VILLAGE GUIDE

Industry Insights

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In this edition of Industry Insights, we review and summarise the discussion paper, **Review of the Retirement Villages Act 2003: Options for Change**, published by Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (HUD).

This is the next step in the government's review of the Retirement Villages Act, and builds on work undertaken by the Retirement Commission.

Summary of Options For Change discussion document

HUD has invited submissions on the review from anyone who has an interest in retirement villages, including residents, their families, prospective residents, operators and sector bodies. The closing date for submissions is **Monday, 20 November, 2023, at 5pm.**

Village Guide has provided a summary of the main points from the discussion document which include:

1. Introducing a partially standardised occupation rights agreement
2. Stopping fees after a unit is vacated or shortly after
3. Introducing a mandatory timeframe for repaying a resident's capital when they move out, and/or requiring an operator to pay interest if the repayment is not made after a certain time
4. Treatment of capital gains or losses
5. Introducing shorter and simpler disclosure statements
6. Requiring disclosure documents to include more information on transferring within a village to aged residential care
7. Requiring operators to meet the direct costs of maintaining and repairing operator-owned chattels and fixtures
8. Replacing the current dispute resolution scheme
9. Better building standards for retirement villages

1

Introducing a partially standardised occupation rights agreement

The review suggests changes to occupation rights agreements (ORAs). It notes that ORAs can vary greatly across different operators. While some operators do supply simple and concise ORAs, this is not always the case. Intending residents may struggle to understand the key terms of their contract, such as their ownership rights.

The review suggests two possible options.

Option 1:

Standardised format only. Under this option, the format of an ORA would be standardised and prescribed, and operators would fill in the content.

Option 2:

Standardised format and some terms. Under this option, the format and some of the exact text of the terms and information to be included in an ORA would be standardised.

The review notes that ORAs should be clear, easy to understand, and have clear and consistent terminology; should not be able to include unfair terms; and should allow operators flexibility.

2

Stopping fees after a unit is vacated or shortly after

The review proposes that the legislation be amended so that operators stop charging outgoings (weekly fees) to former residents no more than four weeks after the unit has been fully vacated. Currently, operators can continue to charge outgoings until the unit is relicensed (although the amount must be reduced by at least 50 percent after six months). The Retirement Villages Association notes that 70% of retirement villages already stop charging for outgoings immediately.

This change means that residents would not be charged for services for which they do not receive any benefits. It would also provide an incentive for operators to relicense vacant units quickly.

The review notes that the proposal is unlikely to negatively impact the sector's viability; however, there is a risk that it could lead to some operators increasing other fees (such as deferred management fees or personal services fees).

3

Introducing a mandatory timeframe for repaying a resident's capital when they move out, and/or requiring an operator to pay interest if the repayment is not made after a certain time

Under the Retirement Villages Act 2003, there is no obligation for an operator to repay an outgoing resident's capital sum until the vacated unit has been relicensed.

The Retirement Villages Association has indicated that over 75 percent of units are relicensed within six months of being vacated and 90 percent within nine months. However, some former residents or their estates have had to wait over 12 months to receive their capital sum repayment and in extreme circumstances they have had to wait over two years.

The review notes that the current rules favour operators over residents and could be considered unfair. It makes two suggestions to fix this imbalance.

Option 1:

Mandatory repayment timeframe. This would require operators to repay a former resident's capital when the unit is relicensed or at a fixed period (for example, six or 12 months), whichever is earliest.

Option 2:

Paying interest on capital sums. If a former resident's unit remains vacant after six months, the operator would be required to pay interest on the former resident's capital sum. The applicable interest rate would be determined by the Interest on Money Claims Act 2016.

The Retirement Villages Residents Association has promoted a 28-day mandatory repayment timeframe. However, the review suggested that such a short timeframe is likely to seriously impact operators' financial viability. In most cases, units are unlikely to be relicensed within 28 days.

The review also suggested that exemptions from the mandatory repayment timeframe for undue financial hardship on a case-by-case basis, as well as certain classes of retirement villages such as not-for-profit villages, would reduce the impacts of this option on operators' financial viability.

4

Treatment of capital gains or losses

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.

The review makes two proposals to address this issue, which it describes as "one-sided and unfair".

The first proposal is to only allow residents to be held liable for a capital loss from the relicensing of their unit to the same extent as they would be entitled to any share of the capital gains.

The second proposal is that operators that share capital gains with residents would not have to make residents liable for capital losses to the same extent. For example, if a resident is entitled to up to 50 percent of a potential capital gain, the ORA could limit their liability for a potential capital loss to a lower percentage (such as 25 percent or 0 percent).

5

Introducing shorter and simpler disclosure statements

The review notes that current disclosure documents can often be long, hard to understand, and difficult to access. It recommends shorter disclosure documents which would be required to be published on the village's website in a prominent place and in a searchable format.

The proposal suggests two possible options:

Option 1:

A village comparison and a retirement village information statement (two documents). Under this option, the purpose of the village comparison would be to provide key terms about a retirement village (such as fees), so that residents can easily compare these key terms with other villages. The village comparison would be in a standardised form and be no more than three pages long.

Option 2:

A disclosure statement (one document). Under this option, there would only be one disclosure statement which would include the same information proposed for both the village comparison and information statement in option 1. Under option 2, the new disclosure statement would also have a standardised format, and would be required to be no more than 15 pages long and be written in plain language.

6

Requiring disclosure documents to include more information on transferring within a village to aged residential care

Stakeholders have noted disclosure statements and ORAs may not provide intending residents with clear or comprehensive information on the transfer process, options available, and the financial implications of transferring to aged residential care facilities. The level of information provided can vary across the sector.

The review suggests operators be required to provide more comprehensive information in their disclosure documents about the financial and care implications of transferring into aged residential care, either within their village or an affiliated site. This would include clear information about whether a capital sum is required and a fixed deduction charged.

The review also suggested that the disclosure statement include a standardised statement to the effect that the village cannot guarantee a bed at the time the resident requires it; and that new disclosure statement include information on average occupancy levels over the past 12 months.

The main aim of this proposal is to improve clarity around the rights and responsibilities of each party. It also aims to ensure residents are not financially disadvantaged when they are transferring from independent living to aged residential care.

7

Requiring operators to meet the direct costs of maintaining and repairing operator-owned chattels and fixtures

Because the legislation does not explicitly state who pays the direct costs of maintaining operator-owned chattels and fixtures, under licence-to-occupy agreements some residents are required to pay for maintenance and repairs to chattels and fixtures they do not own.

The review proposes a variety of changes which would see all residents under a licence-to-occupy agreement pay only for the cost of repairs and maintenance of items they own, or where they cause intentional or careless damage to operator-owned chattels and fixtures.

This proposal aims to ensure rights and responsibilities are fairly allocated, taking into account the benefits that accompany ownership; and that rights and responsibilities are not in conflict with relevant consumer protection standards.

8

Replacing the current dispute resolution scheme

Under the current dispute resolution scheme, if a resident wants to lay a complaint about an operator they must first do so to the operator. If the issue can't be resolved through discussions and mediation, the operator appoints a disputes panel which conducts a hearing and makes a binding decision.

The review notes that the current scheme can be adversarial and overwhelming for residents, particularly as they must first make the complaint to the operator.

The review suggests a disputes resolution scheme that is independent and delivered by either an appointed dispute resolution provider or a commissioner.

The aim of this suggested change is to provide a dispute resolution scheme that meets the principles of best practice.

9

Better building standards for retirement villages

The review also seeks feedback on whether retirement villages should be upgraded to meet certain building standards, such as 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. Currently, retirement village units are built to different standards, depending on the applicable regulations at the time they were constructed.