

**Retirement Villages Act 2003  
Monitoring Project  
Residents' Perspectives**

**July 2011**

**Prepared for the Retirement Commissioner by**

**Bev James  
Public Policy & Research Ltd**

**Kay Saville-Smith  
Centre for Research, Evaluation and Social Assessment**



# Executive Summary

Since 2003, retirement villages have been regulated and monitored under the Retirement Villages Act 2003 (the Act). This research is part of the Retirement Commissioner's on-going monitoring of retirement villages as required under Section 36 of the Retirement Villages Act 2003. It is directed at:

- Establishing the understanding retirement village residents have of the Act, regulations, the Code of Practice and Code of Residents' Rights; and,
- Providing an insight into residents' own assessment of the effectiveness of those protections.

The research was designed to be an input in the Retirement Commission's on-going work around retirement villages as well as a resource to retirement villages, their residents and all those who advise and assist older people. It responds to the diversity and increased provision of retirement villages.

## **The Retirement Village Sector**

Retirement villages are typically marketed as a lifestyle choice in which retirees can have independent living in a managed facility. New Zealand's retirement villages range from small facilities with a few units to large complexes. Some retirement villages are also attached to rest homes and high dependency care.

There are around 179 village operators, some of whom operate more than one village. Around 30,000 people live in retirement villages. Overall, there are 330 registered retirement villages. Of those, 266 registered villages are members of the Retirement Villages Association. The RVA is made up of 54 percent corporate, 25 percent independent (for profit) and 21 percent not-for-profit providers.

Around 5 percent of New Zealanders aged 65 years and over live in retirement villages, with the Auckland region having the most villages. Kapiti and Tauranga have 11-14 percent of their older population in retirement villages. The number of retirement village dwellings has grown rapidly. In 1998 there were around 10,000 retirement village dwellings. Those increased to 17,250 dwellings in 2010. The Retirement Villages Association has forecast that operators will need to build 800-1,200 dwellings annually to meet rising demand as New Zealanders age.

Retirement villages have complex contractual arrangements around rights to occupy and the conditions associated with occupation. These arrangements require that intending residents seek specialist legal and financial advice.

## ***The Research and its Participants***

The research used qualitative research techniques – focus groups supplemented by a few interviews – to explore residents':

- Awareness of and familiarity with the Retirement Villages Act, the Code of Practice, the Code of Residents Rights, the Statutory Supervisor role, complaints and disputes

procedures, the Disclosure Statement, their occupation right agreement, and other protections.

- Residents' access to and use of information and advice about the Act and retirement village living; clarity of information and advice; and residents' understanding of the implications of information provided.
- Residents' views about operators' provision of information and consultation.
- Residents' views about strengths and weaknesses of the Act and its protections, and aspects that could be improved.

The focus group method is a qualitative method that is used for illuminating and exploring issues and experiences that are not able to be done using other methods such as surveys, observation or one-to-one interviews. Focus groups are not designed to generalise findings to a whole population in a statistically representative way.

Focus groups provide a richness of detail and the opportunity for participants to reflect on their experiences through discussion with others. This process of conversational reflection provides a way in which individuals themselves and researchers can distinguish between what is a common or universal experience and what may be an individualised experience. The group dynamics and interaction contribute insights and information on the various perspectives and experiences of the group. The focus group may identify differences, disagreements or the degree of consensus on a topic. Drawing out diverse views is a useful way of gaining further insights into the issue being examined.

The research involved 23 focus groups held in five regions throughout New Zealand with 293 participants. The focus group participants covered the full range of ages of retirement village residents. Overall, 53.3 percent were aged between 75 and 84 years. Just under 30 percent were aged under 75 years. Almost 18 percent were aged 85 or more. Around 58 percent of participants moved to their village prior to 2007, with 8.9 percent having moved to their village within the last 12 months. Most have a licence to occupy, but a significant minority have unit title.

Around 59 villages participated in the focus groups. Fifteen villages hosted focus groups and residents from around 44 villages participated in eight cross-village focus groups. Participants were almost equally divided between those from trust or not-for profit villages and corporate group villages. Residents from independently operated villages also participated. Almost one third of participants were from large villages (85 or more units). A fifth of participants were from medium sized villages (between 35-84 units), while a lower proportion were from small villages (1-34 units). Over half of participants live in villages with a rest home located in the same complex.

### ***Residents' Key Issues, Perspectives and Suggestions***

Overall, many residents are aware that they have statutory protections under legislation, although there appears to be a group that is unaware of the Retirement Villages Act. There is also considerable diversity as to residents' knowledge of the particular mechanisms; processes and responses that the Act requires to ensure those protections are implemented.

Despite that diversity, there were residents across all focus groups who identified the following aspects of their entry into and subsequent life in a retirement village as

compromising the conditions they believe they purchased. The following points summarise those concerns that residents commented on repeatedly across the focus groups:

- Fee increases beyond agreed constraints (usually the Consumer Price Index).
- Reductions in the range of services and amenities covered by the fees and subsequent application of additional charges to those fees.
- Reductions in the quality of amenity through: reduced maintenance or under-investment in repairs; lack of clarity around refurbishment; and, previously undisclosed changes in the built environment such as the addition of higher dependency care facilities, or the addition of new units and/or apartments that impact on communal space or individual units' exposure to noise, sun or light.
- Failure to provide amenities indicated in staged development plans.
- Sale of occupation rights being inappropriately managed.
- Changes in operation, management and ownership without consultation.
- Anxieties exacerbated by perceived lack of financial transparency and the diversity of contracts within villages.

Residents repeatedly noted that some problems arose because they had not appreciated the meaning and implications of their contracts. Focus group participants made a wide range of suggestions for improving the efficacy of the Act:

- Easily understood information presented in large font.
- Reduce the financial burden and uncertainty for residents by: ceasing service fees on contract termination; capping service fees; clarifying charges including the allocation of compliance costs.
- Clarify and make independent the Statutory Supervisor's role.
- Overhaul and improve the disputes process.
- Establish mechanisms for resident representation and decision-making including establishing a residents' advocate.
- Rationalise administration of the Act and review it with resident input.
- Establish a mechanism for regular auditing of operators' compliance with the Act, the Code of Practice and the Code of Residents' Rights.

### ***Conclusions and Recommendations***

The residents participating in the focus groups concurred that they have come to retirement villages to ensure that their future is secured. Most participants would not change their decision to take up residence in a retirement village. They commented that making a decision to live in a retirement village was the right decision for them, but they do worry about the future of their village and their situation in it. It is clear that residents' confidence and comfort can be compromised by deficiencies around the processes by which they came into a village or in the subsequent operation of villages. For many residents, this is exacerbated by a sense of disappointed expectations to a greater or lesser degree. Although there is considerable variation in the degree of satisfaction expressed by residents in the focus

groups about their particular retirement village, even those most satisfied with their village expressed some anxiety that the future may not be as certain or secured as they had hoped.

Although this research has not been evaluative in nature, it does suggest that residents' ability to safeguard their future within retirement villages and the effectiveness of the Act's protections could be improved. Broadly, three areas require consideration:

- There are some aspects of the Act itself which are problematic.
- Many of the difficulties that arise for residents and village operators reflect poor implementation of the Act.
- The Act relies on consumer knowledge and access to information in order that consumers can exercise their rights. However, there is inadequate support for people making decisions about whether to enter retirement villages, as well as a lack of support and advice for residents already living in retirement villages.

These aspects are summarised below.

Problems with the Act	Problems with Act Implementation	Problems with Consumer Support
<ul style="list-style-type: none"> <li>• Role of the Statutory Supervisor and commissioning and specification of services.</li> <li>• Requirements around complaints and disputes procedures.</li> <li>• Misalignments between the Act and other legislative provisions related to tenure.</li> <li>• Lack of a clear administrative, audit and regulatory role in relation to retirement villages.</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to implement key requirements in the Act including maintenance plans, fees and charges, provision of information, consultation processes and village complaints processes.</li> <li>• Lack of detail and specificity in key documents and confusing repetition.</li> <li>• Poor specification and lack of clarity around fees and charges.</li> </ul>	<ul style="list-style-type: none"> <li>• Advice provided by lawyers and financial advisers is too narrow and fails to provide appreciation of implications.</li> <li>• Lack of awareness and confusion about key aspects of occupancy, conditions and options.</li> <li>• Unmet need for independent decision-making support for prospective and existing residents.</li> </ul>

There may be merit in reviewing and reforming the legislation around retirement villages. We have already noted some aspects of the current legislation that appear to be fundamentally problematic. However, in most cases there is nothing to prevent the industry from developing with residents best practices that will address some of those problems as well as address the deficiencies around consumer support and implementation of statutory requirements.

We would recommend that attention is given to the following priorities:

- Promulgating templates for the key documents that:
  - Rationalise the content in each relative to the others.
  - Provide examples of the level of specificity required in relation to various terms and conditions.
- Developing and implementing guidelines for consultation for both operators and residents.
- Retirement villages being independently rated and being required to make public their rating on financial, service, amenity and procedural performance.

- Rationalising the scope of the Statutory Supervisor role and amending the appointment and commissioning of those services.
- Establishing a service to provide independent advice accessible to residents and counselling for people entering retirement villages including information about accessing community-based legal services and legal aid.
- Developing with residents an industry standard and best practice for complaints, mediation and disputes procedures which includes:
  - Make recording all complaints compulsory.
  - Instituting a formal mediation based approach to dispute resolution prior to the activation of the current disputes procedures.
- Reviewing the interface between the Act and other tenure legislation to provide guidance on the conditions pertaining to tenants and those in unit title tenures.



## Contents

Executive Summary.....	i
Part One: Context, Key Objectives and Approach .....	1
Section 1: The Context .....	2
Section 2: Key Objectives and Methods .....	4
2.1 Overview of Method and the Participating Residents .....	4
2.2 Focus Group Caseframe, Selection and Recruitment .....	7
2.3 Sector Advice to the Monitoring Project .....	11
Part Two .....	12
The Act and Moving to a Retirement Village.....	12
Section 3: Moving to a Retirement Village: Motivations & Expectations.....	13
3.1 Why a Retirement Village?.....	13
3.2 Making the Choice .....	14
3.3 Using the 'Cooling Off' Period .....	15
3.4 Was it the 'Right' Choice?.....	15
3.5 Does the Act Protect Them?.....	16
Section 4: Information from Retirement Villages .....	18
Section 5: Information & Advice on Retirement Villages.....	20
5.1 Informal Sources of Information and Advice .....	20
5.2 Formal Sources of Information and Advice .....	20
Section 6: Informed Enough to Make the Choice?.....	23
Part 3.....	24
The Act and Retirement Village Living .....	24
Section 7: Resident Awareness.....	26
7.1 Resident Perceptions of Awareness .....	26
7.2 Need for Legislative Protection.....	27
7.3 Does the Current Act Provide Protection?.....	28
7.4 Residents Need to Know About the Act .....	28
Section 8: Residents, Documents and Conditions.....	30
8.1 Code of Practice 2008 .....	30

8.2	Code of Residents' Rights.....	32
8.3	The Disclosure Statement .....	33
8.4	The Occupation Right Agreement.....	35
	Section 9: Protective Processes.....	42
9.1	Communication and Consultation.....	42
9.2	Complaints and Disputes .....	50
	Section 10: The Statutory Supervisor and Resident Protection .....	53
10.1	Awareness of the Statutory Supervisor .....	53
10.2	Views on Statutory Supervisors.....	54
	Part 4.....	57
	Protecting Residents.....	57
	Section 11: Persistent Problems' Residents' Perspectives .....	57
	Section 12: What Leads To Ineffective Protection? .....	60
	Section 13: Improving Residents Ability to Safeguard Their Futures .....	63
	Bibliography.....	64
	Annex A: Residents Focus Group Questions.....	67

**Tables**

Proposed Number and Type of Focus Group by Region  
Actual Focus Groups by Number and Type by Region  
Selected Village Focus Groups Compared to Case Frame

# Part One:

## Context, Key Objectives and Approach

Since 2003, retirement villages have been regulated and monitored under the Retirement Villages Act 2003 (the Act). Under Section 36 of the Act, the Retirement Commissioner is responsible for monitoring the effects of the Act, the regulations and the Code of Practice. The Retirement Commissioner has developed and implemented a five year monitoring programme. The first two monitoring projects have been: one on the role and function of Statutory Supervisors under the Act;<sup>1</sup> and another on the effects of the Act in relation to the functions and duties of retirement village operators.<sup>2</sup>

In continuing its planned monitoring programme, in 2010-11 the Retirement Commission has focused on the residents of retirement villages and their levels of understanding of the Act and their perspectives on the protections under that Act. To that end the Retirement Commissioner has commissioned a research engagement with retirement village residents by independent researchers. This report sets out the findings of that research.

The report is structured into four parts:

- Part 1 provides an overview of the research context, its key objectives and the approach to data collection and analysis.
- Parts 2 and 3 explore how residents perceive their protections under the Act and its effectiveness by exploring the process of moving to a retirement village and their experiences of living in a retirement village. The latter focuses particularly on residents' understanding and perception of some key protective provisions under the Act. Those being: the Code of Practice; the Code of Residents Rights; the Disclosure Statement; the Occupation Right Agreement; the Statutory Supervisor; and the information, consultation, complaints and disputes procedures.
- Part 4 provides an integrated analysis of the data from the focus groups and interviews with residents. It:
  - Sets out the key aspects of retirement village entry and operation that residents see as problematic and from which they believe they need some protection.
  - Identifies those aspects of the current range of protections that appear to be inadequate.
  - Makes some suggestions as to how the protections around residents' conditions in retirement villages may be made more effective.

---

<sup>1</sup> Retirement Commission 2009.

<sup>2</sup> Retirement Commission 2010a and 2010b.

## Section 1: The Context

New Zealand has traditionally had high proportions of older people living in institutional accommodation compared to Australia, the United Kingdom and the United States.<sup>3</sup> In the last 30 years, that proportion has declined in response to 'ageing in place' policies which have seen older people more likely to be supported in their homes, as well as the developing provision of retirement villages in New Zealand.

Retirement villages are typically marketed as a lifestyle choice in which retirees can have independent living in a managed facility that provides a range of recreational facilities, health services, and security. New Zealand's retirement villages range from small facilities with a few units, to large complexes offering accommodation that may progress along a continuum from independent villas to serviced apartments to high dependency hospital care. Some include dementia care.

Approximately 5 percent of the population aged 65 years and over live in retirement villages. The Auckland region has the most villages, followed by Canterbury and Bay of Plenty. The territorial authorities with the most villages are North Shore City, Auckland City, Manukau City, Christchurch City and Tauranga District.<sup>4</sup> Some areas, notably Kapiti and Tauranga, have 11-14 percent of the older population in retirement villages.<sup>5</sup> There are around 179 village operators catering for around 30,000 residents.<sup>6</sup> Some village operators manage more than one village.

There has been substantial growth in retirement village dwellings. For example, in 1998, there were around 10,000 retirement village dwellings, compared to more than 17,250 dwellings in 2010.<sup>7</sup> The number of retirement villages in Auckland alone increased threefold between 1991 and 2005.<sup>8</sup>

Retirement villages are projected to continue with sustained growth in New Zealand. The Retirement Villages Association reported in 2009 that to maintain the five per cent of those aged 65 years and over living in retirement villages, operators will need to build an additional 800-1,200 dwellings annually until 2016.<sup>9</sup>

Accompanying the substantial growth in retirement villages has been a change in the ownership and governance structures of retirement villages. Notably, some not-for-profit providers, which were prevalent before the 1980s, have withdrawn from the provision of retirement housing. In particular some charitable and religious organisations with longstanding involvement in the provision of elderly housing have sold their rest homes and independent living units. Instead, commercial operators have increasingly entered the market with retirement villages. Some of those operators have taken over units formerly owned by charitable and religious organisations.<sup>10</sup> Overall, there are 330 registered villages.<sup>11</sup> Currently, the Retirement Villages Association has a membership of 266 registered villages.

---

<sup>3</sup> Thorns 1993; Saville-Smith 1993.

<sup>4</sup> AC Neilsen 2006. Note this data includes former territorial authorities of North Shore, Auckland and Manukau that are now part of Auckland City.

<sup>5</sup> Retirement Villages Association 2009.

<sup>6</sup> Retirement Commission 2010a.

<sup>7</sup> Retirement Villages Association 2009; Collyns 2010.

<sup>8</sup> Greenbrook 2005.

<sup>9</sup> Retirement Villages Association 2009.

<sup>10</sup> Lazonby 2007; Saville-Smith 1993.

<sup>11</sup> Ministry of Economic Development data (year starting July 2010 to date).

These are made up of 54 percent corporate, 25 percent independent (for profit) and 21 percent not-for-profit providers.<sup>12</sup>

What distinguishes retirement village occupancy from home ownership or renting is the complex contractual arrangements around rights to occupy. These arrangements require that intending residents seek specialist legal and financial advice. To obtain accommodation in a retirement village, the person enters into a legal contractual agreement conferring a right to occupy, which usually also confers rights to services. This right to occupy involves the resident paying a capital sum. The right to occupy is most commonly established through a licence to occupy, although unit title, lease, rental and other forms of occupation are also found in retirement villages.

Such contractual and financial arrangements governing retirement village living are quite different to people's previous experiences as an owner-occupier or tenant. For example, on entry to a village, the new resident pays a capital sum, which covers costs such as the use of communal facilities, management and long-term maintenance. During occupation regular fees are charged for services. Those fees generally cover village costs such as insurance, rates, operating costs and services such as maintenance, gardening and security. There are also costs associated with leaving a retirement village. Exit fees include a fixed deduction, which may be up to 30 percent of the capital sum to purchase the occupation right. Other exit fees may include refurbishment costs, charges for marketing and selling the unit, and payment of weekly service fees until a new resident is found. A resident may be entitled to payments upon termination of occupancy; for example, a share in any capital gain from sale of the occupation right. But this is not always the case.

---

<sup>12</sup> Retirement Villages Association data (2011 to date).

## Section 2: Key Objectives and Methods

As part of its on-going programme of monitoring the Act, the Retirement Commissioner determined in 2010-11 to place residents' perspectives at the centre of its monitoring activities.

The objectives for the 2010-11 monitoring project are to establish:

- The levels of understanding retirement village residents have of the Act, regulations, the Code of Practice and Code of Residents' Rights.
- An understanding of residents' own assessment of the effectiveness of those protections in achieving the objectives of the Act and in protecting their interests in their retirement village.

In commissioning research to meet those objectives, the Retirement Commission was concerned to ensure that the research provided residents with a real opportunity to reflect on the Act in broad terms. The project was not intended to be an audit or an evaluation of particular retirement villages. At the same time, it is often necessary to explore people's experiences to get an insight into how the Act has worked for them.

Managing the inherent tension between the individual experiences of residents and the need to focus on the sector as a whole has been a critical driver of the use of the focus group method, the case frame for the focus groups and village selection, and the focus group guidelines.

### 2.1 Overview of Method and the Participating Residents

The main method of data collection used was focus groups with residents. The focus group method is a qualitative method that is used for illuminating and exploring issues and experiences that are not able to be done using other methods such as surveys, observation or one-to-one interviews. Focus groups are not designed to generalise findings to a whole population in a statistically representative way.

Instead, they provide a richness of detail and the opportunity for members of the target population to reflect on their experiences through discussion with other members of the target population. This process of conversational reflection provides a way in which individuals themselves and researchers can distinguish between what is a common or universal experience and what may be an individualised experience. Other methods do not allow that. Interviews, for instance, become entirely dominated by the 'story' of the individual and surveying forces individuals to respond to a limited range of questions pre-determined by the researcher.

Overall, then, the group dynamics and interaction of the focus group shape the direction of the conversation and in this way can provide insights and information on the various perspectives and experiences of the group. The focus group may identify differences, disagreements or the degree of consensus on a topic. Drawing out diverse views is a useful way of gaining further insights into the issue being examined.

In that context, the focus groups were designed to explore residents':

- Awareness of and familiarity with the Retirement Villages Act, the Code of Practice, the Code of Residents Rights, the Statutory Supervisor role, complaints and disputes procedures, the Disclosure Statement, their occupation right agreement, and other protections.
- Residents' access to and use of information and advice about the Act and retirement village living; clarity of information and advice; and residents' understanding of the implications of information provided.
- Residents' views about operators' provision of information and consultation with them.
- Residents' views about strengths and weaknesses of the Act and its protections, and aspects that could be improved.

In order to access a broad range of residents living in different types of villages, two types of focus groups were conducted:

- **Village-based focus groups** in which a focus group was held in a village with residents.
- **Cross-village focus groups** in which a focus group of residents from several villages in an area were recruited. Cross-village focus groups enabled those residents not in selected villages to also participate in the project.

Twenty-three focus groups were held in five regions throughout New Zealand during February and early March 2011. Those regions were:

- Auckland (7 focus groups)
- Waikato/Bay of Plenty (4 focus groups)
- Hawkes Bay (4 focus groups)
- Wellington (4 focus groups)
- Otago/Southland (4 focus groups).

There were 293 participants in the focus groups. Of those, 258 filled out a brief questionnaire which provides some insight into the characteristics of the residents who participated.<sup>13</sup>

---

<sup>13</sup> The number of those filling out the questionnaire is less than the total number of focus group participants because one large focus group was not given the questionnaire, and a few people in other focus groups did not complete a questionnaire.

That questionnaire asked for basic information about the participants including:

- When the resident moved to the village
- The resident's legal title (type of occupation right)
- Age
- Sex
- Location of village
- Ownership structure of village
- Size of village
- Whether there is a rest home associated with the village

Participants could also write comments on the questionnaire about the Retirement Villages Act if they wished. In all, 139 participants provided written comments.

The focus group participants covered the full range of ages of retirement village residents, although just over half (53.3 percent) were aged between 75 and 84 years. Just under 30 percent were aged under 75 years, and a few were under 65 years. Almost 18 percent were aged 85 or more. Somewhat more women (57.2 percent) than men (42.8 percent) participated in the focus groups.

Over half the participants (57.8 percent) moved to their village prior to 2007. Over 42 percent moved to their village since 2007, and 8.9 percent had moved to their village within the last 12 months. The large majority of participants (84 percent) have a licence to occupy, while just over 13 percent have a unit title.<sup>14</sup> Seven people indicated that their title is one of the following: lease; rental agreement; or ownership of the house but not land.

Residents from up to 59 villages participated in the focus groups. In addition to the 15 villages that hosted focus groups, residents from 44 villages were involved in the eight cross-village focus groups. Most of those 44 villages did not host a focus group meeting.

The types of villages involved across all focus groups do reflect the characteristics of those chosen for village-based meetings. This is because 184 residents (71.3 percent) participated in a village-based focus group, while 74 (28.7 percent) participated in a cross-village focus group. Almost all participants came from villages in the selected regions, however a few travelled from adjacent areas to participate. A Tauranga meeting included residents from Rotorua and a Wellington meeting included residents from Wairarapa.

Participants were almost equally divided between those from trust or not-for profit villages (45.3 percent), and corporate group villages (43.7 percent). Those from independent operators made up 11 percent of participants. Almost one third of participants were from large villages (85 or more units). One fifth were from medium sized villages (between 35-84 units), while 16.7 percent were from small villages (1-34 units). Over half of residents (58.4 percent) live in villages with a rest home located in the same complex.

---

<sup>14</sup> Overall, 12 percent of operators provide unit title occupancy (Retirement Commission, 2010a). In 2009, 38 villages had units only on unit title, and 11 villages had a mix of unit title and other types of legal title (Retirement Villages Association, 2009).

## 2.2 Focus Group Caseframe, Selection and Recruitment

The remaining discussion provides a more detailed description of the case frame for the focus groups, the way in which retirement villages were selected and the way in which residents were recruited into the focus groups.

### **Focus Group Caseframe**

To maximise resources for the monitoring project, the number of regions in which monitoring occurs was limited to six. Those regions were chosen to achieve:

- A national spread of retirement villages to accommodate regional differences, such as types of retirement villages and profile of residents living in villages.
- Inclusion of regions with differing numbers of residents living in retirement villages.
- The Retirement Commission was also concerned to include regions where little is known about residents' experiences.

According to the distribution of retirement villages, the distribution of the older population and advice from village residents and Reference Group for the project, six regions were selected: Auckland (the area covered by the new Auckland Council); Waikato/Bay of Plenty; Hawkes Bay; Wellington/Kapiti; Christchurch; and Otago/Southland.

Initially 26 focus groups were proposed. The numbers and types of focus groups that were proposed to be conducted in each region are outlined in Table 1.

**Table 1: Proposed Number and Type of Focus Group by Region**

<b>Region</b>	<b>Village Focus Groups</b>	<b>Cross-Village Focus Groups</b>	<b>Total</b>
Auckland	5	2	7
Waikato/Bay of Plenty	2 (1 Waikato, 1 Tauranga)	2 (1 Hamilton, 1 Tauranga)	4
Hawkes Bay	2 (1 Hastings, 1 Napier)	1 (Napier)	3
Wellington/Kapiti	2 (1 Wellington, 1 Kapiti)	2 (1 Wellington, 1 Kapiti)	4
Christchurch	2	2	4
Otago/Southland	2 (Both ex Dunedin)	2 (Both Dunedin)	4
<b>TOTAL</b>	<b>15</b>	<b>11</b>	<b>26</b>

In all, 23 focus groups were held, distributed as outlined below. This differed from the original case frame of 26 proposed focus groups. Although Christchurch was included in the initial selection, the four focus group meetings there were scheduled for the week beginning 28 February 2011. As this was one week after the 22 February earthquake in Christchurch, the meetings had to be cancelled. One additional village focus group in Hawkes Bay was conducted, on the request of the residents in that village who had heard about the project and wished to be included. Most of those attending the additional village focus group were unable to travel to a cross-village focus group meeting. In Otago/Southland, three village focus groups and one cross-village focus group were held, instead of two village focus groups and two cross-village focus groups. That change was made to better accommodate the location of villages and residents' preferences. It was notable that older residents preferred to participate in a meeting only if it was held in their village.

**Table 2: Actual Focus Groups by Number and Type by Region**

Region	Village Focus Groups	Cross-Village Focus Groups	Total Focus Groups
Auckland	5	2	7
Waikato / Bay of Plenty	2	2	4
Hawkes Bay	3	1	4
Wellington/Kapiti	2	2	4
Otago/Southland	3	1	4
<b>TOTAL</b>	<b>15</b>	<b>8</b>	<b>23</b>

Once the regions were established, the second step was to choose villages within the selected regions where focus groups would be held. Only registered retirement villages were included in this project and a matrix of selection characteristics was developed to select the villages. These selection factors were:

- Operator size: large (6 or more retirement villages), medium (2-5 retirement villages), small (one retirement village).
- Size of village complex: small – between 1-34 units; medium – between 35-84 units and large – 85+ units.
- Legal structure: corporate, independent, or charitable/not for profit.
- Type of housing: independent living only; or multiple tier services.
- Tenure: licence to occupy; or unit title.

The actual selection of villages, including alternatives in case of refusal, evolved through developing a comprehensive list of villages. This was based on lists supplied by the Ministry of Economic Development and by the Retirement Villages Association respectively. Searches were also made using internet sites, the white pages and the Guide to Retirement Living (published by Yellow Pages).

To advise villages in the selected areas about the project, all villages in those areas were emailed a letter from the Retirement Commissioner, which outlined the project and explained that the village might be contacted in mid January 2011 and asked to help by providing a venue in the village where residents could meet with the researcher to discuss the Retirement Villages Act. The Retirement Commission also alerted villages to the project through the Department of Building and Housing E Newsletter. In addition, a notice about the project was included in the Retirement Villages Association newsletter.

After that initial notice to villages, the researchers made a follow up phone call to the shortlisted villages that were selected from the list of villages in each area on the basis of the case frame. Of all those called to assist with village-based focus groups, only two villages declined. One village was undergoing development and in the process of offering new villas, as well as taking on new staff, and felt it was too stretched to participate. The other village already had a research project involving some residents, and it was considered that to host another project would be confusing.

The combination of regional selection and the various characteristics sought in relation to village characteristics, generated a complex caseframe. The extent to which that caseframe was achieved through village recruitment is set out in Table 3.

**Table 3: Selected Village Focus Groups Compared To Case Frame**

	<b>Total</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>	<b>Unit Title</b>	<b>Rest Home</b>	<b>Group</b>	<b>Not for Profit</b>	<b>Independent</b>
Auckland	5	1	1	3	1 (all*) 1 (mixed^)	1	2	1	2
Waikato/BOP	2	1	0	1	2 (mixed^)	1	1	0	1
Hawkes Bay	3	1	1	1	0	2	1	2	0
Wellington/Kapiti	2	0	1	1	0	2	2	0	0
Otago/Southland	3	1	0	2	2 (mixed^)	3	1	1	1
<b>Achieved Total</b>	<b>15</b>	<b>4</b>	<b>3</b>	<b>8</b>	<b>6</b>	<b>9</b>	<b>7</b>	<b>4</b>	<b>4</b>
<b>Total (caseframe)</b>	<b>15</b>	<b>5</b>	<b>2</b>	<b>8</b>	<b>5</b>	<b>10</b>	<b>5</b>	<b>5</b>	<b>5</b>

\* All legal titles in village are unit title.

^ Legal titles in village include unit title as well as other types of legal title.

### ***Recruiting Participants***

Overall, a total of 299 village residents participated in this project. In all, 293 people participated in the 23 focus groups. In addition to the focus groups, six individuals were interviewed or provided comment through email. For various reasons they were unable to participate in the focus groups, but had requested to be involved.

Participants for village-based focus groups were recruited in two main ways:

- The village manager circulated an invitation prepared by the researcher, e.g. by placing it on a notice board, providing a copy to each resident, or by putting a notice in the village newsletter.
- Circulation of an invitation prepared by the researcher through the village resident's committee.

Participants in cross-village focus groups were recruited through various ways:

- Circulation of an invitation prepared by the researcher through the regional residents' association.
- Invitation to some individual residents identified as potentially interested in the project.
- General invitation addressed to the 'residents' committee' of villages in the area.
- General invitation provided to village managers in the area to be circulated to residents. Along with invitations to residents committees, invitations through village managers were the main ways that residents were made aware of the cross-village focus group meetings.

### ***Focus Group Process***

The focus groups ranged in size from four to 30 participants and lasted between one and two hours.

At the start of each focus group, the purpose of the project was explained. It was made clear to individuals that their participation was voluntary and that they could leave the focus group at any time if they felt uncomfortable with the process. Individuals were also assured that they would be treated with respect and that confidentiality would be maintained, with no names or personal details, or the name of any village used in any report. It was also made clear that the project was not an audit of villages. Individuals had the opportunity to ask questions about the project prior to the focus group commencing.

A set of questions were used to guide discussions (see Annex A). In summary the questions covered:

- Awareness of and familiarity with the Retirement Villages Act 2003.
- Where would a resident go if they wanted information about the Act.
- When the resident was thinking of moving to a village, what sort of information did they seek?
- Awareness of and views about the Code of Practice 2008.
- Awareness of and views about the Code of Residents Rights.
- How clear residents are about what is contained in their occupation right agreement, and the implications of it.
- Obtaining legal advice and whether it was clear and helpful.

- How clear residents are about what is contained in the Disclosure Statement.
- Residents' views about operators' processes for keeping residents informed and consulting with them.
- Residents' views about complaints and disputes.
- Residents' awareness of the Statutory Supervisor role and views about the role.
- Particularly for residents after May 2007, their views about the 'cooling off' period, a minimum of 15 working days after the occupation right agreement is signed, in which the intending resident can cancel the contract.
- Residents' views about advertising of villages.

At the focus group meeting the facilitator provided copies of the Code of Residents' Rights, and the Department of Building and Housing booklet "Thinking of living in a retirement village?" to take away.

The focus groups were conducted to allow participants to converse. The facilitator aimed to establish a relaxed, comfortable environment. Participants were encouraged to raise topics, expand the discussion along different lines and to return to earlier questions or issues as needed. The focus group questions were framed at a general level, for example: "How familiar are you with the Retirement Villages Act?" Prompts were rarely used.

Detailed notes were taken of all focus group sessions. A summary of each focus group was prepared. Then the range of themes was identified across all focus groups. Analysis included the identification of similarities and differences in views, and the degree of disagreement and agreement with regard to particular issues, both within and across the focus groups.

### **2.3 Sector Advice to the Monitoring Project**

A research reference group was appointed to provide advice and to assist in reviewing the research findings. The reference group met twice over the course of the project; once at the beginning of the project to provide input into scoping the project, and once to discuss the draft report findings prior to finalising the report. The research reference group comprised:

- The Retirement Commission.
- The Department of Building and Housing.
- The Ministry of Economic Development (Registrar of Retirement Villages).
- Retirement Villages Association.
- Age Concern.
- Statutory Supervisor (1).
- Retirement Village lawyer (1)
- Residents (2).

Representatives from three regional resident's associations were also involved in advising on the scope of the project, prior to conducting the research.

## Part Two

# The Act and Moving to a Retirement Village

For the current population of retirement village residents, the first encounter that most had with the Retirement Villages Act, and the contractual arrangements relating to village occupancy was when they considered moving to a retirement village.

People moving into a retirement village are making decisions that are likely to affect them over the long term. They are entering into contractual arrangements that they will find difficult to amend or withdraw from. Those arrangements involve significant financial commitments, effectively limit their discretion about residential location and living conditions into the future, and transfer some of those decision-making powers to the owners and managers of the retirement village to which they are moving.

For those reasons, the legislation has been concerned to ensure that people are aware of the conditions and implications of the contracts that they entering into. The legislation also establishes a set of requirements on retirement villages regarding advertising and disclosure.

This section explores the experiences of participants when they were considering moving to a retirement village and the extent to which they:

- were aware of those protections
- found those protections were implemented, and
- found those protections adequately addressed the issues that they needed to understand and appreciate given their own motivations and circumstances, the reasons they moved to a village, the expectations they have of village life, the information and advice they seek about village living, and their satisfaction with information provided.

The discussion is structured around four sections as follows:

- Section 3 explores why residents wanted to move to a retirement village and their expectations around village life.
- Section 4 looks at residents' experiences with the information provided by the retirement village and the extent to which they considered that information satisfactory at the time and in retrospect.
- Section 5 explores how residents got advice about going into a retirement village.
- Section 6 identifies some critical issues around the scope and efficacy of the Act for people considering a retirement village.

## Section 3: Moving to a Retirement Village: Motivations & Expectations

Understanding why a person moves to a village and their expectations of village life is important to understanding how residents view the efficacy of the Act. For village residents, the Act must protect the things that they value about, and want from, village living. The Act must also support them to make choices between retirement villages and the various conditions offered by villages that optimise the alignment between aspirations, legitimate expectations, and their circumstances.

This section considers why participants wished to move into a retirement village, the characteristics that they were looking for when they were selecting a village, the extent to which they were satisfied with their choice, and where they believe that the Act could have been more helpful in setting the framework for their entry to a retirement village.

### 3.1 Why a Retirement Village?

Across the focus groups, four main reasons emerged to explain why people consider retirement village living. They are:

- A safe environment. This consisted of two aspects:
  - Being secure from perceived external threats. This was particularly the case among women living alone but was by no means restricted to them.
  - Living in a situation in which care or support would be provided if required. This was particularly the case for those who do not wish to be dependent on family members or are without, or some distance from, family.
- A less onerous lifestyle combined with independence. This was particularly around having the choice not to have to cook, or deal with home maintenance or gardens.<sup>15</sup>
- A higher performance, comfortable dwelling that the resident does not have the responsibility for maintaining.
- Companionship.

Participants in all focus groups saw the decision of moving into a retirement village as a future proofing one in which they sought to become integrated into a supportive, place-based community suitable for their 'old age.' There were those who were planning ahead, before a shift was necessitated by immediate health, care or support needs. There were also those whose support needs were immediate, and they too were looking for certainty and security of support for as long as they needed it.

Comments included:

*"I didn't want to be reliant on my family in later years".*

*"It's about lifestyle, not investment."*

*"The most important thing is the security."*

---

<sup>15</sup> It should be noted that the operative word is 'choice'. Many residents undertake all these activities.

*"It's a choice we make, companionship, security".*

*"Motivation for moving into a retirement village from your own home has an underlying requirement for security, both financially and physically."*

### **3.2 Making the Choice**

Focus group participants identified a number of considerations or criteria that they used when exploring which particular retirement village they would choose. The criteria consistently identified were:

- Village reputation.
- Affordability. Aspects of affordability include entry payment, amount of service fees, amount of exit fees, and whether there is any capital gain.<sup>16</sup>
- Proximity to services such as shops, health services and public transport.
- Proximity to family. Some residents had moved a considerable distance to settle near adult children and grandchildren.
- Services and facilities offered in the village, including care facilities.
- Intangible aspects such as village atmosphere and philosophy.
- Familiarity with the locality. Some participants had chosen a village in their neighbourhood.
- The type of ownership structure.
- The type of legal title (occupancy right).
- The physical appearance, layout, size and density of the village.

Comments included:

*"There is a high degree of trust in the village in the district".*

*"I looked around at a lot of other villages. I wasn't interested in a lot of facilities that you get in other places – I would not use them".*

*The financial aspect was important, I wanted to retain an asset, and I thought the contract was fair. It seemed a better deal than in some other villages".*

*"The village is not the building and the grounds, it is also the people".*

*"I had looked at opportunities that were there but thought nothing really suited me ... my daughter came up with a few places on the internet and said, 'we're going to have a look'. The first was unaffordable. With local and family support I had opportunities to do things. A lot of things added together."*

---

<sup>16</sup> Affordability is particularly important for those on modest incomes. As many as 50 percent of retirement village residents only have their superannuation income (Department of Building and Housing 2010a).

### 3.3 Using the ‘Cooling Off’ Period

As a protection for residents, the Act provides a ‘cooling off period’, which enables the intending resident to change his or her mind. The period is a minimum of 15 working days after the occupation right agreement is signed, in which the intending resident can cancel the contract. This provision came into force from 1 May 2007. Residents from some villages said that their village had a cooling off period of three months which is in excess of that required by the Act.

In one focus group, residents who had moved to their village after this new regulation said that it made no difference to them, because their circumstances (such as needing rest home care for a spouse, or needing a more supported living environment themselves) meant their choice was limited.

However, residents in nine focus groups said they liked the cooling off period because it gives time to reflect on what is a major financial transaction and significant lifestyle move. That time provides an opportunity to get additional advice and gives assurance that a person is not being pressured by the operator, or family, into a hasty decision:

*“An opportunity to talk it over and think about it. Some things can look good initially.”*

*“Some people get bulldozed into it by their family.”*

*“It’s a good thing because sometimes on the spur of the moment a decision is made, and you should not make a decision of that significance quickly. If a decision is made under emotional circumstances, you are not thinking clearly.”*

One woman said that she had used the provision because, after further consideration of the unit and the village she decided it was not the place for her. She had used the cooling off period to speak to family, and made the decision to cancel the agreement. After that she moved to another village.

In five focus groups, there were residents who said that they did not like the cooling off provision because it could delay the payment to the departing resident or their estate. It was also pointed out that the additional time could also delay a new resident from moving into the village. Those with unit titles were least enthusiastic about the cooling off period. They pointed out that if they were buying and selling a unit title outside of a retirement village, the cooling off period would not apply. They felt that the provision impeded the direct relationship between buyer and seller.

### 3.4 Was it the ‘Right’ Choice?

Across all the focus groups there were participants who emphasised that they were pleased with their choice. Overall, they have found that retirement village living provides the benefits and supports they expected. In 15 of the focus groups, there were participants who said that, if making the decision again, they would definitely choose village living. Clear satisfaction with their village was apparent for residents across all types of village ownership structures (not-for-profit, independent operator and corporate group) as well as for villages of all sizes, and in all locations.

*“I’m happy living here. I’m grateful. What I wanted was what I bought.”*

*“Very good value. You wouldn’t find anywhere else in Auckland.”*

*“Our village is very very well run ... a small village is far better than a large village. I feel that the costs are reasonable.”*

*“I feel our service here is 200% out of 100%. We’re very fortunate.”*

### **3.5 Does the Act Protect Them?**

Although satisfaction is clearly apparent, there were participants across all focus groups who consider that the way the Act is implemented needs improving. In all focus groups there were those who believe that the Act’s protections are not working for many residents. The very reasons why people choose village living – for lifestyle, the facilities and services provided, security and financial certainty – can also become points of uncertainty, stress and conflict if a resident’s expectations are not met with reality or if those aspects that attracted them to the village change over time.

Some of the major concerns residents have about their circumstances are around whether the Act can protect the things they chose village living for, such as:

- Security and certainty about one’s living situation for the long term. Residents have been timely in their planning and decision-making. They have chosen to move to a village in good time, before their support needs become urgent, or they are unable to make a considered decision with a full range of options. Yet they find their future living situation uncertain, due to such factors as many changes in ownership or management, which may result in a significantly changed living environment due to changes in facilities or services.
- Their investment in a particular home and lifestyle. Residents have carefully chosen their unit and village, however may then find that unexpected changes or developments to the village result in loss of amenity or ambience. Or there is a reduction or loss in services or facilities that they expect to enjoy.
- The on-going affordability of their living situation. Residents have sought financial certainty and security, however they are often confronted with financial uncertainty as service fees rise, or they realise the financial implications of moving to higher dependency living or transferring within the village.
- Freedom from worry and peace of mind. These aspects are paramount for many people wanting to live in a village. However, changes in ownership may result in changes in village management, policies, rules, services, fees and staffing that residents consider jeopardise their peace of mind and feeling of security.
- Physical comfort and safety. Residents expect the village to provide for their physical comfort and safety, however participants said that one of the most common complaints residents have concern the maintenance of communal areas, and ambiguities around the respective responsibilities of operator and resident for repair and maintenance of individual units.

The comments of participants showed how their expectations of these important lifestyle requirements, can come under threat. They emphasised that they could not easily change their housing circumstances, and some felt stuck in a less than ideal situation.

*“It’s a final decision. You can’t go back once you’ve sold your house”.*

*"I'm worried about if my health fails, will I have enough money left?"*

*"Peace of mind is being eroded because of increasing charges".*

*"I didn't question the information I was given. I wasn't aware of the architectural shortcomings of the building".*

*"What we have purchased has to be fit for purpose".*

*"In our Disclosure Statement a date was given when we could expect the village to be up and running. That hasn't happened. And the expectation of amenities available ... if you go into a place that's evolving, what is said to be provided, if that could not be provided in the long term there should be some sort of exit clause. There needs to be more of an exit clause than dying."*

*"They've got rid of the gardener and reduced hours of staff over the weekend. They have reduced security services. It has a run down look because of lack of maintenance ... the village has lost the reason why many came to this village, that they would get their maintenance and gardening looked after for them."*

*"Older residents say, if we had the money, we wouldn't be here. They don't want to be here."*

*"I was terribly upset because this big building would stick out a long way past mine. It would create a big corridor with lots of wind and there's already not much sun, so I went to the solicitor ... we've been told that procedure may still happen, it was the crash that stopped it. It's totally crazy, they shouldn't be able to do that. We thought they might build another three or four units but not on that scale."*

*"It's put me off entirely from living in a village. I was caught up in all the changes and didn't like the idea of having bought a title and selling it as a licence to occupy."*

## Section 4: Information from Retirement Villages

Retirement villages actively market their 'product'. Village managers, sales people and property managers are all providers of advice. In addition, many villages have advertising material and websites. The Retirement Villages Act sets out certain restrictions on advertising. It was generally participants in the cross-village focus groups who were aware of those restrictions, which require that operators must ensure advertisements are not misleading or deceptive.

In 10 focus groups there were participants who were not concerned about the advertising of their village, or had moved to a village that did not advertise, or advertised very little, such as advertising a vacant unit, or holding an annual open day. Those residents said that they did not heed advertising, but were much more swayed by information that they received from friends and relatives, and the local reputation of the village.

Participants in seven focus groups did give examples of advertising that they considered to be inaccurate, misleading or lacking in essential information. They referred to misleading information in advertisements, such as:

- Use of photos depicting facilities that are not available in the village.
- Advertising aimed at the 'young old', which was considered to be misleading about the range of care facilities available, such as serviced apartments or hospital.
- Use of sales and investment terminology for licence to occupy, which implies that the dwelling is owned.
- Advertising information that differed from information contained in the Disclosure Statement.

Essential information that participants felt should be included in advertising, but was generally missing, concerned service fees, and the type of occupation right agreement.

Comments included:

*"People have expectations through the photos they see."*

*"It showed a gym and other facilities and there were none."*

*"The brochure emphasised luxury. It's nice but not luxurious. It was advertised in an exaggerated way."*

*"Some of the advertising to get people to move here was very over the top. They've been removed."*

Participants in 11 focus groups commented that they were satisfied with the detail of information in the material that they received from villages. Those included copies of the occupation right agreement, and information on village amenities and services. Conditions around entry and exit of the village were also typically pointed out and villages provided information about the Act itself including advice around the 'cooling off' period.

*"Paperwork is done well as regards [the village]. I did understand the entrance and exit plan as that was pointed out to me."*

*“The sales girl made sure I understood the cooling off period.”*

There were some exceptions, however. The cost of some ‘extras’ were not always explicit. An example was an additional \$20,000 for a car park which was only revealed on the day that the occupancy was to be taken up.

## **Section 5: Information & Advice on Retirement Villages**

Broadly, two sources of information were used by participants to find out about retirement villages. Firstly, informal information sources and, secondly, formal advice provided by lawyers and, in some cases, accountants or financial advisers.

It was clear from discussion in the focus groups that people used both formal and informal sources of information and gained different things from those different sources. Formal sources of information such as solicitors and financial advisors were sources of specialist advice. Informal sources of information such as family and friends were particularly useful for finding out about the village reputation and what it was like to live there.

### **5.1 Informal Sources of Information and Advice**

In all focus groups there were participants who said that when they were considering living in a retirement village, they got information and advice primarily from family and friends. This was important, not only because of the trust individuals have in their family and friends, but also because people needed some time to absorb, consider and discuss options. Local knowledge of villages was important in their consideration of village living. This was especially important for those residents who moved to another area when they moved to a village. A few said they had asked current village residents about aspects of village life.

It was common for the intending resident to take family members with them to look at a village, and to peruse the documentation from villages. Participants talked about discussing their search for a suitable village with friends and relatives:

*“I, fortunately, have a very supportive daughter and cousins, who are understanding of the needs of elderly and disabled and asked a lot of questions.”*

*“At 87 I needed to make my own decision, but also to have advice as to what I was doing.”*

*“Not everyone understands things like that [contracts]. You look at it and your mind goes blank.”*

### **5.2 Formal Sources of Information and Advice**

In addition to noting the importance of informal information and advice, participants in the focus groups also emphasised the importance of getting independent and professional advice about the meaning and implications of the occupation right agreement, financial aspects and implications, and residents' rights and obligations.

There was wide support across all focus groups for the Act's requirement introduced after 1 May 2007, that intending residents get independent legal advice before signing their occupation right agreement. Participants noted the need for impartial advice – independent not only of the retirement villages but also from their own family – that clearly explained rights and obligations. In particular, they acknowledged that occupation right agreements are complex, and that entering into such an agreement is different to buying or selling a house.

Residents, even those entering a retirement village prior to 2007, reported consulting a solicitor. However, while the large majority of participants appeared to be aware of the requirement to obtain independent legal advice, in two focus groups there were residents

who had moved to a village since 1 May 2007 who were not aware. Often they had relied on their children or spouse to deal with all legal and administrative aspects.

Participants had a wide variety of experiences with solicitors. Some of those who had moved to a village prior to the introduction of the Act reported poor experiences with solicitors. Those entering a village after the Act, and particularly after 1 May 2007, were more likely to say their advice from the solicitor was thorough and useful – in 13 focus groups, residents said that they had received good advice. Comments suggested that their solicitor was careful and meticulous in working through all the documents with them:

*“He went through all the costs and compared them with other villages, as well as with the purchase of another property. He warned me that I would end up with less money than I paid, and I am aware of that.”*

*“I was given time to read through the documents and then ample time to ask questions.”*

*“My solicitor was concerned about what happens if the owner operator goes bankrupt, so asked them for more information on my behalf.”*

*“[My solicitor] really understood I wasn’t looking for an investment return. She did a lot independently just checking different villages I talked about. I think she cared about what environment would be good for me.”*

*“My solicitor gave me a good written analysis of the occupation right agreement.”*

However, the 2007 provisions of the Act clearly did not guarantee that residents considered that they received relevant, useful or sufficient advice. In 13 focus groups there were residents who had moved to a village within the last three years, who said that their solicitor focused on whether they were happy with the agreement, not whether they understood the implications. They considered that they had not received good advice:

*“Solicitors don’t realise the ramifications of retirement villages.”*

*“She wasn’t familiar [with the Act] at all, she was learning at the same time.”*

*“He read it [the occupation right agreement] out to me, and then asked for any questions. I said, ‘you’ve lost me.’”*

*“We had to pay for them to learn it.”*

Participants emphasised the need to get a solicitor with knowledge of the Act and occupation right agreements:

*“Useful, but it depends on whether or not you have a solicitor who knows the Act. My solicitor got in a specialist and went over key points.”*

*“You’ve got to come in with your eyes open. It’s not easy to paint the full picture. Your solicitor must give you good information.”*

Participants also said that, while the solicitor had thoroughly explained that they would not make a capital gain, and explained that the purchase of an occupation right is not a financial investment, there was much less advice and explanation given about other aspects, particularly how the occupation right agreement is actually applied and its implications, provisions for making a complaint, the social and psychological implications of village living

and exploration of whether village life would suit them. It may be that solicitors are not the appropriate people to provide advice on social and psychological aspects of village living, nor to assist individuals to work through their lifestyle preferences. However, participants considered those information needs to be critical and did not seem to know where else they would get such guidance.

Comments that showed intending residents want a range of advice included:

*“All they [solicitors] ask is, ‘are you sure you really want this?’ ... they do not explain the meaning and implications of the licence to occupy. They don’t explain what it means in detail, e.g. the costs of refurbishment, sales commission, you bearing the capital loss rather than the operator.”*

*“They will talk about the financial implications, but not the ramifications of the rest of the agreement, e.g. how the disputes procedure works, who is responsible for fixtures and fittings, the exit provisions.”*

Generally, participants did not seem to be aware of whether they could ask for changes to the occupation right agreement, although one person had got his solicitor to ask the village owner for changes. In another focus group, residents said that often, intending residents were not aware that they could negotiate their agreement.

## Section 6: Informed Enough to Make the Choice?

Given the range and sources of information that people access prior to making a decision, did residents feel informed when they entered a village? Did they really understand the implications? This is much less clear than the general acceptance by most residents that they probably made the right decision. Part of this ambivalence is due to the circumstances that prompt people to make decisions to enter a retirement village.

In five focus groups, participants emphasised that some residents are very stressed when they make the decision to move to a retirement village, either because they have lost a spouse, or due to illness of themselves or their spouse. It was repeatedly noted that while the documentation and advice were available, their own understanding and appreciation of the contract was often deficient.

*"It was a 50 page thing and my husband had just had a heart attack. I just wanted to sign it and get rid of it".*

*"At the time I went in, I was grieving and did not understand much at all."*

In nine focus groups participants also noted that, even though they thoroughly read their occupation right agreement and other documentation supplied by the operator and received helpful independent legal advice, there was nevertheless a lot to understand and it was only some months later that they realised the implications of the agreement.

*"You've got to do as much homework as you can, go to your lawyer, have it all explained. But you are changing your whole lifestyle. Something happens a few months later and you don't realise that was in the agreement".*

*"There is no way anybody can absorb material in the short, expensive amount of time you spend with your lawyer."*

*"When people sign up there are so many things going on that they can't take it all in. It's only when they have been there a year that they realise they should have asked for certain things or queried something."*

*"I only recently realised that I have to pay the fee until the unit is sold. I didn't realise this when I signed the agreement."*

*"It takes living in the village for a while, you might read it, but it's not until you've been here a while that the implications of what it means to live here really hit home."*

*"It is only after a mind focusing experience the resident becomes aware of some specific detail which was initially overlooked."*

## Part 3

# The Act and Retirement Village Living

The early growth in retirement villages occurred in a relative legislative vacuum with no uniformity in legal structures used by operators and inadequate protections for residents regarding such matters as the risk that promised services would not eventuate, or that service fees would increase and become unaffordable. Issues identified in the past have included: villages not being completed or failing; inadequate complaints mechanisms; consumers' lack of understanding of residents' rights and responsibilities; and problems encountered on selling units.<sup>17</sup> In the late 1990s the vulnerability of older people when entering complex legal transactions with developers and operators of villages was highlighted by older people's advocacy organisations, consumer organisations, the Securities Commission, the New Zealand Law Commission and others.<sup>18</sup>

The Retirement Villages Act 2003 was a response to previously limited controls on retirement village providers, inadequate legal protections for residents, loose regulation and growing concern about the marketisation of aged-care services. The Retirement Villages Act 2003 focused on protecting the interests of both actual and intending residents. The Act introduced new rights and protections for residents and intending residents. The Act also established new responsibilities for operators of retirement villages that required them to provide residents with information so that they could form a clear understanding of the financial, occupancy and other obligations of being a resident. Operators also have to ensure that residents receive what they are promised and are entitled to.

The main protections provided by the Retirement Villages Act 2003 for those who are living in retirement villages are:

- The Code of Residents' Rights (a summary of the basic rights of residents given under the Act).
- The Code of Practice 2008 (minimum requirements relating to the village's operation that must be in each occupation right agreement).
- The Disclosure Statement (contains all the information required by the Act about the village and the rights and obligations of the resident and the operator).
- Occupation Right Agreement (a written agreement between the resident and village operator that gives the resident the right to live in the village).
- Complaints and disputes procedures.
- The memorial on the village's certificates of title helps ensure that residents can continue to live in the village if it is sold or goes into liquidation.

To help ensure that the aims of the Act are achieved, the Act includes various mechanisms for oversight of villages, such as the Statutory Supervisor (an independent watchdog), the Registrar of Retirement Villages (in the Companies Office of the Ministry of Economic Development) and the Retirement Commissioner (who monitors the effects of the Act and administers the disputes process).

---

<sup>17</sup> AC Neilson 2006:9.

<sup>18</sup> Law Commission 1999; Lazonby 2007; Craig 2007; Grant 2006; Simpson 2007.

This part of the report presents residents' views around:

- Their own awareness of the Act, the Act's effectiveness and how awareness and effectiveness might be increased.
- The operation of specific protective elements of the Act including the informational and disclosure requirements, the processes around complaints, disputes and consultation, and the operation of the Statutory Supervisor.

## Section 7: Resident Awareness

This section is divided into the following sub-sections:

- Sub-section 7.1 shows that residents vary widely in their awareness of the Act.
- Sub-section 7.2 presents residents' views around the importance and role of legislative protections for people living in retirement villages.
- Sub-section 7.3 shows that the legislative protections are not always seen as effective by residents.
- Sub-section 7.4 identifies ways by which residents' awareness of the Act might be increased.

### 7.1 Resident Perceptions of Awareness

Focus group participants were asked about their own awareness of the Act and their perceptions of the awareness of other residents. It was a widespread view across all focus groups that most residents have a low awareness of the Act. Some are aware that there is an Act, but do not know what it covers. Other residents are not aware that there is an Act that regulates retirement villages.

Regarding their own awareness and knowledge, a wide range of experience was evident in the focus groups, from those who were very familiar with the content of the Act, to those who had seen a copy of it, to those who were unaware of the Act at all:

*"I know what the Act covers, and have read through most of it, and the Code of Practice. I've downloaded the Act on to my computer."*

*"It has been brought up in various AGMs and a summary of it is in the library. It is on the internet."*

*"Vaguely aware."*

*"I haven't seen the Act. But the solicitor said there is an Act."*

*"A lot of stuff that you don't understand"*

*"This is the first time I have heard of the Act."*

Those commenting on general awareness of the Act amongst residents emphasised that there is a widespread lack of interest in the Act. Residents are concerned with matters of everyday living and their specific needs for care, rather than with abstract legislation that seems of no relevance to them. A theme was that many older residents consider that at their time of life, *"we've put all that business behind us"*. Typical comments included:

*"People don't know what's in their own agreement, how can you expect them to take an interest in the Act?"*

*"I don't know much about it and many of our residents have no idea and are not interested."*

*“So many people have never heard of the Act, they don’t know that there is anything there on their behalf”.*

Those who seem to be least familiar with the Act are older, long term residents, many of whom have been living in villages prior to the introduction of the Act. Women whose husbands arranged their move to a village, and those men and women whose families saw to all matters appear to be least aware about the Act.

Those who are more aware of the Act and its content tend to have moved to a village since 2007, to be younger residents, or are involved in residents’ committees and residents’ regional associations. Some participants also made the point that they had become familiar with the Act because of problems encountered in their village.

*“Most have no idea, they don’t care, don’t want to know, but it does depend on the village. If a village is having problems, residents will become familiar with the Act, of necessity”.*

*“I discovered the Act last year because we had a problem”.*

*“Until you have a situation you don’t know about the Act”.*

Residents in five focus groups commented that families are often unaware of the Act, and lack understanding of the critical aspects of village living, including the occupation right agreement. This sometimes results in family misunderstanding of the resident’s rights and responsibilities, as well as the arrangements regarding exit fees and payments.

## **7.2 Need for Legislative Protection**

Although many residents in the focus groups were not very familiar with the Act, there was a strong view amongst both those with low awareness, and those knowledgeable about the Act that it is necessary for residents to be protected. Participants felt that it is necessary to have an Act that:

- Protects residents from exploitation.
- Establishes clear rules for village operators.
- Facilitates problems to be resolved.
- Enables an independent authority to oversee the retirement village sector.

*“You have to have confidence that management is acting for residents’ benefit ... It’s comfortable to have that protection.”*

*“It’s very important that there are some rules for operators to give residents what they are entitled to ... profit making villages need clear obligations. You could get a situation of an unscrupulous operator.”*

*“Villages could do or say what they liked. It’s good to have rules”.*

*“People with a licence to occupy are more vulnerable and need the protections of the Act.”*

*“It’s very important, otherwise it could be open slather.”*

### 7.3 Does the Current Act Provide Protection?

Across all focus groups there were participants who were critical of the ability of the Act and its regulations to actually protect residents. In particular there is:

- A perception that the Act advantages operators over residents. This was a widespread perception across the focus groups. Some participants considered that residents have had a very limited influence on the development of the Act, due to a lack of a nationally organised residents association to lobby for residents.
- A perceived lack of protections considered crucial to avoiding financial exploitation of residents. Particularly mentioned were:
  - No time limit on charging of weekly service fees (or proportion thereof) after termination of the occupation right agreement.
  - Refurbishment costs.
  - No control on service fee increases.
  - No recompense for improvements on the dwelling made by the resident.
  - Operator control of the sale of occupation right agreements.
- A greater focus on the intending resident, rather than current village residents.
- A focus on residents' financial protection, rather than on the protection of residents' lifestyle and quality of life.

Typical comments were:

*“So many things in the Act are out of balance ... weasel words, it's written for the operators.”*

*“The Act seems to protect more the villages than the residents.”*

*“The Act makes sure the villages abide by rules but that's as far as it goes. Residents are out on their own.”*

*“There's an air of disillusionment in many cases. A gap between anticipation and reality.”*

Because of those concerns, many of the focus group participants welcome a review of the Act and question why a review has been delayed.

*“There will be issues in the future that can't be anticipated now. Therefore it's important to have a review as soon as possible. Some current problems are going to get worse if they aren't addressed.”*

### 7.4 Residents Need to Know About the Act

Irrespective of this sense of fundamental imbalance in the Act, residents acknowledge that the protections of the Act could only be activated if residents know and understand them. In three focus groups, participants made the point that residents have a responsibility to inform themselves about the Act.

Participants noted that there are a number of ways in which residents attempt to get information about the Act and the protections that it gives including:

- Asking the village manager or operator.
- Using the village library.
- Accessing the internet, including the Department of Building and Housing, the Retirement Commission, the Retirement Villages Association and New Zealand legislation websites.
- Asking the village Statutory Supervisor.
- Asking Grey Power or Age Concern.
- Contacting the local member of parliament.
- Asking their solicitor.

Retirement villages themselves are potentially important providers of information about the Act. In seven focus groups, participants pointed out simple ways that village managers, operators and statutory supervisors can encourage residents to become more aware of the Act:

*“In this village management have done their best to make everyone aware. They bend over backwards to let us know what is going on. Also the Statutory Supervisor takes time at the AGM to explain the legislation and what’s coming up. It keeps the residents informed.”*

*“[village management] is good at making people aware that there is an Act and that we can ask questions.”*

Residents’ suggestions for helping residents to become more aware of the Act were:

- A plain English summary of the Act, written in large font. Some participants suggested that the summary be trialled with residents to ensure its readability.
- Several suggestions were made for holding meetings where residents could ask questions about the Act and its protections. Some participants suggested that the Retirement Commission run sessions for residents. Others suggested that villages conduct their own sessions with invited speakers. One person suggested a national conference for residents.
- The establishment of more residents’ committees in villages, and regional residents associations, which could encourage residents to become more familiar with the protections under the Act.

While some participants use the internet, there was a widespread view that information dissemination to residents must not rely on the internet alone.

## **Section 8: Residents, Documents and Conditions**

Key documents set out the protections that residents can expect of the Act.

This section is divided into four parts:

- Sub-section 8.1 discusses residents' awareness and views of the Code of Practice.
- Sub-section 8.2 discusses residents' awareness and views of the Code of Residents' Rights.
- Sub-section 8.3 discusses residents' awareness and views of the Disclosure Statement.
- Sub-section 8.4 discusses residents' awareness and views of their Occupation Right Agreement.

### **8.1 Code of Practice 2008**

The Code of Practice is a key protection for residents that came into force in 2009. It sets out national minimum requirements relating to the village's operation that operators must carry out to meet their obligations under the Act. The requirements in the Code are enforceable as a contract with the resident, and must prevail over any less favourable condition in the resident's occupation right agreement. The occupation right agreement must reflect what is in the Code. The village operator must give the Code of Practice to intending residents, and supply one to residents when they ask for a copy.

The Code of Practice covers:

- Staffing policies and procedures.
- Residents' safety and personal security.
- Fire protection and emergency management.
- Transfer of residents within the village.
- Meetings of residents with the operator and resident involvement.
- The complaints facility.
- How accounts are presented.
- Maintenance and upgrading.
- Termination of occupation right agreement by the operator or resident.
- Communication policies and procedures.

Participants' awareness of the Code of Practice varied. More people were aware of the Code of Practice than were aware of the Act, but were often unclear how it relates to the Act. Some participants were also confused between the Code of Practice and: the Retirement Villages Association Code of Practice (an industry code); the Disclosure Statement; the Code of Residents' Rights and their own occupation right agreement. Participants asked questions about the Code of Practice including:

- Whether it applies to all residents or only those moving to a village after the Code's introduction.

- Who monitors whether a village is complying with the Code.
- Whether residents should receive a copy of the Code from the operator, or are they required to ask for a copy.

Residents who have lived in a village for many years appeared to be much less aware of the existence of the Code than more recent residents. Residents moving to a village since 2007 were most aware of the Code, although not all have heard of the Code.

Participants in five focus groups said that in their village the operator has given a copy of the Code of Practice to all residents. Participants in eight focus groups said that in their village, the Code is available on request or is on display, while all new residents receive a copy. Often in those villages the Code is available in the office, library or on the community notice board.

Participants overwhelmingly thought that the Code of Practice is an essential protection for residents, however, the main criticisms concern the implementation of the Code by operators and managers. Participants commented that the effective implementation of the Code of Practice rests on the commitment of the operator and/or manager, and that village residents' experiences of such matters as maintenance and communication with residents could improve or deteriorate simply with a change of management or owner. In one cross-village focus group participants suggested that there is inconsistency in the way different villages interpret the Code. They would like to see clearer directions in the Code to operators on how they must address and implement the Code. In another cross-village focus group, participants suggested that operators' compliance with the Code of Practice be audited by an independent authority.

Nine focus groups commented on shortcomings of the Code of Practice. Aspects of the Code of Practice that participants considered are not well implemented by operators concern:

- Provision of details of staff qualifications and staffing levels.
- Specificity of financial information that should be provided to residents.
- Consultation about the sale of the village.
- Consultation about the appointment of a new manager.
- Clarification of who, the operator or residents, pays the service fee after the unit has been vacant for six months.
- Explanation of refurbishment policy.
- Explanation of policy on increases in service fees.
- Reporting on maintenance and how it will be paid for.
- The terms of transfer of a resident within the village.
- Fire protection and emergency management. There was some heightened awareness of the need for earthquake preparedness. A few also noted lack of fire drills in their village.

Participants in one cross-village focus group also objected to reference in the Code to 'sale' of a unit, as to them this implied a sale and purchase contract similar to buying and selling a property, whereas the majority of units offered are on a licence to occupy basis. Sales language was seen to be misleading to both prospective residents and their families.

Comments on the Code of Practice included:

*“The initiative is left entirely to the operator as to how to implement the Code.”*

*“The Code of Practice is too general. It does not lay down clear parameters. It is too open to interpretation, too many grey areas.”*

*“There is nothing in the Code to make [the operator] do it.”*

*“There is asymmetry of knowledge and power. The operator knows far more than the resident. That’s inevitable. The Code of Practice should redress that imbalance.”*

In three focus groups, residents with unit titles considered that the Code of Practice deals inadequately with unit titles and should be amended to include more guidance to operators on this aspect.

## **8.2 Code of Residents’ Rights**

The Code of Residents’ Rights is a summary of the basic rights that residents have under the Act. The village operator must give the Code of Residents’ Rights to intending residents, and supply one to residents when they ask for a copy.

The Code of Residents’ Rights is contained in Schedule 4 of the Act and covers:

- Services and other benefits.
- Information.
- Consultation.
- Complaints.
- Disputes.
- Use of a support person or representative.
- The right to be treated with courtesy and have rights respected.
- The right not to be exploited.

The Code also explains that the individual resident has obligations, including respecting the rights of other residents and the operator and staff. Details of people whom the resident can contact, including the operator’s contact person, are also contained in the Code supplied by the operator.

Most participants were aware that there is a Code of Residents’ Rights, but not all were aware, even when shown a copy of the document. There were participants in six focus groups who said they did not know about the Code of Residents’ Rights. Other participants said that the Code is prominently displayed in a communal area of their village, although residents from one village said the Code is not displayed in their village. Although there is generally high awareness of the Code, there is less awareness of the rights that the document sets out. Some were not aware that the Code is part of the Act.

Like the criticisms of the Code of Practice, participants’ criticisms of the Code of Residents’ Rights focused on what they saw as shortcomings in the actual implementation of the Code. Residents in six focus groups criticised the Code of Residents’ Rights. They said that the

rights were not specified in enough detail to provide adequate guidance to operators, or to residents so that they would know what to expect. They also noted that whether the Code is implemented appropriately in their village tends to rely on the attitudes and efforts of managers and staff.

Aspects of the Code of Residents' Rights that participants considered were particularly poorly implemented in practice were:

- Provision of information to residents and keeping them informed.
- Consultation with residents.
- Giving feedback on residents' requests and complaints.

Some residents were sceptical about the intent of operators to honour the Code, while others asked how villages are monitored to ensure that they give effect to the Code.

Comments about the Code of Residents' Rights included:

*"It's very broad brush."*

*"A big joke is the right not to be exploited."*

*"It's a waste of time. Unless you're in the know, you don't know your rights, how can you complain?"*

*"[the Code is] hugely visible, but not referred to very often."*

*"The Code does not seem to protect residents from changes happening that we were not made aware of."*

*"It's important to have a manager with people skills ... some staff have never worked in a retirement village before, they are not familiar with it."*

### **8.3 The Disclosure Statement**

The Disclosure Statement should provide full information about the retirement village so that a person can make an informed decision, based on their clear understanding. The village operator must give the intending resident the Disclosure Statement, before he or she signs the Occupation Right Agreement.

The Disclosure Statement explains:

- Ownership structure and management arrangements, including contact details of manager and staff.
- Type of legal title.
- Information about the Statutory Supervisor.
- The state of the village, including whether it is complete or not and the development planned; the number of occupied and un-occupied residential units; and the time taken to dispose of vacant residential units.
- The services and facilities provided, any new services and facilities planned and effects on residents.

- Charges, including entry costs and service fees.
- Provision made for maintenance and refurbishment.
- Information about the financial accounts.
- All details relating to the occupation right agreement.

The information that must be provided in the Disclosure Statement is set out the Act (Schedule 2) and the Code of Practice. The Disclosure Statement must be written in clear language.

With the exception of those participants with some knowledge of the Act and their rights, in general residents have a very low recognition of the term 'Disclosure Statement.'

However, many participants could recall receiving the type of information required in the Disclosure Statement from the operator or manager. Most of those participants unfamiliar with the Disclosure Statement were unclear as to its purpose, and could not easily distinguish it from the Occupation Right Agreement, or the Code of Practice. Several residents enquired as to whether the Disclosure Statement is binding on the operator.

Participants in eight focus groups commented on their village's Disclosure Statement. Those participants who were familiar with their village's Disclosure Statement were largely critical of it, because:

- It is not written in plain language.<sup>19</sup>
- It is deficient in explanation of key aspects of the village development, such as a lack of full disclosure of intended development, and lack of information about the amount of time it has taken to sell vacant units.
- There is lack of information about management and staffing, including qualifications and hours of work. Examples were given of a lack of disclosure of whether nursing staff are registered, the hours of work of registered nursing staff, and the nature of coverage out of normal working hours.
- It is deficient in disclosure of financial aspects.
- Information about the range of facilities and services is misleading or inaccurate. Examples were given of lack of disclosure of some charges, such as charges for a car park.
- It emphasises facilities and services to the detriment of other information and consequently reads more like a promotional document, rather than providing factual information that an intending resident needs to know.

Comments about the Disclosure Statement included:

*"We need a summary of the important clauses. There's a lot to go through."*

*"The development of a rest home and hospital was not explained and I think it should have been."*

---

<sup>19</sup> The monitoring project on the operators of retirement villages (Retirement Commission, 2010a) reported that operators described residents feeling confused by long and complex disclosure statements. Some operators have made a summary available to residents.

*“They said they provided a shopping bus. When none of the residents could actually drive it, it had to be pointed out that this was one of management’s obligations.”*

*“It was clear, but in the end the pay out [when the resident leaves] was very cloudy.”*

In one focus group, a few residents said that they had made a submission to the Department of Building and Housing’s 2009 consultation on the Disclosure Statement. They had submitted that the statement is too long, repetitious and duplicating of information in other documents, and some required details would need regular updating.

## **8.4 The Occupation Right Agreement**

The Occupation Right Agreement is the legal contract, signed by the resident and the operator that entitles a person to occupy a unit in the village and to use services and facilities. The intending resident is required by the Act to get independent legal advice before signing the Occupation Right Agreement. The Occupation Right Agreement must comply with the Act and the Code of Practice. The matters that must be included in the Occupation Right Agreement are set out in the Act (Schedule 3) and the Code of Practice.

Broadly, the Occupation Right Agreement must contain:

- Provisions relating to:
  - Staffing
  - Safety and personal security
  - Fire protection and emergency management
  - The transfer of residents within the village
  - Meetings of residents with the operator
  - Accounts
  - Maintenance and upgrading
  - Termination of the occupation right agreement
  - Communication
  
- Provisions requiring:
  - Consultation with residents before the operator’s interest in the village is sold or otherwise disposed of.
  - Consultation with residents before appointing a new manager.
  - Consultation with residents about any proposed changes to services and benefits, or charges.
  - Residents to be treated with courtesy and their rights to be respected.
  - Residents not to be exploited.
  
- Provision for a complaints facility and disputes procedure.
- Any other provisions required by the Act or the Code of Practice.

- Provision of information on the Code of Residents' Rights and Code of Practice.

Views around the Occupation Right Agreement often varied according to the nature of the occupation right itself. Discussion with the focus groups covered:

- Views about occupation right agreements in general.
- Views about licence to occupy, which is the most common form of occupation right in New Zealand retirement villages. Most focus group participants (84 percent) have a licence to occupy.
- Views about unit title.

### ***Occupation right agreements***

There were participants in three focus groups who did not understand the term occupation right agreement, although they were more familiar with terms referring to specific types of agreement, such as licence to occupy.

Those who were satisfied with their Occupation Right Agreement said that it was easy to understand and comprehensive. However, participants in 12 focus groups made criticisms about their occupation right agreement.

The main criticisms participants have about their Occupation Right Agreement is that it is difficult to understand, or there is lack of detailed information or ambiguity about particular parts of the agreement. Key areas that participants said needed to be further explained or clarified in their Occupation Right Agreements were:

- Who is responsible for maintenance and replacement of fixtures and fittings.
- Who is responsible for insurance of fixtures and fittings.
- Who is responsible for refurbishment.
- What is covered in service fees, and what is not.
- Under what conditions service fees may rise, and how are fees calculated?
- Description of the services and facilities provided.
- What happens if a resident wants to transfer within the village.
- What happens when leaving the village, and what are the exit costs?
- Terms such as "fixtures and fittings", "chattels" and "as new condition" are not clearly defined.
- Whether the resident is able to make changes to the dwelling and what happens to alterations or improvements on vacating.

Participants gave examples of areas of ambiguity or lack of information in their Occupation Right Agreement.

*"It's in small print and legalese."*

*"I had a situation where the hot water tank was not working. Management said it was my problem."*

*“Those here on the earlier agreement, it’s not clear what happens to wear and tear.”*

*“A big grey area is what is charged back to residents on repairs and maintenance, and what are the operator’s responsibility. Unless the residents committee are vigilant, this sort of thing is slipping through all the time.”*

*“If something goes wrong with the stove, you have to pay for it. It’s their stove, shouldn’t they have to pay for it?”*

*“The costs [for refurbishment] seem excessive. It seems like double dipping, I don’t understand what the refurbishment charges entail. The wording about refurbishment in the agreement is hard to understand.”*

*“The occupation right agreement is silent about transfer, leaving residents unable to enforce that part of the Code of Practice, and having to accept whatever terms the operator sees fit to impose.”*

Another more general area of dissatisfaction with occupation right agreements is around the diversity and variation of agreements within a single village.

In three focus groups participants considered that multiple occupation right agreements is an inevitable part of operators’ business practices. In 12 focus groups, there were participants who considered multiple agreements to be inherently unfair, because some are on a more advantageous contract than others, which results in cheaper weekly fees or fewer responsibilities for fixtures and fittings, or for repairs and maintenance.

Other participants wanted the opportunity to change their agreement to a more favourable one, and did not believe they were in a position where they could negotiate. Participants in one focus group suggested that the administration of multiple agreements could become cumbersome and inefficient. They gave examples of different conditions in agreements relating to responsibilities for fixtures and fittings, and for repairs and maintenance. This sometimes gave rise to confusion for both residents and staff.

Participants in another focus group suggested that multiple agreements could be a problem if new agreements put the financial situation of the village in jeopardy or undermine the conditions of existing agreements.

### **Views around licence to occupy**

Although most participants are aware of what a licence to occupy is, there were participants in five focus groups who were not aware that their occupation right is a licence to occupy. In 11 focus groups there were participants who were confused about what a licence to occupy means.

*“What is the difference between a unit title and a licence to occupy?”*

*“I didn’t fully understand it. I was told we would have more security with it.”*

*“I’d like to know what does licence to occupy mean? Who owns it? I paid for the place!”*

*“My biggest surprise was that our house isn’t even in our name, and we can’t apply for rates relief.”*

Other participants said that, while they understood the term licence to occupy, they believed confusion and misunderstanding about the meaning and implications of licence to occupy are widespread among residents, even though they should have received clear legal advice. Those participants said that the main confusion is around exactly what the occupier owns. Comments included:

*“People are learning slowly about what a licence to occupy is. It was hard to absorb what was going on. We had a short time to make up our minds.”*

*“[loss of equity] is the biggest thing to get your head around.”*

*“They come in [to the village] totally misunderstanding it.”*

Participants in two focus groups commented that family often do not understand the licence to occupy agreement, which can lead to their unrealistic expectations of the resident’s estate:

*“You tell your children there’s nothing there for you. This is not an investment.”*

*“The next of kin often does not understand the agreement and this raises problems because of expectations about the price they will receive.”*

Participants in two focus groups asked whether the licence to occupy form of occupation right is “required” by the Act. They said that they had been given this impression by the operator or village sales manager.

The aspects of the licence to occupy that are not liked are:

- The lack of capital gain, which is typical of many agreements.
- The requirement to make up the operator’s capital loss, required in some agreements.
- The exit fees.
- The payment of an on-going service fee or proportion of that fee until the occupation right is on-sold.

Participants reported that, in general, the intending resident does not get a copy of the licence to occupy until they have committed to sign up, or have signed up. In that situation, the intending resident has the cooling off period to fully assess the implications of the agreement. Many, however, felt that they had no ability to withdraw from the commitment and would have preferred to be able to compare different agreements across villages well in advance of making their choice of village<sup>20</sup>.

### **Unit title**

Residents with unit title may live in a village in which all dwellings are unit title, or in a village in which there are also other legal titles, in addition to unit title. In this project, six focus groups were held in villages that included unit title dwellings. One village was solely unit title, and five villages were predominantly licence to occupy, but also included unit title. In those latter villages, unit title agreements are being phased out. Across all the focus groups, which included both those conducted in a village and those comprising residents from several villages, just over 13 percent of participants indicated that they have a unit title.

---

<sup>20</sup> Some villages make their disclosures statements or occupation right agreements available on their websites, however the level of public access to those and other documents varies considerably from village to village.

The main legislation that regulates unit titles is the Unit Titles Act. The review of the Unit Titles Act in 2010 was aware of the unit title developments that are retirement villages. The review aimed to tidy up some legislative inconsistencies and remove duplication where similar or better provisions exist for unit titles in retirement villages under the Retirement Villages Act. Where similar or better provisions exist under the Retirement Villages Act or supporting regulations, an exemption is made for registered retirement villages, or compliance with a provision in the Retirement Villages Act or supporting regulations is deemed to comply with the provision in the Unit Titles Regulations.

Sections of the Unit Titles Act 2010, which will come into force in June 2011, that do **not** apply to a unit title development that is a registered retirement village relate to:

- A scheme following destruction or damage.
- Body corporate operational rules.
- Long term maintenance plans, funds and ancillary matters.
- Contributions.
- Financial statements.
- Monitoring and reporting by the chief executive.
- Insurance.
- The body corporate's duty of repair and maintenance.
- Disclosure of information.
- Disputes.
- Provision of records and documents.
- Minority and majority relief.

All these sections involve important protections for unit titles. Consequently, the priority that the Retirement Villages Act takes over those sections presents a challenge for the retirement village sector and the legislative framework. The challenge is that residents with unit titles must be protected and not disadvantaged by living in a retirement village.

Some participants with unit titles were largely unaware of the Retirement Villages Act, and did not understand the framework that the Retirement Villages Act provides to protect village residents. Those in one focus group who have a unit title agreement said of the Retirement Villages Act:

*"I've never heard of it."*

*"Residents here are indifferent."*

*"I feel it doesn't impact on us."*

*"This is the first time I've heard the definition of a retirement village."*

Other participants with a unit title were familiar with the Retirement Villages Act. However, they consider that it is irrelevant to their situation, and that the Code of Practice is inadequate to protect residents with unit titles. Comments included:

*"I felt better protected before the [Retirement Villages] Act than now. I can't think of anything in the Act that makes me feel better protected."*

*"Many aspects [of the Retirement Villages Act] don't apply to owner/operator and with owner-occupier residents."*

*"At least 95 percent of the [Retirement Villages] Act is not applicable to our type of village, i.e. unit title holders."*

*"We don't seem to get anything out of it. What benefit are we getting out of it?"*

*"The [Retirement Villages] Act is stifling the diversity of villages – it's written for licence to occupy and large corporate villages."*

Some residents with unit titles consider that they have lost rights or protections with the introduction of the Retirement Villages Act, or at the least they are no better protected because of the Act. For example:

- In some villages the unit title residents have the operator involved in the sale of their dwelling. This suggests that the operator is able to curtail the re-sale rights of the resident through the terms of the occupation right agreement.

*"You can't just sell it yourself now. It's a three way arrangement between the seller, the buyer and the [village] owner."*

- Unit title residents are faced with additional annual charges to cover requirements of compliance with the Act, such as village registration and Statutory Supervisor. Prior to the introduction of the Act those residents did not pay those charges.

*"There are the costs of compliance, the Statutory Supervisor is \$7,650 plus disbursements, the registration of the village is \$3,000-\$4,000. There are the disclosure documents and the occupation right agreements ... the trust board picks up the extra costs of sales transactions due to the Statutory Supervisor holding the money ... we estimate that \$20,000 annually is additional that residents have to pay that is directly attributed to Retirement Villages Act compliance."*

- Many of those with a unit title see no advantage in having a Statutory Supervisor. They consider that they already have many of the financial safeguards through the body corporate structure, and the Statutory Supervisor is an unnecessary charge that is imposed on them.

*"The contact the Statutory Supervisor has with individual residents is very minimal. I don't know of any resident who has directly contacted the Statutory Supervisor. There is a cost involved in contacting the Statutory Supervisor, which is a concern ... We don't need the Statutory Supervisor. We are already protected through the trust deed, the body corp. rules, the ownership document."*

*"We own and run the village, we are working with the secretary of the body corporate, the accountant ... we are independently audited. We have an independent observer at our AGM and the six monthly body corp. meeting."*

- The cooling off period imposes a restriction, in that the buyer and seller must wait 15 working days for the sale to take effect. This is not the case with unit titles outside of retirement villages.

*“I don’t think the cooling off period should apply. This is a normal sale, no different to buying and selling your own home. People leave the village for various reasons, not just death or moving on to care, they want to get their money out.”*

- In contrast to other residents, those with a unit title generally want the full service fee continuing after an occupation right agreement is terminated; i.e. they do not want to see a reduction or cessation of the service fee. They consider that the on-going discipline of having to pay the service fee acts as an incentive to the former resident (or their estate) to ensure the unit is sold promptly. Unlike villages with licence to occupy, the village governance and management do not set the sale price or control the sale; the individual unit owner does. Consequently, as the village has no control over the sales process, it is seen as unfair that other residents would have to bear the service fees.

*“The seller controls the sale and the incentive of paying fees should be on them, not subsidised by other residents, who have to balance the books.”*

Some participants who have unit title tenure live in villages where licence to occupy is the predominant form of tenure. Several of those considered that, because they are in a minority, and the unit title was being phased out, they are “forgotten about”. They felt their particular concerns were not acknowledged or addressed in the village. Some were unaware of the role of the Statutory Supervisor. Unit title residents in one village (where licence to occupy was the predominant title) said that the Statutory Supervisor did not attend their body corporate AGM, and they had no other contact with the role.

## Section 9: Protective Processes

The operators of retirement villages have a responsibility to establish and implement processes around:

- Communication and consultation with residents.
- Resolving conflicts, complaints, and disputes.

Sub-section 9.1 looks at communication and consultation processes, while sub-section 9.2 focuses on complaints and disputes procedures.

### 9.1 Communication and Consultation

Operators are required to communicate with residents through such channels as meetings with village residents and consultation on matters affecting residents.

The Code of Residents' Rights reinforces the importance of information provision and consultation. It states that residents have a right to information relating to any matters affecting, or likely to affect, terms and conditions of residency. Residents also have the right to be consulted by the operator on any proposed changes in services and benefits, or charges, that will or might have a material impact on the residents' occupancy, or ability to pay for the services and benefits provided.

The Code of Practice requires operators to:

- Hold an annual general meeting to receive the retirement village's financial statements, the Statutory Supervisor's report, the maintenance report and any other matters.
- Hold a special meeting if:
  - the Act, regulations or this Code of Practice requires the operator to obtain the consent of the residents
  - other enactments, the residents' occupation right agreement, or other such documents require the operator to get the residents' collective consent.
- Consult residents on matters as set out in the Code of Residents' Rights, as well as about proposed rules, or additions or amendments to existing rules.

#### ***Information Provision and Transparency***

It was apparent from residents' comments that operators' practices in the provision of information vary considerably, from those operators that communicate regularly and openly, to those that communicate poorly.

In nine focus groups there were participants who reported communication that they were satisfied with, including regular meetings of the village manager with residents, regular (often weekly) newsletters from the manager; letters to every resident on changes; informal morning tea or afternoon tea with the manager; the manager's informal door-to-door visiting of residents; and the manager's attendance at residents' committee meetings. Several participants noted that in their village, the manager has an "open-door" policy, where residents can approach the manager with queries at any time. Typical comments about good communications practices included:

*“The manager puts out a weekly newsletter, which is done well. You know what is going on.”*

*“Management talks to the residents’ council first, and then will call a meeting with all residents if needed. Even if they are going to trim a tree, we will be advised of it. We are advised about everything going on in the village.”*

In contrast, in 16 focus groups there were participants who expressed their on-going frustrations with the provision of information in their village and the way residents are treated when they ask for information. Typical comments about poor communication were:

*“There is a lack of communication about everything. Communication comes after the fact.”*

*“We ask questions and never get a reply.”*

*“I came here to be safe, I came here thinking I was going to be treated as a person and not patronised.”*

*“Manager is secretive and treats us like children.”*

*“[Manager] rides roughshod over all of us. Ignores all questions ... the management answer we get is, ‘we’ll get back to you’, and we never have an answer”.*

Participants identified two main areas where they consider there is an on-going lack of information: repairs and maintenance of resident’s dwellings and of community facilities; and, financial information, including annual accounts.

A sense that there was not enough information about current maintenance and maintenance intentions reflected a widespread dissatisfaction with village maintenance services. Similar criticisms around maintenance emerged in most focus groups and included:

- General maintenance is not getting done or undertaken poorly. Consequently there are anxieties around safety, especially with regard to footpaths, stairs and chairlifts.
- Lack of supervision of grounds staff and hazards when equipment is left in the grounds.
- Lack of response by managers to residents’ committee requests about maintenance plans, issues and remedial works.
- Escalating costs of repairs associated with lack of timely maintenance.
- Lack of information and clarity about the funding of long term maintenance and implications that future maintenance will be on a fee basis.
- Requests for access to long term maintenance plans being refused by the operator.

Only in one village was there clear satisfaction about the maintenance plan and how it would be funded. In that village, residents stated that all maintenance is clearly itemised including the responsibilities of residents and the operator. There is also a transparent annual sinking fund meeting which shows maintenance for a 10 year period and associated costs.

In general, however, residents were anxious about maintenance roles, responsibilities and liabilities especially where there was a sense that maintenance and refurbishment had been neglected over the years.

*“Refurbishment, it’s all backed up from the last 25 years.”*

*“The paths to your front door, do we have to pay for that or do they put it in? It’s a big issue as far as I am concerned.”*

*“There’s pot holes in the village roads, it’s a safety problem ... we were told that the money for resurfacing the roads was used for refurbishing ... we’ve made an official complaint asking for resealing.”*

*“Maintenance requests are very slow to be actioned, much slower than you would expect from the Code of Practice and RVA<sup>21</sup> guidelines. People should be advised of any delays. It’s not good enough. In our twilight years we expect better.”*

With regard to poor communication about financial issues, residents typically noted that there is difficulty getting information about the:

- Financial position of the village owner, as distinct from the financial position of the village itself.<sup>22</sup>
- Village financial reports and accounts. Residents commented that it is often difficult to find out details of expenses, such as:
  - what service fees cover;
  - what is covered under maintenance charges; and
  - lack of clarity over the charges that the operator should pay and charges that should be paid by residents.
- Reasons why service fees increase, and particularly why services that were previously included in fees are now excluded and additionally charged.

Comments expressing dissatisfaction with financial information included:

*“It’s just a cursory explanation, not a proper explanation. It’s really hard to get to the bottom of where money is being spent ... the Statutory Supervisor says things are looking very healthy, but I am concerned that it is just rubber stamping”.*

*“Despite the provisions of the Act to protect residents’ investments, there are still ways in which operators can unreasonably charge residents through their weekly fees for items which are legitimately the operators’. One specific complaint ... is that the weekly fee includes the cost of the village’s subscription to the RVA. Other villages are unsure whether or not they are charged the same expense because their budget/statement lists ‘subscriptions’ as an all inclusive figure”.*

*“We have no control over what they spend.”*

*“When we ask for anything for the village we are told, your fees will have to go up.”*

In three focus groups, participants were also concerned that it is difficult in their village to find out about other residents. This was mainly in relation to a resident who is ill, or has moved.

---

<sup>21</sup> RVA – Retirement Villages Association.

<sup>22</sup> The Retirement Commission’s Statutory Supervisors Monitoring Report (2009) notes this issue. The report found that some Statutory Supervisors rely on the strong equity of the parent company in their financial monitoring of the village. However, the report observed that most villages operate as a separate legal entity and are therefore unable to rely on the strength of the parent company for continuing viability.

They did not want to know personal details, but simply what had happened to a neighbour. Those participants commented that the Privacy Act is often cited by the village staff as a reason they cannot be told what has happened to another resident.

Also in three focus groups, residents raised the issue of the specific communication needs of residents with a disability, particularly visual and hearing impairment. They felt that those residents are often not well catered for through usual village communications processes.

Overall, residents in seven focus groups considered that the quality of village management's communication often hinged on an individual manager's commitment to keeping residents informed, rather than on well implemented communications policies and procedures. Participants cited instances of a change of village manager that resulted in either improved communication or a reduction in information to residents.

### **Consultation**

The Act requires operators to provide opportunities for participation in decision making affecting the village. Operators are also required to consult with residents on specific matters, as set out in the Code of Practice and Code of Residents' Rights. These include:

- Any proposed changes in services and benefits, or charges that will (or might have) a material impact on the residents' occupancy, or ability to pay for the services and benefits provided.
- Proposed rules, or additions or amendments to existing rules.
- Consultation with residents before the operator's interest in the village is sold or otherwise disposed of.
- Consultation with residents before appointing a new manager.

The Code of Practice (in section 27(3)) sets out how consultation must be conducted. It specifies that the operator must provide enough information so that residents are able to provide an informed response. The operator must also give residents enough time to respond. The operator must not decide a matter before consultation has been completed, and must consider all responses received with an open mind – the outcome cannot have already been decided. The operator is also required to let residents know the decision following consultation and with reasons for the decision. The operator does not have to agree with residents' comments or act on their advice.

Some participants are familiar with the Code of Practice requirements concerning consultation and are aware of the particular aspects of village management that residents should be consulted about. Regardless of whether residents know the range of matters set out under the Act, they have their own views about what should be consulted on including:

- A change of village name.
- Opening of village facilities for use by the general public (not only by residents' families and friends).
- Expenditure priorities.
- Increases in service fees.
- Employment of manager.
- Reduction in staffing numbers and positions.

- Reduction in facilities and services.
- Reduction in maintenance of communal facilities.
- Planning of new residential developments and facilities.
- Not undertaking new development or providing new facilities, which were previously planned.
- Sale of the village.

Whether or not residents were aware of the Act's specification of consultation, most see consultation as essential to the life of the village, the wellbeing of residents and maintaining their lifestyle:

*"A lack of consultation fails to create a feeling of cooperation and kinship with residents."*

*"Their village is their life."*

*"A lot of it is lack of consultation. There's nobody to explain. Staff don't have the time, or the resident doesn't have family around. They don't know what rights they have and what they can and can't expect."*

In 17 focus groups participants said that consultation is poor in their village. A typical criticism was that consultation is not genuine, because residents are informed about changes when they are already decided and about to be implemented, rather than being asked for their opinion on proposed changes.

*"Managers might consult, but in the end they will say, it is our decision anyway."*

*"The manager will do something and tell us about it afterwards. That's not consultation."*

*"They just tick the boxes".*

*"Consultation is just a woolly word".*

*"We are told, there's limited input [to management]"*.

The protections associated with consultation seem weak to participants:

*"Contracts and the Code of Residents Rights do not seem to protect residents from changes happening that they were not made aware of, or services not eventuating."*

*"There's been little consultation on the nature of extensions and the loss of green space and garden amenities. There's also been less maintenance on buildings and on gardens."*

*There was no consultation ... the new management reduced the registered nurse to three days a week and no nights ... we had a meeting with the owner's representative and they said, 'that's it' ... they changed it surreptitiously ... owners can come in and just change things ... the change of ownership was brought up at a village meeting, a lot of people are talked down. You take it or leave it."*

In three focus groups, examples were given of good consultation practices, which have resulted in change because of residents' feedback. One example was consultation resulting in a reduction in fee rises. Another example was negotiating with residents to ensure that for

the vacating resident, after six months no service fee would be paid. A third example was refurbishment of a community facility that involved the residents' committee in planning.

Participants did recognise that appropriate consultation could occur that nevertheless led to decisions with which they disagreed. They distinguished this process from a lack of meaningful consultation. For many participants, consultation is not simply informing residents about a decision that has already been made but a willingness to take into account residents' views, a willingness to re-consider proposals and a willingness to change intentions, rather than presenting a fixed position. Comments included:

*"It is critical to have true consultation. We don't get everything we ask for, but we do discuss it, and they do take many suggestions on board."*

*"There is a difference between telling us and consulting, saying 'we are thinking of doing this, what do you think?' "*

Participants suggested that the Code of Practice should be more explicit on what consultation should involve, and give examples of good consultation practices.

### ***Impacts of Information and Consultation Processes on Residents***

For many participants, problems around communication and consultation mean that living in a retirement village has become disempowering and they feel excluded from decisions in which they believe they should be involved:

*"The view is 'we've given up our rights'".*

*"There is nothing wrong with the concept of a retirement village. The problem is the way it is run ... the lifestyle is being eroded because of disempowerment of residents. We are at the mercy of the operator."*

Participants emphasised that many residents see themselves as major investors in villages, and want to be involved in decisions that affect them, as partners with the operator:

*"Residents don't have voting rights. How can residents participate in the decision making of the village? Residents are investors in the village so they should have the right to vote."*

*"I believe we should have equal rights. Without our money, they go nowhere. Without their buildings we go nowhere ... we are shareholders in a company, as such we should have a say over everything that occurs."*

Participants most likely to feel that they are properly consulted also feel that they are engaged in decision making. Those who felt they have the ability to influence decisions tended to be:

- In villages with active residents' committees that go beyond functioning as social committees and are residents' advocates and representatives; and/or
- Unit title villages where residents are involved in the governance of their village because they are members of the body corporate that owns and runs the village.

Villages in which residents appear to feel least engaged in decision-making tend to be in villages that:

- Have rest homes. Many residents considered that they were ignored as management was focused on running the higher dependency care facilities rather than responding to village residents. They felt that they did not receive information, and their concerns were not listened to. In some instances, any requests or complaints were met with the response that they were living independently and should look after themselves.

*“Independent is interpreted as management doesn’t respond to our requests ... I feel there is nobody assigned to keep an eye on what is going on here.”*

*“We have been told that the government does not provide any money for us so we are on our own.”*

*“Patient care is always above residents’ care.”*

- Where there has been a change of ownership, and particularly where that has resulted in changes of management or changes in policies.

*“The ambience is being undermined ... some services previously included in fees are now being excluded and charged as additions”.*

*“Where does the sale leave residents? What are our rights?”*

- Where there has been a new intake of residents under different agreements.

*“Why should there be different agreements? It’s unfair.”*

*“It’s all about subsidising new residents ... there’s been no consultation about the extensions and the loss of green space and gardens.”*

*“We’re being played off against each other.”*

### ***Wider Issues of Consultation, Representation and Empowerment***

In 11 focus groups, participants raised wider issues on consultation and empowerment for residents. These issues had become apparent for some residents when they sought to make a complaint, or to make a submission to the Code of Practice, the Disclosure Statement, and prior to its introduction, to the Retirement Villages Act itself. Those who had made submissions to the proposed Act said that they had felt disadvantaged in the process because they were not shown how to make a submission. Some residents had made submissions to the draft Code of Practice and expressed disappointment that they had received no feedback about their submissions. They could see no indication that the issues they had raised in their submission were taken into account in the final version of the Code.

Participants made suggestions for sector changes in three related areas where they consider that residents need more ability to nationally influence and effect improvements for residents:

- Resident representation.
- The introduction of a resident advocate role.
- The configuration of agencies administering the Retirement Villages Act.

In five focus groups, participants commented on the lack of a national residents’ representative body to further residents’ interests. Such a body was seen to be necessary to

function as an effective lobby directly to government and as such, balance the operators' industry body. Several participants considered that the lack of a national residents' organisation has disadvantaged residents in having a strong voice and influence on the development of retirement village legislation and policy. Residents suggested that the national residents' organisation would need to be resourced by government.

*"The RVA is more adept at making its views known".*

*"So many things in the Act are out of balance."*

*"We had a short time to make submissions [to the Code of Practice] but we didn't even know what to make submissions about to be honest."*

*"The RVA is a heavyweight organisation, residents have no equivalent organisation. I feel this is a yawning gap. There are over 20,000 residents and they have a huge investment in villages."*

With regard to advocacy and support for individual residents, six focus groups suggested the establishment of an advice and support role, similar to patient advocacy services in the health sector, or an ombudsman. Several participants said that such a role is important for those without family or other support. Some participants thought that this role should extend to providing intending residents with impartial advice. In part, the suggestion for a residents' advocate stemmed from participants' dissatisfaction with the Statutory Supervisor role, which many regard as unable to effectively advocate for and protect residents' interests (see section 10).

*"Someone impartial to take up the concerns that residents have, because there is no voice for residents. The Statutory Supervisor does not seem to be impartial, and they are not there to support residents."*

*"Don't you think we really need someone to talk to us who really know what they're talking about? For us to go to a solicitor is \$300 an hour ... we would like someone to come that we could talk to, that we could call up."*

Some participants also thought that the current configuration of administrative responsibilities for the Act, which are divided among several agencies, is detrimental to residents seeking information, effectively having their say and making complaints. Five focus groups suggested changes to amalgamate the administration of retirement villages into one agency.

*"No one takes responsibility. It leaves us out on a limb. There is no one to complain to. There needs to be one central point where you can take your query."*

*"Who is policing the Act? ... in DBH<sup>23</sup> we are competing with tenancy services and leaky homes ... all the bodies are just clipping the ticket ... [what is needed is] one central point for enquiries, and one person who has the power to do something when things go wrong ... at the moment nobody wants it, we don't fit anywhere. ... because it's old people we are ignored. We are an embarrassment."*

---

<sup>23</sup> DBH – Department of Building and Housing.

## 9.2 Complaints and Disputes

The Act sets out requirements for dispute resolution, the types of disputes that residents and operators may give disputes notices, the operation and powers of a disputes panel, enforcement and penalties. The Code of Practice requires operators to set out the complaints facility so that residents know how they can make a complaint.

### **Complaints**

Across the focus groups there was a widespread view that, as a group, older people are often reluctant to complain. They fear that if they do complain, they will be seen as a “troublemaker” by the operator, which they believe may impact on how they are treated, or they may even be asked to leave the village. Some residents are reluctant to complain for fear of upsetting other residents and jeopardising community relations. Most residents are very aware of their responsibilities in a communal living environment. A few participants also commented that some did not want to make a complaint or fear of “giving the village a bad name”, and possibly affecting the purchase decisions of intending residents.

*“If you put your head above the parapet, they just go ‘oh, it’s her again.’ ... I got called into the manager’s office and it was suggested I was overreacting.”*

*“People are afraid to speak up because they are afraid they will be asked to leave, and they don’t feel they get anywhere when they do complain. We’re paying to live here, why don’t we get the service?”*

In three focus groups participants commented that sometimes the formality of the complaints procedure itself deters residents from raising concerns, particularly where residents are required to write down their complaints. They felt that for older people to have the ability to talk over their complaint with the manager, or to have help to write the complaint, would overcome some fear of using the complaints process. One resident said:

*“The whole idea of a complaints form is foreign to this age group, they would rather go and talk to someone. Some are good at writing it down, but most would prefer to see someone.”*

One of the requirements of the Act is for the operator to operate a facility for dealing with complaints and make it known to residents. Participants differed in their awareness of the complaints procedures operating in their own villages. In five focus groups the majority of participants were not sure how the complaints facility in their village works. Some residents could not say whether their village has a written complaints procedure and where it is to be found. A few of the longer term residents were not clear about the complaints procedure in their village, and could not recall receiving any information about it.

In nine focus groups there were participants who observed that their complaints procedure is easy to find and clear to follow. Those participants said that the complaints procedure is part of the information given to them by the operator. Information on the complaints procedure can also be found in the village library or on the communal notice board. Some participants made the point that residents have a responsibility to make themselves aware of the complaints process.

*“The complaints system is very good, it’s all laid down. We have had no complaints about the complaints system.”*

Participants gave examples of what they considered to be good village practices in handling complaints:

- The manager being available informally to discuss concerns.
- The manager attending regular meetings with residents and with the residents' committee.
- Having a residents' committee that could support residents to make complaints.

The most common action residents said they would do if they had a complaint, was to contact their manager of the village.

*"I feel safe and have trust and confidence in management, I can pop into the office any time".*

The other common approach was to go to their residents' committee. Participants in five focus groups commented that their residents' committee is essential for supporting residents to make complaints, and if necessary, advocating on behalf of residents:

*"Many older people do not like to make a fuss and need support to voice their concerns."*

*"The residents' committee is a way of keeping the owners honest."*

However, it was apparent that while in some villages the residents' committee itself is able to make a complaint to management, in other villages, a complaint must be made by an individual resident; a complaint will not be accepted by the manager if it is made by the residents' committee.

Participants become dissatisfied with the complaints procedure in their village when they feel that their complaints are trivialised, or the complaint is re-defined as a request for a service or for information (e.g. as a maintenance request), rather than treated as a complaint. Participants spoke of instances where there is pressure on the complainant to withdraw the complaint. Examples were also given of complaints not being registered.

The other major dissatisfaction that residents have is apparent management inaction in dealing with complaints. Participants reported:

*"Management response is unsatisfactory. All we get told is that it is in progress, but nothing happens. Response is not as efficient as it should be. We are not even sure if the manager passes on complaints to the operator."*

*"The management answer we get is, 'we'll get back to you', and we never have an answer".*

*"Many residents don't know how to resolve problems especially when the management is evasive or specialises in ineffective communication."*

Very few participants said that they had approached the village Statutory Supervisor with a complaint. Only in one village did the residents say that they have asked for advice from the Statutory Supervisor concerning a complaint.

As with their comments on information provision and consultation, participants highlighted the key role of village manager in ensuring that complaints procedures are implemented appropriately and work well for residents.

### **Disputes**

There was not a high awareness of the Act's disputes procedures among focus group participants, with four focus groups commenting on disputes procedures. A few participants had experience of a dispute in their village, or knew of the disputes procedure because of their familiarity with the Act. One person noted reading about the procedures in the Retirement Commission's *Guide to the Retirement Villages Act 2003*.

There were more criticisms of the disputes procedures compared to village complaints procedures. The main criticisms of the disputes procedures are:

- The disputes panel member is appointed by the operator, who may be a party to the dispute.
- The process is too adversarial and confrontational. Several participants suggested that a mediation process be used instead.<sup>24</sup>
- The resident may have to pay costs and expenses associated with taking the dispute. Participants were concerned that residents may not take a dispute because they cannot afford to.
- Some consider that the type of dispute that residents can take is too narrow. There is a view that residents can only take a dispute relating to their occupation right agreement.

One comment summed up the range of residents' criticisms:

*"The disputes procedure is a dog's breakfast. Overly legalistic, adversarial, intimidatory. The operators have the money to pursue a dispute, residents do not."*

Participants suggested that other disputes models already operating, such as the Tenancy Tribunal, and the Retirement Villages Association disputes resolution process, could be considered and the successful aspects adapted to improve the current disputes procedures.

---

<sup>24</sup> The monitoring project on the operators of retirement villages (Retirement Commission, 2010a) found support among both operators and residents for mediation. Mediation is an option in the Code of Practice.

## Section 10: The Statutory Supervisor and Resident Protection

The Act requires retirement villages to have a Statutory Supervisor unless a village has an exemption. Overall, the Statutory Supervisor's role is to oversee the financial interests of the village. The village operator appoints the Statutory Supervisor. A deed of supervision is established between the operator and the Statutory Supervisor, which sets out the terms and conditions of the Statutory Supervisor's role.

The Act sets out the Statutory Supervisor's duties, which are to:

- Hold the resident's deposit in a trust account.
- Monitor the financial position of the village.
- Report annually to the Registrar of Retirement Villages and residents on what they have done in carrying out their duties.
- Represent the interests of residents if a receiver, liquidator or statutory manager is appointed.

The Statutory Supervisor has the power to:

- Direct the operator to supply residents with specified information, or to operate the village in a specified manner.
- Direct that an advertisement be stopped if it is misleading or deceptive.

Residents have the right to know who their Statutory Supervisor is, to see a copy of the deed of supervision, and to contact the Statutory Supervisor at any time.

### 10.1 Awareness of the Statutory Supervisor

Participants' awareness of the Statutory Supervisor's role differed widely. There were residents in five focus groups who were not at all aware of the role. They were not aware that the Statutory Supervisor chairs their village AGM. They do not know what the Statutory Supervisor does, or that the Statutory Supervisor has certain duties under the Act. They do not know the name of their Statutory Supervisor, or that they can contact him/her, or where to find contact details about their Statutory Supervisor.

In 16 focus groups participants said they were confused about the nature of the Statutory Supervisor role, its scope, and its powers. A common view was that the Statutory Supervisor has fewer powers and a more limited role than is available under the Act.<sup>25</sup> These confusions are apparent in the following comments:

*"I am never quite sure what his field covers."*

*"Should we take our complaints to [Statutory Supervisor]? ... How much are management going to listen to [Statutory Supervisor]?"*

---

<sup>25</sup> The Monitoring Project on the Operators of Retirement Villages (Retirement Commission, 2010a) also noted that operators consider the statutory supervisors role requires more clarity.

*“Does the Statutory Supervisor have the right to have things changed; can he tell the operator what to do?”*

*“Does the Statutory Supervisor monitor service quality?”*

*“I thought he was supposed to look after our interests. But they are more interested in helping the operator make a profit, so what about the residents?”*

In four focus groups there were participants who consider that Statutory Supervisors are themselves confused over the role and give residents poor advice about what they can expect of the position:

*“We enquired what he actually does. He was going to send us a note of his activities during the year, but we haven’t seen anything from him.”*

*“Even different Statutory Supervisors give different views.”*

*“[Statutory Supervisor] said ‘I can only advise and suggest changes, but the operator has the final say’.”*

*“Our Statutory Supervisor said that she could not give residents advice. She could answer questions but not advise us.”*

In part the lack of awareness of the Statutory Supervisor and confusion over the role may be because many residents have very little contact with the Statutory Supervisor for their village. Some said that the Statutory Supervisor visits once a year, while others said that their Statutory Supervisor visits twice a year. Only a few residents said that the Statutory Supervisor has encouraged residents to contact him/her whenever they have an issue.

## **10.2 Views on Statutory Supervisors**

Those who considered that the Statutory Supervisor role is effective for residents emphasised its strengths as an external monitor of the operation of the village, a support for residents, and as a channel for resolving complaints. In seven focus groups there were participants who said that their Statutory Supervisor has been very helpful and proactive on their behalf:

*“We make a point of keeping in touch with ours and would see him at least twice a year ... He is the obvious person to give advice. We have a very good relationship with him”.*

*“Very available. You can talk to her ... needed to have someone who has our wants and needs at heart. She’s very good at explaining things to people who don’t understand ... she will come twice or more if invited. That one’s a large organisation but they’re very good. Approachable.”*

However, in 19 focus groups, some participants did not consider the Statutory Supervisor role to be very effective in the way it currently operates. They were concerned that fundamental aspects of the role do not protect residents. In that respect they do not consider that the Act is working as intended.

The main criticisms of the Statutory Supervisor role were:

- i. There is a widespread view that, as the Statutory Supervisor is chosen and paid for by the operator, that that position is not independent and cannot impartially protect residents' interests. Several participants gave examples of the Statutory Supervisor in their village identifying and aligning with the operator.
- ii. There is also a widespread view that the Statutory Supervisor's role is too circumscribed. In this respect, some participants reported that their Statutory Supervisor has indicated that the ability to offer advice to the operator is limited. Participants gave several examples of issues that they expected their Statutory Supervisor to address, including a rise in fees, lack of maintenance of communal facilities, and the poor quality of service.
- iii. Many participants believe that the Statutory Supervisor's role is lacking in real power. They believe that the Statutory Supervisor has a very limited ability to direct the operator to change. Some residents were concerned that the Statutory Supervisor appears to be ineffectual in resolving differences between the operator and residents.
- iv. Some residents question the skills of Statutory Supervisors. There was some comparison of Statutory Supervisors with the performance of statutory managers in finance companies. Other participants considered that the financial reports of the Statutory Supervisor are inadequate for residents to properly assess the financial situation of the village.<sup>26</sup>
- v. The Statutory Supervisor is not accessible. Some residents said they feel intimidated by the role. They do not feel that they can contact the Statutory Supervisor at any time, or ask questions at meetings. Other residents gave examples of difficulties in getting the Statutory Supervisor to visit them, even when formally invited by the residents' committee. They consider that charges related to toll calls to the Statutory Supervisor and additional charges on residents for additional meetings with the Statutory Supervisor are disincentives to contacting the Statutory Supervisor. Lack of accessibility is considered to dilute any influence that the role might exert on behalf of residents.
- vi. There is widespread concern about the costs<sup>27</sup> of Statutory Supervisors, and the potential increase in costs due to recent proposed legislative changes with the Securities Trustees and Statutory Supervisors Bill. Residents are aware that they directly bear the current costs and any increases in costs of Statutory Supervisors. Those in small villages commented that the costs of the Statutory Supervisor are higher for each resident, as the charges are divided among fewer residents.<sup>28</sup> Some residents said that they have investigated applying for an exemption because of the concerns about costs and the ineffectiveness of the Statutory Supervisor.

---

<sup>26</sup> The Retirement Commission's Statutory Supervisor's Monitoring Report (2009) identified variations in the levels of financial analysis undertaken by statutory supervisors, variations in the file evidence of the review they had done of village financial statements, and variations in the provision of financial statements to residents. In some instances the Statutory Supervisors report was not given to residents.

<sup>27</sup> Costs are made up of an acceptance fee, an annual fixed fee, and additional charges for extra meetings and any settlements.

<sup>28</sup> This issue was also recognised in the Retirement Commission's Statutory Supervisors Monitoring Report (2009).

Comments about the Statutory Supervisor included:

*“Employed by the owners and paid for by the residents.”*

*“Their expertise is on the financial side. They have no interest in or understanding of the deficiencies of management.”*

*“We don’t feel we get the service expected of the Statutory Supervisor in the Act.”*

*“He never comes and talks to us and that’s one of our beefs. We just see his fee on the balance sheets. What does he do, we were told he was here to protect our interests but we never see him, what’s he here for? To protect the management’s interest?”*

*“In whose interests is the Statutory Supervisor working? The operator or the residents? He hasn’t done the job for us as well as he could have”.*

*“They have no way of enforcing the operator to do something.”*

*“They are only there to look after residents’ investment. They don’t get into detail”.*

*“I raised what I considered pertinent points about administration and financial aspects. The Statutory Supervisor said these were not pertinent ... they are not expecting to have to deal with questions, it’s contrary to natural justice, you must give people time to consider matters.”*

Participants in four focus groups made suggestions about how the Statutory Supervisor’s role could be made more proactive in protecting residents’ rights:

- Make the Statutory Supervisor’s role truly independent from operators.
- Describe the Statutory Supervisor’s role, responsibilities and powers in simple terms for residents.
- Have residents’ input into the deed of supervision.

## Part 4

# Protecting Residents

This part of the report sets out the conclusions of the monitoring project. It is concerned with identifying responses that can help residents be more confident that the Act provides the protections they feel they need. The discussion is divided into three sections:

- Section 11 provides a summary of the key problems that residents consistently identified as issues for them.
- Section 12 identifies aspects of the current range of protections that appear to compromise their effectiveness.
- Section 13 makes some recommendations as to how the efficacy of protections might be improved.

### Section 11: Persistent Problems' Residents' Perspectives

This research is not an evaluation of either retirement villages or the Act that regulates them. The experience of the almost 300 retirement village residents who participated in this research showed a remarkable consistency in their views around their need for protection, the areas in which those protections were most needed, and the problems that appear to arise where those protections are not effectively implemented.

Residents showed a strong sense that they have entered into a contract with their retirement village and a belief that the Act is designed to:

- Ensure that they understand the nature of that contract when they enter a retirement village.
- Ensure that their conditions are secure from the financial failure of a retirement village.
- Enable them to resolve disputes.
- Protect them from unilateral changes in services, amenities, built environment, fees and operation which may compromise the contract into which they entered.

Overall, it must be concluded that many residents are aware that they have statutory protections under legislation, although there appears to be a group that is entirely unaware of the Retirement Villages Act. Furthermore, there is considerable diversity among the resident population as to their knowledge of the particular mechanisms, processes and responses that the Act requires to ensure those protections are implemented.

Such diversity is understandable, given the diversity of the retirement village sector. There are differences in the size of villages, the ownership structures, the facilities and services offered and the type of legal title that a resident can hold. There is also wide variation in occupation right agreements; often within one village. Residents themselves are a heterogeneous group. They range from their 50s to 90s and beyond, and vary in the extent to which they require support. Residents also vary considerably in their income status, which impacts on their ability to change their housing circumstances if required.

Despite the diversity of residents and retirement villages, residents in the focus groups consistently identified the following aspects of their entry into and subsequent life in a retirement village as compromising the conditions they believe they purchased. In particular:

- Fee increases that appear to be beyond agreed constraints (usually the Consumer Price Index).
- Reductions in the range of services and amenities covered by the fees and subsequent application of additional charges to those fees.
- Reductions in the quality of amenity through:
  - Reduced maintenance or under-investment in repairs.
  - Lack of clarity around refurbishment.
  - Previously undisclosed changes in the built environment such as the addition of higher dependency care facilities, or the addition of new units and/or apartments that impact on communal space or conditions such as noise, sun and light in individual units.
- Failure to provide amenities and developments indicated in staged development plans.
- Sale of occupation rights being inappropriately managed to benefit operators.
- Changes in operation, management and ownership without consultation.
- Anxieties about the future of the retirement village exacerbated by perceived lack of financial transparency.
- Compromising existing residents' conditions by significantly different conditions being offered to incoming residents.

There are, of course permutations in how these issues are articulated and played out in particular villages. This underscores the importance of having an Act that is effectively implemented to ensure that everyone is protected, no matter their situation or the issue, as well as the importance of residents obtaining expert, independent advice.

Residents repeatedly noted that some problems arose because they had not appreciated the meaning and implications of their contracts. In that context, consistent themes in the focus groups were around the:

- Lack of transparency and specificity around the services, fee structure and scope, and exit fees and payments.
- Being overloaded with documentation which was sometimes confusing, repetitive but lacking in detail and tending to be abstract.
- Lack of definition of some key terms such as fixtures and fittings, and chattels.
- Poor consultation processes and lack of timely access to proposals and plans around future developments, financial management, ownership and organisational structure, and maintenance.
- Lack of effective complaints processes and ways to resolve complaints.
- Inappropriate dispute resolution processes.

Because of the two Christchurch earthquakes (one of which occurred during the time of the monitoring project), there was heightened anxiety among participants about the interpretation of their own occupation right agreements in the event of a natural disaster. There was

particular concern about insurance arrangements, what would happen about security of accommodation and how payouts to residents would be assessed. These concerns illustrate the lack of clarity around many of the aspects raised by participants concerning their occupation right agreements, as well as inadequate communication and consultation with residents. There was concern that conditions and agreements would be re-defined to benefit the operator, rather than the affected resident. In particular, participants considered that the Act's protections are not strong enough to work for residents in emergency events. Residents whose homes have been rendered unliveable by an earthquake have not 'exited' but have been forced to leave by circumstance beyond their control.

Focus group participants made a wide range of suggestions for improving the efficacy of the Act, which broadly fell into the following areas:

- Provide residents with easily understood information about the Act and its protections in summary form and in large font. Summaries should be 'test driven' by retired people to ensure they are easily understood. Summaries are required for:
  - The Act and the main protections as specified in the Act.
  - The Code of Practice.
  - The occupation right agreement.
  - The Disclosure Statement.
  - What is a licence to occupy.
  - A checklist for intending residents to make sure they cover all the things they should ask about.
  
- Reduce the financial burden on residents by:
  - Ceasing service fees on termination of contract.
  - Capping service fees.
  - Clarifying the relative responsibilities of residents and the operator for charges.
  - Reducing compliance costs, which are inevitably passed on to residents.
  
- Clarify and make independent the Statutory Supervisor's role.
- Overhaul and improve the disputes process.
- Establish mechanisms for resident influence, representation and decision-making e.g. national residents' body.
- Rationalise administration of the Act. Many participants want to see a 'one stop shop' established.
- Establish a residents' advocate role.
- Review the Act as soon as possible, with appropriate input from residents.
- Establish a mechanism for regular auditing of operators' compliance with Act, the Code of Practice and the Code of Residents' Rights.

## Section 12: What Leads To Ineffective Protection?

Analysis of what residents see as the areas in which protections have failed suggests that there are three factors compromising residents' confidence and comfort. They are:

- Problems with the protections set out in the Act itself.
- Poor implementation of the Act.
- Lack of adequate support for people making decisions about whether to enter retirement villages and residents already living in retirement villages.

Problems with the protections set out in the Act are primarily around:

- The role of the Statutory Supervisor and the processes set out for the commissioning and specification of the Statutory Supervisor's services. Across the focus groups considerable dissatisfaction was expressed about the Statutory Supervisor role, especially in regard to the charges, competence, and nature and extent of the service provided. There is also widespread confusion about the role, its scope, powers and responsibilities. Many residents do not regard the Statutory Supervisor as independent from the operator, or as truly working in residents' interests. Consequently they are sceptical about the job that the role can do in protecting residents.
- The requirements around the complaints and disputes procedures. Residents noted a reluctance to make complaints because of fear of repercussions, lack of a clear procedure or lack of understanding about how the complaints process works. In some villages complaints are trivialised and re-defined so they are not regarded as complaints. When complaints are made, there is a lack of response as to the outcome. Participants in some focus groups also identified concerns with the current disputes procedures including:
  - The disputes panel member is appointed from a list of panel members approved by the Retirement Commissioner, by the operator who may be a party to the dispute.
  - The process is too adversarial and confrontational.
  - Residents may not take a dispute because they cannot afford to.
  - The type of dispute that residents can take, as defined in the Act, is too narrow.
- Misalignments between the Act and other legislative provisions related to tenure, in particular residential tenancies legislation and unit title legislation.
- Lack of a clear administrative, audit and regulatory role in relation to retirement villages, which means that the requirements of the Act are not always well implemented and place the onus on residents to resolve issues through the complaints and disputes procedures. Several participants expressed concerns about the range of agencies with responsibilities for administering the Act, which results in confusion for residents and inhibits their ability to seek information, effectively have their say and make complaints.

Problems around the implementation of the Act relate to:

- Failure to implement key requirements in the Act including maintenance plans, provision of information, consultation processes and village complaints processes. A common theme throughout the focus groups is poor communications and consultation practices of

village operators and management. It is widely considered that operators do not consult on matters that they are required to consult about under the Act. Residents identified poor provision of information about the management of the village, the services and facilities provided, and the charges they are expected to pay. This ranged from confusion about what their service fees include, to queries about planned maintenance, to lack of information about proposed changes in staffing. Many residents feel disempowered.

- Lack of detail and specificity in key documents, which are loaded with confusing repetition. In general, residents do not find the main documents that set out residents' rights and protections easy to understand. There is confusion about the differences between the Code of Practice, the Code of Residents' Rights, the Disclosure Statement and individual occupation rights agreement. When residents need information, they do not know which document to consult.

Overall, the documents that are designed to protect residents are:

- Lengthy, and without a supporting précis or quick guide.
- Difficult to understand, particularly for residents who are not used to legal and policy terminology.
- Sometimes vague or ambiguous in how requirements are to be implemented.
- Repetitive and overlapping in the material they cover.
- There is no clear hierarchy of documents or guidance as to which documents, if any, take precedence, and in what situation.
- There is no clear guidance to residents on how and where the documents should be consistent.
- There is no clear guidance on what is required or mandatory of operators and residents, as distinct from what is desirable or optional.

Currently there is no simple, easily available summary of the Act that clearly sets out the protections that residents can expect. Furthermore, there is strong reliance on residents accessing information through the internet when the older age group is the least likely to be computer literate, or to have access to the internet.

Finally, it is clear that residents need assistance around making decisions to enter a retirement village and after doing so managing issues that arise for them in the context of their contracts. Legal and financial advice frequently is too narrow in scope and often does not provide intending residents with a practical appreciation of the myriad of implications that might arise.

The Act relies on consumer knowledge and access to information in order that consumers can exercise their rights. However, during focus group discussions, it became clear that, in general, residents lack knowledge and understanding about many aspects of the Act and its protections. Participants asked questions about a wide range of matters that demonstrated their lack of understanding of the protections available to residents, including:

- The agencies that administer the Act, and what their roles and responsibilities are.
- The definition of a retirement village.
- Whether there is an agency with the authority to audit retirement villages.
- Whether the Act covers unit titles and all types of ownership structures.

- Whether operators are required to only offer a licence to occupy title.
- Whether a village must have a residents committee.
- Whether residents in un-registered villages are protected by the Act.
- What a memorial on the land title is.
- Whether villages can be bought and sold.

Even information on these issues is not enough in itself. Focus group participants felt that they need experienced people that they could talk to about their particular circumstances to assist them to make decisions and address issues that might arise for them personally. Currently, many feel that they have to go to lawyers or financial advisers for that support. They either do not do so because of cost or because they feel that the issues may not be best dealt with, in the first instance, through a legalistic approach. There are, however, no clear mechanisms for them through which they can get this type of personalised support for decision-making.

## Section 13: Improving Residents Ability to Safeguard Their Futures

The residents participating in the focus groups consistently say that they have come to retirement villages to ensure that their future is secured. There is considerable variation in the degree of satisfaction expressed by residents in the focus groups about their particular retirement village. Even those most satisfied with their village, nevertheless, expressed some anxiety that the future may not be as certain or secured as they had hoped. Most participants commented that making a decision to live in a retirement village was the right decision, but they do worry about the future of their village and their situation in it. For many this is exacerbated by a sense of disappointed expectations to a greater or lesser degree.

Although this research has not been evaluative in nature, it does suggest that residents' ability to safeguard their future within retirement villages and the effectiveness of the Act's protections could be improved.

There may be some merit in reviewing and reforming the legislation around retirement villages. We have already noted some aspects of the current legislation that appear to be fundamentally problematic. However, in most cases there is nothing to prevent the industry from developing with residents best practices that will address some of those problems as well as address the deficiencies around consumer support and implementation of statutory requirements.

We would recommend that attention is given to the following priorities:

- Promulgating templates for the key documents that:
- Rationalise the content in each relative to the others.
- Provide examples of the level of specificity required in relation to various terms and conditions.
- Developing and implementing guidelines for consultation for both operators and residents.
- Retirement villages being independently rated and being required to make public their rating on financial, service, amenity and procedural performance.
- Rationalising the scope of the Statutory Supervisor role and amending the appointment and commissioning of those services.
- Establishing a service to provide independent advice accessible to residents and counselling for people entering retirement villages including information about accessing community-based legal services and legal aid.
- Developing with residents an industry standard and best practice for complaints, mediation and disputes procedures which includes:
  - Make recording all complaints compulsory.
  - Instituting a formal mediation based approach to dispute resolution prior to the activation of the current disputes procedures.
- Reviewing the interface between the Act and other tenure legislation to provide guidance on the conditions pertaining to tenants and those in unit title tenures.

## Bibliography

AC Neilsen, 2006, *Retirement Villages Survey 2006*, Wellington, Retirement Commission.

Age Concern New Zealand and Grey Power New Zealand Federation, 2009, *Submission to the Department of Building and Housing on "What do you think should be included in a Retirement Villages Disclosure Statement"*, Discussion paper, Wellington, Department of Building and Housing.

Cabinet Office, 2009, *Securities Trustees and Statutory Supervisors Bill: Approval for Introduction 16 December 2009* <http://www.med.govt.nz/upload/71035/cabinet-paper.pdf>

Collyns, J., 2010, *Letter to the Review of the Financial Reporting Framework*, Wellington, Ministry of Economic Development.  
<http://www.med.govt.nz/upload/71380/092-Retirement-Village-Association-of-NZ.pdf>

Collyns, J., 2009, *Implementing a Practical Code of Practice for Retirement Villages*, Paper for the International Association of Homes and Services for the Ageing 8th International Conference, London, 19-22 July 2009.

Craig, M., 2007, *Dispute Resolution and the Retirement Villages Act 2003: A fair and independent process?* Thesis submitted in fulfilment of the requirements for the Degree of Master of Laws, Hamilton, University of Waikato.

Department of Building and Housing, 2007, *Retirement Villages Disclosure Statement*, Wellington, Department of Building and Housing [www.dbh.govt.nz](http://www.dbh.govt.nz)

Department of Building and Housing, 2008, *Retirement Villages Code of Practice 2008*, Wellington, Department of Building and Housing [www.dbh.govt.nz](http://www.dbh.govt.nz)

Department of Building and Housing, 2010a, *Summary of Submissions to the Consultation on "What do you think should be included in a Retirement Village Disclosure Statement?"* Wellington, Department of Building and Housing [www.dbh.govt.nz](http://www.dbh.govt.nz)

Department of Building and Housing, 2010b, *Thinking of Living in a Retirement Village?* Wellington, Department of Building and Housing [www.dbh.govt.nz](http://www.dbh.govt.nz)

Grant, B., 2006, "Retirement Villages: An alternative form of housing on an ageing landscape" *Social Policy Journal of New Zealand*, 27(March): 100-113.

Greenbrook, S., 2005, *Village People: The changing role of retirement villages in New Zealand's ageing society*. Thesis submitted in fulfilment of the requirements for the Degree of Master of Arts in Geography, Auckland, University of Auckland

Jones, P., and Melrose, H., 1997, *New Zealand Law Society Seminar: Retirement Villages April-May 1997*, Wellington, New Zealand Law Society.

- Law Commission, 1999, *Retirement Villages Report 57* Wellington, Law Commission.
- Lazonby, A., 2007, *The Changing Face of the Aged Care Sector in New Zealand* RPRC Working Paper 2007-1 Auckland, Retirement Policy and Research, Centre Economics Department, University of Auckland.
- Leonard, L., 2003, *Village as home: Why Retirement Villages are a Housing Choice for Older People*. Paper presented at Emerging Researchers: Symposium for Postgraduate Students, SPEaR/NziRA Oct 2003.
- Leonard, L., 2002, *Retirement Villages: Promises of a Lifestyle*. Masters Thesis, Sociology, Christchurch, University of Canterbury.
- Mansvelt, J., 2003, "A Choice for Life? Decision to Enter Retirement Villages in New Zealand", *Proceedings of the 22nd New Zealand Geographical Society Conference*, New Zealand Geographical Society, The University of Auckland, Auckland, 219-223.
- Mansvelt, J., 2002, "Rest or Relaxation? Retirement Village Living in New Zealand" *Proceedings of the Third Joint Conference of the New Zealand Geographical Society Conference and the Institute of Australian Geographers*, New Zealand Geographical Society, University of Otago, Dunedin, 327-334.
- Retirement Commission, 2010a, *Monitoring Project on the Operators of Retirement Villages* Report prepared for the Retirement Commission.
- Retirement Commission, 2010b, *Monitoring Project on the Operators of Retirement Villages: Appendix 1 Survey Results* Report prepared for the Retirement Commission.
- Reid, M., 2008, *Supported Independent Accommodation for Older New Zealanders: A Review of Current Policy and Innovative Practice*. Thesis submitted in fulfilment of the requirements for the Degree of Master of Arts in Social Policy, Wellington, Victoria University of Wellington.
- Retirement Commission, 2009, *Statutory Supervisors Monitoring Report*, Wellington, Retirement Commission.
- Retirement Commission, 2007, *Guide to the Retirement Villages Act 2003*, Wellington, Retirement Commission.
- Retirement Villages Act 2003
- Retirement Villages Association, 2009, *Submission to the Social Services Select Committee Unit Titles Bill* [http://www.parliament.nz/NR/rdonlyres/B5D846F1-DB21-49B5-BB60-4FA3414487A8/131087/49SCSS\\_EVI\\_00DBHOH\\_BILL8600\\_1\\_A30194\\_RetirementVil.pdf](http://www.parliament.nz/NR/rdonlyres/B5D846F1-DB21-49B5-BB60-4FA3414487A8/131087/49SCSS_EVI_00DBHOH_BILL8600_1_A30194_RetirementVil.pdf)
- Saville-Smith, K., 1993, "The State and the Social Construction of Ageing" pp. 76-94 in P. Koopman-Boyden (ed.) *New Zealand's Ageing Society The Implications* Wellington, Daphne Brasell Associates Press.

Simpson, M., 2007, *Organisational Transformations in the New Zealand Retirement Village Sector: A Critical-Rhetorical and -Discursive Analysis of Promotion, Community, and Resident Participation* Thesis submitted in fulfilment of the requirements for the Degree of Doctor of Philosophy, Hamilton, University of Waikato.

Simpson, M. and Cheney, G., 2007, "Marketization, participation and communication with New Zealand retirement villages: a critical-rhetorical and discursive analysis" *Discourse & Communication* 1(2):191-222.

The Treasury, Dec 2009, *Regulatory Impact Statement for the inclusion of retirement village statutory supervisors* <http://www.med.govt.nz/upload/71032/retirement-village-ris.pdf>

Thorns, D., 1993, "Tenure and Wealth Accumulation: Implications for Housing Policy" pp. 97-121 in P. Koopman-Boyden (ed.) *New Zealand's Ageing Society The Implications* Wellington, Daphne Brasell Associates Press.

# Annex A: Residents Focus Group Questions

## ***Awareness of the Retirement Villages Act and regulations***

1. Overall, how would you describe your level of awareness about the RV Act?
2. How familiar are you with the Act?
3. How necessary do you think the Act is for residents?
4. Do you think the Act is helpful to residents? (why or why not?)
5. Where would you go / who would you ask if you wanted information about the Act?
6. What would help residents to know more about the Act?

## ***Some questions about your experience as an intending resident***

7. When you were thinking of moving to a village, what sort of information did you seek?
8. What did you think about the advertising material – was it accurate? Informative?
9. What information was provided by the operator? Were you satisfied with the information provided? (why or why not?)
10. With regard to legal advice:
  - Do you think the advice you got was clear?
  - What was, and wasn't clear?
  - Were you satisfied with that advice (why or why not?)
11. What do you think about the 'cooling off period'?

## ***Seeking information***

12. Since you have been a resident, have you looked for information about your rights or obligations, or have you had questions about your situation?
13. When you have asked questions, do you feel that you have received useful, credible information (explore why or why not).

## ***Code of Practice***

14. Have you heard of the Code of Practice 2008?
15. What do you think the Code of Practice is for? What does the Code do for residents?

### ***Code of Residents Rights***

16. Have you heard of the Code of Residents Rights?

17. What do you think the Code of Residents Rights is for? What does the Code do for residents?

### ***Occupation right agreement***

18. When you took up your ORA, how clear were you about:

- The type of legal title you have to your villa/unit?
- Fees and charges that you pay?
- Village rules or any restrictions on residents?
- What would happen to you if your village is sold or goes into liquidation?
- Exit costs for residents?
- Exit payments to residents?

19. Did you get independent legal advice before signing the agreement to live in your villa/unit?

- Do you think the advice you got was clear on all those matters?
- What was, and wasn't clear?

### ***The disclosure statement***

20. Have you seen the village disclosure statement?

21. How clear or comprehensive is the village disclosure statement?

- What is missing?
- What is not clear?
- Are the services and facilities offered clearly stated in the disclosure statement?
- Does the disclosure statement give financial information about entry fees, ongoing fees and exit fees?

### ***Operators' processes for keeping residents informed and consulting with them***

22. How does the operator keep residents informed?

23. How does the operator consult with residents?

24. What does the operator consult residents about?

25. Is there a residents' committee or association? What does it do?

***Complaints and disputes***

26. Is there information for residents about complaints procedures?

- Is that information clear?

27. Do those procedures get implemented when a complaint is made?

***The Statutory Supervisor***

28. What are your views about the role of the Statutory Supervisor?

29. What sort of contact do residents have with the Statutory Supervisor for your village?

30. How easy is it to find out about the Statutory Supervisor?