



Retirement Villages Association

Summary of the Retirement Villages Association submission on the Ministry of Housing and Urban Development's *Options For Change* discussion paper

November 2023

"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."

Foreword in MHUD discussion paper

The RVA agrees with this statement and it succinctly describes and reflects our focus in responding to the discussion paper.

The RVA has reviewed the proposals set out in the discussion paper from a resident-centric perspective (recognising that in a resident-funded retirement village model, resident satisfaction is key to the success of our members' villages).

At the same time, it must be recognised that the success of the retirement village sector depends on operators being able to continue to run their villages in a manner that is financially sustainable.

As part of the preparation of this submission, the RVA has held consultation meetings with its members in Auckland, Wellington and Christchurch. Therefore, this submission is representative of the views of our members who make up the vast majority of operators in New Zealand.

Background to the RVA

The Retirement Villages Association of New Zealand Inc (RVA) is a voluntary, nationally-based membership association representing owners and operators of retirement villages throughout New Zealand.

It represents 413 member villages, with a combined total of 41,100 dwellings and 50,200 residents. Our member composition is approximately 68% corporate operators, 16% independent, 16% not-for-profit. Approximately 96% of the registered retirement village in New Zealand are operated by RVA members.

Any legislative review of the retirement villages sector must be considered in the context of overall resident satisfaction¹ and the continued growth of the sector that has occurred under the current regime.

The sector has grown and developed over the 16 years since the RV Act first came into force (from 15,900 retirement village units in 254 RVA member villages in 2008 to 41,100 retirement village units in 413 RVA member villages by December 2022².)

The RVA considers that a number of proposals set out in the discussion paper will in fact have the opposite effect, and if implemented, would result in restricted growth and innovation and a reduction in consumer choice.

¹ For example, a survey of 1,692 residents completed by UMR Market Research in 2021 found that 91% of residents surveyed declared they were satisfied with their experience of living in their retirement village.

² RVA Annual Report, 2008 and 2023



The RVA's principal findings arising from the discussion paper are as follows:

1. **Opposed to mandatory repayments** - The RVA is categorically opposed to mandatory repayments
2. **Focus on disclosure and transparency, not on imposing commercial terms** - The RVA considers that any proposed legislative reform should focus on improving transparency and disclosure for residents rather than forcing one commercial model on operators. For example, instead of operators being forced to cover the costs of maintenance of operator's chattels and unit fixtures, the ORA should clearly set out who owns the chattels in the unit (operator or resident) and who is responsible for the cost of the maintenance of the chattels (operator or resident).
3. **Evidence before change** - Many assertions in the discussion paper have been made with limited, or no, objective quantitative evidence (in particular, the proposals regarding complaints and disputes) and the RVA strongly recommends that quantitative evidence be obtained as to whether there is in fact any problems with a particular area of the current regime before any changes are proposed in respect of that area.

The RVA supports implementing some key changes by way of amendments to the Retirement Villages Code of Practice (Code of Practice) such as a requirement for operators to stop charging weekly fees, and for the accrual of the fixed deduction to cease on the date that the resident vacates the unit. This will enable initial changes to be made in the shortest time without the need for full legislative reform. Such changes would capture many of the points raised in the RVA's Blueprint released in 2021.

General Observations

- **Retrospective legislation is bad public policy and undermines the rule of law** - The discussion paper proposes that a number of changes could retrospectively apply to existing ORAs. ORAs are the cornerstone of an operator's business. Operators must have contractual certainty in respect of all ORAs that have already been entered into. The RVA strongly disagrees with imposing any retrospective provisions that would alter the terms of existing contracts.
- **Legislative duplication** - Retirement villages are subject to a wide range of legislation. The discussion paper has focused on some areas that are already sufficiently covered by other legislation and dealt with by other government agencies (such as privacy law and unfair contract terms). The RVA considers that such areas are already adequately governed by other primary legislation. Therefore, there is no need for retirement villages legislation to be amended to duplicate topics already covered.
- **Diversity of choice** - A strength of the current RV legislative regime is that it allows flexibility of business models and a wide variety of ORA terms, allowing residents to choose the model that suits them. It is imperative that any legislative change supports this diversity and freedom of choice. The RVA is concerned that much of the discussion paper seems to be premised on the licence to occupy model and also suggests that this model is homogenous (which it is not).
- **Imposition of one ORA model** - Regulating and homogenising key commercial terms as proposed in the discussion paper (such as responsibility for maintenance and how much can be charged as a fixed deduction) will result in the need for operators to change their offering to compensate for these obligations. This will effectively result in the imposition of one model on all retirement village operators.
- **Anti-competitive** - The RVA considers any proposed legislative change that would result in the Government effectively setting an operator's commercial terms of their offering to be anticompetitive.
- **Residential Tenancies Act** - There are references throughout the discussion paper suggesting that aspects of the retirement villages regime should align with the residential tenancies regime. They are distinct offerings and there are many reasons why such alignment is not appropriate.
- **Protection of consumer rights** - The role of the statutory supervisor is integral to the successful operation of the retirement villages legislative regime and the protection of the rights of all residents. It can be argued that the absence of the role of statutory supervisor in Australia has led to Australian legislation developing protections that are not necessary in New Zealand. It is disappointing that the role and contribution of statutory supervisors is barely recognised or touched upon in the discussion paper. In particular, statutory supervisors' role in the complaint resolution process is not adequately recognised.