



**National Council of
Women of New Zealand**

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**Submission to the Justice & Electoral Select Committee
on the Retirement Villages Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 43 nationally organised societies. It has 35 branches spread throughout the country to which women from some 150 societies are affiliated.

NCWNZ has maintained a close interest in Retirement Villages and in 1989 undertook a comprehensive study and report into the industry. Since that date we have made submissions to the Securities Commission Taskforce, proposals for Reform of the Law for Resident Funded Retirement Villages 1994 and the Law Commission preliminary Paper 34 in 1999. Preparation for the above included wide consultation through the NCWNZ Circular, over 1500 copies of which are sent to representatives of all member societies each month. Response to this proposed Bill by the Social Issues Standing Committee has been drawn from policy established from that consultation.

Our paramount concern has always been security of tenure for residents. Time has shown that the requirements of the Securities Commission have proved cumbersome and inappropriate in some circumstances. Evidence collected by NCWNZ membership showed that residents were inadequately protected against risk. We supported the concept of dedicated legislation as proposed by the Law Commission because we believe a uniform set of rules should cover all village promotions.

We therefore concur with the **Purpose** of this Act as set out in:

Clause 3

- (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.

We do however have some reservations as to the wording in the proposed Bill and wish to make the following comments:

**Part 1
Preliminary Provisions**

Clause 5 Interpretation: Defines the **disclosure statement** in relation to a retirement village, as a written documents that:

- (a) contains all the information that it is required to contain by the applicable code of residents' rights, the applicable code of practice, and regulations made under this Act; and
- (b) states that it is a disclosure statement for the purposes of this Act.





We can find no standard format listing the required content of this very important document in the proposed Regulations.

One of the most often voiced complaints from our members was misunderstanding with village management as to:

- where financial responsibility lay for redecorating costs
- the need to continue paying a service levy after exiting the village while awaiting the on-sale of their occupation rights
- the fact that on-selling of units was solely in the hands of village management.

In our view it would save confusion for villages and residents alike to have a standard format for a disclosure statement in the Regulations, the content of which would define all the rights and obligations both financial and otherwise set out in the Bill. We also submit that any such disclosure statements be couched in language easily understood by a prudent but non-expert person to enable she/he to decide whether or not to take up the offer.

Part 2 Registration, occupation right agreements, and related requirements and rules

Clause 21 Effect of Memorial (1) and (2)

Our understanding of this clause is that "Occupation Rights" have legal precedence over and above the rights in a mortgage agreement. We consider this a vital safeguard for residents.

Clause 24 (1) No operator of a retirement village that is **not registered under this Act may :**

- (a) make, allow to be made, or acquiesce in the making of any offer of occupation or the publication of any advertisement to the public or any section of the public or to any individual after 31 May 2003, or
- (b) enter into any occupation right agreement after that date.

As we understand it this clause comes into effect after 31 May 2003, and its intent is to reinforce the mandatory nature of the proposed Regulations. We applaud such a safeguard for intending residents.

Clause 26 Occupation Right Agreements states: 'an occupation right agreement that contains, in a clear and unambiguous form,-

- (a) provisions and information of the kind specified in **Schedule 2**'

Schedule 2: (ii) Safety and Personal security of Residents.

Some occupation agreements state or imply Registered Nurse (RN) supervision is always available. This is reassuring particularly for those residents who have an ongoing illness such as diabetes mellitus but the statement may be misleading as there are occasions where there may be no RNs on the premises.

(vii) Maintenance and upgrading

This should cover provision for how redecoration / maintenance of a resident's, or intending residents' individual units are dealt with especially with regard to who bears the financial cost of refurbishment.

**Clause 29 Information to be provided**

(1) Disclosure statement in relation to Retirement Village is defined in Clause 5 as containing information on applicable code residents' rights and applicable code of practice, therefore we submit that Disclosure Statement mentioned in Clause 29 (a) should be inclusive of all the information in (b), (c) and (d) of that same Clause 29.

Clause 30 Code of Residents Rights

(2) (a)

We submit that a draft of residents' rights (as set out in Schedule 3) should be vetted by an independent person e.g. Retirement Commissioner to ensure that the points covered produce a clear national standard. Clauses may be added to suit the needs of a particular village providing the basic national tenets remain in place.

(4) It is of concern to us that this does not appear to provide standard conditions of entry for intending residents. (We note that Schedule 5 does outline adequate exit conditions.) We note also that in Explanatory Note (page 10) under **Regulatory impact and cost compliance statement**: 'retirement villages will need to revise current disclosure documentation currently normally contained in prospectus and investment state into proposed disclosure statement template format..... Many retirement villages, especially smaller and mature ones, will be able to dispense with the prospectus.'

Therefore we contend that: it should be specified in the Regulations that any *proposed disclosure statement template* should detail not only the rights and obligations of residents or intending residents, but also the financial risk the offerees will be required to assume.

Part 3**Retirement Commissioner and Statutory Supervisors****Clause 35 Retirement Commissioner to monitor effect of this Act**

(1) (a) and (b)

We commend this initiative to involve the Retirement Commissioner in what we perceive to be a legal watchdog role.

(c) to promote education about retirement village issues and to publish information about such issues:

We applaud the move towards extending public understanding of the issues surrounding retirement village lifestyle. Too many residents fail to give sufficient consideration to the legal and financial aspects of buying into a village, and as a result are often unaware of their rights in law.

Clause 36 Who may be Statutory Supervisor

(1) A nominated individual, not an institution should be appointed to this role. A measure of trust needs to evolve between residents and statutory supervisors in order to achieve the protection cited in the Purpose of the Act, this is less likely to occur where various staff members of a large institution attend to the needs of residents.

Clause 37 Statutory supervisor must be appointed

(1) We do not agree that the statutory supervisor should be appointed by the operator. If the statutory supervisor is to be an advocate for residents he/she should be appointed by an independent body e.g. Retirement Commission. We are very aware of the possibility of a



blurring of responsibilities between the rights of owners and rights of residents occurring, given that the financial costs involved remain with the village owner.

Part 4 Dispute resolution, enforcement, and penalties

Clause 41 Who may apply for dispute resolution

(1) We submit that the operator is not the appropriate person for residents to approach in the matter of resolution of disputes. If the dispute has legal connotations then the Statutory Supervisor should be involved. If not, then we envisage the need for an independent advocate for residents who can apply to the operator for a dispute resolution on behalf of the resident.

Clause 42 How to apply for dispute resolution

It is unlikely that residents will have easy access to or intimate knowledge of the legislation proposed by this Bill, therefore we suggest that Clause 42 (1) and (2) (a); (b); (c); (d); (e); (f); and (g) (i) and (ii) be included in Schedule 5, Code of Practice.

Clause 43 Operator to engage and allocate disputes panel to resolve dispute

(1) We do not consider it is 'protecting the interests of residents' (as set out in the Purpose of this Bill) for an operator to appoint members of a disputes panel. Older people need to feel they can trust someone to take their interests into account in any resolution process. We suggest the Retirement Commissioner a suitable person to select members of a disputes panel. For convenience sake he may delegate the dictates specified in subsections (1), (2), (3) and (4) to the statutory supervisor.

Part 5 Code of Practice and miscellaneous matters

Clause 65 Code of practice must be prepared and published

(1) Village Industry could be directed to work with an interested outside body e.g. Age Concern to compile a standard Code of Practice which is fair to both resident and operator alike and would cover all Villages. Any such Code should be clear of intent and written in language easily understood by non-expert older people.

Schedule 2 Occupation Right Agreements

There is nothing in this schedule that covers financial issues surrounding occupancy.

Schedule 3 Code of residents' rights

(4) Residents have the right to promised services and facilities of an appropriate standard: Our members felt that what can be regarded as "services" can vary greatly from village to village, therefore this particular right needs careful wording to ensure understanding. It also needs to be made very clear what "services" are an entitlement provided by payment of a weekly service levy, as levies can vary according to the ability of residents to fend for themselves.



Schedule 4

Provisions applying in respect of statutory supervisor

1 Duties of statutory supervisor

Subsection 1 (a), (b), (c), (d) and (e) specify clearly the duties of a statutory supervisor, but in practise, how accessible will a statutory supervisor be to individual residents of a large village complex? Our members are adamant each village needs an advocate they can trust to provide a listening ear for day-to-day concerns which may not always be of sufficient importance to warrant the attention of a statutory supervisor.

2 Powers of statutory supervisor

- (1) line 4 reads 'statutory supervisor **'may'** - this should read statutory supervisor **'must'**.
- (2) first line reads : The statutory supervisor **'may'** direct - this should read statutory supervisor **'must'** direct.

Schedule 5

Matters to be included in code of practice

4 Transfer of residents within retirement village

(a) and (b)

Our members suggest there should be a mechanism within this subsection to deal with a situation where one marriage partner requires a transfer to more intensive long-term care. Members are concerned as to how such a situation would affect the occupancy rights of the other partner?

8 Termination of occupation right agreement by operator or resident

(c) (iv)

Much concern has been expressed by members with regard to the fact that on-selling of their occupation rights rested solely with the village management. We submit there be a timeframe within which village operators have full control of sale of occupation rights, after which the former resident or any representative of the former resident may attempt to find a buyer.

General Comments

NCWNZ's 1989 Survey recommended intending residents seek competent legal advice before committing to a particular Retirement Village. Those who chose not to, often lived to rue entrusting their life savings to an outcome they were unable to rectify. We are therefore, particularly pleased with the inclusion of the education dimension of the Retirement Commissioner's role. A comprehensive education programme should help to ensure prospective residents are more aware of the cost/benefit ratio of buying into a lifestyle through the village industry.

Provision of oversight by the Retirement Commissioner is also a welcome addition to the Regulations. By extending the Commissioner's role to include monitoring the effectiveness of the legislation and giving him/her the power to advise the Minister of additions and alterations, provides residents with a valuable mechanism of appeal against what they may regard as anomalies within the village industry.

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