

1 August 2022

Chairperson
Social Services and Community Committee
Parliament Buildings
Wellington
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SUBMISSION on Petition of Retirement Village Residents Association of New Zealand: Address the imbalance between retirement village residents and operators

1. Introduction

Thank you for the opportunity to make a submission on the Retirement Village Residents Association of New Zealand (RVRANZ) petition to address the imbalance of power between retirement village residents and operators (Petition).

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 on the Petition

Consumer NZ supports the Petition. There is a clear power imbalance between retirement villages and residents and the current regulatory regime does not adequately address the negative outcomes this imbalance creates.

We therefore support an urgent review of the Retirement Villages Act 2003 (the Act) and the Code of Practice.

3. Our comments on specific points raised in the Petition

That the government initiates an urgent review of the Retirement Villages Act of 2003 and 2008 Code of Practice to address the imbalances between operator and resident

Consumer NZ supports RVRANZ's call for an urgent review of the Act and the Code of Practice.

The retirement village industry is a significant provider of housing services to older New Zealanders¹. The industry plays an important role in increasing housing supply both through construction of new units and by facilitating residents moving into villages, which frees up general housing stock.

Given the issues New Zealand faces around access to, and affordability of, housing, there are clear benefits to having a well-functioning and scalable retirement village sector. However, if those benefits are being realised unfairly, retirement village residents are carrying a disproportionate burden on behalf of other parts of society.

To incentivise the industry to invest, investment must be profitable. The sums invested in retirement villages are significant.² In our view, any review of the Act must recognise the need for private operators to be profitable but must also acknowledge the inherent vulnerability of residents in a multi-billion dollar, for profit model, where the primary duty of operators is to achieve returns for shareholders, not maximise service and value to residents.

This inherent vulnerability is amplified where barriers to switching are high. Anecdotally, residents are attracted to the village lifestyle because of a desire for a safe, secure and stress-free retirement. Indeed, a 2020 Consumer NZ survey of 1680 village residents (undertaken with support

¹ An estimated 14% of people aged over 75 live in a retirement village
<https://www.consumer.org.nz/articles/retirement-villages>

² The Retirement Villages Association estimates total industry investment at \$106b.

from the Law Foundation³) found that 81% of respondents were satisfied with their village. Freedom from home maintenance and a desire to live in a safe and secure environment were most commonly cited as reasons for making the move to a village.

The desire for a quiet life, combined with the significant cost and effort associated with moving to an alternative village, places residents at a disadvantage and may make them reluctant to move or enforce what (limited) rights they have when things go wrong.

Vulnerability increases where there are gaps in consumer knowledge or understanding. Occupational rights agreements (ORAs) are the most common form of agreement between residents and operators. However, ORAs are heavily weighted in favour of operators and differ significantly from agreements that consumers are likely to be more familiar with – such as standard tenancy agreements and agreements for the sale and purchase of real estate.

Our 2020 research found that just 44% of residents surveyed thought the agreement with their provider was easy to read and understand. Only 18% of respondents rated the terms and conditions as “very fair” and 26% as “somewhat fair”.

This means that, for many, while the quality of life experienced in a village is high, the underlying relationship between resident and provider is governed by agreements that one party can struggle to read and understand and which are widely seen as unfair.

In addition, the key piece of legislation governing the industry is clearly failing in its core purposes, namely:

- (a) *To protect the interests of residents and intending residents of retirement villages:*
- (b) *To enable the development of retirement villages under a legal framework readily understandable by residents, intending residents and operators.*

³ <https://www.consumer.org.nz/articles/retirement-villages#what-the-contracts-say>

Consumer NZ agrees with the Petition, the RVRANZ and the Retirement Commissioner that a full review of the Act and the Code of Practice is long overdue so that both can begin to live up to the purpose in the Act.

The Code of Practice is inadequate, cumbersome and in some cases not adhered to⁴. Reliance on a Code of Practice that heavily favours the industry and lacks sufficient access to an effective disputes mechanism is clearly problematic.

The regulatory regime has failed to keep pace with the growth in the retirement village industry and the ever-increasing number of residents now vulnerable to the power imbalance outlined above.

That where a resident with an Occupation Rights Agreement has no share in the capital gain nor any involvement in the sales process of their unit, the operator guarantees to return the capital (less the deferred management fee) to the departing resident on resale/relicensing of the unit or with 28 days of exit, whichever comes first.

We understand that operators cannot control when residents leave and that there may be significant costs involved if they need to make multiple exit payments within a very short period. We also understand that villages usually refurbish units between residents and that it may take some time to find a new resident for the unit.

However, given residents have no control over the refurbishment and re-licensing process and they don't own the units, we support the introduction of short timeframe within which operators are required to make an exit payment.

We support the 28-day proposal in the petition. In our view, a resident (or their estate) should be entitled to their exit payment soon after vacating the unit, irrespective of the amount of time it takes to find a new resident for the unit. If the retirement village is unable to pay the exit payment within this time, they could be granted an extension for up to 3 months. However, interest should be payable from 28 days.

⁴ See Retirement Village Residents Association Submission to the Social Services and Community Select Committee February 2022 at section 2.

This would incentivise the operator to only refurbish the unit if necessary and to find a new resident for the unit as soon as possible.

The fact residents (or their estates) have to wait considerable periods before being paid their exit fees is causing detriment to consumers. However, it is just one of numerous examples⁵ of ORA provisions designed to benefit operators at the expense of residents' interests. The practice underlines the vulnerability concerns outlined earlier in this submission.

Thank you for the opportunity to provide comment.

ENDS

⁵ For further examples see: <https://www.consumer.org.nz/articles/retirement-villages#retirement-villages-checklist>