedback on the proposed standardised format.

Option 2 – Standardised format and some terms

84. Under this option, the format (as in option 1 above) and some of the exact text of the terms and information to be included in an ORA would be standardised. This means operators would essentially ‘copy and paste’ some terms into their ORAs.²³ We have developed a table that sets out examples of which terms we think can, could, and cannot be standardised. This is in [Appendix 5](#).

85. Terms which we think can be standardised are those which are either common to the sector (for example, definitions of standard terms such as ‘licence to occupy’), or those which are essentially minimum standards or obligations mandated by the Act. Terms which we think cannot be standardised are those which are specific to the agreement, for example the financial arrangements between the resident and operator. If you agree with this option, we seek feedback on both the format and which terms and information should be standardised in ORAs.

86. Under option 2, operators and residents could continue to negotiate terms which are enhanced or additional rights above those in the standardised content. For example, they could extend the ‘cooling off’ period from 15 days to a longer period such as 90 days.

²³ An example of existing ‘copy and paste terms’ is the “Form of statement of information for intending residents” in Schedule 4 of the Retirement Villages (General) Regulations 2006.

Requirements which would apply to both options

87. Under both options:
- a. the information required to be included in an ORA would be prescribed in regulations rather than the Act and the Code of Practice
 - b. ORAs would be required to be drafted in plain language
 - c. electronic versions of ORAs would be required to be in a searchable format
 - d. operators could include bespoke contractual terms, such as financial terms, services, or requirements specific to the resident
 - e. residents would be able to negotiate terms above the minimum prescribed or standard terms in the ORA.
88. Only one of the proposed options would be introduced. Both options should be adaptable for use by all types of operators, from small, independent, and not-for-profit villages to large commercial villages.
89. In Part C we discuss the interaction between the retirement village and aged residential care sectors, and proposed additional aged residential care information requirements for ORAs.

Power to declare certain terms unfair

90. The Fair Trading Act 1986 applies to the retirement village industry. The Commerce Commission is currently undertaking an investigation into potential breaches of the Fair Trading Act 1986, following complaints about misleading advertising and alleged unfair contract terms in ORAs.²⁴
91. It is not clear whether the remedies under the Fair Trading Act 1986 in respect of 'unfair contract terms' are sufficient for retirement village ORAs. Accordingly, we are seeking feedback on whether a specific power to declare a term unfair should be included in the Act or regulations. This power could be held by the Court or a regulatory body with relevant expertise, such as the improved dispute scheme (discussed in Part C). A term could be considered unfair where it:
- a. causes a significant imbalance in the parties' rights and obligations under an ORA
 - b. is not reasonably necessary to protect the legitimate interests of the party that would be favoured by the term
 - c. would cause detriment to a party if it were applied.
92. Terms declared unfair would be void and unenforceable. This power would be over and above any remedies in the Fair Trading Act 1986.

²⁴ The Commerce Commission can apply to the Court for a declaration that a term in a standard form consumer contract is an unfair contract term. If a term is declared to be unfair, a person cannot include it in a standard form contract and cannot apply, enforce or rely on the unfair contract term. For a term to be declared unfair it must meet the requirements set out in the Fair Trading Act 1986.

How would these changes meet our objectives?

93. Both options for standardising ORAs mean ORAs would be clearly structured in plain language, which should:
 - a. reduce length and repetition of information
 - b. make it easier for intending residents to read and understand ORAs and be better informed of their rights and responsibilities
 - c. assist the role of lawyers in explaining ORAs to intending residents
 - d. assist organisations which translate ORAs into languages other than English, making it easier for non-English speaking residents to read and understand their rights before they sign an ORA.
94. Because some terms would be standardised as well as the layout under option 2, the rights and responsibilities of residents and operators would be very clearly defined and enhance residents' understanding more than option 1. This means intending residents could compare different village contracts more easily and potentially negotiate different or better terms with operators. It would be easier to spot and address terms which are arguably unfair. Option 2 has the potential to better enhance consumer protection for residents and intending residents.
95. Both options would continue to ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice, as operators would not be constrained in their ability to offer unique housing options, facilities, services, and other terms. However, operators may consider option 2 restrictive in the way terms are articulated, and for this reason prefer option 1.
96. While there may be initial costs for operators in transitioning to the new format, over time the use of standardised ORAs should create efficiencies and therefore reduce costs for operators. This is especially the case for option 2, as there would be less content to be drafted.
97. We are not proposing fully standardising all the terms in an ORA as each operator would have different financial arrangements. ORAs are commercial contracts so it would not be appropriate to fully standardise contracts in the retirement villages sector. This approach would be overly restrictive for the sector, and not allow for commercial flexibility or innovation. Operators and residents need to be able to negotiate terms freely.
98. The proposal to declare a term in an ORA unfair (and be unenforceable) would strengthen consumer protections for residents and result in a more effective balance between the rights and responsibilities of residents and operators.

We are also considering privacy issues

99. Privacy concerns can be heightened in situations where people face a power imbalance. We have come across some ORAs which require access to a resident's personal health information directly from health agencies. This may be contrary to the principles of the Privacy Act 2020 and could indicate broader privacy concerns about how information is collected and used by operators. Due consideration needs to be given to whether terms written in ORAs are consistent with residents' right to privacy.
100. In addition, a separate set of rules applies to aged residential care facilities such as rest homes. The Health Information Privacy Code 2020 sets out specific rules for agencies in the health sector covering how health information is collected, used, held and disclosed by health agencies.
101. We think having clear protections about what terms can be included in an ORA and a structured and logical format would address concerns about privacy by making it clear what terms can and cannot be included. We are seeking feedback on whether additional measures are needed to address privacy concerns arising from terms in ORAs. For example, ORAs could contain a statement the Privacy Act 2020 applies to any personal information held by operators.

We seek views on whether conveyancers should be able to advise on ORAs

102. Intending residents may consider seeking legal advice from other legal professionals, such as conveyancers. Under the Lawyers and Conveyancers Act 2006, a conveyancer is a person who is not a lawyer or a person acting under the supervision of a lawyer, and who provides conveyancing services. Conveyancing includes legal work to create, vary, transfer, or cancel a property interest or right. We seek feedback on whether conveyancers should also be able to provide legal advice to intending residents on ORAs (as well as lawyers).

Transition to new arrangements

103. We propose that if implemented, new ORA requirements (either option 1 or 2) would only apply to ORAs for future residents following legislative changes. We propose a transition period of one year from the time the legislation is changed to the changes commencing. This is to allow time for the sector to adjust to the new rules and for operators to update their systems and develop documents to comply with the new ORA requirements.
104. During the transition period, operators would be able to use their existing ORAs before they migrate to the new regime for ORAs. After the transition period, operators would only be able to use and register documents that comply with the new prescribed format. The Ministry would work with the sector to monitor how the changeover is managed.
105. The Ministry may need to consider the outcome of the Commerce Commission's investigation into unfair terms if option 2 is adopted.

Interaction with other proposals

106. Proposals for ORAs are linked to other topics in this discussion paper:

- [Disclosure statements](#)
- [Maintenance for operator-owned chattels and fixtures](#)
- [Moving from retirement village living into aged residential care](#)
- [Stopping outgoings and other fees](#)
- [Treatment of capital gains/losses](#)

Tell us what you think

QUESTIONS ON ORAS	
Q.8	<p>Which of the proposed options for standardising ORAs do you agree with?</p> <ul style="list-style-type: none"> ▪ Option 1 - Standardising the format (i.e., the headings and layout) ▪ Option 2 - Standardising both the format and some of the terms ▪ Neither of these <p>Please give us your reasons, including any suggestions for how the issues with ORAs could be addressed.</p>
Q.9	<p>Which terms <u>should</u> be standardised in ORAs, and which terms <u>should not</u> be standardised? Please give us your reasons.</p>
Q.10	<p>Are there certain types of retirement villages that the proposed standardised format would not work for? Please give us your reasons.</p>
Q.11	<p>Are there terms currently included in ORAs that could be considered unfair to residents? If yes, what are they and why are they unfair?</p>
Q.12	<p>Should a specific power be included in the Act to declare certain terms in ORAs to be unfair? If yes, who or which body should hold this power?</p>
Q.13	<p>Are there any ORA terms which may breach a resident's privacy? If yes, what are they and what additional measures are required to address potential privacy breaches?</p>
Q.14	<p>Should conveyancers be able to provide intending residents with legal advice on ORAs? Please give us your reasons.</p>

Part C – Living in

107. This section covers the time a resident is living in a retirement village. While many residents report high satisfaction levels, concerns have been raised about the fairness of current practices relating to the maintenance and repair of chattels and fixtures, the suitability of the complaint and dispute resolution scheme, and clarity about the continuum of care for residents transferring from independent living into aged residential care.

Maintenance of operator-owned chattels and fixtures

108. A large majority of residents in retirement villages (95 percent) purchase a ‘licence to occupy’. This means they pay a capital sum to occupy or live in their unit, but do not own it. When a resident moves into a unit, it will come with fixtures such as carpet and light fittings, and some chattels such as the oven and fridge. The chattels provided vary between units and villages and are set out in the ORA.
109. Residents may be able to bring in other chattels and fixtures depending on the terms in the ORA. This section relates to ‘operator-owned’ chattels and fixtures, which are those chattels and fixtures that are provided and owned by the operator. This section does not apply to agreements where the resident owns the unit, such as unit titles.
110. The Code of Practice defines ‘retirement village property’ as ‘buildings, plant, and equipment that are owned by retirement village operators (including assets, amenities and utilities within the retirement village boundary).’ Operators are required to maintain property ‘in clean and safe working order, suitable for their intended use’. Operators must ensure they can afford to maintain village property, and report on how they propose to pay for the maintenance.
111. Maintenance obligations for unit chattels and fixtures are not specified in the legislative regime. Additionally, while the Code of Practice prescribes an obligation to maintain ‘retirement village property’, it does not explicitly state the operator is responsible for meeting these maintenance costs. This has led to operators setting the terms for maintenance and repair of chattels and fixtures in units, including who pays the direct costs of these through the ORA.

112. In some villages, operators pay upfront for repairs and maintenance of the unit chattels and fixtures they own.²⁵ In others, operators assign these costs to the resident as users of the property.²⁶ Some assign a mix of operator/resident responsibility depending on the chattel/fixture.²⁷ Common examples of operator-owned chattels and fixtures that residents are required to cover the cost of repairing or maintaining include range hoods, sink garbage disposal units, garage door openers, electric wiring to ceiling down lights, power elements and electrical fittings, and hot water cylinders.
113. The Retirement Village Residents' Association estimates around 40 percent of villages require residents to pay for repairs and maintenance of operator-owned chattels and fixtures beyond what they pay through weekly fees and fixed deductions.

Problems with the way operator-owned chattels and fixtures are managed

114. Because the legislation does not explicitly state who pays the direct costs of maintaining operator-owned chattels and fixtures, some residents are required to pay for maintenance and repairs to chattels and fixtures they do not own. Under the licence to occupy model, residents do not receive the benefits of ownership of the property, and most residents receive no share in capital gain when the property is sold.
115. This situation is specific to the 'licence to occupy' model. Under other models, such as the unit titles, residents pay for repairs and maintenance. However, as they also own the unit chattels and fixtures, they get the benefits of ownership.
116. Residents may be paying for repairs and maintenance of chattels and fixtures used by previous residents. Units are typically refurbished between residencies, but not all chattels and fixtures will need to be replaced and may not be new when the incoming resident moves in. Depending on the condition of the chattel or fixture at entry, chattels and fixtures may also need replacing during the time a resident lives in their unit.

25 For example, Village A covers the cost unless it is beyond fair wear and tear or relates to works requested by residents.

26 For example, Village B requires the resident to pay for the costs of all repairs, maintenance and replacements of the interior of the unit including the operator's chattels and fixtures.

27 For example, Village C requires the resident to pay the costs of maintaining and repairing the unit interior and some chattels and fixtures, but others are the operator's responsibility.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING MAINTENANCE OF OPERATOR-OWNED CHATTELS PROPOSALS
Adequate consumer protections for residents and intending residents of retirement villages.	<p>Proposals should ensure:</p> <ul style="list-style-type: none"> ▪ rights and responsibilities are clear and transparent ▪ residents have a clear understanding of the costs that will be incurred for the duration of their occupancy ▪ rights and responsibilities are fairly allocated, taking into account the benefits that accompany ownership ▪ rights and responsibilities are not in conflict with relevant established consumer protection standards.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	
Ensure appropriately defined rights and responsibilities of residents and operators, including where they may differ for different occupancy rights.	
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	<p>Proposals should:</p> <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.

Changes we are proposing for the maintenance of operator-owned chattels and fixtures

Clarify who is responsible for maintenance and repairs

117. To improve clarity for operators and residents, we propose to:
- a. amend the definition of ‘retirement village property’ under the Act to specifically include operator-owned unit chattels and fixtures; and
 - b. require operators to provide a list of operator-owned chattels and fixtures and the condition of these to intending residents.

Fair rules for maintenance, repairs, and wear and tear

118. To improve fairness, we propose to:
- a. assign responsibility in legislation for maintenance and repairs (including the direct cost of these) to the chattel/fixture owner, except where the resident or their guest causes intentional or careless damage or loss, in which case this is at the operator’s discretion and the resident may be held liable
 - b. clarify that marks due to use of mobility aids and incontinence are classified as ‘fair wear and tear’ given the target cohort of retirement villages and may be expected as part of usual use by residents
 - c. require operators to meet the cost of replacing or upgrading operator-owned unit chattels or fixtures when they wear out, or reach the end of their useful economic life, and a resident remains in the unit.
119. The combined effect of these changes would mean all residents under a ‘licence to occupy’ agreement would pay only for the direct costs of repairs and maintenance of chattels and fixtures they own, or where they cause intentional or careless damage to operator-owned chattels and fixtures.²⁸

²⁸ The approach aligns with that of the Residential Tenancies Act 1986, under which landlords are required to list chattels they provide in rental premises in the tenancy agreement, and to maintain premises in a reasonable state of repair. Tenants have limited liability for damage they carelessly cause to the landlord’s property.

How would these changes meet our objectives?

120. Collectively, these proposals would give residents greater certainty around the costs they would need to cover while in the village. This is a key factor for many residents in choosing retirement village life. The additional clarity these proposals provide over responsibilities, costs, and condition of chattels and fixtures at the beginning of the process would support residents to make an informed decision.
121. The proposals also address questions of fairness, as the costs of maintaining, upgrading, and repairing operator-owned chattels and fixtures would be met by the operator who has the benefits of ownership. They also align with other accommodation-related legislation such as the Residential Tenancies Act 1986. This means village residents are not unfairly disadvantaged and receive similar protections to others in comparable situations.
122. We considered other options to clarify the responsibility for maintenance and repair of chattels and fixtures in units, such as operators covering the cost of providing chattels and fixtures with residents covering the cost of maintaining them. We also considered requiring operators to cover the cost of maintaining some specified chattels and fixtures only. However, neither of these options address the equity issue of residents paying for chattels and fixtures they do not own. Our proposals align with current industry best practice and mean all residents receive the same standard.
123. It is possible that operators who currently charge residents directly for maintenance and repairs of operator-owned chattels and fixtures could seek to increase regular payments, such as weekly fees, to recoup these costs. We are aware of operators, both not-for-profit and commercial, that already accept these costs as part of their business model. These proposals balance the possibility of an increase by some operators against the current uncertainty of unpredictable, larger payments for a proportion of residents.
124. The proposals could see some operators choosing to provide fewer chattels and fixtures in order not to be required to carry the cost of maintaining them. In this case, residents providing their own chattels and fixtures would need to meet the costs of maintaining these but would have ownership benefits.

Transition to new arrangements

125. We are seeking feedback on whether the proposed changes should apply to new and existing ORAs from the point that the required legislative amendments are made.

Interaction with other proposals

126. Proposals for maintenance, repair and replacement of operator-owned chattels and fixtures have links to other topics in this discussion paper:

- [Occupation right agreements](#)
- [The Code of Practice](#)

Tell us what you think

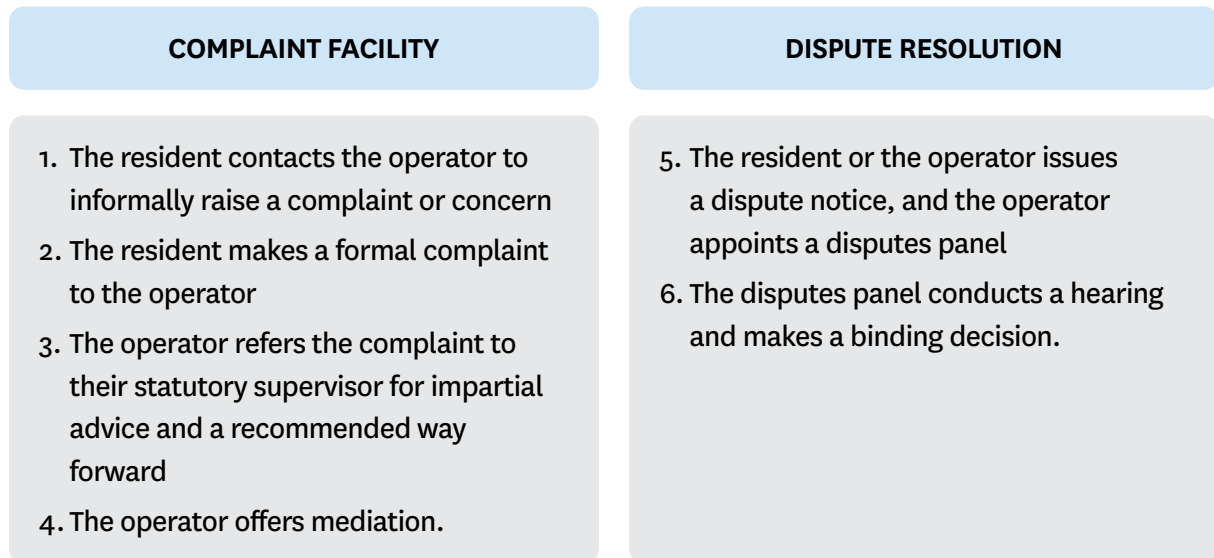
QUESTIONS ON MAINTENANCE OF OPERATOR-OWNED CHATTELS AND FIXTURES	
Q.15	Do you agree with the proposal to amend the definition of ‘retirement village property’ to specifically include operator-owned unit chattels and fixtures? Please give us your reasons.
Q.16	Do you agree with the proposal to require operators to provide a list of operator-owned chattels and fixtures and the condition of these to intending residents? Please give us your reasons.
Q.17	Do you agree with the proposal to assign responsibility for maintenance and repairs (including the direct cost of these) of operator-owned chattels and fixtures to the operator, except where the resident or their guest causes intentional or careless damage or loss? Please give us your reasons.
Q.18	Do you agree with the proposal to clarify that marks due to use of mobility aids and incontinence are classified as ‘fair wear and tear’? Please give us your reasons.
Q.19	Do you agree with the proposal to require operators to meet the cost of replacing or upgrading operator-owned unit chattels and fixtures when they wear out? Please give us your reasons.
Q.20	If introduced, should the proposals apply to existing ORAs? Please give us your reasons.
Q.21	If there are other issues with maintenance and repairs that we should be aware of, please tell us about them.

A simple and effective dispute resolution scheme

How the current dispute resolution scheme works

127. The Code of Residents' Rights gives retirement village residents the right to:
 - a. complain to the operator and to receive a response within a reasonable time
 - b. a speedy and efficient process for resolving disputes with the operator and other residents.
128. The Act requires operators to have a written complaints policy that aligns with requirements in the Code of Practice, and to provide a process for disputes that cannot be resolved through negotiation between parties.
129. Complaints and disputes can relate to contractual and legal matters such as charges, maintenance and access to services and facilities, or to interpersonal matters such as resident, management or staff behaviour. Complaints and disputes can be between a current or previous resident and the operator, or between residents.

FIGURE 1: OVERVIEW OF CURRENT COMPLAINT AND DISPUTE RESOLUTION PROCESS²⁹



²⁹ A more detailed diagram of the current complaint and dispute resolution process is available on page 33 of the Code of Practice.

130. Where a complaint cannot be resolved through informal contact or within 20 working days of a formal complaint being made, it must be referred to the village's statutory supervisor to offer a way forward. If the complaint is still unresolved after a further 20 working days, operators must offer mediation through an agency approved by the Retirement Commission.³⁰ A resident or operator can choose to shorten the process by issuing a dispute notice at any point after 20 working days of a formal complaint being made, which triggers the dispute resolution process.
131. After issuing or receiving a dispute notice, the operator must appoint a disputes panel from a list of panellists approved by the Retirement Commission. The panel will conduct a hearing, consider evidence, and make a binding decision to resolve the dispute. Disputes panel decisions can be appealed through the courts.
132. In the six months to March 2023, 141 operators reported receiving 334 formal complaints.³¹ Almost two-thirds of the reported complaints were resolved within the reporting period, with the majority resolved within 20 working days. The most common complaints over the six months related to service levels and maintenance/repairs of grounds and buildings. Complaints about resident behaviour accounted for 11 percent of complaints.

Problems with the current dispute resolution scheme

Some residents may be reluctant to use the scheme

133. Retirement Commission investigations and reports suggest the current number of complaints may not accurately reflect resident satisfaction levels with their retirement village. Some residents' concerns may go unreported if residents are reluctant to make a complaint to the village operator. This can be because they do not want to be seen to be making a fuss or feel it might negatively impact their ongoing relationship with village management and staff.
134. The power imbalance between operators and residents in terms of information and resources is not effectively addressed through the current scheme. Operators are more likely than residents to access legal advice in the early stages of the process and engage legal representation for dispute hearings. Where expense is a barrier to accessing legal support, residents may choose not to make or progress a complaint because of the uneven playing field.

³⁰ The Code of Practice was amended in 2017 to reflect the progressive step-by-step process for resolving formal complaints. The requirement that operators must offer mediation was introduced.

³¹ The Retirement Commission receives six-monthly reports from operators on complaints and publishes a summary – see retirement.govt.nz/retirement-villages/monitoring-and-reports/. In the six months to March 2023, 425 villages entered data with 284 operators reporting they received no formal complaints.

It is complex to navigate with no clear, single source of support for residents

135. A range of agencies offer information and advice on the complaint process, such as the Retirement Village Residents Association, Retirement Commission and Citizens Advice Bureau. However, there is no individual advocacy support for residents who might need help to navigate the current process and negotiate a resolution.
136. While residents can refer a complaint to a residents' committee, the village's statutory supervisor, the Retirement Commissioner, or the Registrar, ultimately the only option to resolve a complaint is through negotiation with the other party or through the disputes panel process.

It lacks independence

137. Operators are responsible for receiving, investigating and resolving complaints. Statutory supervisors and disputes panels are appointed and paid by operators, which can impact perceptions of their independence.

Dispute hearings are seen as being adversarial and are not used frequently

138. Most operators have never used the disputes panel process, with approximately 30 disputes panel decisions made since 2007. While it is appropriate for a disputes panel to be engaged only after other options for resolving the dispute have been exhausted, the low number of decisions suggests the process is not fit for purpose. Operators typically engage legal representation which can make disputes panel hearings expensive and intimidating for residents. The adversarial nature of disputes panel hearings does not align with the need to preserve ongoing relationships between parties to a dispute.

Residents' lack of mobility undermines consumer protection

139. 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 therefore has a vital role in ensuring residents have adequate consumer protections.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING DISPUTE RESOLUTION SCHEME PROPOSALS
Adequate consumer protections for residents and intending residents of retirement villages.	<p>Proposals align with five best practice principles for dispute resolution:³²</p> <ol style="list-style-type: none"> 1. User focussed and accessible Users of dispute resolution services are at the centre of all aspects of the system. Dispute resolution is easy for potential users to find, enter and use regardless of their capabilities and resources. 2. Independent and fair All dispute resolution functions are, and are seen to be, carried out in an objective and unbiased way. 3. Efficient Dispute resolution provides value for money through appropriate, proportionate and timely responses to issues. It evolves and improves over time and makes good use of information to identify systemic issues. 4. Effective Dispute resolution delivers sustainable results and meets intended objectives. It fulfils its role by helping to minimise conflict. 5. Accountable There is public confidence in dispute resolution. Those involved in its design and delivery are held to account for the quality of their performance. Regular monitoring and assessment and public reporting encourages ongoing improvement and better outcomes.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	
Ensure appropriately defined rights and responsibilities of residents and operators, including where they may differ for different occupancy rights.	

32 The best practice principles have been identified by the Government Centre for Dispute Resolution to guide the design, operation and review of dispute resolution schemes in New Zealand. The principles are summarised in the table. For more information, refer to <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/>.

Changes we are proposing to the complaints and disputes regime

A new independent complaints and dispute resolution scheme

140. To address the issues identified with the current scheme and to better align with the objectives of the review, we propose replacing the current complaints and dispute resolution scheme with a new sector-specific scheme that is independent of retirement village operators.
141. We propose the new scheme would have the following features:
- a. Formal complaints would be made to the dispute resolution scheme provider (rather than the village operator).
 - b. The dispute resolution scheme provider would be responsible for clarifying the issues, triaging the complaint and advising parties on next steps. The provider would support the parties through the process to a resolution.
 - c. The dispute resolution scheme provider would be responsible for requesting, collating and assessing information and evidence from all parties relevant to the complaint.
 - d. A negotiated resolution (e.g., through facilitated discussion between the parties or mediation) would be attempted before the matter is referred to an independent decision maker for a binding decision.
 - e. The scheme would be free for residents, although there may be an exception for disputes between residents. Currently residents share the costs of mediation with operators, and this could be retained in a new scheme.
142. We seek feedback on the proposal to establish a new independent scheme and on two options relating to the delivery of a new scheme:
- Option 1 – a scheme delivered by an appointed dispute resolution provider or
 - Option 2 – a scheme delivered by a commissioner.

Delivery options for a new scheme

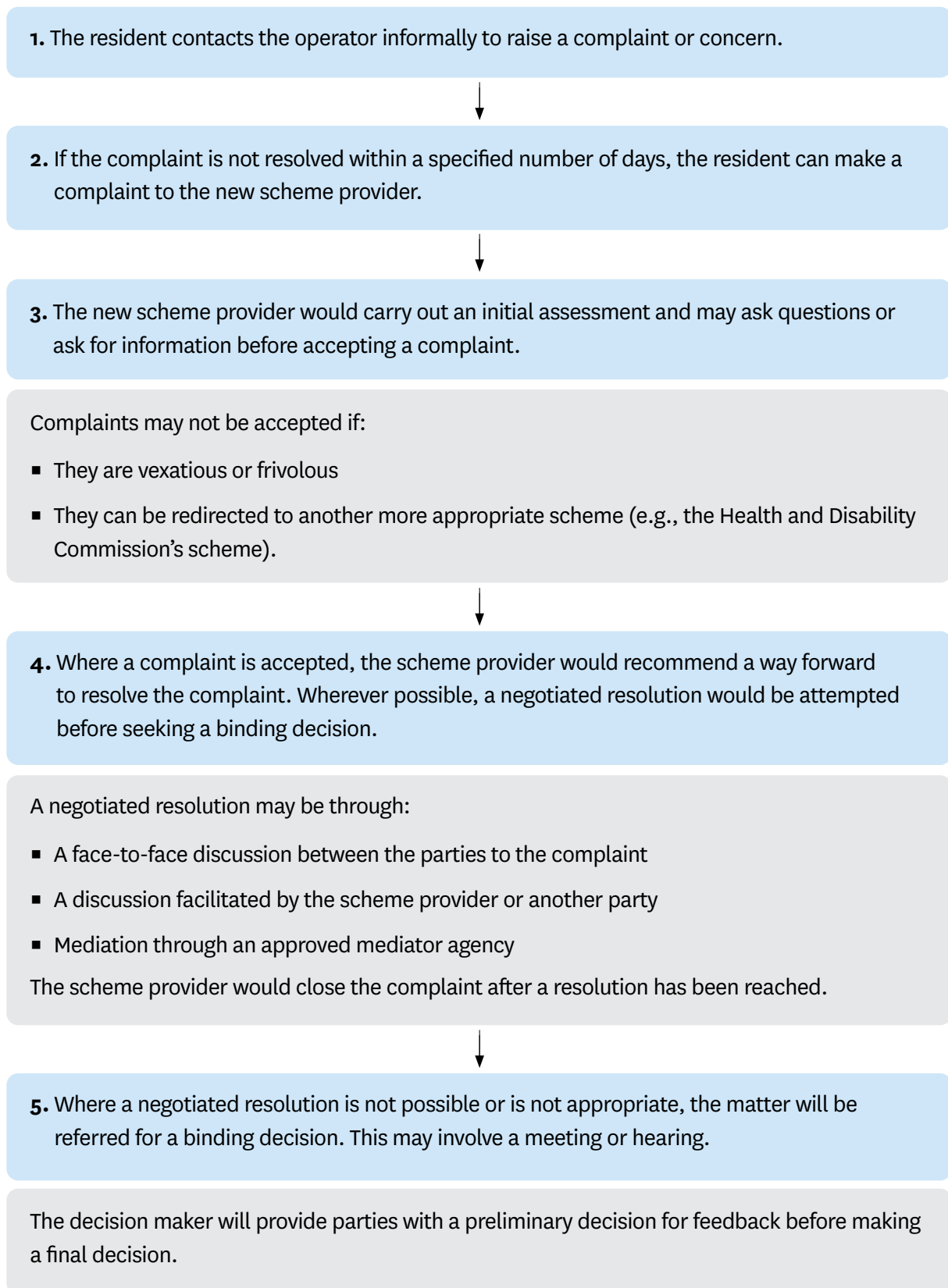
Option 1 – Scheme delivered by an appointed dispute resolution scheme provider

143. A private dispute resolution scheme provider would be appointed for a specified term following a competitive procurement process run by the Ministry or another agency. Where a negotiated resolution is not possible, the dispute would be referred to an adjudicator with appropriate qualifications and experience to make a binding decision.
144. This type of scheme is suitable for the current volume of complaints but could also scale up if required. The scheme provider would operate independently of government but would be required to report to the Ministry or another agency on complaints and disputes, including on any emerging trends and potential systemic issues.

OR

Option 2 – Scheme delivered by a commissioner

145. The new scheme could potentially be operated by the Office of the Retirement Commissioner, given the alignment with responsibilities and functions already held by the Retirement Commissioner. Establishing the scheme within an existing office would reduce establishment costs and be proportionate to the current number of complaints.
146. Options for who would make final binding decisions where a negotiated resolution is not possible would be explored in the detailed design stage. This could be, for example, the Retirement Commissioner, someone with delegated authority, or a disputes panel appointed by the Retirement Commissioner.
147. The proposed process for both options follows the steps set out in Figure 2.

FIGURE 2: PROPOSED PROCESS FOR A NEW DISPUTE RESOLUTION SCHEME

148. The following features of the current scheme would be retained in a new scheme:
- a. A family member or another person could represent a resident with a complaint.
 - b. Informal contact between residents and operators would be recommended as a first step, retaining the emphasis on a negotiated resolution at the earliest possible stage.
 - c. The village's statutory supervisor and the Registrar would be informed of any complaint that is relevant to their functions and duties, and they would be asked to provide input into the resolution process where the complaint is relevant to their role and expertise.
 - d. The powers currently available in relation to disputes about reselling a unit formerly occupied by a resident, including powers to order the operator to pay compensation, would be retained.
 - e. If not operating the new scheme, the Retirement Commission would continue to receive information about complaints and dispute decisions, report this information, and monitor the system.
 - f. Appeals relating to decisions to resolve a dispute could be made through the District or High Courts.
149. The detailed design of a new dispute resolution scheme would be undertaken at a later stage, with input from residents, operators, and other stakeholders. Matters that would be considered during the detailed design stage include:
- a. the fee structure for operators, and any resident contribution to costs
 - b. timeframes for progressing and resolving complaints
 - c. how and when to inform and involve the village's statutory supervisor and the Registrar in complaints that could be relevant to their functions and duties
 - d. the use of legal representation at meetings between parties, mediation and hearings
 - e. how the scheme could be responsive to different needs, including the needs of Māori residents and their whānau, and people with disabilities.

Costs and benefits of a new scheme

150. The new scheme would be funded by operators, potentially through an annual fee paid by all operators based on the number of units with additional charges where a complaint is accepted ([see step 4 in Figure 2](#)). We would like feedback on whether residents should continue to pay a share of the costs of mediation where the dispute is between residents, as they do under the current scheme.
151. An independent assessment of costs and benefits estimated that the cost to operators of a new independent scheme would be up to \$800,000 over and above the cost of the current scheme over ten years.³³ The current scheme was the least costly option estimated to cost \$7.68 million over 10 years. Adding advocacy support to the current scheme was the most expensive option estimated to cost \$11.25 million over 10 years. Independent advocacy support was estimated to cost around \$3.57 million over ten years.
152. The proposed option of introducing a new scheme was estimated to cost operators \$8.47 million over ten years for a scheme delivered by the Retirement Commission, or \$7.74 million for a scheme delivered by an appointed dispute resolution scheme provider. These cost estimates are based on current complaint levels (i.e., residents in two percent of retirement village units make a complaint each year).
153. The proposed new scheme would primarily benefit residents and their families, although there would also be benefits for operators. These include time saved by no longer processing formal complaints, and the reputational benefits to the retirement village sector. Benefits to residents are qualitative and focus on improved accessibility and a less stressful, intimidating process.
154. The cost benefit analysis identified some areas which lacked data. We welcome further information through this discussion paper from residents, operators, and others on actual costs they have faced using the current complaint and dispute resolution process.

How would these changes meet our objectives?

155. We have assessed the proposal to introduce a new dispute resolution scheme against the best practice principles for dispute resolution. Meeting these principles would ensure our proposals align with the overall objectives of the review, including through strengthening consumer protections and supporting the ongoing viability of the retirement village sector.

³³ MartinJenkins, *Costs and benefits of proposed changes to the Retirement Villages Act 2003*, July 2023, <https://www.hud.govt.nz/our-work/retirement-villages-act-regulations-and-codes/>.

BEST PRACTICE PRINCIPLE	ASSESSMENT OF THE PROPOSAL TO INTRODUCE A NEW SCHEME
User focussed and accessible	<ul style="list-style-type: none"> ▪ Residents and their families would be involved in the detailed design of the new scheme to ensure the needs of users are fully considered and incorporated. ▪ There would be one point of entry to the new scheme. ▪ The scheme provider would support residents through all stages of the process, for example: making a complaint, providing evidence and information, and preparing for meetings and negotiations.
Independent and fair	<ul style="list-style-type: none"> ▪ The new scheme would be independent of village operators. ▪ The scheme provider would be responsible for informing and involving appropriate third parties, such as the statutory supervisor and Registrar. ▪ The scheme provider would be responsible for engaging a mediator and adjudicator. ▪ The use of legal representation could be reduced, including through a limited role in adjudication hearings (e.g., legal representation is only allowed at Tenancy Tribunal hearings in special cases). This could help to address the imbalance between operators and residents.
Efficient	<ul style="list-style-type: none"> ▪ Emphasis on resolving issues and complaints at the earliest possible stage would be retained, providing value for money. ▪ Statutory supervisors and the Registrar would be involved in complaints and disputes where relevant to their functions and duties. ▪ The scheme provider would have a range of options available to progress different types of complaints to enable timely resolution (e.g., legal and contractual matters could follow a different process than interpersonal disputes).
Effective	<ul style="list-style-type: none"> ▪ Making disputes panel hearings less adversarial would support parties to maintain positive ongoing relationships. ▪ Where further negotiation between the parties is not likely to achieve a resolution, the dispute would be referred to a decision maker with the appropriate level of authority and expertise to consider the evidence and make a decision that is binding on the parties.
Accountable	<ul style="list-style-type: none"> ▪ Regular reporting and monitoring through the Retirement Commission would be retained in a new scheme.

Other options we considered

156. We considered the option of retaining the current scheme with the following changes:
- a. An independent body (potentially the Retirement Commission) would be responsible for appointing disputes panels.
 - b. The process would be streamlined for certain types of complaints – for example, there would be no requirement to refer interpersonal complaints to the statutory supervisor, reducing the timeframe in which mediation is offered.
 - c. Free, independent advocacy support would be introduced to support residents considering their options, navigating the process and in negotiations with operators to help to address the power imbalance between residents and operators.
157. Compared to the proposed option, retaining the current scheme would not align as well with the best practice principles for dispute resolution. The current scheme is not independent or designed to be user friendly and therefore would not achieve the objectives of the review.

Advocacy support for residents

158. We are seeking views on whether free advocacy support should be available to residents under a new scheme. The proposed new scheme would be independent of operators and would be designed with input from residents and their families to be accessible and user friendly. The scheme provider would provide advice and support to residents who are considering whether to make a complaint or involved in a complaints process, by providing ongoing support throughout the process until the complaint is resolved. We note that the scheme provider would not represent or advocate for individual residents.
159. A potential advocacy service could:
- a. provide advice and support to residents/families on retirement village matters (including legal and financial advice),
 - b. assist in resolving disputes by clarifying issues, identifying options, and facilitating outcomes
 - c. represent or advocate for individual residents.

Transition to new arrangements

160. We propose a transition period of one year from the time the legislation is changed to when the changes commence. This would ensure there is time for a new scheme to be fully designed and set up. The current scheme would continue to operate throughout the transition period.

Tell us what you think

QUESTIONS ON THE DISPUTE RESOLUTION SCHEME	
Q.22	Do you agree with the proposal to establish a new dispute resolution scheme that is independent of retirement village operators? Please give us your reasons, including any alternative suggestions about how issues with the current scheme could be addressed.
Q.23	Should the new scheme be delivered by: <ul style="list-style-type: none"> ▪ a dispute resolution scheme provider ▪ a government appointed commissioner ▪ neither of these? Please give us your reasons.
Q.24	Should residents be required to contribute to the costs of resolving disputes between residents (where the operator is not a party to the dispute)? If yes, what costs should residents contribute to?
Q.25	Should legal representation be limited in a new scheme? If yes, how should it be limited?
Q.26	Do you have information you could share on the costs of the current complaint and dispute resolution scheme for operators or for residents? For example, if you have been a party to a complaint or dispute in the past, could you provide information on the costs you faced (the type and amount), if any?
Q.27	Would independent advocacy support that is free for residents to access be needed under a new dispute resolution scheme? If yes, please give your reasons and suggestions for how it might work.

Moving from retirement village living into aged residential care

161. Alongside independent living, many retirement villages provide some or all of the following aged residential care: rest home care, hospital-level care, and secure dementia care. Aged residential care is part of the health system. Manatū Hauora – Ministry of Health certifies providers and Te Whatu Ora – Health New Zealand contracts providers and assesses the needs of residents before they enter care facilities.
162. The retirement villages and health legislative frameworks intersect when a resident transfers from independent living to a care facility. When retirement village residents are assessed as needing aged residential care and have ORAs for their accommodation (generally in “ORA care suites” or “residential care suites”), both legislative frameworks apply.
163. Retirement village operators play a significant role in the supply of aged residential care beds. Research released by JLL in 2022 estimated that 274 villages (approximately 65 percent) contained an aged residential care facility, providing 19,300 aged residential care beds.³⁴ This represents approximately 50 percent of the aged residential care sector’s capacity.
164. Given the subject of this review, the broader issues affecting the aged residential care sector such as staffing, service levels and increased care costs are outside the scope of the review.

ORAs for aged residential care units

165. In response to resident demand, many village operators offer aged residential care accommodation that is above the government standard service specification (for example, the room might be larger, have an ensuite and/or a view) and charge an accommodation premium. While accommodation premiums can be paid through higher fees, increasingly operators are offering options that involve residents paying a capital sum and having an ORA.
166. Some retirement villages offer serviced apartments, providing residents with personalised in-room care. Services offered include meals, housekeeping, personal care and health care. New residents to a village can move directly into a serviced apartment. Where residents move from independent living units into serviced apartments, they may need to terminate their first ORA and purchase a second one.
167. Serviced apartments that are accredited by Manatū Hauora – Ministry of Health can be used as care suites to provide rest home or hospital level care for residents who are assessed as requiring long-term residential care.
168. The JLL report notes that the introduction of care suites into new aged residential care facilities continues as a response to development feasibility constraints and growing demand for premium accommodation options from residents and their families.³⁵ Some

³⁴ (JLL, *New Zealand Retirement Villages and Aged Care*, 2022, <https://www.jll.nz/en/trends-and-insights/research/retirement-villages-market-review-2022>).

³⁵ Ibid

care suites may enable couples to continue to live together where one or both require aged residential care.

169. As at the end of March 2023, there were 2,931 aged residential care residents in rooms which had an ORA arrangement. This was 9.1 percent of the 32,200 aged residential care residents in New Zealand.³⁶
170. Payment and repayment arrangements differ across the sector where residents have ORAs for aged residential care. Operators offering care suites charge a fixed deduction ('deferred management fee'). A refundable accommodation deposit (RAD) is a different arrangement where a capital payment for an aged residential care room offsets weekly fees and is repaid in full by the operator when the resident moves out.

Problems with transferring into aged residential care

Suitable rooms are sometimes not available when needed

171. Many residents choose a retirement village for the continuum of care it offers and, along with their families, may have expectations that a suitable room will be available to them when they need to transfer into aged residential care. This expectation can be based in part on marketing material or disclosure documents, despite ORAs stating that transfers within a village are dependent on a suitable room being available.
172. Operators generally prioritise existing residents over non-residents who need aged residential care. In most cases transfers go well for residents, but situations where this is not the case can be very distressing for residents and their families.³⁷

The interface between retirement villages and aged residential care is complex and not clear cut

173. Operators are required to include information on the process for transferring into aged residential care in disclosure statements and ORAs, but the interface between aged residential care and retirement villages is not clear cut, and can be challenging for legal advisers, operators, residents and their families to navigate. This is especially the case with serviced apartments accredited for aged residential care, where both retirement villages and aged residential care legislation can apply.
174. Stakeholders have noted disclosure statements and ORAs may not provide intending residents with clear or comprehensive information on the transfer process, options available and the financial implications of transferring to aged residential care facilities. The situation can be further complicated where a couple has been living in an independent living unit and one needs to transfer into care.

³⁶ Te Whatu Ora Health New Zealand Quarterly Survey of Aged Residential Care Facilities, March 2023

³⁷ The Petition of Sue Brown to the Social Services and Community Select Committee called for retirement villages to have capacity for existing residents when they move to a higher level of care. The petition was made in response to the petitioner's mother's experience of transferring between levels of care. In 2022, the Committee recommended the Government conduct a full review of the legislation governing the retirement sector.

175. Many operators already include more comprehensive information than the minimum required in regulations and the Code of Practice, but the level of information can vary across the sector.³⁸

Financial implications are not clear to residents, intending residents, their families and legal advisors

176. Villages are offering an increasing range of aged residential care accommodation options with different payment arrangements. While flexibility allows operators to respond to demand and provide innovative options, it can be confusing for residents and their families to understand the options available and to make informed financial decisions, often at short notice after a significant health event. The financial implications of transferring to aged residential care can be significant, including where the resident pays a RAD or a capital sum for a care suite.
177. When a resident transfers from an independent living unit to aged residential care, we understand that typically their ORA will be terminated, and their capital sum repaid minus the fixed deduction when their unit is relicensed.
178. Where a resident has been living in an independent unit for a long time, the capital repayment they receive may be insufficient to cover a second ORA, which will have increased in price over time (e.g., a resident who paid \$350,000 for a unit ten years ago might be repaid \$245,000 when the unit is relicensed depending on the percentage of the fixed deduction and assuming no share of capital gains). This may require the resident to have access to other financial resources. Alongside the terms of the ORA, having access to financial assistance through a Residential Care Loan³⁹ or through the village operator can provide residents with more accommodation options.
179. Depending on the terms and conditions of their ORA, residents in care suites may be required to pay a second fixed deduction when they move out, or the payment of the fixed deduction might be adjusted in some way (for example, the percentage might be split over both units).
180. We seek further information through this discussion paper on residents paying a capital sum (including a RAD) and having an ORA for aged residential care accommodation. We are interested in sector practices and views on residents paying a second fixed deduction. Please see the questions at the end of this section if you have information or views you would like to share.

38 The Retirement Villages Association has developed guidelines for its members for minimum disclosures about transfer to care in a retirement village. The guidelines are available on the Retirement Commission website at <https://assets.retirement.govt.nz/public/Uploads/Retirement-Villages/Resources/Transition-to-Care-Disclosure-Guidelines-March-2020.pdf>.

39 Residential care loans are interest-free loans from Manatū Hauora - Ministry of Health to cover the cost of residential care.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR AGED RESIDENTIAL CARE PROPOSALS
Adequate consumer protections for residents and intending residents of retirement villages.	<p>Terms and conditions for transferring to aged residential care should be fair and easy to understand. Expectations about the ability to transfer to aged residential care facilities should be managed.</p> <p>The financial implications of transferring from independent living to aged residential care within the same village should be readily understandable by residents and families.</p>
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	Residents should have options and not be unduly financially disadvantaged for transferring from independent living to aged residential care.
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	<p>Proposals should:</p> <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ ensure operators can continue to respond to resident demand and offer innovative options for aged residential care ▪ not impact small, rural, or not-for-profit retirement villages disproportionately ▪ not unduly restrict the availability of appropriate aged residential care options in communities.
Ensure appropriately defined rights and responsibilities of residents and operators, including where they may differ for different occupancy rights.	The proposals should improve clarity of the rights and responsibilities of each party, and in relation to different occupancy rights where relevant.

Changes we are proposing for aged residential care transfers

Operators provide information to better manage expectations on the continuum of care

181. We propose to:
- a. retain the current requirement that ORAs state that transferring to aged residential care within the village is dependent on the availability of a suitable room
 - b. add a statement in standardised wording to the new disclosure documents (either the Village Comparison or new disclosure statement): ‘The village may not be able to guarantee a bed in the care facility at the time the resident requires it’
 - c. require operators to provide information in new disclosure documents on average occupancy levels of on-site aged residential care over the past 12 months by care category.
182. Providing information on occupancy levels differs from the information many operators currently provide to intending residents in disclosure documentation, which sets out the number of rooms available in aged residential care facilities at a point in time.
183. We considered this option but felt point in time information might not provide an accurate reflection of room availability more generally and could quickly become outdated. The objective of these proposals is to better manage expectations of seamless transfers from independent living into aged residential care at the time it is needed. Our view is that providing occupancy levels over a 12-month period would provide a better indication of the availability of rooms in aged residential care over a longer period, allowing intending residents to make more informed decisions at the time they enter a retirement village. We welcome feedback on this proposal.
184. There may be other ways of providing information to manage resident expectations of the continuum of care villages can offer, such as the turnover of residents in aged residential care facilities. We welcome feedback on this, such as how complicated it could be to calculate and whether compliance costs could be significant.

Operators provide more comprehensive information on transfers to aged residential care, including options and financial implications

185. We propose to require operators to provide more comprehensive information on the financial and care implications of transferring into aged residential care in disclosure documents. Our proposals in the table below are broadly consistent with Retirement Villages Association best practice guidelines on transfers into aged residential care developed with the Retirement Commission. Many operators will therefore already be providing this information in disclosure documents.

Proposals for additional information for intending residents

INFORMATION OPERATORS WOULD NEED TO PROVIDE	HOW IT WOULD BE PROVIDED
Are there aged residential care facilities on site or at an affiliated site? Yes/No	Village comparison
<p>A statement to be included:</p> <p>“The village may not be able to guarantee a bed in the aged residential care facility at the time the resident requires it.”</p>	Village comparison Information Statement or new Disclosure Statement
What categories of aged residential care are available on-site (rest home, hospital level, dual service rest home and hospital, secured dementia care) and how many rooms are there in each care category?	Information Statement or new Disclosure Statement
What categories of aged residential care rooms are available at a separate site affiliated to the operator (rest home, hospital level, secured dementia care), and what are the ownership details of the affiliated aged residential care facility?	Information Statement or new Disclosure Statement
What were the average occupancy levels over the past 12 months of on-site aged residential care rooms by care category?	Information Statement or new Disclosure Statement
What is the process for being assessed for aged residential care?	Information Statement or new Disclosure Statement
If no suitable aged residential care room is available on site to which a resident can transfer, what would happen and what interim measures would the village take?	Information Statement or new Disclosure Statement
<p>What are the financial implications of transferring to an aged residential care facility?</p> <p>Operators, please include details about:</p> <ul style="list-style-type: none"> ▪ what types of rooms are available (standard rooms, premium rooms, care suites, or other types of rooms)? ▪ what costs are associated with each type of room? For example, ongoing accommodation costs, capital sum, deferred management fee. ▪ whether a resident would have to terminate their current ORA and enter into a new ORA and if so, what would this mean for the resident’s deferred management fee? ▪ what the financial implications are if one person in a couple has to transfer to aged residential care? 	Information Statement or new Disclosure Statement

INFORMATION OPERATORS WOULD NEED TO PROVIDE	HOW IT WOULD BE PROVIDED
<p>What financial assistance (if any) does the operator offer residents who are transferring to a supported living unit or aged residential care, including:</p> <ul style="list-style-type: none"> ▪ assistance where one person in a couple will remain in their independent living unit? ▪ where assistance is limited to on-site/affiliated aged residential care facilities? 	Information Statement or new Disclosure Statement

186. Our proposals for additional information on transfers to aged residential care would add to existing requirements in the General Regulations and the Code of Practice. Operators would still be required to provide the information summarised in the table below.

Information operators must already provide to intending residents

TYPE OF INFORMATION	HOW INFORMATION IS PROVIDED
Whether the ORA allows a resident to receive rest home care or hospital care and an explanation on the terms on which that is allowed.	Disclosure Statement
<p>Terms of transfer:</p> <ul style="list-style-type: none"> ▪ How a transfer is initiated and by whom. ▪ Any priority for existing residents over external applicants. ▪ Dependence on a suitable unit and care being available and the resident being assessed as suitable for the available care. ▪ The resident has the right to be given information on options, have an independent assessment, and to be consulted, along with their family or representative. ▪ A needs assessment may be required to access subsidies. 	ORA
<p>Financial and other arrangements:</p> <ul style="list-style-type: none"> ▪ Any changes in charges. ▪ Arrangement for the physical transfer of the resident and their belongings. ▪ Any other charges incurred by the transfer and who pays. 	ORA

How would these changes meet our objectives?

187. The proposals would improve consumer protection by requiring all operators to provide clear, comprehensive information to support intending residents and their families when making the decision to move into a retirement village. Drawing attention to operators' inability to guarantee a suitable room when a resident is assessed as needing aged residential care would help to manage expectations on the continuum of care available.
188. Clear and comprehensive information on the financial implications of transferring to aged residential care, including options involving payment of a capital sum, would better protect residents' rights and interests through better awareness and understanding of options available to them in the future.
189. We do not think the proposed changes will adversely affect the ongoing viability of retirement villages. The proposed changes will have no impact on villages that do not have on-site or affiliated aged residential care facilities. For operators that offer aged residential care, we consider the proposals are cost effective and proportionate. Many operators are already providing intending residents with more comprehensive information in line with the best practice guidelines developed by the Retirement Villages Association. We do not think that operators who would be required to provide more comprehensive information would face significant compliance costs.
190. These proposals would not impact the ability of operators to innovate and provide a range of housing options.
191. As an alternative option, we considered encouraging operators to align with best practice guidelines rather than introducing further requirements in legislation. However, this would still allow for variability across the sector, and would not align as well with the objectives of the review.

Transition to new arrangements

192. We propose a transition period of one year from the time the legislation is changed to when the changes commence. This is because it will take operators time to update their systems and develop documents that comply with the new requirements.

Interaction with other proposals

193. Proposals for moving from village living to aged residential care have links to other topics in this discussion paper:
 - [Disclosure Statements](#)
 - [Occupation right agreements](#)
 - [Financial Exit Matters](#)

Tell us what you think

QUESTIONS ON MOVING TO AGED RESIDENTIAL CARE	
Q.28	<p>What information on occupancy levels of aged residential care should be provided to intending residents:</p> <ul style="list-style-type: none"> ▪ average occupancy across the previous 12 months ▪ current occupancy levels at a clearly dated point in time ▪ other information ▪ no information? <p>Please give us your reasons, including details if you answered 'other information'.</p>
Q.29	<p>Should a clear statement that a suitable aged residential care unit cannot be guaranteed be included in one of the new disclosure documents? Please give us your reasons.</p>
Q.30	<p>If there are other issues related to transferring from an independent living unit to aged residential care that should be considered as part of the review, please tell us about them.</p>
Q.31	<p>Should operators be allowed to charge aged residential care residents in ORA care suites a second fixed deduction ('deferred management fee')? Please give us your reasons, including if it should be capped or limited in some way.</p>
Q.32	<p>Do you have information on different practices across the sector relating to ORAs for aged residential care you can share with us, including the different terms and conditions offered? For example:</p> <ul style="list-style-type: none"> ▪ What kinds of different terms and conditions do operators offer where a resident has a second ORA for living in the same village? ▪ Is it common practice for operators to charge a second fixed deduction or is there variability across the sector? ▪ Where a second fixed deduction is charged, does the percentage increase by length of stay, and at what percentage is it capped? ▪ What potential implications of stopping or limiting second fixed deductions should we be aware of, such as increased weekly fees for residents, or reduced new supply of aged residential care facilities?

Minimum building standards for retirement villages

194. Retirement villages and units are built to different standards, depending on the applicable building regulations at the time they were constructed. When a unit is vacated, there is no obligation on an operator to bring that unit up to the current Building Code. Older village units are therefore likely to be of a lower standard than newer ones. However, some villages may have undergone significant refurbishment, expansion or rebuilding, and as a result may have been brought up to more recent Building Code standards.
195. The Building Code is administered and updated by the Ministry of Business, Innovation and Employment (MBIE). MBIE is the overarching regulator of New Zealand’s building system. The Code of Practice sets out the minimum building requirements retirement village operators need to meet and should be read in conjunction with the Building Code.
196. Individual villas or units are generally only upgraded after a resident has vacated the unit. If a unit is not built with insulation or double-glazed and has not been refurbished during a long period of occupancy, issues may develop such as the unit being cold and damp. Where there are problems with warmth and dryness, residents may need to pay more to heat their home adequately.⁴⁰
197. We have heard concerns about some retirement village units not being refurbished to standards equivalent to, or better than, the healthy homes standards.⁴¹ Retirement villages are not required to meet the healthy homes standards as the standards only apply to rental properties under the Residential Tenancies Act 1986. However, broadly speaking, new villages which are built to the current Building Code would meet or exceed the healthy homes standards.⁴²
198. Because the healthy homes standards were designed for rental properties the standards may not be appropriate for retirement village units. However, it is difficult to make this assessment without knowing how many villages were built to outdated building standards and of these, how many have not been substantially refurbished. We have heard some concerns about older units not being sufficiently warm and dry.
199. Retirement villages may not comply with other modern building standards. Changes to the Building Code will come into effect in late 2024. The changes include requiring interconnected smoke alarms and reducing the maximum temperature for hot water taps. The new requirements will only apply to new buildings and buildings undergoing extensive alterations, not existing retirement village units.
200. Because of the older age and associated health needs of residents, it is important that retirement villages are built or upgraded to a high standard, are accessible for disabled

⁴⁰ The current Building Code requires “old people’s homes” to maintain the temperature of habitable spaces at no less than 16°C but does not prescribe a heating source.

⁴¹ Residential Tenancies (Healthy Homes Standards) Regulations 2019. These regulations are made under the Residential Tenancies Act 1986.

⁴² An exception is the healthy homes heating standard, which requires a fixed heating device. The healthy homes heating standard is higher than the Building Code for the living area.

people, and are warm and dry. We are seeking information to understand the scale of building quality issues in retirement villages and are interested in hearing your views and experiences.

201. This information will inform policy proposals on whether particular building quality standards should apply to retirement villages, taking into account the potential costs and impacts this may have on the sector. The way in which any proposed changes to building and accessibility standards for retirement villages would be applied across the sector would need to be considered in conjunction with MBIE, as regulator of the building system.

Tell us what you think

QUESTIONS ON MINIMUM BUILDING STANDARDS	
Q.33	If there any other issues with minimum building standards that we have not covered, please tell us about them.
Q.34	Do you or someone you know live in a retirement village unit that is regularly cold or damp? If yes, please tell us about it.
Q.35	Should retirement villages be upgraded to meet certain building standards, such as the healthy homes standards? Please give us your reasons.
Q.36	Is the design of your retirement village age-friendly and accessible to support residents to age in place? If no, what changes would be needed?

Part D – Moving out

202. This section covers issues related to financial exit matters between an outgoing resident (or their estate) and the village operator after a unit is vacated. These are:
- a. the repayment of the resident's capital sum
 - b. stopping charges for outgoings and other fees
 - c. the fixed deduction (also known as a deferred management fee, exit fee, facilities fee, or village contribution)
 - d. the treatment of capital gains and losses from the relicensing of the outgoing resident's unit.

Repayment of the resident's capital sum

203. Residents pay a capital sum in return for their right to live in the village. This capital sum (less the fixed deduction) is repaid to outgoing residents (or their estate) after they leave the village. However, village operators are not obligated to repay an outgoing resident's capital sum until the vacated unit has been re-licensed. Once a unit has been re-licensed, the operator must repay the outgoing resident's capital sum within five business days of payment being received from the incoming resident.
204. While there is no obligation on operators to repay outgoing residents' capital sums until the unit has been re-licensed, they are required to take all reasonable steps to enter into a new ORA for a vacated unit in a timely manner and for the best price reasonably possible. This includes:
- a. consulting former residents (or their estate) on the marketing of the unit and keeping them informed on a monthly basis on the progress of marketing
 - b. after three months, the operator must provide a written report to the former resident or their estate, stating the steps taken to market the unit and progress made towards finding a new resident. The operator must then provide monthly reports until the unit is relicensed
 - c. after six months, the operator must obtain a registered valuation of the unit to establish a suitable price to market the unit at. The former resident or their estate may obtain their own valuation if they disagree with the one obtained by the operator.

205. If a former resident's unit has still not been relicensed after nine months, the resident may lodge a dispute notice. In considering the dispute, the disputes panel must consider the relevant real estate market, the age and condition of the unit, and the effect of the panel's decision on other village residents and the financial stability of the village. The disputes panel can require the operator to market the unit in a certain way or at a certain price, pay interest to the former resident, or repay the former resident's capital sum within a certain timeframe.

Problems with how resident's capital sums are repaid

206. The current rules relating to the repayment of former residents' capital sums favour operators over residents and may be considered unfair. Operators maintain the interest-free use of former residents' capital sums until the repayment is made. Former residents and/or their estates are disadvantaged as they do not have access to their money.
207. The Retirement Villages Association has indicated that over 75 percent of units are relicensed within six months of being vacated and 90 percent within nine months. However, some former residents or their estates have had to wait over 12 months to receive their capital sum repayment and in extreme circumstances they have had to wait over two years. This can cause significant financial and emotional stress for former residents and their families.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING REPAYMENT OF CAPITAL SUMS
Adequate consumer protections for residents and intending residents of retirement villages.	Repayment of capital sums to residents (or their estates) should: <ul style="list-style-type: none"> ▪ be timely and fair ▪ provide greater certainty for exiting residents and/or their families.
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	Proposals should: <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ allow operators flexibility to offer choice and be competitive ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.

Changes we are proposing to repayment of capital sums

208. We have developed two options to address this issue:
- a. mandatory repayment timeframe and/or
 - b. paying interest on capital sums.
209. We seek feedback on which option (if any) is appropriate.

Option 1 – Mandatory repayment timeframe

210. Operators would be required to repay a former resident's capital sum by the earlier of:
- a. the former resident's unit being relicensed, or
 - b. a fixed period (e.g., six or 12 months) after the ORA has been terminated and the unit has been fully vacated. We seek feedback on what the appropriate length of the mandatory repayment timeframe should be.
211. To limit the impact that a mandatory repayment timeframe would have on villages' financial viability, a number of exemptions could be considered. These could include:
- a. Undue financial hardship – Operators could apply to the disputes panel or new complaints and disputes regime ([see Part C](#)) for an exemption from the mandatory repayment timeframe on a case by case basis. The exemption would only be granted if making the repayment before the unit has been licensed would cause undue financial hardship to the operator. Australian states that have introduced mandatory repayment timeframes into their retirement village legislation have included financial hardship exemptions.
 - b. Class of retirement village exemption – Certain types of retirement villages could either be exempt from the mandatory repayment timeframe entirely, or subject to a longer repayment timeframe. For example, not-for-profit operators' financial viability may be more likely to be adversely affected by a mandatory repayment timeframe. An exemption or longer repayment timeframe for not-for-profit operators may therefore be appropriate.
 - c. Capital gains shared with residents – An exemption from the mandatory repayment timeframe could apply to operators that provide former residents with some or all of the capital gain from the relicensing of a unit. Applying the mandatory repayment timeframe in this situation could cause valuation issues as the capital gains (and therefore the former residents' exit payment entitlement) would not be known until the unit has been relicensed.

Option 2 – Paying interest on capital sums

212. If a former resident's unit remains vacant after six months, the operator would be required to pay interest on the former resident's capital sum. The applicable interest rate would be determined by the Interest on Money Claims Act 2016. This rate is based on an average of the six most recent observations of the six-month term deposit rate published by the Reserve Bank of New Zealand plus a premium of 0.15 percent.
213. This option could be implemented on its own or in combination with the mandatory repayment timeframe.

How would these changes meet our objectives?

Mandatory repayment timeframe

214. Introducing a mandatory repayment timeframe would improve fairness for former residents by improving their consumer protections. The mandatory repayment timeframe would bring forward the date some former residents receive their capital sum repayments and increase certainty about when repayments would be received for all residents.
215. However, some operators have indicated that mandatory repayment timeframes would adversely affect their financial viability. Operators would need to ensure they have sufficient funds available to meet their repayment obligations within the mandatory timeframe. This could cause financial stress for some operators and could lead to some operators increasing weekly fees or fixed deductions to compensate. Market downturns may also increase the number of repayments operators need to make before a unit has been relicensed, further increasing operators' financial vulnerability.
216. The extent to which a mandatory repayment timeframe is likely to affect operators' financial viability would depend on the detailed design of the rules, specifically the length of the repayment timeframe and the design of any exemptions.
217. The Retirement Villages Residents' Association has promoted a 28-day mandatory repayment timeframe. However, we consider that such a short timeframe is likely to seriously impact operators' financial viability. In most cases, units are unlikely to be relicensed within 28 days, and as such, a repayment timeframe of 28 days would require operators to have significant funds available to meet their repayment obligations.
218. A longer repayment timeframe such as 18 months or two years would better support operators' financial viability. However, this would still result in some former residents waiting a long time to receive their capital sum repayment. On balance, we consider a 12-month timeframe would best balance the interests of residents and operators. However, we seek your feedback on what period would be most appropriate.
219. An independent analysis of the costs and benefits of a mandatory repayment timeframe has been undertaken. This analysis estimated that, with a 12-month timeframe and no exemptions, the annual cost across the sector in the first year the mandatory repayment timeframe applied would be between \$10.645 and \$44.216 million. This equates to an average cost per unit of between \$238 and \$989.⁴³
220. This analysis was based on the proposal applying to both new and existing ORAs. Costs in the short-to-medium-term would be significantly lower if (as we are proposing) it only applied to new ORAs. However, costs in the long-term once all current ORAs have been terminated would be consistent with the analysis.

⁴³ MartinJenkins, *Costs and benefits of proposed changes to the Retirement Villages Act 2003*, July 2023, <https://www.hud.govt.nz/our-work/retirement-villages-act-regulations-and-codes/>.

221. The potential exemptions from the mandatory repayment timeframe for undue financial hardship on a case-by-case basis, as well as certain classes of retirement villages such as not-for-profit villages, would also reduce the impacts of this option on operators' financial viability. However, they could also lead to former residents of these villages having to wait a long time to receive their capital sum repayment.
222. As an alternative to the mandatory repayment timeframe, we considered enabling former residents to apply to an operator for early repayment of their capital sum if a unit had not been relicensed within a certain time period (for example six months). Operators would have only been able to refuse a request if making the repayment early would cause them undue financial hardship. However, this option was discounted as it would impose additional compliance costs on former residents compared to a mandatory repayment timeframe.

Paying interest on capital sums

223. Requiring operators to pay interest to former residents on their capital sums if a unit has not been relicensed within six months will improve fairness for former residents by compensating them for not having the use of their capital sum. It would also provide an additional financial incentive for operators to quickly relicense vacant units.
224. However, if this option is implemented on its own, it would not alleviate the hardship caused to former residents or their estates from having to wait a long time to receive their capital sum repayment. The interest received would be a relatively small amount and may not be sufficient to cover former residents' residential care costs or to pay a deposit on a new home elsewhere.
225. The Retirement Villages Association has promoted paying interest on capital sums if a unit is still vacant after nine months as best practice. As such, we consider option two to be unlikely to adversely affect operators' financial viability. However, feedback is sought on how long operators should have to relicense a unit before they need to start paying interest to the former resident.

Transition to new arrangements

Mandatory repayment timeframe

226. We propose that option one would only apply to contracts entered into after the required legislative amendments have been made.
227. We propose a transition period of one year from the time the legislation is changed to when the changes commence.
228. Sufficient lead-in time would also be needed for the implementation of a mandatory repayment timeframe (option one), to ensure that operators are able to build adequate cash reserves to meet their repayment obligations. The required lead-in time would depend on the detail of the design. If the option only applies to new ORAs and the mandatory repayment timeframe is 12 months, a lead-in time of one year may be sufficient. However, a longer lead-in time may be required if the repayment timeframe is shorter, or the option also applied to existing ORAs. We are seeking feedback on what an appropriate lead-in time for the mandatory repayment timeframe would be.

Paying interest on capital sums

229. We are seeking feedback on whether paying interest on capital sums (option two) should apply to both new and existing ORAs from the point that the required legislative amendments are made.

Interaction with other topics

230. Proposals for the repayment of a resident's capital sum have links to the [Occupation right agreements](#) topic in Part B.

Tell us what you think

QUESTIONS ON REPAYMENT OF THE RESIDENT'S CAPITAL SUM	
Q.37	<p>Do you agree with:</p> <ul style="list-style-type: none"> ▪ the proposal to require operators to repay a former resident's capital sum within a fixed period after the ORA has been terminated and the unit has been fully vacated, and if so, how long should the fixed period be? ▪ the proposal to require operators to pay interest on a former resident's capital sum if the unit remains vacant after six months? ▪ neither or these? <p>Please give us your reasons, including any additional suggestions for how the issues covered could be addressed.</p>
Q.38	Which option/s do you consider would most improve fairness for residents?
Q.39	What impacts would the proposed options have for operators?
Q.40	Should operators be able to apply for an exemption from the proposed mandatory repayment timeframe because of undue financial hardship? If yes, what should qualify as undue financial hardship?
Q.41	Should certain types of retirement villages (for example not-for-profit villages) be either exempt from the proposed mandatory repayment timeframe or subject to a longer repayment timeframe? Please give us your reasons.
Q.42	How long should operators have to relicense a unit before they need to start paying interest to the former resident? Please give us your reasons.
Q.43	If implemented, does the Interest on Money Claims Act 2016 provide a fair interest rate for operators to pay former residents if they have not relicensed the unit within six months? Please give us your reasons.
Q.44	If implemented, should the proposal to introduce a mandatory repayment timeframe for residents' capital sums apply to existing ORAs? Please give us your reasons.
Q.45	If implemented, should the proposal to require operators to pay interest on former residents' capital sums apply to existing ORAs? Please give us your reasons.

Stopping outgoings and other fees

What are 'outgoings'?

231. Fees charged to retirement village residents include charges for personal services and charges for outgoings (also known as weekly fees). Personal services include services provided to a resident on an individual basis at that resident's request, for example, meals, laundry, nursing care, and cleaning.
232. Outgoings include costs relating to the operation, management, supervision, and maintenance of the retirement village as a whole that are recovered from all residents as agreed in the ORA. Outgoings do not include costs of providing personal services to a resident.
233. Operators are required to immediately stop charging an exiting resident for personal services on the date the resident permanently exits the residential unit.
234. However, operators are entitled to continue charging outgoings to exiting residents until the unit has been relicensed and a new ORA has been entered into. The charge for outgoings must be reduced by at least 50 percent if the unit has not been relicensed after six months.

Problem with the current situation

235. Some retirement villages continue to charge outgoings to former residents until their units have been relicensed. We see this as unfair as former residents no longer receive the benefits of the services paid for by the outgoings charge. In extreme circumstances where there is difficulty relicensing a unit, this can mean former residents continue to pay outgoings for over 12 months after vacating their units (albeit discounted by 50 per cent after six months).

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING OUTGOINGS AND OTHER FEES
Adequate consumer protections for residents and intending residents of retirement villages.	Proposals for outgoings should be fair, clear and ensure residents are not charged for services for which they do not receive any benefits.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	Proposals should: <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.

Changes we are proposing regarding outgoings and other fees

236. We propose to amend the legislation so that retirement villages stop charging outgoings to former residents either immediately or very soon (i.e., no more than four weeks) after an ORA has been terminated and the unit has been fully vacated.

How would these changes meet our objectives?

237. The proposal would provide better consumer protections by ensuring former residents are not charged for services they do not benefit from. It would also provide an additional incentive for operators to relicence vacant units as quickly as possible.

238. The Retirement Villages Association has promoted stopping outgoings immediately upon a unit being vacated and we understand that over 70 percent of villages already do so. As such, the proposal aligns with current best practice and is unlikely to negatively impact the viability of the sector overall. However, there is a risk that the proposal could lead to some operators increasing fixed deductions (also known as deferred management fees) or charges for personal services.

Transition to new arrangements

239. We are seeking your feedback on whether this proposal should apply to both new and existing ORAs from the point that the required legislative amendments are made.

Interaction with other topics

240. Proposals for stopping outgoings and other fees have links to the [Occupation right agreements](#) topic in Part B.

Tell us what you think

QUESTIONS ON STOPPING OUTGOINGS AND OTHER FEES	
Q.46	Do you agree with the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after? Please give us your reasons, including any additional suggestions for how the issues with outgoings and other fees can be addressed.
Q.47	Should the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after apply to existing ORAs? Please give us your reasons.

Fixed deductions

What is a fixed deduction?

241. Retirement village operators typically charge residents a fixed deduction (also known as an exit fee, deferred maintenance fee, facilities fee, or village contribution) upon vacating their unit. The fixed deduction is subtracted from the repayment of the original capital sum paid to purchase the ORA, once the unit has been relicensed.
242. Fixed deductions are designed to reflect the benefit the resident received from their use of the facilities in the village during their time there. The deduction also includes a margin to help cover capital costs of supplying and upgrading the village and facilities for future residents.
243. The amount of the fixed deduction varies across villages. However, it is typically between 20 and 30 percent of a resident's capital sum. The amount of fixed deduction may also depend on how long a resident has been living in a village.
244. For example, an ORA in a retirement village is sold for \$400,000 with a 25 per cent fixed deduction that increases evenly over five years. After one year, the fixed deduction is five percent of the price it was sold for (i.e., \$20,000), and after two years it is 10 percent of the price it was sold for (i.e., \$40,000). The fixed deduction increases five percent each year until five years is reached, at which point the fixed deduction is \$100,000 and remains at the same level regardless of the number of additional years the resident occupies their unit. If the resident left the village after living in it for five years or over, their fixed deduction would be \$100,000 and their exit entitlement (repayment amount) would be \$300,000.
245. The Code of Practice places no limits on the fixed deduction that operators may charge. While most operators typically charge fixed deductions of between 20 and 30 per cent of residents' capital sums, there is nothing to prevent an operator from charging a considerably higher fixed deduction. However, the amount of a fixed deduction must be made known to intending residents, so villages charging higher deductions may struggle to attract residents.

Problems with fixed deductions

246. Fixed deductions can continue to increase between a resident vacating a unit and the unit being relicensed. This is despite the resident no longer receiving the benefit of the facilities that the deduction is being charged for.
247. In the example above, if a resident vacated a unit after three years, the fixed deduction would be \$60,000, but if the unit is not licensed for another 12 months, the fixed deduction subtracted from their exit entitlement would increase to \$80,000.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING FIXED DEDUCTIONS
Adequate consumer protections for residents and intending residents of retirement villages.	Treatment of fixed deductions should be fair and clear, and ensure residents are not charged for facilities for which they do not receive any benefits.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	Proposals should: <ul style="list-style-type: none"> ▪ be proportionate and cost effective ▪ not impact small, rural, or not-for-profit retirement villages disproportionately.

Changes we are proposing to fixed deductions

248. We propose that fixed deductions must stop accruing either immediately or very soon after an ORA has been terminated and the resident has fully vacated their unit (i.e., no more than four weeks).
249. We are also seeking feedback on whether:
- a. there should be any limitations placed on the size of the fixed deduction, and if so, what these limitations should be (e.g., no more than 30 per cent of the capital sum)
 - b. greater transparency is needed about the specific costs covered by fixed deductions.

How would these changes meet our objectives?

250. This proposal would provide better consumer protections for former residents, by ensuring they are not accruing fixed deductions when they no longer have access to the village's facilities. It would also provide additional incentive for operators to relicense vacant units as quickly as possible.
251. We understand that in many villages, fixed deductions already immediately stop increasing upon a resident vacating their unit. As such, the proposal is not expected to have a significant impact on the financial viability of the sector.

Transition to new arrangements

252. We are seeking feedback on whether this proposal should apply to both new and existing ORAs from the point that the required legislative amendments are made.

Interaction with other topics

253. Proposals for fixed deductions have links to the [Occupation right agreements](#) topic in Part B.

Tell us what you think

QUESTIONS ON FIXED DEDUCTIONS	
Q.48	Do you agree with the proposal to require fixed deductions to stop accruing upon a unit being vacated or very shortly after? Please give us your reasons, including any additional suggestions for how issues with fixed deductions can be addressed.
Q.49	Should limits be placed on the size of the fixed deduction? Why/why not?
Q.50	Is greater transparency needed about the specific costs covered by fixed deductions? Why/why not?
Q.51	If introduced, should the proposal apply to existing ORAs? Why/why not?

Treatment of capital gains/losses

254. The capital sum charged to incoming residents to purchase an ORA will vary depending on when it is purchased. A capital gain or loss is possible when a unit is re-licensed. Village operators are under no obligation to share capital gains (or losses) from re-licensing a unit with the outgoing resident when their capital sum is repaid. While some villages share capital gains with outgoing residents, most do not.

Problem with capital gains/losses treatment

255. An ORA can make an outgoing resident liable (in part or full) for any capital loss from relicensing the resident's unit, even if the resident is not eligible to share any potential capital gains. We consider placing the risk of capital loss on residents whilst only operators stand to benefit from capital gains is one-sided and unfair.
256. We understand only a very small number of villages include capital loss clauses in their ORAs without also sharing capital gains with residents. The Retirement Villages Association is encouraging its members to remove these clauses from their ORAs.

What we are trying to achieve

RELEVANT REVIEW OBJECTIVES	CRITERIA FOR ASSESSING TREATMENT OF CAPITAL GAINS/LOSSES
Adequate consumer protections for residents and intending residents of retirement villages.	Treatment of capital gains/losses should balance the benefits and risks fairly between residents and operators.
An effective balance between the rights and responsibilities of residents and operators of retirement villages.	
Ensure the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice.	Proposals should be proportionate and cost effective.

Changes we are proposing for treatment of capital gains/losses

257. We propose to amend the legislation so that residents can only be held liable for a capital loss from the relicensing of their unit to the same extent as they would be entitled to any share of the capital gains. For example:
- a. If residents are not entitled to any share of a potential capital gain, they are not liable for any share of a potential capital loss
 - b. If residents are entitled to 100 percent of any potential capital gain, they can be liable for up to 100 percent of any potential capital loss
 - c. If residents are entitled to 50 percent of any potential capital gain, they can be liable for up to 50 percent of any potential capital loss.
258. Operators that share capital gains with residents would not be required to make residents liable for capital losses to the same extent. For example, if a resident is entitled to up to 50 percent of a potential capital gain, the ORA could limit their liability for a potential capital loss to a lower percentage (for example, 25, or 0 percent).

How would these changes meet our objectives?

259. This proposal would provide better consumer protections and a better balance between the rights and responsibilities of operators and residents. The proposal would prevent operators from obtaining all the benefit of capital gains whilst placing all the risk of capital losses on residents.
260. As very few operators currently have capital loss clauses in their ORAs without also sharing capital gains with residents, the proposal is unlikely to negatively impact the ongoing viability of the retirement village sector.

Transition to new arrangements

261. We are seeking feedback on whether this proposal should apply to both new and existing ORAs from the point that the required legislative amendments are made.

Interaction with other topics

262. Proposals for the treatment of capital gains and losses have links to the [Occupation right agreements](#) topic in Part B.

Tell us what you think

QUESTIONS ON CAPITAL GAINS/LOSSES	
Q.52	<p>Do you agree with:</p> <ul style="list-style-type: none"> ▪ the proposal to require that operators can only make a resident liable for a capital loss on resale of their unit to the same extent as they would be entitled to any share of the capital gains? ▪ the proposal that operators that share capital gains with residents would not be required to make residents liable for capital losses to the same extent? <p>Please give us your reasons, including any additional suggestions for how the issue in this section can be addressed.</p>
Q.53	<p>If implemented, should the proposal apply to existing ORAs? Please give us your reasons.</p>
Q.54	<p>If there are any other issues with capital gains or losses from the relicensing of a unit in a retirement village that should be addressed in the review, please tell us about them.</p>

Part E – Future-proofing the definition of retirement village

263. The definition of retirement village is set out in section 6 of the Act. The full definition is provided in [Appendix 6](#). The key elements of the definition are:
- a. a property, building or other premises containing two or more residential units providing accommodation, services and/or facilities for people in their retirement
 - b. a resident’s right of occupation may be provided by way of freehold or leasehold title, cross lease title, unit title, lease, licence to occupy, or residential tenancy⁴⁴
 - c. residents pay a capital sum for their right to occupy a residential unit.
264. Payment of a capital sum is required regardless of the occupancy model to meet the current definition of a retirement village (though this can be split into multiple payments over time). In the future, fewer retired people are likely to have the required capital sum to buy into a retirement village, which generally relies on releasing equity from accumulated assets (either their home or other assets). This is because increasingly people will still have mortgages on their homes or be renting when they reach retirement age. The Retirement Commission estimates that the number of retired New Zealanders who rent will double by 2048.⁴⁵
265. We want to ensure that future cohorts of older New Zealanders are able to access a range of housing options that meet their needs. Accordingly, we are considering whether the current definition effectively enables a range of different retirement village models to develop. This could be done by allowing for retirement villages that do not require a capital sum. We are seeking feedback on this issue.
266. More flexible definitions can be found in Australian legislation. For example, the definition of ‘retirement village scheme’ under the Western Australia Retirement Villages Act 1992 sets out a range of tenancy or occupancy arrangements under which a resident may reside in a retirement village. These include a residential tenancy agreement, right to occupation conferred by ownership of shares, and purchase of the unit.
267. There can also sometimes be confusion as to whether other establishments, or parts of other establishments meet the definition (e.g., unit title lifestyle villages which target retirees with similar marketing to registered retirement villages). This issue was raised by the Retirement Commission in the White Paper.

44 Note that the Residential Tenancies Act 1986 covers residential tenancies. It does not apply where a resident has an ORA, therefore a residential tenancy as defined under the Residential Tenancies Act 1986 cannot apply to occupation of a retirement village unit.

45 Te Ara Ahunga Ora – Retirement Commission, 2022 *Review of Retirement Income Policies*, 13, [RRIP_2022.pdf \(retirement.govt.nz\)](#).

Tell us what you think

QUESTIONS ON FUTURE PROOFING THE DEFINITION OF RETIREMENT VILLAGE	
Q.55	Is the definition of retirement village easy to understand? Why/why not?
Q.56	Are any aspects of the definition unnecessary or redundant? If yes, please tell us which ones.
Q.57	Does the definition enable operators to respond to changing demographics and housing needs? Why/why not?

Part F – Other topics

268. This section deals with a variety of other matters relating to retirement villages. For some of these matters we have included proposals and for others we are seeking further information to inform future policy work. These matters are:
- a. Insurance cover for retirement village operators.
 - b. Security for residents' capital sums.
 - c. Culturally responsive services and models of care.
 - d. Roles of government agencies in the retirement village system.
 - e. The operation of the Retirement Villages Register.
 - f. Reviewing the Code of Practice and Code of Residents' Rights.
 - g. Offences and penalties.

Insurance cover for retirement village operators

269. Insurance cover for retirement village operators protects both operators and residents from loss, damage, or destruction caused by fires, accidents, and natural disasters.
270. The Code of Practice has requirements for village operators' insurance cover. Currently, operators are required to take out comprehensive insurance policies to cover loss, damage, or destruction caused by fire, accident, or natural disaster of all:
- a. retirement village property
 - b. capital improvements or additional fittings provided by residents
 - c. residential units owned by residents.
271. Operators' insurance policies must provide 'full replacement cover' unless full replacement cover is not available. Indemnity insurance is permitted if full replacement insurance is not available.
272. Operators may choose to take out any other relevant insurance policies in relation to the retirement village (for example, business interruption insurance).
273. Residents are responsible for insuring any contents they own within their residential units. Residents may, but are not required to, take out contents insurance with their preferred insurer.

Problems with existing insurance cover requirements

Insurance requirements do not reflect cover available to operators

274. Stakeholders have raised that, for most retirement villages, it is no longer possible to obtain full replacement value policies. Instead, insurers generally require an agreed 'sum insured' policy which clearly identifies the maximum loss that could be incurred. Operators with multiple villages are also increasingly obtaining collective or 'loss-limit' policies as it is becoming difficult to purchase full insurance cover for their entire portfolio.

Termination of an ORA if unit is damaged or destroyed

275. If a unit is damaged or destroyed and unable to be reinstated, and the operator terminates the resident's ORA, the Code of Practice requires the operator to pay out the resident's capital sum (with no fixed deduction charged to the resident).
276. A concern arises when an entire village is destroyed, is unable to be reinstated and the operator terminates all ORAs. In such an event, most insurers will pay out the indemnity value of the village which will typically be less than the sum insured amount. In many cases, the insurance indemnity amount is less than the amount required to pay out all the residents and, in some cases, there can be a substantial shortfall that the operator is required to cover.

Operators passing on excess to residents

277. The Code of Practice requires operators to inform residents whether or not they pass on any insurance policy excess amount to residents and in what circumstances. However, so long as residents are informed, there are no restrictions in the Code of Practice on when insurance excess may be passed on to residents.
278. It may be appropriate for insurance excess to be passed to a resident in certain situations. For example, when a resident is at fault for the damage caused. However, where retirement village property has been damaged and residents are not at fault, passing on insurance excess is likely to be unfair.

Changes we are proposing to operator insurance cover

279. Considering the issues discussed above, we have developed three proposed options. These options should be considered as a package, however each could be progressed separately from the others.

Insurance requirements reflect available cover

280. We propose to modernise and futureproof the insurance requirements imposed on retirement village operators to reflect the types of insurance policies that are readily available. This includes removing the requirement for full replacement cover and allowing the types of sum-insured and collective policies currently being obtained by operators.

Sufficient coverage to pay out residents' capital sums if village is destroyed

281. We propose that village operators should be required to maintain insurance policies that at all times are sufficient, alongside other funds, to pay out all residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated.
282. Insurance policies held by an operator would, alongside other funds, need to meet this minimum requirement to the satisfaction of the operator's statutory supervisor (if there is one).

Restricting ability to pass on insurance excess to residents

283. We propose to restrict the ability for village operators to pass on any insurance excess amounts to residents if:
- a. the loss, damage or destruction relates to retirement village property
 - b. the resident was not at fault for the loss, damage or destruction.
284. Village operators could still pass on insurance excess amounts if the resident is at fault or the loss, damage or destruction is to property owned by the resident. Operators would still be required to inform residents of whether they are passing on any insurance excess amount and in what circumstances.
285. Feedback is sought on whether there are any other circumstances in which operators' ability to pass on insurance excess amounts to residents should be restricted.

How would these changes meet our objectives?

286. The options for insurance requirements for retirement village operators are intended to provide adequate consumer protections for residents. In addition, it is important that the requirements are practical, and operators are able to comply.
287. Requiring operators to maintain sufficient insurance cover, alongside other funds, to be able to pay out all residents' capital sums in the event that a village is destroyed and unable to be reinstated would increase consumer protections for residents. This minimum insurance requirement would protect residents' interests by ensuring that, if a village is destroyed and unable to be reinstated, the operator is always able to meet its obligations to the residents.
288. Restricting the ability for operators to pass on insurance excess would provide additional consumer protections for residents. This proposal would prevent the unfair situation of operators passing on insurance excess when the damage is to retirement village property and the resident is not at fault.

Transition to new arrangements

289. If approved, the proposal to modernise insurance requirements and remove the requirement for full replacement cover would apply as soon as the amendments have been made to the Code of Practice.
290. The proposal to require operators to maintain sufficient cover to pay out all residents' capital sums in the event a village is destroyed would likely require some lead-in time to enable operators to update their insurance policies or obtain new ones. We propose a transition period of one year from the time the legislation is changed to when the changes commence.
291. The proposed restriction on passing on insurance excess amounts to residents in certain situations would apply to events of loss, damage or destruction that occur after the amendments to the Code of Practice have been made.

Interaction with other topics

292. Insurance proposals have links to the [Maintenance of operator-owned chattels and fixtures](#) topic in Part C.

Tell us what you think

QUESTIONS ON INSURANCE COVER FOR RETIREMENT VILLAGES	
Q.58	<p>Do you agree with:</p> <ul style="list-style-type: none"> ▪ the proposal to require that operators maintain insurance policies that, at all times, are sufficient (alongside other funds) to pay out all residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated? ▪ 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, damage or destruction? ▪ neither of these? <p>Please give us your reasons, including any additional suggestions for how issues with insurance cover can be addressed.</p>
Q.59	Do you foresee any issues with the proposal to remove the requirement that operators should have "full replacement cover" and instead allow them to obtain sum-insured and collective type insurance policies? Why/why not?
Q.60	Is a 12-month transition period sufficient for operators to update insurance policies or obtain new ones to meet the proposed sufficient coverage requirement? Why/why not?
Q.61	Are there any other scenarios in which operators' ability to pass on insurance excess amounts to residents should be restricted? If yes, please tell us about them.

Security for residents' capital sums

293. The Act requires retirement village operators to appoint a statutory supervisor unless the Registrar grants an exemption. Statutory supervisors are independent professionals, licensed by the Financial Markets Authority, whose role is to represent the collective financial interests of retirement village residents and monitor the financial position of the village.⁴⁶
294. Statutory supervisors report annually to the Registrar, and to village residents, on their performance of their duties. Statutory supervisors have powers under the Act to carry out these duties, such as requiring operators to provide specified information to residents, or directing operators to manage the village in a specified way where the financial position of the village is inadequate.
295. Statutory supervisors can negotiate with an operator to hold a security agreement. There are two types of security: land security (via a mortgage or encumbrance) and personal property security (through a general security agreement (GSA)).
296. Having a security agreement allows better enforcement of legal rights granted under an ORA where a retirement village gets into financial difficulty. Security arrangements set the priority order in which creditors (including residents) receive amounts due to them. Personal property security also gives the supervisor the ability to appoint a receiver quickly, if required.

Problems with the current situation

297. Sections 21 and 22 of the Act create a statutory protection of certain specified rights of residents, ahead of some security holders, such as banks. Most statutory supervisors are able to negotiate with the operator to be able to hold land security (via a mortgage or encumbrance) additional to the section 21 memorial. However, not all statutory supervisors are able to negotiate to be able to hold personal property security (through a GSA).⁴⁷ This leaves a security gap which could result in residents not receiving back all financial amounts due to them.
298. Additionally, statutory supervisors must currently request information from auditors of retirement villages. In other situations, like supervisors of debt securities, auditors must report concern about finances to the relevant supervisors.

⁴⁶ Statutory supervisors are governed by the Financial Markets Supervisors Act 2011. This Act includes a requirement for them to be licensed by the Financial Markets Authority. They also can play a role in supervising other financial areas, such as debt securities and unit trusts.

⁴⁷ This was identified in the summary of submissions on the Retirement Commission's White Paper, as well as in conversations with the statutory supervisors.

Changes we are proposing to security of residents' capital sums

299. We propose amending the legislation to require statutory supervisors to hold both land and personal property securities. This would mean that statutory supervisors who currently do not hold a GSA would register one. This would also override operators who currently restrict their statutory supervisor from getting a GSA.
300. We did consider not making a change; however, we think this issue is worth addressing to better protect residents. We are interested to hear views on what the appropriate rank of the securities should be (above or below banks).
301. We are not proposing to require auditors to report information to the statutory supervisors, similar to the provisions in sections 198 and 199 of the Financial Markets Conduct Act 2013. However, we are interested to hear whether this would be useful, and other impacts this could have.

How would these changes meet our objectives?

302. This proposal responds to the overarching objectives of the review which are to ensure an effective balance between the rights and responsibilities of residents and operators of retirement villages, and adequate consumer protections for residents and intending residents.
303. Introducing a requirement to hold both types of security would ensure consistency of consumer protection across all villages. The proposal aligns with the role of the statutory supervisor to protect the collective financial interests of residents.
304. This proposal would improve residents' priority position to share in the assets of an insolvent village operator with regards to money owing to the resident.

Transition to new arrangements

305. The proposal would apply to existing supervision arrangements. We propose a transition period of one year from the time the legislation is changed to when the changes commence. This would give time for statutory supervisors and operators to amend the necessary documents, such as the Deed of Supervision, to allow for the new requirements.

Tell us what you think

QUESTIONS ON SECURITY FOR RESIDENTS' CAPITAL SUMS	
Q.62	Do you agree that statutory supervisors should have the ability to hold both land and personal property security on behalf of residents? Why/why not?
Q.63	Would legislating that statutory supervisors have to hold both types of security affect banking arrangements? If yes, how?
Q.64	If the legislation was to empower a statutory supervisor to hold a GSA, should this be first ranking or is it sufficient for this to rank second in priority behind the bank lender? Please give us your reasons.

QUESTIONS ON SECURITY FOR RESIDENTS' CAPITAL SUMS**Q.65**

What impact would requiring auditors of retirement villages to report to statutory supervisors if there was concern about solvency have on the security of residents' capital sums?

Culturally responsive services and models of care

306. The Government Policy Statement on Housing and Urban Development has the vision that everyone lives in a home and a community that meets their needs and aspirations.⁴⁸ We know that connection to culture and affirmation of identity are hugely important for health and wellbeing.
307. We are committed to honouring Te Tiriti ō Waitangi. MAIHI Ka Ora, the National Māori Housing Strategy sets out our approach to addressing fundamental and structural barriers that exist to realising Māori housing needs and aspirations. Critically, the approach is centred on Māori led solutions – by Māori, for Māori.⁴⁹
308. To date, retirement villages have mostly been home to older New Zealand European/Pākehā. This is partly because retirement villages are targeted at people over the age of 75, and of that age group, around 87 percent are European.⁵⁰
309. Other factors also undoubtedly play a role. For example, the capital payment, typically generated from selling a home, is a barrier for groups with lower home ownership rates, such as Māori and Pasifika. Māori and Pasifika also have shorter life expectancy on average, which means a higher proportion will not reach the typical entry age for retirement villages.⁵¹
310. Underlying these structural inequities is a history of land dispossession and cultural alienation for Māori. Perhaps most significantly, the concept of a retirement village itself may hold less appeal for Māori, Pasifika, and others who place greater emphasis on intergenerational living and maintaining connection to whenua. Other options, such as kaumātua flats, papakāinga, and multi-generational and co-housing opportunities may represent better solutions.
311. Our population is changing and over time more of our older people will identify with ethnic groups other than Pākehā. To better reflect the wider needs and preferences in our

48 Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, *Government Policy Statement on Housing and Urban Development* (GPS-HUD), 2021, https://www.hud.govt.nz/assets/Uploads/Documents/HUD-GPS_Cabinet-Paper-CMYK-5_3b2-web-3.pdf.

49 Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development, *MAIHI Ka Ora – the National Māori Housing Strategy*, 2021, [MAIHI Ka Ora Strategy document \(hud.govt.nz\)](https://www.hud.govt.nz/assets/Uploads/Documents/HUD-GPS_Cabinet-Paper-CMYK-5_3b2-web-3.pdf).

50 Data from Stats NZ, based on Census 2018 data.

51 Average life expectancy at birth based on death rates 2017-2019 were 73.4 for Māori males, 77.1 for Māori females, 75.4 for Pacific males 75.4, and 79 for Pacific females, compared with 81 for male European/other and 84.5 for female European/other. See “Growth in life expectancy slows” Stats NZ (20 April 2021) <https://www.stats.govt.nz/news/growth-in-life-expectancy-slows/>.

community, some villages have begun to adopt practices which encourage residents from non-Pākehā backgrounds into village life and make them feel more at home. These include celebrating significant cultural events, incorporating a wider selection of onsite activities, and employing staff who can speak the language of residents where English is not their first or preferred language.

312. There is, however, only limited information on the extent to which these offerings are meeting the broader cultural needs of a range of communities. We seek views on whether and how operators could reflect or cater for a variety of cultures in the design and delivery of their villages and services, if not already. Examples of how villages are currently providing culturally inclusive spaces are also important so we can help share good practice across the industry.

What the current legislation requires

313. The Act makes limited requirements for the provision of culturally responsive services. Under the Code of Residents' Rights, residents have the 'right to be treated with courtesy and have rights respected by the operator, the people who work at the village, and the people who provide services at the village'.
314. The Code of Practice states, 'the operator must inform residents and intending residents about staff employed at the retirement village ... [with] skills in communicating with residents who speak languages other than English.'

We are seeking more information

315. We are not proposing any changes to legislation at present. Addressing the wider barriers that exist to meeting the housing needs of kaumātua, and older Pasifika, sits largely beyond the scope of this review. However, there may be an opportunity through guidelines, education, or otherwise to achieve any desired changes that come out of the consultation process. The information provided in response to this section will help us understand the needs and aspirations of current or prospective residents to inform what retirement villages might look like if they were to broaden culturally and what kind of response might achieve this.

Tell us what you think

QUESTIONS ON CULTURALLY RESPONSIVE SERVICES AND MODELS OF CARE	
Q.66	Does your retirement village provide a culturally responsive environment and/or services? Please tell us how.
Q.67	Are there any changes you would like to see in how retirement villages provide a culturally responsive environment and/or services? If yes, please tell us how.
Q.68	Are there any areas we should be aware of in the review that may impact Māori or other cultural groups differently? If yes, please tell us about them.

Roles of government agencies in the retirement village system

316. Multiple government agencies have roles and responsibilities in the retirement villages system, as set out below.⁵²

<p>Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (the Ministry) is responsible for administering the Retirement Villages Act 2003 and its regulations. This responsibility includes recommending amendments to the Minister if it considers them necessary.</p>	<p>Te Ara Ahunga Ora – Retirement Commission (the Retirement Commission) monitors the effects of the retirement villages legal framework and provides educational and advisory resources to retirees and the wider public.</p> <p>The Retirement Commission informs the responsible Minister about retirement villages, works with the Ministry to identify problems with the regulatory system, and makes recommendations to the Minister on variations to the Code of Practice.</p>
<p>The Registrar of Retirement Villages (the Registrar), within MBIE, is responsible for the registration of villages and maintaining the Retirement Villages Register.</p> <p>The Registrar’s powers under the Act include suspending the registration of villages in specified circumstances, and approving exemptions from statutory supervision.</p>	<p>The Ministry of Business, Innovation and Employment (MBIE) is responsible for the building and construction regulatory systems.</p> <p>MBIE is also responsible for appointing the Registrar and administering consumer protection legislation.</p>
<p>The Financial Markets Authority (FMA) oversees and issues licences to statutory supervisors.</p> <p>The FMA monitors the financial industry and has the power to investigate misconduct, including by statutory supervisors.</p>	<p>The Office for Seniors is the primary government advisor on issues affecting older people.</p> <p>The Office for Seniors also provides information and resources to older people and their families.</p>
<p>The Real Estate Authority regulates real estate agents who facilitate the transfer of retirement units.</p> <p>The Real Estate Authority is responsible for ensuring that any real estate agency work is only carried out by a licensed real estate agent.</p>	<p>The Commerce Commission administers and enforces consumer protection law.</p> <p>The Commerce Commission can take actions against village operators in relation to alleged breaches of the Fair Trading Act 1986.</p>
<p>Manatū Hauora – Ministry of Health certifies aged residential care facilities within retirement villages through the HealthCERT scheme.</p>	

⁵² Manatū Hauora - Ministry of Health, the Aged Care Commissioner, the Ombudsman and Te Whatu Ora – Health New Zealand have statutory roles in the aged residential care sector.

Are changes needed to roles and functions of government entities?

317. The Retirement Commission's *Submissions summary and recommendations 2021* report noted the complexity of the legislative framework and called 'for a simplified structure with one central authority responsible for retirement villages, rather than the multiple government and statutory entities currently involved'.
318. The report also noted,
 'the current legislative environment does not make provision for any government agency to audit retirement village compliance with the Code or other retirement villages legislation, other than the Registrar's s97 powers to inspect relevant documents.'
319. The Retirement Villages Association undertakes three-yearly audits of its member villages against the Code of Practice, and statutory supervisors are responsible for monitoring the financial position of villages and the security of residents' interests. We are seeking views as to whether one government agency should be tasked with monitoring and enforcing retirement villages' compliance with the whole retirement villages legislative regime.
320. As part of the review, consideration will be given to the roles and functions that government agencies have in the retirement village system (such as the Registrar and the Retirement Commission), and whether and what changes to the roles, functions and powers of agencies could improve the overall performance of the retirement villages system.

Tell us what you think

QUESTIONS ON ROLES AND POWERS OF GOVERNMENT AGENCIES IN THE RETIREMENT VILLAGE SYSTEM	
Q.69	Do you think government agencies have sufficient powers to carry out their functions within the retirement villages system? Why/why not?
Q.70	Do you think a government agency should be tasked with monitoring and auditing retirement villages' compliance with the legislative framework? Why/why not?
Q.71	System roles are currently spread across a range of government agencies, and stakeholders have observed that there is no clear system leader. Do you think one agency should have an overall leadership role? Why/why not?

The operation of the Retirement Villages Register

321. The Registrar (located within MBIE) is responsible for the registration of retirement villages and maintenance of the Retirement Villages Register (the Register).
322. The Register is maintained in an electronic format which is publicly accessible on the Companies Office website. The public Register is searchable by the name of a registered village. It is organised so that all records are displayed on a separate page for each village. The Register contains a copy of all the documents required to be registered for each village.
323. This review is an opportunity to amend parts of the Act which provide for the establishment, maintenance and operation of the Register. The Registrar has identified four specific areas for improvement to modernise these parts of the Act, so the legislation more closely reflects the way the Register is maintained and operated in practice.⁵³

Issues identified by the Registrar

Documents provided on the public Register

324. Section 10 of the Act sets out the documents that retirement village operators must provide to the Registrar, along with the prescribed registration form, to register as a retirement village. These are the village's disclosure statement and ORA, information on village land and its ownership, details of the village's statutory supervision (unless exempt), a registration fee, and any other matter prescribed by regulations.
325. In addition to the section 10 requirements, the public Register also includes the following information and documents for each registered village:
 - a. The name, physical address, registered office, address for communication, registration number and registration status (i.e., registered, suspended or cancelled) of the village.
 - b. Any previous names used by the village.
 - c. The name, address and date of appointment of the operator.
 - d. The name, address and date of appointment of the statutory supervisor.
 - e. Notice of exemption from the requirement to appoint a statutory supervisor and notices of variation to the terms and conditions of these exemptions (where applicable).
326. We are seeking feedback on whether the Act should be amended to provide that the information and documents detailed above in paragraph 325 are required to be included on the Register, together with any content which is prescribed by regulations.

⁵³ Examples of modern registrar provisions are those in the Incorporated Societies Act 2022 (sections 231-239), the Limited Partnerships Act 2008 (sections 55-88), and the Financial Markets Conduct Act 2013 (schedule 2).

327. We are also seeking feedback about what other additional information should be required to be included on the Register (such as the New Zealand Business Number for the operator, and contact phone numbers and email addresses for the operator and the village).

Power to correct minor errors

328. The Act currently does not permit the Registrar to make corrections to minor or technical errors in the Register, for example if a document was placed on the wrong part of the Register.
329. We are seeking feedback on whether the Act should be amended to include a power for the Registrar to make corrections to minor or technical errors.

Manner in which documents are to be provided to the Registrar

330. The current Register is partially electronic, and documents and information are manually uploaded onto it.
331. Other registers administered by the Companies Office have a function for people authorised by a registered entity to submit documents for registration via an electronic facility or to upload some documents directly onto the register.
332. As the Retirement Villages Register may become fully electronic and automated in the future, the Registrar needs to be able to specify the manner in which documents are lodged and filed under the Act so that it interacts with the new electronic format of the Register. We are seeking feedback on whether the Act should be amended to provide the Registrar with a power to specify the manner in which documents are to be filed or lodged under the Act.

Search purposes and search criteria

333. Most modern legislation which establishes a register has the following provisions:
- 'Search purpose' provisions which set out the purposes of a register and/or the purposes for which a register can be searched (e.g., sections 232 and 238 of the Incorporated Societies Act 2022 and section 65 of the Limited Partnership Act 2008).
 - Search criteria provisions which set out the criteria (data points) by which a register may be searched (e.g., section 237 of the Incorporated Societies Act 2022 and section 64 of the Limited Partnership Act 2008).
334. Search criteria are usually introduced where a public register contains personal information to protect residual privacy rights in that information. A register must be built specifically to accommodate the search criteria so that members of the public can only search by them.
335. If the Retirement Villages Register is replaced and upgraded, it is an opportunity to consider introducing legislative search purposes and search criteria to ensure that persons using the Register are aware of the purposes for which the Register can be used and to protect privacy rights in personal information which may be contained on the Register.
336. We are seeking feedback on whether the Act should be amended to provide the power to regulate the purposes for which the Register can be searched and the way it can be searched.

Tell us what you think

QUESTIONS ON OPERATION OF THE RETIREMENT VILLAGES REGISTER	
Q.72	What additional information and documents should be required under the Act to be available to the Registrar?
Q.73	Do you agree that the Registrar should have the power to correct minor or technical errors in the Register? Why/why not?
Q.74	Do you agree that the Act should be amended to provide the Registrar with a power to specify the manner in which documents are to be filed or lodged? Why/why not?
Q.75	Do you agree that the Act should be amended to provide the power to regulate the purposes for which the Register can be searched and the manner in which it can be searched? Why/why not?
Q.76	If there are other improvements that could be made to the Register, please tell us them.

The Code of Practice

337. The Code of Practice builds on the provisions in the Act and regulations by setting out further rights and obligations of retirement village operators and residents. It sets out the minimum requirements operators must meet, including requirements relating to:
- a. the safety and personal security of residents
 - b. the transfer of residents within a retirement village
 - c. resident meetings with the operator
 - d. the complaints facility
 - e. maintenance and upgrading
 - f. terminating an ORA by the operator or resident
 - g. communication with residents.
338. The Code of Practice was introduced in 2008, replacing the Retirement Villages Association Industry Code of Practice that had been used by the sector since 1990. Two variations have been made since the Code of Practice was introduced.
339. The Act, the Code of Residents' Rights, the General Regulations, and the Code of Practice are inter-dependent. The Code of Practice references sections of the Act and regulations, with residents having to draw on a range of sources to understand their rights. The Code of Practice must be made available to every resident and intending resident.
340. The settings in the Code of Practice directly impact on consumer issues discussed in this paper, including the maintenance and repair of owner-operated chattels and stopping weekly fees after a unit is vacated.
341. The effects of the Code of Practice are monitored by the Retirement Commission. Operators may apply to the Registrar for an exemption from complying with any provisions of the Code for up to two years.

Issues with the Code of Practice

Varying the Code of Practice

342. Variations to the Code of Practice are approved by the responsible Minister after considering any recommendations of:
- a. the Retirement Commissioner
 - b. any groups that represent operators, residents, intending residents, statutory supervisors, or other persons.
343. The Ministry provides advice to the Minister on variations to the Code of Practice.
344. The Act does not provide for a regular review, and changes can take some time. We seek views on whether and what changes are required to the current requirements to vary the Code of Practice.

Compliance with the Code of Practice

345. Stakeholders have raised concerns about how the Code of Practice is applied in practice and if all operators are compliant with its requirements.
346. As referred to in the section, [Roles of government agencies in the retirement village system](#), the Retirement Villages Association undertakes its own three-yearly audit of its members' compliance with the Code of Practice, but there is no independent ongoing monitoring of all villages. We are interested in feedback on whether one government agency should be tasked with monitoring operators' compliance with the legislative framework, including the Code of Practice.

The Code of Practice is not always accessible

347. The Code of Practice is not written in plain language, which can make it difficult to understand. In addition, there is duplication of information across the documents intending residents receive when they move into a retirement village. This may lead to some inconsistency or conflicting terms.
348. We are seeking feedback on whether the Code of Practice should be written in plain language to better articulate minimum standards and rights of residents and to make it more easily understandable.
349. We are also seeking feedback on whether the Code of Practice (and other registered documents) should be provided in alternate formats such as New Zealand Sign Language (NZSL) and Braille.

Expectations and requirements of annual and special general meetings

350. The Code of Practice sets out the procedures for annual and special general meetings. All residents are expected to attend annual or special general meetings. Through stakeholder discussions, concerns have been raised about residents not wanting to attend and/or vote at these meetings or where they may feel their views are not represented. There have also been issues raised about residents in aged residential care who struggle to attend or understand these meetings. We are interested in feedback on the procedures and requirements for annual and special general meetings, and what amendments may be required.

Obligation to consult residents about changes to weekly fees

351. We are also seeking feedback on the process operators should follow when seeking to increase weekly fees.⁵⁴ There are a number of consultation requirements outlined in the Code of Residents' Rights and the Code of Practice. We want to know what processes are currently followed when weekly fees are increased, and whether consultation requirements relating to weekly fee increases need to be strengthened.

54 As referenced in Part D, weekly fees are also known as outgoings – fees a resident is charged while living in a retirement village. For examples, charges for personal services.

Tell us what you think

QUESTIONS ON THE CODE OF PRACTICE	
Q.77	<p>Do you agree with the following improvements to address the issues identified with the Code of Practice?</p> <ul style="list-style-type: none"> ▪ introducing a regular review of the Code of Practice (for example every five or ten years) ▪ introducing a plain language Code of Practice ▪ providing the Code of Practice (and other registered documents) in alternate formats such as NZSL and Braille ▪ none of these. <p>Please give us your reasons.</p>
Q.78	<p>What changes, if any, should be made to:</p> <ul style="list-style-type: none"> ▪ the way the Code of Practice is currently varied ▪ the requirements for annual and special general meetings in the Code of Practice?
Q.79	<p>Are there any other issues with the current Code of Practice? If yes, please tell us about them.</p>
Q.80	<p>If your weekly fees have increased during occupancy, please tell us about the experience, including whether residents were consulted.</p>
Q.81	<p>Should consultation requirements for weekly fees in the Code of Practice be changed or strengthened? Why/why not?</p>

The Code of Residents' Rights

352. The Code of Residents' Rights summarises minimum rights conferred on a resident by the Act. It deals with such things as a resident's rights to:

- a. services and other benefits
- b. information
- c. be consulted by the operator
- d. complain
- e. use a support person or representative
- f. be treated with courtesy and have rights respected
- g. not to be exploited.

Issues with the Code of Residents' Rights

353. The Code of Residents' Rights includes a resident's right to not be exploited, but there is no reference to safety. We are seeking feedback on whether the Code of Residents' Rights should specifically include a resident's right to safety.
354. We are also considering whether and how to clarify and strengthen the rights and obligations residents have to other residents. For example, under the New South Wales Retirement Villages Act 1999, retirement village residents have clear rights and obligations regarding their treatment of one another. Some examples include resident obligations to:
- a. not interfere with the peace, comfort, or privacy of other residents
 - b. respect the rights of other residents
 - c. not act in a matter that adversely affects the health and safety of persons working in the village.
355. After considering submissions, we will review the Code of Practice and the Code of Residents' Rights to assess whether any changes are needed to update them and align the two Codes with the rest of the legislative framework.

Tell us what you think

QUESTIONS ON THE CODE OF RESIDENTS' RIGHTS

Q.82

Are changes needed to the Code of Residents' Rights, such as clarifying and strengthening residents' rights and obligations to one another? If yes, please tell us how.

Offences and penalties

356. The Act sets out a number of offences and penalties for people breaching or failing to comply with certain provisions. These offences include retirement village operators failing to:
- a. register a village with the Registrar
 - b. provide an intending resident with a copy of the ORA, Code of Practice, Code of Residents' Rights or disclosure statement
 - c. include a 15 day 'cooling off' period to cancel the agreement in an ORA
 - d. appoint a statutory supervisor
 - e. provide and make known the complaints facility
 - f. take all practicable steps to ensure that advertisements are not misleading or deceptive
 - g. include false or misleading material in an application for an exemption to comply with the Code of Practice
 - h. meet financial reporting requirements.
357. The penalties for these offences vary depending on the severity of the offence and are mostly set out in section 79 of the Act.
358. In addition to the offences listed above, the Act also provides for other enforcement mechanisms, such as the power of the Registrar to suspend the registration of a retirement village operator, for example if they consider any registered document is likely to mislead or deceive any resident, intending resident, or the public.
359. If proposals in this discussion paper for the disclosure regime and ORAs are implemented, new offences and enforcement mechanisms would be created. For example, these could include a new power to declare certain ORA terms unfair, and/or improved regulatory tools for dealing with false, misleading, or confusing statements.

Tell us what you think

QUESTIONS ON OFFENCES AND PENALTIES	
Q.83	Are there any issues with the current provisions for offences, penalties, and enforcement tools under the Act? If yes, please give us your reasons, including any changes you would like to see.

Application of the Real Estate Agents Act 2008 to the sale or transfer of a retirement village unit

360. When a resident vacates their unit there are different ways it can be relicensed or sold. Generally, the two most common ways a transfer is facilitated are:
- a. through the retirement village, either directly or through the village engaging a real estate agent or
 - b. by the outgoing resident, either directly or through the outgoing resident engaging a real estate agent.
361. If a real estate agent is used, the consumer protection mechanisms of the Real Estate Agents Act 2008 (REA Act) apply directly to the buyer, and the seller who has engaged the agent (either the retirement village or the outgoing resident). These protections include:
- a. the agent must be licensed under the REA Act
 - b. the agent owing a fiduciary duty to the seller, which creates a requirement to ensure that they are acting in the best interests of the seller
 - c. ensuring an agency agreement is in place which clearly identifies the commission payable to the agent, and other costs that are payable
 - d. the ability to make a complaint to the Real Estate Authority for any breaches of the legislation, Code of Conduct, or regulations.
362. Where the transfer of a unit is facilitated directly through the retirement village (without the use of a real estate agent), the general protections of the retirement villages regime, such as the improved dispute resolution scheme and the repayment of the fixed deduction, would apply. However, the wider protections under the REA Act, for both the buyer and the outgoing resident, would not.
363. Similarly, as is the case in general when a person sells their own property, where the transfer is facilitated directly by the outgoing resident, the protections under the REA Act would also not apply for either the buyer or the outgoing resident. In such cases, however, the outgoing resident will have more control over the transaction.
364. We are seeking feedback as to whether the current protections are adequate, or whether there is a need to align the consumer protections for all transfers where a third party (including the retirement village) is involved.

Tell us what you think

QUESTIONS ON APPLICATION OF THE REA ACT TO SALE OR TRANSFER OF A RETIREMENT VILLAGE UNIT	
Q.84	Should all sales and transfers of retirement village units have the same consumer protections? Why/why not?
Q.85	Do you think the third party facilitating the sale or transfer of a retirement village unit (whether that is the retirement village operator or an independent third party) should have a general fiduciary duty to act in the best interests of the outgoing resident?

Any other comments related to the review

365. You are welcome to write to us about any retirement village matters that relate to the review but may not be covered in this discussion paper. This can include any personal experiences you might have had that should be considered as part of this review.

ANY OTHER COMMENTS	
Q.86	If you have anything else on the review of the Retirement Villages Act you want to share with us, please let us know.

Glossary

Summary of key terms

Aged residential care	Long-term care services for older people with ongoing health and personal support needs, who are no longer able to live independently. Includes rest home care, hospital level care and secure dementia care.
Assisted living unit	Units for people who need a certain level of support to maintain their independence. This can also be referred to as a serviced apartment.
Building Code	Minimum performance standards buildings are required meet, set out in Schedule 1 of the Building Regulations 1992.
Capital sum	A sum of money paid by a retirement village resident as consideration for their right to occupy a residential unit.
Chattels	See 'Unit chattels and fixtures'
The Code of Practice	The Retirement Villages Code of Practice 2008 sets out the minimum standards that all retirement village operators must comply with, and sets out further rights and obligations of residents and operators not already set out in the Act or Code of Residents' Rights. A copy must be given to intending residents alongside the disclosure statement.
Code of Residents' Rights	Summarises the basic rights that the Retirement Villages Act 2003 (the Act) gives to all residents. A copy must be given to intending residents alongside the disclosure statement.
Complaint facility	A written procedure required to be developed by operators, so that a resident may contact the operator about a concern or issue at any time.
Cross lease	A land ownership structure where two or more people jointly own a piece of land, and lease their house or unit from all the other landowners. Landowners share use and maintenance of common property, e.g., driveways, lawns and fences.
Deed of supervision	The document setting out the terms and conditions under which a statutory supervisor is appointed by an operator.
Deferred management fee	See 'Fixed deduction'.
Disclosure statement	A document setting out the main terms of an offer for an intending resident to enter a retirement village.
Dispute notice	A formal notice triggering the disputes process, if the resident's issue is unable to be resolved through the formal or informal complaints process.

Disputes panel	A panel of at least three members, required to be appointed by the operator within 20 working days of receiving a dispute notice. Panel members must be selected from a list approved by the Retirement Commissioner.
Exit fee	See 'Fixed deduction'.
Facilities fee	See 'Fixed deduction'.
Fair Trading Act 1986	Legislation protecting consumers from misleading and deceptive actions, false representations and unfair practices by traders.
Fixed deduction	A percentage of a resident's capital sum, kept by the operator when the remainder of the capital sum is returned to the resident after they exit their unit. Also called a deferred management fee, exit fee, facilities fee or village contribution.
Fixtures	See 'Unit chattels and fixtures'.
General Security Agreement (GSA)	A document recording a security provided by a debtor company to its creditor over a specific group of assets or over all assets of the business.
Healthy homes standards	A set of regulations under the Residential Tenancies Act 1986, setting minimum standards for heating, insulation, ventilation, dampness, drainage and draught stopping for rental properties.
Independent living unit	Residential unit within a retirement village in which a resident lives independently and gets no additional care services.
Intending resident	A person considering becoming a retirement village resident.
Licence to occupy	The right to occupy a unit in a retirement village. Residents buy the right to live in their unit until termination of the agreement, but do not own their unit outright.
Occupation Right Agreement (ORA)	A signed written contract between an operator and a resident that gives a resident the right to occupy a unit in a retirement village. ORAs can cover a variety of occupation arrangements, such as unit titles, cross-lease titles and licences to occupy.
ORA care suite	A room or unit in a retirement village occupied by a resident assessed as requiring aged residential care, where occupation is purchased by way of an ORA.
Outgoings	See 'Weekly fees'.
Periodical charges	See 'Weekly fees'.
Personal services	Include services provided to a resident on an individual basis at that resident's request, for example, meals, laundry, nursing care, and cleaning.
Registrar of Retirement Villages (the Registrar)	Person employed by MBIE to maintain the Retirement Villages Register.

Retirement Villages Act 2003 (the Act)	Primary piece of legislation setting out the obligations of retirement village operators, and rights of residents and intending residents.
Retirement Villages (General) Regulations 2006 (the General Regulations)	Prescribe what must be included in disclosure documents and ORAs, and registration requirements and deed of supervision arrangements with statutory supervisors.
Retirement village property	Buildings, plant, and equipment that are owned by retirement village operators (including assets, amenities and utilities within the retirement village boundaries).
Retirement Villages Register (the Register)	A register of all registered retirement villages. Operators are required to provide specified documents to the Registrar for registration, including ORAs, disclosure statements, and annual returns.
Retirement village unit	Residential unit within a retirement village.
Statutory supervisor	Statutory supervisors are appointed to monitor the financial position of retirement villages, and the security of residents' interests.
Summary of Key Terms	A template developed by the Retirement Villages Association and completed by retirement village operators, summarising the key terms and information relating to living in that village.
The Ministry	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development.
Weekly fees	Costs relating to the operation, management, supervision and maintenance of the village as a whole, recovered from all residents as agreed in the ORA. Weekly fees do not include costs of providing personal services to a resident. Also called outgoings and periodical charges.
Unit chattels and fixtures	Chattels are moveable items of property, while fixtures are items that are fixed to the property or land. For the purposes of this document, unit chattels and fixtures refer to those owned by the retirement village operator, and provided to residents in retirement village units, e.g., refrigerators, electrical fixtures, curtains and blinds.
Unit title	A property ownership structure where the owner owns a defined part of a building, such as an apartment, and shares ownership of common areas e.g., lifts, lobbies or driveways, with other residents.
Village contribution	See 'Fixed deduction'.

Acronyms and abbreviations

The Act	Retirement Villages Act 2003
FMA	Financial Markets Authority
The General Regulations	The Retirement Villages (General) Regulations 2006
GSA	General Security Agreement
Information Statement	Retirement Village Information Statement
MBIE	Ministry of Business, Innovation and Employment
ORA	Occupation right agreement
The Retirement Commission	Te Ara Ahunga Ora – Retirement Commission
REA Act	Real Estate Agents Act 2008
The review	The review of the Retirement Villages Act 2003

Appendix 1 – Proposed Village Comparison template

VILLAGE COMPARISON	
Village and details of accommodation	
1	Name and address of village
2	Name of operator
3	When was the village completed?
4	Nature of ownership or occupancy rights (e.g., unit title, rental, licence-to-occupy, cross-lease)
5	What type or types of accommodation are offered? [Fill in type, e.g., independent apartment unit, serviced apartment]
Financial matters	
6	What is the range of entry prices for available units?
7	What is the maximum fixed deduction charge (deferred management fee) on vacating the unit?
8	What ongoing fees are payable by the resident? How often are they payable (e.g., weekly)?
9	Are there any circumstances under which a resident would have to pay more than one fixed deduction? E.g., if they had to transfer to a different part of the village
10	Does the resident share in any capital gain on the sale of the unit and if yes, what share?
11	When do weekly fees stop after the resident vacates their unit?
Current Aged Residential Care	
12	Are there aged residential care facilities on site or at an affiliated site? Yes/No If yes – insert statement: ‘Please see Information Statement for details’
13	Does the village offer any standard aged residential care rooms where there is no requirement to pay premium room charges or purchase an occupation right agreement?
14	(Statement to be included if applicable) ‘The village may not be able to guarantee a bed in the care facility at the time the resident requires it.’
Village life and facilities	
15	Are pets allowed?
16	What services and facilities are available? [Tick boxes to be inserted and space to specify additional services and facilities, as applicable]
General statements to be included	
17	This information contains some key terms for the retirement village. You should also read the Retirement Village Information Statement for this village.

Appendix 2 – Proposed Retirement Village Information Statement template

RETIREMENT VILLAGE INFORMATION STATEMENT	
Introduction	
1	Name and address of village
2	Name of operator
3	Contact details of village, including email address and telephone number
4	Registered office
5	What is the date on which this disclosure statement is issued?
6	Important information for intending residents (see Schedule 4 of the Retirement Villages (General) Regulations 2006)
7	Statement that before signing an ORA, the operator must give intending resident disclosure documents (Village Comparison and Information Statement/Disclosure Statement), Code of Residents' Rights, Code of Practice, and an ORA
8	Summary of key terms by operator (optional)
9	Glossary of terms
General village information	
10	Who owns the village? (including legal nature of operator and where resident can find more information about the ownership structure)
11	The identity and role of the statutory supervisor
12	How is the village managed?
13	What are the features of the village (including services and facilities)?
14	What age limits apply to residents of this village?
15	Is there a residents' committee?
Details of accommodation and ownership or occupancy rights of resident	
16	What type or types of accommodation are offered? (e.g., independent apartment unit, serviced apartment)
17	What type or types of occupancy rights are offered to residents?
18	Do I have the right to market and sell my unit if my ORA is terminated?
19	Can I have a partner or spouse move in with me? What happens if I exit the unit before they do?
20	Is there a policy about having guests stay?
21	Am I allowed a pet?

State of village and future plans	
22	What is the age and condition of the village?
23	Is the village fully or partially completed?
24	If the village is partially completed or still to be built, what is/are the expected timeframes for completion?
25	Are there any additional services and facilities planned to be built?
26	What is the anticipated impact on residents of planned construction of parts of the village?
27	A statement to be included: “This information is current as at the date of the Information Statement.”
Charges, billing & estimated costs	
28	How much do I need to pay to secure a village unit?
29	Is the amount refundable? If yes, under what circumstances and how much is refundable?
30	What is the maximum fixed deduction charge (deferred management fee) on vacating the unit?
31	How is the fixed deduction calculated? What does it cover?
32	What fees or charges will I have to pay while occupying a village unit? What do they cover?
33	If ongoing fees are not fixed, how much can they be increased by the operator? On what basis can they be increased?
34	Are there any additional fees and charges, e.g., for specific or personal services?
35	When do ongoing fees stop after my unit is vacated?
36	When do I or my estate get paid my capital sum (minus fees and charges) after my village unit is vacated?
37	What is the estimated <u>total cost</u> a resident would pay if they leave the unit after one year, five years, and seven years of occupation (including outgoing such as weekly fees)?
38	What is the estimated <u>financial return</u> a resident would receive if they left their unit after one year, five years, and seven years of occupation?
Transferring between units	
39	Does the resident have priority over non-residents to transfer to another unit at the village?
40	How much will I have to pay if I transfer between units?
Insurance	
41	What is the insurance policy of the village? (including the insurance cover for the retirement village held by operator and the risks relating to the residential unit for which the resident is responsible)

Aged residential care facilities	
42	Does my ORA allow me to receive rest home care or hospital care? What are the terms on which this is allowed?
43	(If applicable) What are the categories of aged residential care available on-site (rest home, hospital level, secured dementia care) and number of rooms in each care category?
44	What were the average occupancy levels over the past 12 months of on-site aged residential care rooms by care category?
45	(If applicable) What are the categories of aged residential care rooms available at a separate site affiliated to the operator (rest home, hospital level, secured dementia care), and ownership details of the affiliated aged residential care facility?
46	What is the process of being assessed for aged residential care?
47	A statement to be included: “The village may not be able to guarantee a bed in the aged residential care facility at the time the resident requires it.”
48	If no suitable aged residential care room is available on site to which a resident can transfer, what would happen and what interim measures would the village take?
49	What are the financial implications of transferring to an aged residential care facility? Operators, please include details about: <ul style="list-style-type: none"> ▪ What types of rooms are available (standard rooms, premium rooms, care suites, or other types of rooms) ▪ What types of costs are there for each type of room. For example, ongoing accommodation costs, capital sum, deferred management fee ▪ Whether a resident would have to terminate their current ORA and enter a new ORA and if so, what would this mean for the resident’s fixed deduction charge ▪ What the financial implications are if one person in a couple has to transfer to aged residential care.
50	Does the operator offer financial assistance to transfer to aged residential care? If yes, please give details of this assistance including: <ul style="list-style-type: none"> ▪ assistance where one person in a couple will remain in their independent living unit ▪ whether assistance is limited to onsite/affiliated aged residential care facilities.
Complaints and disputes	
51	How can I make a complaint?
Additional terms	
52	Terms, conditions, and other information specific to the village.

Further information which I can request	
53	<p>Statements to be included:</p> <p>“The resident or intending resident has the right to ask for a copy of, or inspect, the following documents: site plans, village rules, dispute resolution regime, financial statements and annual accounts, compliance documents, and guidelines and policies.”</p> <p>“The resident or intending resident has the right to ask for and receive information on sales and disposals of units within the 12 months prior to the Information Statement was issued, including numbers occupied before disposal, time taken to dispose each of the units, and average time taken to dispose each unit.”</p>
Occupation right agreement	
54	Can I vary the occupation right agreement?
55	How can I cancel an occupation right agreement I already signed? (including cooling off period)
What are my rights if the undertakings made here do not eventuate?	
56	<p>A statement to be included:</p> <p>“You may lodge an application through the retirement villages disputes regime for compensation if you are concerned any undertakings or representations in this document as to services and facilities have not been honoured. You can find out more about the complaints and dispute resolution process here [link].”</p>

Appendix 3 – Proposed new Disclosure Statement

NEW DISCLOSURE STATEMENT	
Introduction	
1	Name and address of village
2	Name of operator
3	Contact details of village, including email address and telephone number
4	Registered office
5	What is the date on which this disclosure statement is issued?
6	Important information for intending residents (see Schedule 4 of the Retirement Villages (General) Regulations 2006)
7	Statement that before signing an ORA, the operator must give the intending resident a disclosure statement, Code of Residents' Rights, Code of Practice, and an ORA
8	Summary of key terms (optional)
9	Glossary of terms
General village information and details of accommodation	
10	Who owns the village (including legal nature of operator and where the resident can find more information about the ownership structure)?
11	How is the village managed?
12	What type or types of accommodation are offered? [fill in type, e.g., independent apartment unit, serviced apartment]
13	What are the features of the village (including services and facilities)?
14	What age limits apply to residents of this village?
15	Is there a residents' committee?
16	The identity and role of the statutory supervisor
Details of occupancy rights of residents	
17	What type or types of occupancy rights are offered to residents?
18	Do I have the right to market and sell my unit if my ORA is terminated?
19	Can I have a partner or spouse move in with me? What happens if I exit the unit before they do?
20	Is there a policy about having guests to stay?
21	Am I allowed a pet?

State of village and future plans	
22	What is the age and condition of the village?
23	Is the village fully or partially completed?
24	If the village is partially completed or still to be built, what is/are the expected timeframes for completion?
25	What is the anticipated impact on residents of planned construction of parts of the village?
26	Are there any other services and facilities planned to be built?
Financial matters	
27	How much do I need to pay to secure a village unit?
28	Is the amount refundable? If yes, under what circumstances and how much is refundable?
29	What is the maximum fixed deduction charge (deferred management fee) on vacating the unit?
30	How is the fixed deduction calculated? What does it cover?
31	What fees or charges will I have to pay while occupying a village unit (e.g. weekly fees)? What do they cover?
32	If ongoing fees are not fixed, how much can they be increased by the operator? On what basis can they be increased?
33	Are there any additional fees and charges, e.g., for specific or personal services?
34	When do I or my estate get paid my capital sum (minus fees and charges) after my village unit is vacated?
35	Are there any circumstances under which a resident would have to pay more than one fixed deduction? E.g., if they had to transfer to a different part of the village?
36	Does the resident share in any capital gain on the sale of the unit and if yes, what share?
37	Are there any circumstances under which a resident would have to pay more than one fixed deduction? E.g., if they had to transfer to a different part of the village?
38	Does the resident share in any capital gain on the sale of the unit and if yes, what share?
39	When do weekly fees stop after the resident vacates their unit?
40	What is the estimated <u>total cost</u> a resident would pay if they leave the unit after one year, five years, and seven years of occupation (including outgoing such as weekly fees)?
41	What is the estimated <u>financial return</u> a resident would receive if they left their unit after one year, five years, and seven years of occupation?
Insurance	
42	What is the insurance policy of the village (including the insurance cover for the retirement village held by operator and the risks relating to the residential unit for which the resident is responsible)?

Current Aged Residential Care	
43	Does my ORA allow me to receive rest home care or hospital care? What are the terms on which this is allowed?
44	Are there aged residential care facilities on-site or at an affiliated site? Yes/No
45	Does the village offer any standard aged residential care rooms where there is no requirement to pay premium room charges or purchase an occupation right agreement?
46	(If applicable) What are the categories of aged residential care available on-site (rest home, hospital level, secured dementia care) and number of rooms in each care category?
47	What were the average occupancy levels over the past 12 months of on-site aged residential care rooms by care category?
48	(If applicable) What are the categories of aged residential care rooms available at a <u>separate site affiliated to the operator</u> (rest home, hospital level, secured dementia care), and ownership details of the affiliated aged residential care facility?
49	What is the process for being assessed for aged residential care?
50	A statement to be included: “The village may not be able to guarantee a bed in the aged residential care facility at the time the resident requires it.”
51	If no suitable aged residential care room is available on-site to which a resident can transfer, what would happen and what interim measures would the village take?
52	What are the financial implications of transferring to an aged residential care facility? Operators, please include details about: <ul style="list-style-type: none"> ▪ What types of rooms are available (standard rooms, premium rooms, care suites, or other types of rooms) ▪ What types of costs are there for each type of room? For example, ongoing accommodation costs, capital sum, deferred management fee. ▪ Whether a resident would have to terminate their current ORA and enter a new ORA and if so, what would this mean for the resident’s fixed deduction charge? ▪ What are the financial implications if one person in a couple has to transfer to aged residential care?
53	Does the operator offer financial assistance to transfer to aged residential care? If yes, give details of this assistance including: <ul style="list-style-type: none"> ▪ assistance where one person in a couple will remain in their independent living unit ▪ whether assistance is limited to on-site/affiliated aged residential care facilities.
Transferring between units within the village	
54	Does the resident have priority over non-residents to transfer to another unit at the village?
55	How much will I have to pay if I transfer between units?

Complaints and disputes	
56	How can I make a complaint?
Additional terms	
57	Terms, conditions, and other information specific to the village.
Further information which I can request	
58	<p>Statements to be included:</p> <p>“The resident or intending resident has the right to ask for a copy of or inspect the following documents: site plans, village rules, dispute resolution regime, financial statements and annual accounts, compliance documents, and guidelines and policies.”</p> <p>“The resident or intending resident has the right to ask for and receive information on sales and disposals of units in the 12 months before the Information Statement was issued, including numbers occupied before disposal, time taken to dispose of each of the units, and average time taken to dispose of each unit.”</p>
Occupation right agreement	
59	Can I vary the occupation right agreement?
60	How can I cancel an occupation right agreement I already signed? (including cooling off period)
What are my rights if the undertakings made here do not eventuate?	
61	<p>A statement to be included:</p> <p>“You may lodge an application through the retirement villages disputes regime for compensation if you are concerned any undertakings or representations in this document as to services and facilities have not been honoured. You can find out more about the complaints and dispute resolution process here [link].”</p>

Appendix 4 – Proposed standardised layout for ORA

(Note: the explanation would not form part of the standardised ORA)

STANDARDISED FORMAT ORA	
1	<p>Introduction</p> <p>[Information about the type of ORA e.g., nature of resident’s right to occupy and other details operators wish to include]</p>
Essential Information	
2	Date of agreement
3	<p>Parties – Names of Operator and Resident(s)</p> <p>[The registered company name and the full name(s) of the resident(s)]</p>
4	<p>Unit/apartment number, village name and village address</p> <p>[Details of the resident’s unit/apartment, name/number and address at the retirement village]</p>
5	<p>Other areas included for your personal use: (List details for items that apply – examples below)</p> <p>1. Garage number:</p> <p>2. Car port number:</p> <p>3. Parking space:</p> <p>4. Other (Please describe):</p> <p>[to be completed if resident(s) will receive additional facilities]</p>
6	<p>Expected date for completion of unit (if relevant)</p> <p>[To be included if unit is not completed at the time of purchase]</p>
Overview of payments (dollar amount)	
[This section lists the \$ amount only. Details of the payments are listed in the following section]	
7	<p>Entry payment</p> <p>\$ _____</p> <p>[Operator to insert upfront capital sum payable for residents’ unit prior to entry]</p>
8	<p>Regular fee (also known as weekly fee) \$ _____ (weekly/monthly)</p> <p>[Enter the recurring fee a resident must pay for the duration of their residence and how often it is charged]</p>
9	<p>Fees for additional items/services</p> <p>\$ _____</p> <p>[List fees for additional items and/or services a resident(s) is to receive in their package, if applicable]</p>
10	<p>Fixed deduction (also known as ‘deferred management fee’)</p> <p>[Include the maximum amount in dollars payable and what percentage of the entry payment this represents]</p>

Breakdown of your payments	
11	<p>Entry payment</p> <p>[For example, when the entry payment must be paid by the resident prior to their commencement date]</p>
12	<p>Regular fee</p> <p>[For example, how often the regular fee is invoiced, whether and how the regular fee could increase during the resident's stay, and if the regular fee is required in advance before the resident begins living in the retirement village]</p>
13	<p>Additional item(s)/service(s) fee</p> <p>[If the resident has requested other services which are not included in their regular fee, when the resident is invoiced for these services and other relevant details]</p>
14	<p>Pathways to aged residential care payments</p> <p>[This section details the payments a resident would have to pay if they required aged residential care. For example, details of any changes in charges, any other charges incurred by the transfer and who pays, and arrangements for the physical transfer of the resident and their belongings. Further details on the level of service, health assessment and transfer to a care facility is detailed below in sections 30-34]</p>
15	<p>Fixed deduction</p> <p>[Details about how the fixed deduction is calculated and when the fixed deduction would apply, for example if the resident transfers to aged residential care, and under what circumstances a fixed deduction would not apply]</p>
16	<p>Other fees or costs</p> <p>[Covers any other fees or costs the resident may need to pay during their residence. For example:</p> <ul style="list-style-type: none"> ▪ utilities costs ▪ late payments ▪ interest incurred on late payments]

Your residency rights	
17	<p>What are my rights and responsibilities?</p> <p>[Covers details of the rights and responsibilities a resident has and may not have while living in the retirement village.</p> <ul style="list-style-type: none"> ▪ This could include, for example, details about a resident’s right or responsibilities regarding: ▪ having guests stay overnight ▪ keeping a pet ▪ being treated and treating other residents with courtesy and respect ▪ insurance responsibilities for their personal contents ▪ an inability to sell or market their own unit ▪ an inability to transfer their rights to another person ▪ other rights a resident may not have]
18	<p>Maintenance, repairs and upgrades</p> <p>[Includes details of the obligations, expectations and protocols for maintaining, repairing and upgrading the unit and operator-owned chattels]</p>
19	<p>Modifying your unit</p> <p>[Covers circumstances in which a resident is able to modify their unit, who undertakes the modifications, who is responsible for the costs associated with the modifications, the effect of alterations on the sale or disposal of the residential unit, obligation to remove alterations, and modification rights for disabled people]</p>
Our obligations	
20	<p>Our rights and responsibilities</p> <p>[Details responsibilities of the operator, the staff and people who provide services to treat residents with courtesy, to respect the rights of residents, and not to exploit residents.</p> <p>The operator may also include other rights and responsibilities they have at their village, such as the operator’s access to resident’s unit or the operator making all reasonable efforts to find a new resident and not giving preference to find new residents for unoccupied units]</p>
21	<p>Operator’s duty to consult with you</p> <p>[This would include matters on which an operator should consult a resident, such as:</p> <ul style="list-style-type: none"> ▪ before interest in village is sold ▪ about any material changes to services/benefits/charges ▪ selling and marketing the resident’s unit ▪ before appointing a new manager ▪ sale of the village]

22	<p>Operator’s duty to provide you certain documents</p> <p>[This would include:</p> <ul style="list-style-type: none"> ▪ Code of Practice ▪ Code of Residents’ Rights ▪ audited financial statements, village rules and the deed of supervision]
23	<p>Operator’s duty to run the village using reasonable skill and care</p> <p>[Details duty of operator to exercise reasonable care and skill in ensuring affairs of village are conducted properly and efficiently and performing its powers, functions and duties]</p>
24	<p>Operator’s duty to keep the village in good condition and order</p> <p>[Details duty of operator to keep village in good condition and order, including having a long-term maintenance plan]</p>
25	<p>Complaints facility</p> <p>[Details the obligation of operator to have a complaint facility to deal with informal and formal complaints. Also covers the operator’s right to make a complaint against the resident. The proposed disputes resolution scheme could also be attached as a schedule to the ORA]</p>
26	<p>Meetings</p> <p>[Details of the obligations, circumstances and purpose an operator has for calling residents’ meetings]</p>
27	<p>Policies and procedures</p> <p>[Details the operator’s written policies and procedures. Examples include:</p> <ul style="list-style-type: none"> ▪ staffing ▪ safety and security ▪ fire protection and emergency management ▪ accounts ▪ communication to those for whom English is a second language or whose ability to communicate is limited]
28	<p>Insurance</p> <p>[Details operators’ duty to insure full replacement of the village to the satisfaction of the statutory supervisor and other insurance responsibilities]</p>
29	<p>No statutory supervisor (also known as ‘Procedure if there ceases to be a statutory supervisor’)</p> <p>[Details the procedure to arrange for another statutory supervisor if the statutory supervisor stops acting for the village. This also applies whether there is no statutory supervisor when the ORA was created]</p>

Pathways to aged residential care	
30	<p>Your transfer rights</p> <p>[Operator to provide details on:</p> <ul style="list-style-type: none"> ▪ resident's right to be given information on options ▪ Priority for existing residents over non-residents ▪ having an independent assessment ▪ right to be consulted, along with their family or representative ▪ a needs assessment may be required to access subsidies]
31	<p>Our right to transfer you for health needs</p> <p>[Operator to provide details on:</p> <ul style="list-style-type: none"> ▪ operator requiring the resident undertake a health assessment ▪ how a transfer is initiated and by whom ▪ dependence on a suitable unit and care being available and the resident being assessed as suitable for the available care ▪ providing new documents for the transfer]
32	<p>Transfer into an independent unit to serviced unit</p> <p>[Provides details of the process of transfer from an independent unit to a serviced unit in aged residential care with accreditation from Manatū Hauora – Ministry of Health. The resident would also be required to undertake a health assessment and meet the requirements. This would also detail the process if the transfer is to a less or more expensive unit]</p>
33	<p>Transfer into rest home or hospital or dementia level of care</p> <p>[Provides details of the process of transfer to rest home, hospital or dementia level of care with accreditation from Manatū Hauora – Ministry of Health]</p>
34	<p>Other transfer terms</p> <p>[Provides details if the transfer is to other aged residential care facility in another village owned by the same operator or to an affiliated aged residential care facility. This would also include any other terms and conditions which may apply to transfers]</p>

Your protections in the event of damage or destruction of the unit	
35	Damage or destruction [Details about the procedure to be followed in the event of damage or destruction]
36	Repair or replacement of unit [Operator's undertakings relating to repairing or replacing a resident's unit following damage or destruction]
37	Suspension of payments during repair or replacement [Details about the suspension of payments during the repair or replacement period]
38	Temporary accommodation [Details on whether the operator will provide temporary accommodation while the resident is temporarily displaced or their unit is being repaired or replaced, the associated costs and when temporary accommodation will be available]
39	Transfer to another unit or village [Details about whether a resident is transferred to another village if the resident's unit is not replaceable]
Your rights to end this agreement	
40	Your right to cancel this agreement [Details of the resident's right to a cooling-off period and cancellation of this agreement]
41	Termination by resident [Details of the process if the resident chooses to terminate the ORA, the notice period, and the suitable form of notifying the operator]
42	Termination on death [Details about termination of the ORA if the resident passes away]
43	Termination by agreement [Details about the process if the resident and operator jointly agree to terminate the agreement, the notice period, and the suitable form of notifying the operator]
44	Termination by operator [Details of operator's termination grounds, including the reasons and the notice period for terminating the ORA. Grounds for termination could include: <ul style="list-style-type: none"> ▪ medical grounds ▪ serious damage, injury, harm or distress to others ▪ permanent abandonment or breach of agreement]
45	Termination of agreement in the event of damage or destruction of the unit [Details on whether the ORA terminates if the unit is damaged or destroyed through no fault of the resident]

Additional terms

[For operator to fill in if they have negotiated additional bespoke terms with the resident or there are other terms which may not fit under the standardised headings and may be important to include.

For example, exemption to comply with any provision in the Code of Practice]

Glossary of terms

[Operator to provide a summary of the key terms used throughout the ORA. This could also include all acronyms and abbreviations]

Schedules

[Some examples of schedules that could be attached to the ORA:

- cooling off and cancellation rights
- complaints facility and disputes resolution scheme
- residents' meetings
- list of operator-owned chattels/fixtures provided in the unit and their condition]

Checklist of key documents

[A checklist for residents to tick to indicate they have received these key documents in addition to their occupation right agreement]

- Code of Practice
- Code of Residents' Rights
- Disclosure document(s)

Signature section between operator and resident(s)

[The resident and operator sign the ORA agreeing to the terms in the ORA]

Lawyer's Certificate

[Certifies that the resident has signed the agreement and that the lawyer has explained the general effect of the agreement and its implications]

Appendix 5 – Standardisation of terms

WHAT <i>CAN</i> BE STANDARDISED	WHAT <i>COULD</i> BE STANDARDISED	WHAT <i>CANNOT</i> BE STANDARDISED
Type of occupancy right – nature of resident’s right to occupy a unit.	Operators’ introduction section at the beginning of the ORA.	Name and address of village.
Maintenance, repairs and upgrades – obligations of each party.	Termination of ORA by agreement between the resident and operator.	Details of parties, such as their names and addresses.
Operator’s obligations relating to residents’ meetings (Regulation 10, General Regulations 2006).	Termination of ORA by resident.	Transfer of residents within a village to aged residential care facilities.
Resident’s right to receive audited financial statements from the operator.	Termination of ORA on death.	All the commercial arrangements such as the financial terms in an ORA.
Procedure if there ceases to be a statutory supervisor.	Operator’s grounds for termination due to: <ul style="list-style-type: none"> ▪ Medical grounds ▪ Serious damage, injury, harm or distress to others ▪ Permanent abandonment or breach of agreement 	Specific terms, such as the services and facilities available at the retirement village as these would be unique and specific to each operator and village.
Duty to make all reasonable efforts to find new residents – Operators obligation to find a new resident for a unit after it has been vacated.	Complaints and disputes process.	
Duty not to give preference to finding new residents for unoccupied units.	Cooling off period and cancellation rights (Section 28, Retirement Villages Act 2003).	
Information on the Code of Practice and the Code of Residents’ Rights (1(f) of Schedule 3, Retirement Villages Act 2003).		

Appendix 6 – Retirement Villages Act 2003 - Section 6

- (1) In this Act, but subject to subsections (2) to (6), **retirement village** means the part of any property, building, or other premises that contains 2 or more residential units that provide, or are intended to provide, residential accommodation together with services or facilities, or both, predominantly for persons in their retirement, or persons in their retirement and their spouses or partners, or both, and for which the residents pay, or agree to pay, a capital sum as consideration and regardless of whether-
- (a) a resident's right of occupation of any residential unit is provided by way of freehold or leasehold title, crosslease title, unit title, lease, licence to occupy, residential tenancy, or other form of assurance, for life or any other term; or
 - (b) the form of the consideration for that right is a lump sum payment or deduction, or a contribution or a payment in kind of any form, a periodic payment or deduction, or any combination of such payments or deductions, whether made before, during, or after occupancy; or
 - (c) the consideration is actually paid or agreed to be paid by a particular resident or particular residents or on behalf of that resident or those residents, or by another person for the benefit of that resident or those residents; or
 - (d) the resident makes an additional payment or periodical payment (for example, a service fee) for any services or facilities or access to such services or facilities; or
 - (e) the services or facilities, or both, are provided by the owner of the property, building, or other premises, or by any other person under an arrangement with the operator of the village.
- (2) A retirement village includes any common areas and facilities to which residents of the retirement village have access under their ORAs.
- (3) Despite subsections (1) and (2), if 1 or more of the residential units referred to in subsection (1) are located in a rest home or hospital care institution, the only parts of that rest home or hospital care institution that comprise, or are included in, the retirement village are—
- (a) the residential unit or units themselves; and
 - (b) the common areas and facilities within the rest home or hospital care institution (if any) to which the resident or residents of the unit or units have access only by reason of their occupation right agreement.

- (4) For the avoidance of doubt, the following are not retirement villages for the purposes of this Act:
- (a) owner-occupied residential units registered under the Unit Titles Act 2010 or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—
 - (i) similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners; or
 - (ii) residential units occupied under tenancies to which the [Residential Tenancies Act 1986](#) applies:
 - (b) boarding houses, guest houses, or hostels:
 - (c) halls of residence associated with educational institutions.
- (5) Whether or not a property or building is, or any other premises are, a retirement village must be determined according to the nature, substance, and economic effect of the operation of the property, building, or premises and other facts, and independently of its or their form or description in any document.
- (6) For the avoidance of doubt,—
- (a) a property, building, or other premises does not cease to be a retirement village by reason only that persons in their retirement cease to predominate amongst residents of the village:
 - (b) a retirement village does not include any land or building that is under development as a retirement village, or as part of a retirement village, that is not occupied by any resident.
- (7) This section must be read in conjunction with [section 103](#) (which authorises the making of regulations declaring specified property, buildings, or other premises, or property, buildings, or other premises of a specified class, to be or not to be a retirement village for the purposes of this Act).



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