

12 February 2021

Commission for Financial Capability
P O Box 106-056
Auckland City 1143

By email: consultation@cffc.govt.nz

**SUBMISSION on "Retirement villages legislative framework:
Assessment and options for change 2020"**

Introduction

Thank you for the opportunity to make a submission on the White Paper "Retirement villages legislative framework: Assessment and options for change 2020". This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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Responses to questions

Question 1: Has this White Paper canvassed the issues fairly and accurately?

1. We welcome the commission's White Paper and consider it has accurately outlined the majority of issues facing consumers in this sector. Existing legislative protections are failing to provide adequate protection for consumers and a review of the Retirement Villages Act, regulations and code of practice is overdue.
2. We consider current rules are slanted heavily in favour of village operators, leading to adverse outcomes for residents. These issues are also emerging in other jurisdictions, forcing legislative protections for consumers to be increased. The same needs to happen in New Zealand.

Question 2: Are there any important points that are missing?

3. Consumer NZ recently carried out a review of retirement village contracts offered by six major operators. Our review found contract terms that we consider privilege the village and risk leaving residents unfairly out of pocket. Terms include those that:
 - make residents responsible for maintenance of, and repairs to, the village's chattels, including the appliances in their unit, plumbing and electrical fittings
 - deny residents the opportunity to benefit from any capital gain when their licence is sold, despite being required to contribute to the property's upkeep

- result in residents being charged penalty interest if they make any payments a few days late, while the village retains discretion to decide whether it will pay interest on money owed to residents
 - attempt to exempt the village from liability for damage that the village may cause to the residents' possessions
 - give the village wide-ranging discretion to decide what residents can and can't do, including whether they can have guests to stay, make improvements to their unit and raise reasonable objections to village developments.
4. Our recent survey of village residents also identified low ratings for satisfaction with occupation right agreements, in terms of readability and fairness of terms. Of the 1680 respondents:
 - just 44 percent thought the agreement was "very easy" or "somewhat easy" to read and understand,
 - only 18 percent rated the terms and conditions as "very fair" and 26 percent as "somewhat fair".
 5. The top three complaints among survey respondents were as follows:
 - 63 percent were unhappy their agreement didn't allow them to get any capital gain when their unit was sold.
 - 29 percent thought the deferred management fee charged by the village was too high.
 - 24 percent said the agreement required them to use the village's nominated tradespeople, preventing them shopping around for better rates.
 6. Attached is the article we published on our contract review and survey. We would be happy to provide additional information if it would assist the commission's work.

Question 3: Do you agree that a full review of the retirement villages framework is needed?

7. We agree a full review of the retirement villages framework is needed. There are major consumer protection gaps that need to be addressed in this sector. We therefore support the commission's recommended option to conduct a policy framework review.
8. The vulnerability of many residents living in retirement villages, and the potential for significant financial harm resulting from unfair terms and conditions, provide additional grounds for reviewing the current framework.
9. Specific attention should be given to the dispute process. Since publishing our review, we've been contacted by residents reporting unfair treatment by operators. These residents often feel they have no practical avenue to raise concerns, given the cost and time involved in using the formal dispute process.
10. We recommend the commission consider whether changes to the dispute process should be prioritised, given the well-established problems with the process.

ENDS