Retirement Villages Act 2003 Review

November 2023

New Zealand Council Of Christian Social Services

Tirohanga Whānui | Overview

The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on the Retirement Villages Act 2003. We support the kaupapa to update this legislation to give better protections, more clarity and surety to residents. We consider kaumātua to be taonga, and we tautoko this concern for their wellbeing and housing safety. The uncertainty around Retirement Villages and occupational rights agreements (ORAs) needs to be clarified to keep our older people safe.

Kaupapa | Purpose

We strongly recommend that the Te Tūāpapa Kura Kāinga pay particular attention to the following areas:

1. Retirement Village residents represent a small percentage of our older people
2. Update the definition of a Retirement Village to cater to a more diverse group of older people
3. Create clarity regarding the overlap between Retirement Villages and Aged Residential Care
4. Ensure that all residents have access to culturally appropriate services
5. Plain language and accessible formatting should be used throughout all documentation
6. Ensure that ORAs do not provide residents with less rights than tenants receive under the RTA
7. Ensure that Retirement Village operators are required to meet Healthy Homes standards of housing at a minimum
8. Ensure that any changes are applied to all existing ORAs
9. Create a minimum percentage of affordable rental units in all new build villages for those who cannot afford an ORA
10. Clarify and simplify the dispute resolution scheme under the leadership of the Retirement Commissioner
11. Ensure the timely repayment of capital sums upon leaving the residence

Our answers to selected questions from the consultation document follow these points.

Horopaki | Context

1. Retirement Villages residents represent a small percentage of older people
Data from 2020 indicated that almost 14% of those aged over 75 live in Retirement Villages. This number of residents has risen to just over 50,000 at the end of 2022. This is a significant group to take into consideration, and we applaud this work to ensure that they are being protected. However, we need to ensure that the remaining estimated 330,000 people in our country aged over 75 are also considered when discussing housing needs for this age group.

We express concern that Retirement Villages are the only context of understanding for housing issues for older people. When asked directly regarding their policies and plans for older peoples' housing in our election coverage[1], all political parties only responded with their thoughts on this consultation.

We express concern that this consultation will signal the end of the interest that government and Te Tūāpapa Kura Kāinga has in older person's housing without assessing or addressing the needs of the vast majority of those in this cohort.

Recommendation 1: We suggest ensuring that this review is followed by a comprehensive assessment of the state of older person's housing and housing support across the country, including availability, suitability, and affordability.

2. Update the definition of a Retirement Village to cater to a more diverse group of older people
Requiring residents pay a capital sum for accommodation as a key part of the definition of a Retirement Village (RVA 2003, section 6(1)). This excludes a large section of the over-75 population. Predictions suggest that over half of all over 65s will be renters within the next 20 years, most of whom will not have access to capital to meet the requirements to enter a Retirement Village. Where the current Act goes on to state that residential tenancy is a valid form of right of occupation in a Retirement Village (Section 6(1)(a)), this should also mean that the normal rental arrangements should allow tenancy in a Retirement Village. This would not include a capital sum.

Retirement Villages are communities of accommodation and services designed to meet the needs of people in older age. Refocusing the definition to the purpose of the village as opposed to the asset- and capital-based requirements allows the residents to be united in their age and stage, as opposed to divided by their asset base. While this may make the sector less appealing as an investment opportunity, it will ensure that the original intention of the Retirement Village – a community of older people where their needs are prioritised and catered for – is once again a priority.

Recommendation 2: We suggest updating the definition of Retirement Village to remove the requirement for capital sum payment for entry.

[1] NZCCSS Older People Q&A, https://nzccss.org.nz/election-2023/older-people-qa/

3. Create clarity regarding the overlap between Retirement Villages and Aged Residential Care
When selecting a Retirement Village, many people choose one based on the inclusion of an Aged Residential Care (ARC) facility in the complex. The promise of continuity of care is a strong selling point, but it is not guaranteed due to bed numbers and availability. In some cases, a mixed ORA/ARC model allows for residents to remain near their spouse or family, but this is an extraordinary cost to the individual through the purchase or transfer of their ORA. This option creates an expectation that it will be available when a resident comes to need it, but again this may not always be available due to occupancy.

In addition, some providers only have "premium" rooms available in their ARC facility, resulting in significant ongoing costs to the individual resident. While the mixed model of provision may result in individuals being covered and protected by both the Retirement Villages Act and legislation around Aged Residential Care facilities, we have found that this 'murky middle' is confusing and ambiguous to understand in terms of cost, entitlement, resident rights, and service provision.

Clarity around the number of beds, turnover, availability expectation, and other factors regarding the associated ARC or mixed model "care suites" must be made available to residents when they enter a village so they can make choices with the best information on hand.

Recommendation 3: We strongly advise that the overlap between the two forms of accommodation is clarified to remove all ambiguity, and that it has attention paid to it in the dispute resolution scheme.

4. Ensure that all residents have access to culturally appropriate services
Every resident in a village deserves the respect of having services that are culturally responsive and appropriate. Forming community connections with cultural groups should be a priority for all Retirement Villages to ensure reciprocal understanding and support of residents and members. Villages have an obligation to ensure that they are prepared to meet the cultural needs of anyone who seeks to live within them and must prepare frameworks for this provision. Services within this framework need to include specific reference to Te Tiriti o Waitangi, to ensure that Māori residents are provided with access to tikanga responsive services.

Recommendation 4: We suggest legislated requirements for culturally appropriate and responsive services in all Retirement Villages.

5. Plain language and accessible formatting should be used throughout all documentation
When designing any document, plain language is important to ensure that it can be effectively used by those who will read and use them. When the main users of this documentation are those over the age of 75 (the normal age of Retirement Village entry) this becomes even more important.

Documents should not only be checked for plain language, but for accessibility including font choice and size, and colours. Any document that will be seen by the resident should meet accessibility guidelines, including the ORA itself and other documents such as the Code of Conduct and the Village Information. For an example accessibility guideline, we recommend "Accessibility Guide: Leading the way in accessible information", published by the Ministry of Social Development in 2019[2].

Recommendation 5: We suggest requirements for plain language and accessible formatting for all documents relating to Retirement Villages.

6. Ensure that ORAs do not provide residents with less rights than tenants receive under the RTA
There is very little difference between a "resident" in a Retirement Village and a "tenant" in a tenancy agreement other than one is governed by the Retirement Villages Act and the other is governed by the Residential Tenancies Act (RTA). Both do not own the property they live in. Both have a contractual agreement with the owner of the property to live there. Both groups pay regular fees to live in the property, and do not benefit from the sale of the property. The fact that these two groups have been separated by legislative governance means that as the RTA has improved, the RVA has been left behind. The Residential Tenancies Act has been improved to ensure that the tenant, the one with less power in the relationship, is better supported by the law. This process of regular review should also apply to the Retirement Villages Act. The protections for the residents under the RVA should be at least as good as tenants have under the RTA.

Recommendation 6: We suggest modelling the protections for residents on the protections for tenants under the Residential Tenancies Act and Residential Tenancies Amendment Act 2020.

7. Ensure that Retirement Village operators are required to meet Healthy Homes standards of housing at a minimum
Similar to point 5, the housing standards of those in Retirement Villages should at least meet those of the RTA. There is no excuse for Retirement Village units, for which residents are paying large sums of money to live in, to not at a minimum meet Healthy Homes standards[3]. Older people rely heavily on the health of their home to keep themselves safe and healthy. Having these Healthy Homes standards as a minimum in Retirement Villages is an effective preventative health measure.

Recommendation 7: We suggest requiring Retirement Village accommodation to meet Healthy Homes Standards.

[2] https://msd.govt.nz/about-msd-and-our-work/work-programmes/accessibility/accessibility-guide/index.html
[3] Healthy Homes Standards, Tenancy Services. https://www.tenancy.govt.nz/assets/Uploads/files/healthy-homes-standards-key-facts.pdf

8. Ensure that any changes are applied to all existing ORAs

There is no reason that any changes to this Act should not apply to those already living in a Retirement Village. All members of the Retirement Village community should have the same rights and protections.

Recommendation 8: We suggest applying any changes to all existing ORAs.

9. Create a minimum percentage of affordable rental units in new build villages for those who cannot afford an ORA

If rental units are considered a valid form of Retirement Village accommodation, then there needs to a requirement for them to be present. There is currently no incentive or requirement for providers to have rental accommodation within their village. To this end, any further development of Retirement Villages should include a minimum percentage of dedicated retirement-appropriate rental accommodation.

Home ownership is decreasing across all ages, and estimates suggest that by 2053 almost half of all those over 65 will be renters[4]. As the sale of a home is normally the way someone raises the capital required to purchase an ORA, this pool of paid-up residents is declining. At the same time, the group of those requiring age-appropriate rental accommodation is set to skyrocket.

There needs to be an additional requirement for these rentals to be affordable. While metrics for affordability, such as rent control, are not in play across the wider housing sector, we do use an equivalence in community housing, where Income Related Rent (IRR) is employed to keep rents affordable[5]. For a couple, both eligible for Superannuation as their sole income, on an M tax code, they would receive $763.64 a week. Using the 25% metric from IRR, this would cap these affordable retirement rentals at $190.91 per week in rent. As a comparison, the average weekly rental rate across all 1- and 2-bedroom properties out in the community across the country is currently $484.22, which is 55% of the superannuation income for a couple[6]. Superannuation is not designed to sustain ongoing accommodation payments such as rent, and as a result affordability parameters on housing for older people must be enforced. This also links back to Recommendation One.

Recommendation 9: We suggest a minimum percentage of new build Retirement Village accommodation to be available as affordable rentals.

[4] Jackson, N., & James, B. (2016) Home Ownership, Renting and Residence in a Home Owned by a Family Trust for the Western Bay of Plenty and Total New Zealand, by birth cohort, for the period 1986-2013. https://renting.goodhomes.co.nz/wp-content/uploads/2017/06/wbop-cohort-report-final2.pdf

[5] Calculating your rent payments, Work and Income. https://www.workandincome.govt.nz/housing/live-in-home/live-in-public-housing/calculating-rent-payments.html

[6] Rental Bond Data - https://www.tenancy.govt.nz/about-tenancy-services/data-and-statistics/rental-bond-data/

10. Clarify and simplify the dispute resolution scheme under the leadership of the Retirement Commissioner

Residents and Providers have an unequal power distribution in their relationship, and as such any dispute resolution between the two should involve an independent third party. We strongly support the centralisation of this oversight and regulation with the Retirement Commissioner. The Commissioner is already a well-known figure for older people, and it is a logical assignment of responsibility.

Recommendation 10: We support an independent dispute resolution scheme that is overseen by the Office of the Retirement Commissioner.

11. Ensure the timely repayment of capital sums upon leaving the residence

Residents who seek to leave Retirement Villages are often hamstrung by the significant delay in the return of their capital sum. Residents are held in limbo while waiting for an indefinite amount of time to receive their capital sum.. If they were selling their home, they could expect to remain in residence at their home while the sale was being conducted, would receive a deposit with which to make other housing arrangements with when the sale was confirmed, and then receive the balance when they vacated on settlement day. In a Retirement Village, the indeterminate countdown to the return of their funds does not even begin until they have fully vacated the residence. Additionally, with no guaranteed return date, it is difficult to make interim choices – family may provide space for a short intermediate period, but indefinite periods are hard to negotiate around.

In addition, residents who need to move to higher levels of care – either at a facility in the same village or a different one – are highly likely to need access to that capital in order to pay for their bed. Most Retirement Village residents will not pass the Work and Income Asset and Income test, resulting in a weekly bill for their Aged Residential Care of anywhere between $1355.76 - $1464.26 per Standard bed[7], and more per day for any Premium charges. While this consultation document states that residents may be eligible for the Residential Care Loan to assist with these costs (Point 178, Footnote 39), Work and Income states that you may be able to get this assistance “if you still own the home you lived in before going in to residential care”, which will eliminate the majority of Retirement Village residents as they will likely have sold their homes to purchase their ORA[8].

Giving residents a specifically stipulated period of time in which their capital will be returned gives them more options and surety in choice.

Recommendation 11: We suggest stipulating that all capital sums are returned to the resident or the estate of the resident within six months of the full vacancy of the residence.

Recommendation 12: We also suggest working with Work and Income to ensure that the Residential Care Loan is available to prior residents of Retirement Villages for this same period while they wait for their capital to be returned.

[7] Maximum Contribution Applying in Each Territorial Local Authority Region from 1 July 2023, New Zealand Gazette. Notice Number – 2023-go2824. https://gazette.govt.nz/notice/id/2023-go2824

[8] Residential Care Loan, Work and Income. https://www.workandincome.govt.nz/products/a-z-benefits/residential-care-loan.html

Tūtohutanga | Recommendations

Recommendation 1: Ensure that this review is followed by a comprehensive assessment of the state of older person's housing and housing support.

Recommendation 2: Update the definition of Retirement Village to remove the requirement for capital sum payment for entry.

Recommendation 3: Unambiguously clarify the cross over between the two forms of accommodation and ensure that it has attention paid to it in the dispute resolution scheme.

Recommendation 4: Require culturally appropriate and responsive services in all Retirement Villages.

Recommendation 5: Require plain language and accessible formatting for all documents relating to Retirement Villages.

Recommendation 6: Model the protections for residents on the protections for tenants under the Residential Tenancies Act and Residential Tenancies Amendment Act 2020.

Recommendation 7: Require Retirement Village accommodation to meet Healthy Homes Standards.

Recommendation 8: Apply any changes to all existing ORAs.

Recommendation 9: Mandate a minimum percentage of new build Retirement Village accommodation to be available as affordable rentals.

Recommendation 10: We support an independent dispute resolution scheme that is overseen by the Office of the Retirement Commissioner.

Recommendation 11: Require that all capital sums are returned to the resident or the estate of the resident within six months of the full vacancy of the residence.

Recommendation 12: Work with Work and Income to ensure that any set period that capital sums must be returned to residents within also is a period of eligibility for Residential Care Loans.

He Whakautu | Answers to specific questions from the consultation document

Q4 - Option two, the shorter Disclosure statement, provided it meets plain language and accessibility standards, to ensure it is as understandable as possible for residents

Q8 - Option two, to standardise both the format and some of the terms, in order to ensure that those who assist with these documents have a consistent understanding of what terms mean, and it is easier for residents to compare different options

Q9 – full standardisation of column 1 and 2, for the above reasons

Q15-20, 22-27, 35, & 61 – yes, to ensure that residents have as much protection under the RVA as tenants do under the RTA

Ko wai tātou | Who we are

NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.

Through this membership, NZCCSS represents over 230 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website www.nzccss.org.nz.

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