



## Economic Policy Centre

### Pensions and Intergenerational Equity

## Submission: Review of the Retirement Villages Act 2003

To: [RVAreview@HUD.govt.nz](mailto:RVAreview@HUD.govt.nz)

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### Summary of the Submission:

- 1.) Introduce a new, shorter, standardised Disclosure Statement with prescribed headings and questions, no more than 6,000 words, drafted in plain language.
- 2.) The format of Occupation rights agreements (ORAs) would also be standardised and drafted in plain language. Terms and information which are common to the sector (e.g., definitions of terms such as 'licence to occupy') and those which are minimum standards or obligations mandated by the Act, would also be standardised. In addition, a specific power needs to be introduced to declare a term unfair in the Act or regulations, meaning the term would be void and unenforceable.
- 3.) Align the Act with the Residential Tenancies Act 1986, which requires landlords to list chattels they provide in rental properties in the tenancy agreement, and to maintain premises in a reasonable state of repair. In addition, clarify that marks due to mobility aids and incontinence are classified as 'fair wear and tear'; and require operators to replace chattels and fixtures when they wear out.
- 4.) Replace the current dispute resolution scheme with an independent scheme aligned with best practice. The provider would be responsible for receiving and progressing formal complaints and supporting parties through to a negotiated resolution. Where a negotiated outcome is not possible, the dispute would be referred to a decision maker with the mandate and expertise to make a binding decision. Involve residents and their families in the design of the new scheme to ensure it is accessible and meets the needs of users. The operating costs would be funded primarily by RV operators, but where disputes are between residents, they would be required to contribute.
- 5.) Require a statement in standardised wording in the new disclosure documents that an operator may not be able to guarantee an ARC unit at the time a resident needs it, and require operators to provide information on occupancy levels of on-site ARC facilities. Also, require operators to provide more comprehensive information in disclosure documents on the options available for, and the financial implications of, transferring to ARC within their RV or an affiliated site, including clear information about

whether a capital sum is required and/or a fixed deduction will be charged. If one partner moves from an RV unit to an ARC unit while other partner remains in the RV, fairness and justice must be included in the arrangement and the costs. A second fixed deduction or capital sum charged for moving from RV to ARC in the same village is not fair or just.

6.) RVs should be upgraded to meet the healthy homes standards, and to be age-friendly and accessible to support residents to age in place. At minimum, RVs are required to meet The Residential Tenancies (Healthy Homes Standards) Regulations 2019 (made under the Residential Tenancies Act 1986) standards for heating, insulation, ventilation, moisture ingress, drainage, and draught stopping.

7.) Require operators to repay a former resident's capital sum within 6 months after the ORA has been terminated and the unit has been fully vacated. If exemptions are allowed on certain grounds, require operators to pay interest at average term deposit rate on the former resident's capital sum until that sum is paid out.

8.) Require operators to stop charging outgoings to former residents either immediately or no more than four weeks after an ORA has been terminated and the unit has been fully vacated.

9.) Include a requirement in the Code of Practice that fixed deductions stop accruing either immediately or no more than four weeks after an ORA has been terminated and the resident has fully vacated their unit.

10.) Ensure residents are only held liable for a capital loss from the relicensing of their unit to the same extent as they are entitled to any share of the capital gains. 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. If residents are entitled to 100% of any capital gain, they can be liable for up to 100% of any capital loss. Of course, operators that share capital gains with residents can choose not to make residents liable for capital losses to the same extent.

11.) Ensure the definition of retirement village is clear and easy to understand and enables operators to respond to changing demographic and housing needs, for example, providing rental units.

12.) Remove the requirement for full replacement cover and allow operators to obtain 'sum insured' and 'collective' policies, but require operators to maintain insurance policies that are sufficient alongside other funds to pay out residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated. Restrict the ability for operators to pass on any insurance excess amounts to resident/s if the loss, damage or destruction relates to RV property, and the resident was not at fault.

13.) Require statutory supervisors to hold both land and personal property securities. To ensure consistency across all RVs this proposal would apply to existing and new deeds of supervision. Require auditors to report certain information to statutory supervisors, similar to sections 198 and 199 of the Financial Markets Conduct Act 2013.

14.) Enable operators to provide a culturally responsive environment in the design and delivery of their RVs and services, and to access funding to establish different models of villages including intergenerational villages.

15.) Ensure government agencies have sufficient powers to carry out their functions under the Act; and allocate to one agency (preferably Te Tūāpapa Kura Kāinga – Ministry

of Housing and Urban Development) an overall system leadership role and responsibility for auditing RVs' compliance with the legislative framework.

16.) Require operators to provide additional information and documents that the Registrar is already requesting in practice, and provide the Registrar with a power to specify the manner in which documents are to be filed or lodged, including a power to correct minor or technical errors on the Register. Also, provide a power to regulate the purposes for which the Register can be searched and the manner in which it can be searched.

17.) The Code of Practice must be reviewed on a regular basis, and written in plain language. Procedures for annual and special general meetings must be easy to understand and comply with; and consultation requirements must be robust and easy to follow.

18.) Review the Code of Residents' Rights and include a resident's right to safety; and an obligation on residents not to interfere with the peace, comfort, or privacy of other residents.

19.) Currently, RV operators can exert disproportionate power over the lives and assets of residents. A clear and comprehensive record of offences and penalties would improve the rights and protections accorded to RV residents.

20.) All sales and transfers of RV units must have the same consumer protections. Third parties facilitating the sale or transfer of a RV unit (whether that is the RV operator or an independent third party) must have a general fiduciary duty to act in the best interests of the outgoing resident. Also, cost of agents' fees must be shared equally between outgoing resident and RV operator.

21.) Māori, Pasifika and pan-Asian interests in and experiences of RVs or their alternatives should be taken into account in the review. There are a range of historical, cultural, and economic reasons why this difference is critical to the future of housing for older people. There is a need to learn about alternative models, including inter-generational models of housing. Our duty is to learn from the best options available anywhere in the world.

## **Introduction:**

The review is considering whether the retirement villages regime provides 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.

The review traverses the governance regime of retirement villages: the Retirement Villages Act 2003 (the Act), the Code of Practice and three sets of regulations as outlined below:

**The purposes of the Retirement Villages Act 2003** are:

- \*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, and
- \*regulating and monitoring operators and defining the roles of the Retirement Commissioner, statutory supervisors, and the Registrar of Retirement Villages.

**The Code of Practice 2008** sets out minimum requirements for retirement village operators.

### **The three sets of regulations are:**

**\*Retirement Villages (General) Regulations 2006** regulates disclosure of information, occupation right agreements, registration, statutory supervisors and other matters.

**\*Retirement Villages (Fees) Regulations 2006** sets out fees and penalties.

**\*Retirement Villages (Disputes Panel) Regulations 2006** sets out the process for panel hearings to resolve disputes.

**The objective of the review** is to consider whether the Retirement Villages Act 2003, regulations and codes remain fit for purpose to ensure:

- adequate consumer protections for residents and intending residents of retirement villages;
- an effective balance between the rights and responsibilities of residents and operators of retirement villages;
- the ongoing viability of the retirement village sector and its ability to provide a range of retirement housing options and consumer choice;
- the rights and responsibilities of residents and operators are appropriately defined, including where they may differ for different occupancy rights;
- \* the effective operation of the three main stages of retirement village living: moving in, living in, and moving out.

### **Context:**

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 (RV) industry has responded to this growth – between 2012 and 2021 there was a 24% increase in villages, from 343 to 425, and a 65% increase in unit numbers, from 21,815 to over 36,000.

There is significant variety in the size of RVs, the facilities they provide, and the costs and contracts they offer.

Currently, of approximately 900,000 New Zealanders aged 65+, around 36,000 are in aged residential care (ARC), around 43,000 are receiving in-home care, and around 50,800 live in retirement villages (RVs).

#### **1. Moving in:**

Before intending residents can sign an occupation right agreement (ORA), operators must provide them with a written disclosure statement setting out the main terms of an offer for entering the retirement village, including the state of the village, services and facilities offered, and the estimated financial return to the resident if/when they sell or dispose of a unit.

Disclosure statements are often too long, hard to understand, and difficult to access. They contain too much information, the wrong kind of information, and there is duplication across documents. In addition, undertakings in disclosure statements and advertisements can be hard to enforce.

**Preferred solution: Option 2:** one new, shorter, standardised Disclosure Statement (one document) with prescribed headings and questions, that is no more than fifteen pages long, has no more than 6,000 words, and is drafted in plain language.

A standardised Disclosure Statement would make 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; it would strengthen the power of the Registrar of Retirement Villages to act if they consider a registered document or advertisement is likely to

mislead or confuse. In addition, a standardised Disclosure Statement would require that if a term in an ORA is inconsistent with information 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.

## **2. Occupation right agreements**

An occupation right agreement (ORA) is a contract between an RV operator and a resident, giving the resident the right to occupy a unit in the RV. An ORA can cover a variety of ownership and occupation agreements, but in practice around 95% of RV units are sold under a 'licence to occupy' agreement, meaning a resident buys the right to live in their unit but does not own it.

ORAs can be long, complex and difficult to understand. Some information in ORAs is duplicated in the Disclosure Statement and the Code of Practice. Intending residents are generally unable to negotiate the terms of their ORAs, although some ORAs contain unfair terms.

**Preferred solution: Option 2:** The format would be standardised. Terms and information which are common to the sector (e.g., definitions of terms such as 'licence to occupy') and those which are minimum standards or obligations mandated by the Act, would also be standardised, and drafted in plain language.

In addition, a specific power needs to be introduced to declare a term unfair in the Act or regulations, meaning the term would be void and unenforceable; and conveyancers (who specialise in the transfer of property ownership) should be able to provide intending residents with legal advice on ORAs.

## **3. Living in**

Retirement village units come fitted with chattels and fixtures owned by the operator. These commonly include things like dishwashers, curtains, and light fixtures. The legislation does not explicitly cover responsibilities for the maintenance, repair, and replacement of operator-owned chattels and fixtures. Operators can set terms through ORAs for the allocation of costs of maintenance and repair of chattels and fixtures. Some residents are required to pay for the maintenance of chattels and fixtures they do not own, and which may have been used by previous residents, and some residents are required to pay for damage which should be classified as fair wear and tear.

**Preferred solution:** Align the Act with the Residential Tenancies Act 1986, which requires landlords to list chattels they provide in rental properties 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. In addition, clarify that marks due to mobility aids and incontinence are classified as 'fair wear and tear'; and require operators to replace chattels and fixtures when they wear out.

## **4. A simple, effective dispute resolution scheme**

To ensure residents have adequate consumer protections, an effective dispute resolution scheme is vital. Residents' complaints, whether about other residents or about the RV management or conditions need to be resolved in a fair, impartial and transparent manner. Under the current scheme, RV operators are responsible for receiving and resolving complaints. The village's statutory supervisor can become involved to offer a way forward and the operator must offer mediation. If a negotiated resolution is not reached, a dispute panel can be appointed, hold a hearing, and make a binding decision.

The current scheme is not independent from operators; it can be complex to navigate with no advocacy support for residents; and dispute panel hearings are adversarial and expensive. It does not align with the best practice principles for dispute resolution, including accessible, user focused, independent, efficient, effective and accountable.

**Preferred solution:** Replace the current dispute resolution scheme with an independent scheme aligned with best practice. The provider would be responsible for receiving and progressing formal complaints and supporting parties through to a negotiated resolution. Where a negotiated outcome is not possible, the dispute would be referred to a decision maker with the mandate and expertise to make a binding decision. Involve residents and their families in the design of the new scheme to ensure it is accessible and meets the needs of users. The operating costs would be funded primarily by RV operators, but where disputes are between residents, they would be required to contribute.

## **5. Moving from retirement village into aged residential care**

RVs are offering an increasing range of accommodation options in response to resident demand, with different payment arrangements. Many RVs offer rest home care, hospital-level care, and/or secure dementia care, and many residents choose a RV for the continuum of care it offers, attracted by the prospect of a seamless transition to ARC should they need it in the future. Many residents are not aware that a suitable ARC room within their RV may not be available when they need it; access is not guaranteed. The interface between RVs and ARC is complex, and challenging for residents, their families, legal advisors and operators to navigate. Also, ARC is part of the health system, but health and RV legislation overlap when a resident transfers to ARC within a RV. The financial implications can be significant but are not always well understood, nor are they necessarily made clear in the documentation provided on entry to the RV. Residents transferring to ARC may be required to pay a capital sum, including a refundable accommodation deposit (RAD) and a new ORA. Disclosure documents and ORAs do not always provide clear, comprehensive information on the options available and the process for transferring to ARC.

**Preferred solution:** Require a statement in standardised wording in the new disclosure documents that an operator may not be able to guarantee an ARC unit at the time a resident needs it, and require operators to provide information on occupancy levels of on-site ARC facilities. Also, require operators to provide more comprehensive information in disclosure documents on the options available for, and the financial implications of, transferring to ARC within their RV or an affiliated site, including clear information about whether a capital sum is required and/or a fixed deduction will be charged. If one partner moves from an RV unit to an ARC unit while other partner remains in the RV, fairness and justice must be included in the arrangement and the costs. A second fixed deduction or capital sum charged for moving from RV to ARC in the same village is not fair or just.

## **6. Minimum building standards for retirement villages**

Retirement village units are built to different standards, depending on the applicable regulations at the time they were constructed. Older village units are likely to be of a lower standard than newer ones, unless the village has undergone significant refurbishment and has been brought up to more recent Building Code standards. The Code of Practice sets out the minimum building requirements that operators need to meet and should be read in conjunction with the Building Code. Retirement villages are not required to meet the healthy homes standards as they only apply to rental properties under the Residential Tenancies Act 1986. However, new villages which are built to the current Building Code would likely meet or exceed the healthy homes standards.

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 warm and dry and are accessible for disabled people.

**Preferred solution:** RVs should be upgraded to meet the healthy homes standards, and are required to be age-friendly and accessible to support residents to age in place. At minimum, RVs are required to meet The Residential Tenancies (Healthy Homes Standards) Regulations 2019 (made under the Residential Tenancies Act 1986) standards for heating, insulation, ventilation, moisture ingress, drainage, and draught stopping.

## **7. Moving out: Repayment of the resident's capital sum**

RV residents pay a capital sum in return for the right to live in their retirement village unit (often a licence to occupy ORA). When the resident leaves the village, the capital sum is repaid to the resident or their estate, minus a fixed deduction (also known as a deferred management fee) which is a percentage kept by the operator. But operators do not have to repay a former resident's capital sum until their unit has been relicensed, and this can take a long time. While waiting for the unit to be relicensed, the former resident or their estate does not have access to their money, and the longer it takes, the more financial and emotional stress is caused.

**Preferred solution:** Require operators to repay a former resident's capital sum within 6 months after the ORA has been terminated and the unit has been fully vacated. If exemptions are allowed on certain grounds, require operators to pay interest at average term deposit rate on the former resident's capital sum until that sum is paid out.

## **8. Moving out: Stopping outgoings and other fees**

Outgoings, also known as weekly fees, are costs relating to the operation, management, supervision and maintenance of the RV, recovered from residents as agreed in their ORAs. Some operators continue to charge outgoings to former residents until their units have been relicensed, meaning that former residents (or their estate) are being charged for services they receive no benefit from.

**Preferred solution:** Require operators to stop charging outgoings to former residents either immediately or no more than four weeks after an ORA has been terminated and the unit has been fully vacated.

## **9. Moving out: Fixed deductions**

The Code of Practice places no limits on fixed deductions. A fixed deduction (also called deferred management fee, exit fee, facilities fee, or village contribution) is a sum charged by operators when a resident vacates their unit. The fixed deduction is subtracted from the repayment of the resident's capital sum once the unit has been relicensed. Fixed deductions cover the resident's use of village facilities during their time living in the village and include a margin to help cover the costs of supplying and upgrading the village and facilities for future residents.

The amount of the fixed deduction may depend on how long a resident has lived in the village, often with the percentage accruing over time. Fixed deductions can continue to accrue between a resident vacating a unit and the unit being relicensed, despite the resident no longer receiving the benefit of village facilities.

**Preferred solution:** Include a requirement in the Code of Practice that fixed deductions stop accruing either immediately or no more than four weeks after an ORA has been terminated and the resident has fully vacated their unit.

## **10. Moving out: Treatment of capital gains/losses**

Retirement village operators are under no obligation to share capital gains (or losses) from relicensing a unit with the outgoing resident when their capital sum is repaid. While some villages share capital gains with outgoing residents, most do not.

Under the terms of their ORA, an outgoing resident may be liable for any capital loss from relicensing the resident's unit, even if the resident is not eligible to share any potential capital gains. This is one-sided and unfair.

**Preferred solution:** Ensure residents are only held liable for a capital loss from the relicensing of their unit to the same extent as they are entitled to any share of the capital gains. 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. If residents are entitled to 100% of any capital gain, they can be liable for up to 100% of any capital loss. Of course, operators that share capital gains with residents can choose not to make residents liable for capital losses to the same extent.

## **11. Future-proofing the definition of retirement village**

The definition of a RV is in section 6 of the Act. The key elements are: a property, building or other premises containing two or more residential units providing accommodation, services and/or facilities for people in their retirement. Residents pay a capital sum for their right to occupy a residential unit, and that right of occupation may be provided by way of freehold or leasehold title, cross lease title, unit title, lease, licence to occupy, or residential tenancy. Increasingly, people will still have mortgages on their homes or be renting when they reach retirement age and may not be able to afford a capital sum to buy into a retirement village. Also, there can sometimes be confusion as to whether other establishments, or parts of them, meet the definition of a retirement village. Unit title lifestyle villages, for example, target retirees with similar marketing to registered retirement villages, but do not have the same protective legislation.

**Preferred solution:** Ensure the definition of retirement village is clear and easy to understand and enables operators to respond to changing demographic and housing needs, for example, providing rental units.

## **12. Other topics: Insurance cover for retirement village operators**

Retirement village operators are required to take out comprehensive insurance policies to cover loss, damage or destruction of retirement villages by fire, accident or natural disaster. Policies must provide 'full replacement cover' unless this type of policy is not available. But it is no longer possible for many operators to obtain full replacement cover policies. Insurers generally require an agreed 'sum insured' policy. Operators with multiple villages are also increasingly obtaining collective or 'loss-limit' policies. When an entire village is destroyed and the operator terminates all ORAs, most insurers will pay out the indemnity value of the village which will typically be less than the amount required to pay out all the residents' capital sums (with no fixed deductions charged to residents). In some cases, there can be a substantial shortfall that the operator is required to cover under Code of Practice obligations. Provided that residents are informed, there are no restrictions in the Code of Practice on operators passing on insurance excesses to residents. But where RV property has been damaged and residents are not at fault, passing on the insurance excess is likely to be unfair.

**Preferred solution:** Remove the requirement for full replacement cover and allow operators to obtain 'sum insured' and 'collective' policies. Also, require operators to maintain insurance policies that are sufficient alongside other funds to pay out residents'



capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated. Restrict the ability for operators to pass on any insurance excess amounts to resident/s if the loss, damage or destruction relates to RV property, and the resident was not at fault.

### **13. Other topics: Security for residents' capital sums**

Retirement village operators must appoint a statutory supervisor unless the Registrar of Retirement Villages grants an exemption. Statutory supervisors are independent professionals licensed by the Financial Markets Authority whose role is to represent the collective financial interests of RV residents and monitor the financial position of the village. Statutory supervisors can negotiate with an operator to hold a security agreement; a land security through a mortgage or encumbrance, and/or personal property security through a general security agreement (GSA). Security arrangements set the priority order in which creditors (including residents) receive amounts due to them. Personal property security also gives the statutory supervisor the ability to appoint a receiver quickly, if required. But not all statutory supervisors can negotiate to hold personal property security through a GSA, resulting in a security gap which could result in residents not being refunded their full capital sum if a village gets into financial difficulty. Statutory supervisors can request information from auditors of retirement villages. In some other sectors, auditors must report concerns about finances to the relevant supervisors, but this is not a requirement in the RV sector.

**Preferred solution:** Require statutory supervisors to hold both land and personal property securities. To ensure consistency across all RVs this proposal would apply to existing and new deeds of supervision. Require auditors to report certain information to statutory supervisors, similar to sections 198 and 199 of the Financial Markets Conduct Act 2013.

### **14. Other topics: Culturally responsive services & models of care**

The ideal is that everyone lives in a home and a community that meets their needs and aspirations. Connection to culture and affirmation of identity are hugely important for health and wellbeing. To date, RVs have been home mostly to older New Zealand European/Pākehā. Our population is changing and over time more of our older people will belong to ethnic groups other than Pākehā.

**Preferred solution:** Enable operators to provide a culturally responsive environment in the design and delivery of their RVs and services, and to access funding to establish different models of villages including intergenerational villages.

### **15. Other topics: Roles of government agencies in the RV system**

Multiple government agencies have roles and responsibilities in the RV system, including:

- Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, responsible for administering the Act and its regulations,
- Te Ara Ahunga Ora – Retirement Commission, monitors the effects of the RVs legal framework and provides education and advisory resources,
- Registrar of Retirement Villages, within the Ministry of Business, Innovation and Employment, responsibilities include registration of RVs and maintenance of Retirement Villages Register.

Stakeholders have noted that the system is complex, with many agencies involved but none taking an overall leadership role. There is no government agency responsible for

auditing RVs' compliance with the legislation (though the Retirement Villages Association and statutory supervisors undertake monitoring and compliance roles).

**Preferred solution:** Ensure government agencies have sufficient powers to carry out their functions under the Act; and allocate to one agency (preferably Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development) an overall system leadership role and responsibility for auditing RVs' compliance with the legislative framework.

## **16. The operation of the Retirement Villages Register**

The Retirement Villages Registrar (the Registrar) is responsible for the registration of villages and maintenance of the Retirement Villages Register (the Register). Operators must provide information and documents that are made available on the Register. The review provides an opportunity to amend the provisions in the Act which provide for the establishment, maintenance, and operation of the Register, so they more closely reflect the way the Register is maintained and operated in practice.

**Preferred solution:** Require operators to provide additional information and documents that the Registrar is already requesting in practice, and provide the Registrar with a power to specify the manner in which documents are to be filed or lodged, including a power to correct minor or technical errors on the Register. Also, provide a power to regulate the purposes for which the Register can be searched and the manner in which it can be searched.

## **17. Code of Practice**

The Code of Practice builds on provisions in the Act and regulations by setting out further rights and obligations of RV operators and residents. The Code sets out procedures for annual and special general meetings, which all residents are expected to attend, although some residents may struggle to attend or understand these meetings, and others do not want to attend. Importantly, although the Code sets out consultation requirements, they may not be followed, or may not be strong enough in relation to increases to weekly fees. There is no requirement for the Code of Practice to be reviewed on a regular basis; and it is not written in plain language and can be difficult to understand.

**Preferred solution:** The Code of Practice must be reviewed on a regular basis, and written in plain language. Procedures for annual and special general meetings must be easy to understand and comply with; and consultation requirements must be robust and easy to follow.

## **18. Code of Residents' Rights**

The Code of Residents' Rights summarises minimum rights conferred on a resident by the Act. The Code of Residents' Rights includes a resident's right not to be exploited, but there is no reference to a right to safety. Residents' responsibilities towards one another are poorly defined in the Code. For example, there is no obligation on residents not to interfere with the peace, comfort, or privacy of other residents.

**Preferred solution:** Review the Code of Residents' Rights and include a resident's right to safety; and an obligation on residents not to interfere with the peace, comfort, or privacy of other residents.

## **19. Offences and penalties**

The Act sets out offences and penalties for people breaching or failing to comply with certain provisions. The Act also provides for enforcement mechanisms, such as the

power of the Registrar to suspend registration of a RV operator for specified offences. If proposals in the discussion paper for the disclosure regime and ORAs are implemented, new offences and enforcement mechanisms would be created.

**Preferred solution:** Currently, RV operators can exert disproportionate power over the lives and assets of residents. A clear and comprehensive record of offences and penalties would improve the rights and protections accorded to RV residents.

## **20. Application of the Real Estate Agents Act 2008 to sale of a retirement village unit**

When a resident vacates a unit, the two most common ways of relicensing or selling a unit are through a transfer facilitated either by the outgoing resident or their estate (directly or through engaging a real estate agent) or through the RV (either directly or through the village engaging a real estate agent). If a real estate agent is used, the consumer protection mechanisms in the Real Estate Agents Act 2008 (REA Act) apply directly to the buyer and the seller who has engaged the agent. Where the transfer of a unit is facilitated directly through the RV without the use of a real estate agent, the general protections of the RV legislation apply, BUT the wider protections under the REA Act, for both the buyer and the outgoing resident, do not.

**Preferred solution:** All sales and transfers of RV units should have the same consumer protections. Third parties facilitating the sale or transfer of a RV unit (whether that is the RV operator or an independent third party) must have a general fiduciary duty to act in the best interests of the outgoing resident. Also, cost of agents' fees must be shared equally between outgoing resident and RV operator.

## **21. General questions & other comments related to the review**

Impact of proposals will be quantifiable and non-quantifiable costs and benefits, including financial costs, legal costs, more efficient processes, greater clarity, and increased wellbeing. The known fact is that the numbers of seniors buying into RVs is likely to increase. Another known fact is that alternatives the provide better for elder living are required. New Zealand is not alone with an ageing population, and internationally, inventive, efficient and healthy options are proliferating. While there is limited information available, relatively few Māori and Pasifika elders reside in RVs as they are currently designed, funded and managed.

**Preferred solution:** Māori, Pasifika and pan-Asian interests in and experiences of RVs or their alternatives should be taken into account in the review. There are a range of historical, cultural, and economic reasons why this difference is critical to the future of housing for older people. There is a need to learn about alternative models, including intergenerational models of housing. Our duty is to learn from the best options available anywhere in the world.