consumer.

20 November 2023

Retirement Villages Act Review
Ministry of Housing and Urban Development
PO Box 82
Wellington 6140
New Zealand

Sent by email to: RVAreview@hud.govt.nz

SUBMISSION on Review of the Retirement Villages Act 2003

1. Introduction

Thank you for the opportunity to make a submission on the 'Review of the Retirement Villages Act 2003: Options for change' discussion paper (the Discussion Paper). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General comments

Consumer NZ strongly supports a comprehensive review of the retirement villages regime in New Zealand. As stated in previous submissions[1], we consider the Retirement Villages Act 2003 (the Act), relevant regulations and the Code of Practice have failed to fulfil their purposes of providing

[1] Consumer NZ submission dated 1 August 2022 & Consumer NZ submission dated 21 February 2021

adequate protection for residents. A thorough review of the legislative framework is long overdue.

At Consumer NZ, we receive regular complaints from retirees about their experiences with retirement villages. These complaints, together with our research into the retirement village sector, have highlighted the current regime is heavily weighted in favour of operators. It needs urgent attention to ensure retirees are adequately protected when entering, living in, or leaving retirement villages.

We support most of the proposals in the Discussion Paper. However, to ensure the proposals are effective, we think it is critical that any changes apply to existing Occupational Rights Agreements as well as those entered in the future.

3. Answers to selected questions in the Discussion Paper

Our answers to selected questions in the Discussion Paper are attached in Appendix 1.

Appendix 1: Consumer NZ's Submission on the Discussion Paper

QUESTIONS ON THE OVERVIEW OF THE REVIEW	
Q.1	Do you agree with the scope and objectives of the review? Why/why not?
A.1	We agree the scope of the review covers most of the issues raised in Retirement Commission reports and by different stakeholders. We also agree with the objectives of the review. New research indicates there are over 50,000 residents currently living in retirement villages,[2] and there is a growing need for retirement accommodation. To provide a safe, secure and stress-free environment at retirement villages, it is vital to ensure the Act, its regulations and its codes provide "adequate consumer protections to residents" and "an effective balance between the rights and responsibilities of residents and operators of retirement villages".
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)?
A.2	Yes, we consider the proposed changes will create a more even playing field and ensure consumers are better protected. Operators will have a lot more certainty about what they can and cannot do and regulators will have clearer rules to enforce.
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?
A.3	No comment.

QUESTIONS ON THE DISCLOSURE REGIME PROPOSALS	
Q.4	Which of the proposed options for new disclosure documents do you agree with? Option 1 – Two documents: A Village Comparison and Information Statement Option 2 – A new shorter Disclosure Statement Neither of these Please give reasons for your answer, including any alternative suggestions about how the issues with disclosure documents could be addressed.
A.4	Consumer NZ understands there are advantages to both options but on balance, we support operators being required to provide a standard form Village Comparison and Information Statement (option 1). The requirement under the Act for operators to provide disclosure documents is an attempt to reduce information asymmetry between intending residents and retirement villages. The disclosure statement also draws intending residents' attention to some of the most important aspects worth considering before entering an Occupation Rights Agreement (ORA) (sch.4 of Retirement Villages (General) Regulations 2006). A lot of existing disclosure statements fail to help residents in making the decision to enter a village. One resident, who has spent over 9 years living in a retirement village in Auckland, told us that "it is complex and quite difficult to understand all

[2] Retirement village population now totals 50,791 residents, new study shows - NZ Herald

	the implications until you are actually dealing with an issue, often some years later". This is a common theme in the complaints we have received from retirement village residents. To serve its intended purpose, a disclosure statement or information statement must be drafted in plain language without complex legal jargon or duplication, and only contain key information that is necessary and relevant. We support the prescribed headings/questions in the Discussion Paper, together with the prescribed page and word lengths. We consider this should provide better guidance to operators to ensure disclosure statements are clearer and legal rights and obligations are left to be dealt with in the ORAs. We also support the inclusion of a Village Comparison (in a standardised form of no more than 3 pages). The "Summary of Key Terms" (on which the proposed comparison document is based) was provided to operators by the Retirement Villages Association and has already been used by some operators. We believe standardising this summary document as part of the mandatory disclosure will provide intending residents with more consistent and reliable materials for comparing different options in the market.
Q.5	Is any information missing from the proposed documents? (Appendix 1, Appendix 2, Appendix 3) If yes, please tell us what this is.
A.5	*Proposed Village Comparison template:* Intending residents are usually most concerned with (1) their financial obligations associated with the village, (2) the available services and facilities in the villages, and (3) long-term support by care facilities. We appreciate that the Proposed Village Comparison template has covered most of these areas of interest. We have a few additional suggestions: Under "Financial matters", information as to whether, and how often, the ongoing fees might be increased should be included. It is also important to contain a list of all other potential expenses that could be incurred by the resident during their stay. Further, under "Village life and facilities", we suggest operators should also state whether each of the services and facilities is included in the ongoing fees, which of them will be charged separately, whether (and how often) the fee can be adjusted, and whether there will be suspension or reduction in fees when any of them is not available. These are important considerations as we have received complaints about the unavailability and lack of maintenance of facilities during residents' stays notwithstanding that residents have fully paid the relevant fees. To enable detailed comparisons, it may be helpful to include, under each heading, express references to the corresponding sections in the Information Statement, especially where the subject matter is more detailed in the Information Statement.

	Proposed Information Statement template: The suggestions above should also apply to the Information Statement. We also suggest the following information is included. Under Item 14, operators should state whether the age limits can be varied unilaterally, as a sudden change of age limits will have an impact on the community that residents were promised when they entered the village. Under "Complaints and disputes", it would be helpful to include the number of complaints received by the operators in the last 12 months, and the number of unresolved disputes at the time of the Information Statement. If there is any ruling by authorities against the operators (e.g., a breach of code of practice or ORAs), this should also be disclosed. A lot of residents we have talked to did not understand the full financial implications of their decisions to enter a retirement village. For example, they didn't understand the effect of inflation, lack of sharing of capital gain, the increase in ongoing fees, the delay in repayment of capital sum, the reduction of capital sum due to the Deferred Management Fee, the financial consequences of transferring to a care facility, and how other unexpected circumstances might potentially put them into financial hardship. Given the complexity of financial information and the large sum of money involved, the Information Statement should contain an express recommendation for intending residents to seek financial advice. The Act should also require the lawyer providing advice be satisfied the resident understands the financial aspects of the ORA and what this means for the resident. In general, any terms that could be amended during the residents' stay should be highlighted in the relevant sections of the Information Statement.
Q.6	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? Please give reasons for your answer, including any alternative suggestions about how these issues could be addressed.
A.6	We think the proposals to deal with false and misleading statements and inconsistencies would go some way to address the issues outlined. However, it is important the relevant authority has appropriate powers to address the major impacts these statements can have on residents and the ability to put the resident back in the position they would have been in had they not been misled. We have received many complaints from residents who feel they were misled when entering their village. One resident told us "My experience is that what facilities you see or are told are available when you inspect the village, can be changed in some way or become unavailable at a future time after you move in." Another resident who lived in their retirement village for over 1 year told us "we were misled by our Disclosure Statement which detailed undertakings that

	disappeared in the next issue. Had we known that this could happen, we would never have signed our ORA." We were also told "sales managers give certain impressions and statements that later turn out not to be true. For example, I was told a care facility would happen if the residents wanted it. This was not true. It is not going to happen regardless." Residents in a privately-owned village also raised concerns with us about promises for a 24-hour long-term care facility not being kept. This facility was pivotal to some residents' decisions to enter the village. However, after waiting for more than 6 years for the promise to be fulfilled, residents told us they moved out. These complaints all make it clear that operators are getting away with making false and misleading claims, and as a result, residents feel stuck in their villages. If they need to leave, to get higher levels of care at another village for example, they are required to cancel their contracts and pay the deferred management fee. In our view, this is not fair. Therefore, we agree it needs to be easy for a resident to make complaints against an operator, or its agent, for making a false or misleading statement as this appears to happen too often. However, as mentioned, the relevant authority must have appropriate powers to address these issues. We also agree the Registrar should be able to take action against an operator if they consider a registered document or advertisement is likely to mislead or confuse. And we agree if a term in an ORA is inconsistent with information in a disclosure statement, to the detriment of the resident, this should be interpreted in favour of the resident.
Q.7	Please add any other suggestions
A.7	While we understand that a reasonable transition period is required to allow the sector to adapt to new rules regarding disclosure documents, given the growing need for retirement villages, we encourage operators to voluntarily adopt the new standardised forms as soon as possible. In fact, the use of shorter and simpler disclosure documents will likely give operators a competitive edge over others. We also support new content requirements being consolidated and prescribed in regulations alone, and requiring documents are accessible online in searchable formats.

QUESTIONS ON ORAS	
Q.8	Which of the proposed options for standardising ORAs do you agree with? 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 Please give us your reasons, including any suggestions for how the issues with ORAs could be addressed.
A.8	We support option 2. Existing ORAs tend to be complex and poorly drafted. Residents have told us about their lack of understanding of the true nature of their rights under ORAs even after seeking legal advice (which appears to be

	inadequate in some cases). Some residents did not realise they don't actually own their units and were not entitled to make changes to them. Some were surprised to find out they were required to contribute to upgrades, alterations, and remodelling of the units. According to one complainant: *"Although my lawyer explained the legal aspects of the village requirements, the implications of this don't hit home until you are in the village. There's no resident's capital gain when the villa is sold and no compensation for any add-on e.g., dishwasher, heat pump, sun awning, blinds curtains, and external security door provided by the resident. Management pockets the capital gain."* Many residents feel ORAs are drafted in favour of the operators and are sometimes unfair. We agree this is true in many cases (see Q.11 below). We therefore support ORAs being standardised to ensure they are consistent and meet minimum standards. We agree standardised terms should be included wherever appropriate and practicable. The Retirement Villages Act 2003, its regulations and the Code of Practice already set out categories of required information and provisions in an ORA. We believe that standardised headings and layout would only bring limited improvement to ORAs adopted by operators. The Retirement Commission concluded that *"despite the use of plain language, ORAs remain complex given the length and breadth of subject matter that is required by the legislative framework to be included in an ORA."*[3] It is also recommended that *"any standardised ORA introduced by regulation is drafted by regulators in conjunction with lawyers that specialise in the drafting of ORAs who will consult with the New Zealand Law Society – Property Law Section."* The standardised ORAs should also exclude any unfair terms (see Q.11 below) and set out minimum protections or guarantees that cannot be contracted out of. Requiring a standardised format and terms provides the opportunity to set standards to be applied across the industry. In the long term it will not only provide better protection to consumers, but also save operators' cost in drafting and refining complex and lengthy ORAs, and in dealing with disputes.
Q.9	Which terms should be standardised in ORAs, and which terms should not be standardised? Please give us your reasons.
A.9	We consider many ORAs lack clear provisions which leads to confusion and uncertainty. We therefore support a well-drafted, comprehensive, easily understandable ORA template. Such a template should provide standardised wording for as many provisions as possible, with space for operators to insert the details of their specific models, or additional terms above the minimum standards. Where it is not feasible to impose standardised wording, standardised layout should still apply to increase clarity and maintain consistency.
Q.10	Are there certain types of retirement villages that the proposed standardised format would not work for? Please give us your reasons.
A.10	We agree with paragraph 88 of the Discussion Paper that the standardised agreement should be adaptable for use by all types of operators from small, not-for-profit villages, to large, listed commercial ones.

[3] Sara Jones *Retirement Villages Annual Investigation Report 2021-22* (30 June 2022) at page 3

Q.11	Are there terms currently included in ORAs that could be considered unfair to residents? If yes, what are they and why are they unfair?
A.11	Over the years, Consumer NZ has come across numerous terms in ORAs that appear completely unfair to residents. For example, in our review of 6 ORAs used in the market in February 2021, we found terms:[4] • stating residents were liable for the cost of maintaining and repairing the chattels, and sometimes fixtures, in their unit, even though they did not own any of them. • stating operators were not liable if residents' possessions were damaged by villages. • placing limits on residents' rights including requiring approval for guests staying in a resident's unit for longer than a few weeks. • imposing financial penalties on residents who are late in paying any bills. However, the same operators don't pay interest on money owing to residents. In some cases, they may pay interest on the exit fee, but only after 6 or 9 months have passed. • giving operators the power to make any alterations to the villages but preventing residents from making any objections to the alterations, or any noise, dust, discomfort or other nuisance. • requiring residents to use the village's nominated tradespeople. We also published an article about an 80-year-old widow who had not received the repayment of her capital sum almost 1 year after she moved out from the unit. Under the terms of her ORA, there was no set timeframe for the operator to repay her exit fee. However, she was required to continue paying weekly fees, even though she had left the village. Her deferred management fee also continued to accrue while she waited for the operator to sell the licence to her unit.[5] We consider these terms to be unfair. We recently received a lot of similar complaints about residents encountering unfair terms in ORAs. One resident reported she was liable for all payments after moving out until a new licence was granted (including refurbishment of $97k, costs associated with re-licensing, and a fortnightly levy), and she would lose the capital sum if the operator re-licensed the unit for less than what she paid (though she turned down the opportunity to pay more for 50% of capital gain). During her stay, no pets or visitors were allowed unless agreed by the operator in writing. She was also under an obligation to inform the village of any infection/illness in her unit and required to thoroughly fumigate and disinfect the unit to the satisfaction of local health officer. In another case, a resident was not allowed to change a light bulb on her own and was required to pay an electrician to do so. Other unfair terms reported by residents include (i) excessive power for operators to increase weekly fees and service fees, (ii) short periods of time (7 days) granted to families to remove a resident's belongings after death. If the timeframe isn't

[4] Retirement village contracts: unfair terms in the fine print

[5] Retirement village resident left in financial limbo, paying fees for a unit she left 10 months ago

	adhered to, rent is charged, (iii) residents are required to bear valuation and marketing costs in the case of re-licensing, and (iv) allowing operators the right to vary services or facilities. We also support the Retirement Village Residents' Association views on unfair terms in ORAs in their publication in September 2022[6] and their subsequent Commerce Commission complaint. We strongly recommend this review takes into account any findings made by the Commerce Commission in response to this complaint. While in theory intending residents can discuss the terms of the ORAs with the operators, there is little room for negotiation as intending residents are unlikely to find better alternatives in the market and contracts are generally offered on a 'take it or leave it' basis. Given the growing demand for retirement accommodation, there will be no incentive for operators to offer more favourable terms to intending residents if no minimum standards are imposed by law. It is therefore extremely important to prevent the inclusion of unfair terms.
Q.12	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?
A.12	While 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, individual consumers (including residents of retirement villages) have no rights to do the same under the Fair Trading Act. This means consumers are not able to do anything when faced with unfair terms in standard form consumer contracts, other than complain to the Commerce Commission. This is problematic and needs to be addressed for both for unfair terms in retirement village contracts and generally. We welcome the inclusion of a specific power in the retirement village context to declare unfair terms in ORAs. To improve certainty, we suggest the Act should contain a schedule or list of examples of unfair terms or terms that have been declared unfair. We understand that, under section 69 of the Act, a dispute panel (under the existing dispute resolution procedures) has the power to amend an ORA so that it complies with any applicable code of practice or section 27(1). We suggest that, in addition to a power to declare unfair terms void and unenforceable, the existing power in section 69 is extended to cover unfair terms, so these terms can be amended where necessary. It provides flexibility and will avoid situations where the legal rights and obligations of the operators and the residents become uncertain after unfair terms are removed. In line with our answers to Q.69 – Q.71 below, this power should be vested in an independent regulator.
Q.13	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?
A.13	We have not received any specific complaints about potential breaches of a resident's privacy. However, we understand some ORAs allow the operator access to a resident's personal information directly from health agencies etc. In some

[6] RVR-Unfair-Terms-Oct22-DIGITAL.pdf (rvranz.org.nz)

	cases, these terms appear to be incredibly broad and could allow operators to obtain information they do not require. These clauses could raise issues under the Privacy Act. To ensure consumers are aware of their rights under the Privacy Act, we consider it would be useful for ORAs to contain a statement that the Privacy Act applies to the collection, storage and use of any personal information by operators.
Q.14	Should conveyancers be able to provide intending residents with legal advice on ORAs? Please give us your reasons.
A.14	Under the Lawyers and Conveyancers Act 2006, conveyancing practitioners can carry out legal work, including providing advice in relation to legal or equitable rights and obligations for the purpose of effecting or documenting any transaction or prospective transaction that does or would create, vary, transfer, or extinguish a legal or equitable estate, interest, or right in any real property. We have no objections to a conveyancing practitioner, who holds a current practising certificate issued by the New Zealand Society of Conveyancers, providing legal advice about ORAs, so long as they also undertake appropriate training on the subject prior to providing advice to the public. It may offer consumers more choices of professionals specialising in retirement villages when seeking legal advice for their ORAs. Also, if contracts are standardised, in both format and content, we consider the case for allowing conveyancing practitioners to provide legal advice is stronger. We also suggest that both the New Zealand Society of Conveyancers and New Zealand Law Society should be consulted in the process of formulating a template of ORAs with standardised provisions, and updated training should be provided by them to practitioners giving legal advice to intending residents in the future.

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.
A.15	Yes. A clearer definition of "retirement village property" will avoid unnecessary confusion and disputes about who is responsible for maintenance and repairs. Improved clarity will help intending residents to carefully manage their budgets.
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.
A.16	Yes. This would provide further clarity as to the scope of responsibility for maintenance and repairs by either party. Ideally, the list should be included as a schedule to the ORA for the specific unit. We recently received a complaint about an operator who advised a resident he had to pay for the cost of repairing an underfloor heating unit because it was deemed to be a chattel under the terms of the ORA. The resident considered this to be unfair. We agree. A resident should not have to pay for basic amenities, such as heating systems in their unit, to be repaired. This situation could be avoided in future if there is a comprehensive list of operator-owned chattels and fixtures available for the parties' reference.

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.
A.17	Yes. We do not think it is fair that operators treat residents like owners in some respects, but not others. For example, operators make it clear that residents are not allowed to make modifications to their units, must consult operators when getting a pet or inviting guests to stay for extended periods. However, at the same time residents are required to assume the responsibilities of an owner (i.e., to maintain and repair fixtures and chattels). This is inherently unfair and, in some cases, causes misunderstanding as to the residents' interest in the unit. We strongly agree that responsibility for maintenance and repairs of operator-owned chattels and fixtures should only come with the benefits of ownership.
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.
A.18	We agree any marks due to the use of mobility aids or incontinence should be classified as 'fair wear and tear'. These marks are not made intentionally and should be expected by operators given they are providing accommodation to elderly residents.
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.
A.19	Yes. For the reasons as set out in Q.17 above, we agree that operators should meet the cost of replacing or upgrading their chattels and fixtures when they wear out or stop working properly, regardless of when this happens. If, for example, an oven or heat pump stops working after 2 years, the operator should still be responsible for replacing it.
Q.20	If introduced, should the proposals apply to existing ORAs? Please give us your reasons.
A.20	Disputes about maintenance and repair of owner-operator fixtures and chattels cause inconvenience and distress to residents. We were told that in one village, residents were asked to contribute half of the repair cost for the lift in the main building. The residents believed the village should be responsible for this cost, not the residents. We agree. The dispute went on for two years. Given the inherent unfairness of requiring the resident to pay for the cost of repair and maintenance of operator-owned chattels and fixtures, we strongly support the proposals applying to all existing ORAs. Arguably, these proposals merely reflect the true intentions of the law for the operators to fulfil their obligations to (i) keep the village in good condition, and (ii) to make and adhere to a long-term plan for maintaining and refurbishing the village and its facilities, pursuant to clause 8 of the Retirement Villages (General) Regulations 2006. They also reflect rights that residents are likely to already have under the Consumer Guarantees Act (CGA) and Fair Trading Act (FTA). Under the CGA, operators must provide services using reasonable care and skill and the services must be fit for purpose. Also, under the FTA, they cannot enforce or rely on terms that are unfair.

	To maintain fairness, we expect that operators would review their existing ORAs and voluntarily adopt these proposals until the legislative change is finalised.
Q.21	If there are other issues with maintenance and repairs that we should be aware of, please tell us about them.
A.21	We have heard there can be significant delays in getting chattels or fixtures repaired. For example, one resident told us the heat pumps in her unit were not cleaned for over 2.5 years, notwithstanding the management's repeated promises to do so. The current requirement on operators in the Code of Practice to have a procedure that ensures repairs are actioned without unnecessary delay does not appear to be effective in all cases. We have also received a few complaints that residents felt "ripped off" as they had no control over the seemingly unnecessary and costly refurbishment for which they were responsible upon moving out of the village. Refurbishing a unit also often creates additional delays for residents in getting their money back from the operator. In our view, operators should not be able to undertake refurbishments of a unit (after a resident has moved out) unless it is reasonably necessary to do so. The cost of any refurbishment that is not reasonably necessary for maintaining the unit in good condition must not be borne by the outgoing residents. Improvement to the complaint handling process will also help with these disputes. (see Q.22-27 below).

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.
A.22	In our view, the current dispute resolution scheme is confusing, infrequently used, and not trusted by residents. Residents, at retirement age, are already facing a lot and may simply not have the knowledge or energy to fight for their rights during their stay in a retirement village. As mentioned in paragraph 139 of the Discussion Paper, moving elsewhere is unlikely to be a feasible option for aggrieved residents, mainly because of the financial burden associated with terminating the ORA. Further, residents have also told us they are concerned about how making a complaint might worsen the ongoing relationship with the operators and staff, and that residents rely on the operators and their staff for their quiet and peaceful lives in the villages. As a result, residents tend to put up with unsatisfactory quality of the villages, unfair treatment and unreasonable behaviour of staff, or even breaches of ORAs (or the Act) by the operators. We are clearly in need of a more effective dispute resolution scheme to ensure residents are sufficiently protected and have somewhere to go if there is a problem.
Q.23	Should the new scheme be delivered by:

	▪ a dispute resolution scheme provider ▪ a government appointed commissioner ▪ neither of these? Please give us your reasons.
A.23	We consider a government appointed commissioner (i.e., the Retirement Commissioner) should deliver the new scheme. It is critical residents have a trusted entity to turn to when they have concerns or complaints about the operations of retirement villages or how they are treated. We believe an independent and reliable regulator with the power to enforce the Act and regulations, together with a more user-friendly and effective dispute resolution process, can provide this. A commissioner with a regulatory role and thorough understanding of the industry will be better equipped to investigate and resolve complaints. An independent commissioner would be well-placed to facilitate meaningful negotiations and to monitor the ongoing performance of the operators after dispute resolution. The commissioner should be required to publish information about the disputes or complaints it receives, and operators under investigation. This will help maintain high standards amongst operators in the sector and provide valuable information for intending residents. The new dispute scheme will also be more effective if the commissioner has a wide range of regulatory powers (for example, power to inspect retirement villages, power to investigate potential breaches of the Code of Practice, the Act or ORAs, power to de-register retirement villages, power to declare unfair terms to be unenforceable and the power to amend ORAs etc). Please also see our reply to Q.71 below.
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?
A.24	The dispute resolution scheme's primary objective is to help residents who may have disputes with operators. We believe resources are best reserved for those situations. However, contribution by residents (in case of disputes between them) should be set at a reasonable level so as not to deter residents from using the scheme.
Q.25	Should legal representation be limited in a new scheme? If yes, how should it be limited?
A.25	Yes, we think legal representation should be limited in a new scheme. Residents should be allowed to use advocates but legal representation is unlikely to be necessary in most cases. Allowing legal representation in all cases will likely increase the costs, time and stress involved. We think residents should have the ability to apply to the scheme to bring a legal representative for a particularly complex or serious case, but they shouldn't be allowed as a matter of course.
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?
A.26	No comment.
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.
A.27	We support a free independent advocacy support service being available to residents under a new dispute resolution scheme. We consider the RVRA could provide this service. Some elderly residents may not fully understand their legal rights and may require extra support in deciding the next course of action. Most of the time, formal legal advice is not the only thing they require. Independent advocacy support is valuable as residents are not always in a good position to proactively fight for their own rights, especially if they have limited support from friends and family. We recently received a complaint from a resident saying that aggrieved residents usually have no alternative but to stay silent because they are often physically and/or mentally exhausted. They often lack the support and energy to take on the operators, especially when their livelihoods are at stake. Another aggrieved resident complained that "We shouldn't have to fight for what's in our ORAs and elderly residents shouldn't lose sleep because management ignore the Retirement Village Act and Code of Residents Rights. Our village is getting more run-down and I wish I had never bought into it". An elderly woman considering moving into a village also told us she was worried about how she would get sufficient support and independent advice as she gets older, particularly with limited family support. We consider these types of residents would benefit from an independent advocacy service. Residents have also complained to us about the lack of assistance provided by statutory supervisors. For example, one resident told us his villages' statutory supervisor was not helpful, and his complaint remained unresolved for a long period of time. Another resident complained that while the operators have abundant resources for legal advice, the statutory supervisor does not seem to be supportive of the residents. The resident believed the statutory supervisor appeared to back up the operators.

QUESTIONS ON MOVING TO AGED RESIDENTIAL CARE	
Q.28	What information on occupancy levels of aged residential care should be provided to intending residents: ▪ average occupancy across the previous 12 months ▪ current occupancy levels at a clearly dated point in time ▪ other information ▪ no information? Please give us your reasons, including details if you answered 'other information'.

A.28	The availability of aged residential care in a retirement village is a key consideration for some intending residents, especially for those moving in at an older age. Our 2020 survey of 1680 village residents found 50% wanted to move to a facility where care was available if the resident or their spouse needed it. Therefore, information on average occupancy across the previous 12 months together with occupancy levels at the time of the disclosure documents, is particularly helpful. We also suggest operators should disclose the number of residents who require aged care but were denied access to care facilities due to unavailability, or otherwise being unable to transfer to one (with reasons) in the past 12 months and 3 years.
Q.29	Should a clear statement that a suitable aged residential care unit cannot be guaranteed be included in the Village Comparison? Please give us your reasons.
A.29	Yes. Such a statement will help ensure intending residents understand they have no entitlement to be transferred to care facilities as of right and that this depends on availability. In September 2021, Consumer NZ lodged a complaint with the Commerce Commission regarding the 'continuum of care' claims made by retirement villages. A number of residents told us villages failed to provide the promised care services. One resident told us "The promised aged care facility, that was pivotal in my decision to agree to move to this village, has not been built." Another resident said "sales managers give certain impressions and statements that later turn out not to be true. For example, I was told a care facility would happen if the residents wanted it. This was not true. It is not going to happen."[7] We are meeting with the Commerce Commission on the date this submission is due to find out the outcome of the Commission's investigation. We encourage the Ministry to take this into account.
Q.30	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.
A.30	Residents who require aged care but can't access it are in a vulnerable position. While more stringent disclosure requirements about access to care facilities is desirable, there are still many factors out of residents' control that may impact the availability of care facilities in the future. For example, if an operator increases the minimum entry age of a retirement village, develops new units, or makes the care facilities available for non-residents, the availability of the care facilities can change dramatically, resulting in the disclosed information becoming meaningless. One resident recently complained to us that while waiting for the repayment of her capital sum, she was required to pay monthly fees for her recently vacated unit (which was awaiting refurbishment), and also for the care facilities and treatment at the same time. In our view, the fact residents cannot immediately

[7] Consumer NZ lodges complaint over retirement villages' care claims - Consumer NZ

	access their capital sum when they are transferred to care facilities causes hardship for many residents. Similarly, if a couple move into a village together but one of them requires care, they will usually need to enter a second agreement which they may not be unable to afford. This leaves the couple in a very difficult position. As a result, many residents put off transferring into care to delay the costs associated with the transfer. This puts the resident at risk and needs to be resolved. Operators should be required to take all reasonable steps to assist residents in need of aged care to transfer to another facility, and where necessary, help get a residential care loan from the Ministry of Social Development or advance the funds to them directly. We appreciate the Retirement Villages Association has recently proposed new guidelines for best practice in this respect.[8]
Q.31	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 it be capped or limited in some way.
	No. There is no compelling reason for operators to charge a second fixed deduction when a resident moves from a unit into a care facility within a village. In our view, it is double-dipping and should not be allowed. We have received complaints about the excessive costs involved in transferring within the same village. For example, one resident was asked to pay an extra $100,000 for moving to another unit and offered an interest free loan of $40,000 by the operator. Regardless of whether a resident moves between units within a village, to another village of the same operator, or from a unit to a care facility run by the operator, only one fixed deduction should apply at the time the resident leaves the village. This is in line with the position held by the Retirement Village Residents' Association.
Q.32	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: ▪ 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?
A.32	No comment.

[8] Blueprint for New Zealand

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.
A.33	We are aware of one complaint about asbestos (a known carcinogen) found in the lifts of a retirement village. Another resident also expressed concerns about fire safety and emergency exits in the retirement village. Some residents also complained about the lack of air-conditioners in the village or units as they usually become too hot in summer, especially during a heat wave. One resident told us he believed his friend's unit was too hot and appeared to worsen his friend's Multiple Sclerosis symptoms. We support the RVRA's views on smoke alarms. Operators should be required to provide smoke alarms that are fit for purpose (for example, alarms that will provide adequate warnings to residents who are hard of hearing, deaf etc). They should also be required to ensure the alarms remain in good working order.
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.
A.34	We have received complaints from residents about the common facilities being too cold because the heating was insufficient. Even though the operators promised to install heat pumps at a residents' meeting, we were told this never actually happened. In another case, the operator of a retirement village in Hastings refused to install a heat pump for a resident even though the townhouse was cold and only had a single wall heater. Another resident who lived in a retirement village in Auckland for 6 years told us it was cold and windy and residents needed to use the heat pump most days. One resident also complained about the dampness in his unit, and was unhappy the operators had not carefully inspected the unit before he moved in. Residents also expressed that double-glazing and wall insulation were missing in some villages, resulting in the units not being warm enough.
Q.35	Should retirement villages be upgraded to meet certain building standards, such as the healthy homes standards? Please give us your reasons.
A.35	Yes. Minimum standards are needed to ensure residents are safe and comfortable in their homes. Although some operators may meet these standards, this is done so on a voluntary basis and needs to be required by law. The healthy home standards were designed to provide guaranteed standards for tenants in residential properties. There is no reason why these should not apply to retirement villages, which are also used for residential purposes. The fact these standards do not automatically apply to retirement villages is unacceptable as it means that residents may be required to bear the costs of ensuring their homes meet minimum standards. A resident in Arvida retirement villages also pointed out that "any improvements to the property are at the tenant's cost - even for double glazing which one might expect to be a modern-day requirement."

	One resident recently told us Summerset was asking residents to cover 50 percent of the cost of double-glazing their units. We don't think residents should be required to cover these costs.
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?
A.36	We have received complaints about lack of the safety measures, for instance, handrails and personal alarms, in various retirement villages. One elderly resident fell in her villa and was not found for 48 hours because she couldn't reach the call bell which was located 1-2 meters above the ground.[9] To be fit for purpose, we consider personal alarms and handrails should be provided to residents, and the cost of these minimum safety measures should be borne by the operators, not the residents. Without these safety measures, residents are more likely to suffer harm and may also lose confidence moving around their village. For example, one resident recently told us a resident in her village fell off a curb when visiting her best friend across the road. After this, she was too scared to walk over the road again. In our view, it is unacceptable for operators to shift the financial burden (for example, Summerset charges a monthly fee of $45 for personal alarms) to residents due to a lack of age-appropriate equipment in the villages.

QUESTIONS ON REPAYMENT OF THE RESIDENT'S CAPITAL SUM	
Q.37	Do you agree with: ▪ 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? Please give us your reasons, including any additional suggestions for how the issues covered could be addressed.
A.37	In our view, a resident (or their estate) should be entitled to their exit payment within 28 days of vacating the unit, irrespective of the amount of time it takes to find a new resident for the unit. If the operator is unable to repay within this time, they could be granted an extension of up to 3 months. However, interest should be payable from 28 days. However, if operators terminate the ORA they should be required to repay exit payments within 5 working days of termination. We have heard too many cases of outgoing residents being left in 'financial limbo' after vacating their units. Although operators are required to take all reasonable steps to enter into a new ORA for a vacated unit in a timely manner, there are no prescriptive obligations requiring operators to refurbish, market and sell a unit as soon as possible, or return a resident's money within a certain period.

[9] Retirement village resident not found for nearly 3 days after falling and breaking her hip - Consumer NZ

	Too often, this results in residents (or their whanau) having to wait months, or even years, to get their money back from the village. Given operators can continue charging residents after they have vacated their units, and during refurbishment etc, there is no financial incentive for them to return a resident's money as soon as they have moved out. On the other hand, outgoing residents usually have no (or limited) control over the re-licensing process and can do very little to expedite the process. This seriously affects an outgoing residents' ability to move to another village or care facility. Some can't afford to leave without obtaining financial assistance. As one resident told us "the retention of capital beyond departure date precludes the ability of most residents to facilitate their move from a villa or apartment to care facilities". We strongly support a mandatory repayment timeframe. This would provide clarity for villages, residents and their whanau, allow residents to better prepare for their exit and help prevent disputes. While the Retirement Villages Association has indicated that over 75 percent of units are relicensed within 6 months, this data is from the current regime, in which there is no set timeframe for repayment. It does not mean that, on average, operators need 6 months to repay residents or their whanau. The capital sum paid by a resident upon entering an ORA is essentially an interest-free loan for the period of the resident's stay in the retirement village. It is only fair for a resident to be entitled to the repayment of such loan (after deducting any fixed deductions and other expenses) within a reasonable time after the resident no longer enjoys any benefits under the ORA (i.e., vacating the unit).
Q.38	Which option/s do you consider would most improve fairness for residents?
A.38	The above proposal should greatly improve fairness to residents who are contemplating a termination of their ORAs.
Q.39	What impacts would the proposed options have for operators?
A.39	We expect operators will be concerned with the apparent large sum of money to be set aside, or finance to be obtained, for repayment of capital sums (and the related interest payment) regardless of whether a unit has been re-licensed. However, given these provisions will not be enacted for some time, we believe operators have enough time to prepare for the change, especially when a financial hardship exemption is also available to them.
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?
A.40	We understand an operator may face undue financial hardship if many residents leave in a short period of time. This could disrupt the operation of the retirement village, and incidentally affect the existing residents. We therefore believe operators should be able to apply for an exemption, on a case-by-case basis.

	As it involves a balancing exercise of the hardships faced by operators and outgoing residents, we suggest that partial repayment or repayment by instalment be included as possible solutions. The power to grant such an exemption should also be vested in the independent regulator or commissioner and the operator should have to provide sufficient evidence of hardship before any exemptions are granted. If an operator is granted an exemption, we suggest this is noted in future disclosure documents, so consumers are aware of this.
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.
A.41	We believe that financial hardship exemptions granted on a case-by-case basis is sufficient to cater for different types of retirement villages. However, as submitted below in Q.54, we believe conditional exemptions should be given to operators who share capital gain (in different ways), as an incentive to do this.
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.
A.42	We propose a period of 28 days from when the unit is vacated. See Q37 above.
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.
A.43	No comment.
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.
A.44	The delay in repayments has wide implications and has caused unfairness in many cases. The large scale of hardship on the part of existing residents should justify the implementation of mandatory repayment timeframes to existing ORAs. Given there is still a long way to go until this proposal becomes law, we believe operators have sufficient time to prepare for the change, especially when a financial hardship exemption is available to them.
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.
A.45	See our answer to Q44 above. We believe this should apply to all existing ORAs.

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.
A.46	Yes. We strongly support the proposal to require operators to stop charging weekly fees upon a unit being vacated. There is no legitimate reason for the operators to continue to charge departing residents after they've vacated the unit. Any term to the contrary is unfair and a potential a breach of the Fair Trading Act as residents no longer enjoy the right to occupy their unit, or receive any benefits from the facilities or services provided by the operators.

	Allowing operators to continue to charge weekly fees is also a disincentive to timely re-licensing of the unit by the operators. It is only fair that operators stop any charges immediately after the unit is vacated. We are pleased to see that some operators have voluntarily adopted this practice already. However, we consider this requirement needs to be specified in the Act.
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.
A.47	Yes. See our answer to Q.46 above. The fact operators have already started to adopt this practice voluntarily highlights the unfairness of the practice and indicates operators can make this change. However, the change should be reflected in the Act for all existing ORAs to ensure operators will not start charging residents again.

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.
A.48	Yes. As pointed out in paragraph 242 of the Discussion Paper, fixed deductions represent the benefit the residents received from their use of facilities, plus a margin for the operators to help cover village costs. It therefore follows that it must stop accruing immediately upon a unit being vacated. To allow any continuous accrual is totally unfair to the outgoing residents, and a possible breach of the Fair Trading Act.
Q.49	Should limits be placed on the size of the fixed deduction? Why/why not?
A.49	We consider fixed deductions should be limited to no more than 30% of the capital sum. This would prevent operators from setting excessively high fixed deductions and ensure an even playing field for all operators.
Q.50	Is greater transparency needed about the specific costs covered by fixed deductions? Why/why not?
A.50	Yes. Without a clear understanding of what the fixed deduction covers, it is difficult for residents to understand what they are being charged for and to what extent they are benefiting from these payments. We therefore suggest that fixed deductions should be made clear in the ORA with a breakdown of the costs they cover.
Q.51	If introduced, should the proposal apply to existing ORAs? Why/why not?
A.51	Yes. Given it is inherently unfair for operators to continue the accrual of fixed deductions after a resident leaves a retirement village, this change should be reflected in all existing ORAs as well. We think operators should voluntarily implement this change pending legislative amendments.

QUESTIONS ON CAPITAL GAINS/LOSSES	
Q.52	Do you agree with: ▪ 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? Please give us your reasons, including any additional suggestions for how the issue in this section can be addressed.
A.52	We agree with both proposals. We consider making a resident liable for capital loss without entitlement to capital gain is unfair and a form of elder abuse. Of course, operators could propose more favourable terms to residents, including completely waiving outgoing residents' liability for capital loss on resale.
Q.53	If implemented, should the proposal apply to existing ORAs? Please give us your reasons.
A.53	This change should be reflected in all existing ORAs. Operators should also implement the change pending legislative amendments as, in our view, it would be unfair and unconscionable for operators to enforce such terms.
Q.54	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.
A.54	While we understand that sharing capital gain will have negative impacts on operators' financial positions, it is not financially or practically infeasible to do so. Although it isn't common practice, there are still some operators in the market who are willing to share capital gains with outgoing residents.[10] However, given the majority of retirement villages are run by large corporations that are unwilling to share capital gain, we believe there is no incentive for operators to even consider changing this practice. We hear a lot of complaints from residents about their bad experiences upon leaving their retirement villages, and they often relate to their dissatisfaction with the fact they're not entitled to any share of the capital gain. To provide better options for consumers, we recommend operators should be required to provide options for intending residents to share capital gain on resale. While we understand a mandatory requirement to share capital gain with outgoing residents would be strongly opposed by operators, in the absence of any incentives for operators to make such a change, we think it is fair and reasonable for the Act to impose requirements for operators to at least provide options or alternatives to share capital gain. We are aware of villages that do this already. That is, they offer residents the option of paying a slightly higher capital sum to obtain a share in any capital gain, or a reduced capital sum if they don't wish to obtain a share in any capital gain.

QUESTIONS ON FUTURE PROOFING THE DEFINITION OF RETIREMENT VILLAGE	
Q.55	Is the definition of retirement village easy to understand? Why/why not?
A.55	We think the definition of retirement village should be simplified. It is currently several pages long and difficult to understand.

[10] Retirement village returns 80 per cent - NZ Herald

Q.56	Are any aspects of the definition unnecessary or redundant? If yes, please tell us which ones.
A.56	No comment.
Q.57	Does the definition enable operators to respond to changing demographics and housing needs? Why/why not?
A.57	We consider the requirement that a resident pays a capital sum for their right to occupy a unit inhibits innovation. Ultimately, it means residents who can't afford to pay the capital sum will be unable to live in a retirement village.

QUESTIONS ON INSURANCE COVER FOR RETIREMENT VILLAGES	
Q.58	Do you agree with: ▪ 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? Please give us your reasons, including any additional suggestions for how issues with insurance cover can be addressed.
A.58	Consumer NZ welcomes both proposals to minimise the loss suffered by residents in case of events causing damage to their villages. These risks should never be borne by residents. However, we are concerned that residents could be left out of pocket if, for example, they paid $500,000 for their unit and it was destroyed 10 years later. Returning a resident's capital sum would mean they were left with limited options for relocating to another village of similar standards.
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?
A.59	No comment.
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?
A.60	No comment.
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.
A.61	Yes, we consider it would be unfair for operators to pass on insurance excesses to residents. The resident has no control over the excess and should not be expected to pay for it. These are part of an operator's operating costs.

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?

A.62	We agree. As pointed out in the Discussion Paper at paragraph 297, there is a security gap which may adversely affect residents' interests if a retirement village encounters financial difficulty. The statutory requirement for security over personal property should fill this gap and gives extra protection to residents.
Q.63	Would legislating that statutory supervisors have to hold both types of security affect banking arrangements? If yes, how?
A.63	No comment.
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.
A.64	Yes, this should be first ranking to ensure residents' capital sums are protected.
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?
A.65	No comment.

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.
A.66	No comment.
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.
A.67	No comment.
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.
A.68	No comment.

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?
A.69	The existing powers and functions are shared among different governmental agencies. We consider this hinders the performance of these agencies, creates unnecessary complexity and makes the system harder to navigate and understand for residents and their whanau. The existing agencies also seem to lack the power to regularly inspect the operation of retirement villages, and proactively investigate potential breaches of the Act or codes. A resident who lived in a retirement village in Christchurch for over 10 years expressed concerns about the lack of physical inspection by authorities or attempts to enforce of the Code of Practice in the actual operation of the retirement village, despite various apparent breaches (e.g., lack of emergency practice, lack of disability access, fire sprinkler system, and lack of sufficient manager or staff). It appeared to him that there is no accountability.

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?
A.70	Yes. Instead of relying on complaints from residents, we strongly support the regular inspection, proactive investigation, and ongoing monitoring of the performance of retirement villages by the authority. We consider this would encourage better compliance with the law, which would improve standards in the sector. It would also help residents feel assured that someone was checking their village meets the required standards.
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?
A.71	Yes. We agree that a single government agency with ultimate responsibility and power to regulate the sector is desirable. Residents will have a clear idea of the entity to seek help from when they have an issue. Extensive powers should be given to the authority, from complaint-handling, registration, inspection, monitoring, auditing, dispute resolution to investigation and enforcement. We think a single authority with a wide range of powers and centralised resources will be able to effectively regulate the sector and better safeguard consumers' interests.

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?
A.72	No comment.
Q.73	Do you agree that the Registrar should have the power to correct minor or technical errors in the Register? Why/why not?
A.73	No comment.
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?
A.74	No comment.
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?
A.75	No comment.
Q.76	If there are other improvements that could be made to the Register, please tell us them.
A.76	No comment.

QUESTIONS ON THE CODE OF PRACTICE	
Q.77	Do you agree with the following improvements to address the issues identified with the Code of Practice? ▪ 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. Please give us your reasons.
A.77	We agree a regular review of the Code of Practice will enable the authority to amend or update the standards of operation of retirement villages to address current or potential issues that are drawn to the authority's attention. We believe a simpler and plain English version of the Code of Practice will enable residents to better understand the statutory minimum standards of the villages that they reside in.
Q.78	What changes, if any, should be made to: ▪ the way the Code of Practice is currently varied ▪ the requirements for annual and special general meetings in the Code of Practice?
A.78	No comment.
Q.79	Are there any other issues with the current Code of Practice? If yes, please tell us about them.
A.79	We have not undertaken a clause by clause analysis of the Code of Practice. However, we are aware there are issues with the Code. For example, the Code only allows a resident to take a complaint 9 months after the unit has become available for re-occupation. Also, the Code requires operators to maintain all buildings, plant, and equipment in clean and safe working order, suitable for their intended use. However, this has not stopped operators pushing this cost onto residents through terms in their ORAs. As discussed above, this needs to be remedied. We are also concerned provisions in the Code of Practice may prevent unfair terms in ORAs from being declared unfair. Under section 46K of the Fair Trading Act terms that are expressly permitted by any enactment (including the Code) cannot be declared unfair. Clause 54(2) of the Code, for example, requires operators to reduce outgoings by at least 50% if no new ORA has been entered into within six months after termination. This clause appears to allow operators to continue to charge outgoings after a resident moves out and may prevent a court from declaring a term in an ORA that allows this, unfair. Therefore, this term, among others, clearly needs amending. To increase accountability and ensure compliance with the Code of Practice, we believe the independent commissioner should have the power to investigate, whether on its own motion or upon receiving a complaint, and to discipline operators for a breach of Code of Practice. A public reprimand with media release following a breach of the Code of Practice will have sufficient deterrent effect to ensure better compliance with the Code of Practice and allow residents to learn about the standards villages have failed to meet.
Q.80	If your weekly fees have increased during occupancy, please tell us about the experience, including whether residents were consulted.

Q.80	We have received a number of complaints about weekly fee increases. These include complaints: • residents have "no say" in the increase even if it seems unreasonable. The right to be consulted does not stop operators from imposing excess fees. Please see Q.81 below as well. • weekly fees are based on the cost of the unit, and unrelated to the actual costs of the service provided. • fees increase each year regardless of whether the operator's costs have increased. • that there are no limits to the amount an operator can increase their weekly fees. These issues need to be addressed.
Q.81	Should consultation requirements for weekly fees in the Code of Practice be changed or strengthened? Why/why not?
A.81	Yes, they should be strengthened. The Code of Practice should provide requirements as to when and how operators are allowed to increase weekly fees. For example, any increase should be linked to the actual increase of service cost, be for the benefit of the residents (instead of generating extra income for operators) and be proposed by operators in good faith. There should also be a limit on the frequency of weekly fee increases to once every year (similar to how rents can only be increased for tenants once a year), and a cap on the amount of any increase.

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.
A.82	Yes, we think changes are likely to be needed to strengthen residents' rights. In particular, we think it should be clear that residents can contact a government appointed commissioner directly, rather than going through the operator, when they have a complaint.

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.
A.83	From what we've heard, it appears the offences, penalties and enforcement tools are insufficient. Consumer NZ supports reform of the enforcement regime (including the entity, its powers, procedures, and tools) to ensure sufficient regulation and oversight over operations of retirement villages.

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?

A.84	Yes, we consider all sales and transfer of retirement village units should have the same consumer protections. If they do not, the regime will continue to be difficult for residents, their whanau, and advisors to understand.
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?
A.85	We consider there should be a general fiduciary duty on the part of an operator whenever it is involved (by itself or through agents) in the sales process.

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.
A.86	As one intending resident pointed out to us, operators are free to set the minimum entry age for a retirement village, which can be well above the common retirement age in New Zealand. Another resident told us that the operator at her retirement village changed the minimum entry age without consultation with residents. We believe that while it provides flexibility to operators, it may also defeat the purpose of the Act which aims to provide options for retirees. We consider the Act should specify an upper limit for the minimum entry age allowed in villages. Also, we have previously raised concerns about the lack of regulation around Refundable Accommodation Deposits (RADs). RADs are a relatively new way of paying for premium accommodation at Aged Residential Care (ARC) facilities, including those provided by Ryman Healthcare. We understand ARC facilities are outside the scope of this review but nonetheless encourage the Ministry to consider regulation of these payments to ensure consumers paying a RAD are protected[11].

ENDS

[11] Vanessa Pratley, 'The Bank of Granny and Grandad', *Consumer,* Winter 2023, Issue 620, page 45