



Department of
Building and Housing
Te Tari Kaupapa Whare

Summary of submissions on the proposed Retirement Villages Code of Practice 2008



Introduction

This report contains the Department of Building and Housing's summary of submissions analysis and recommendations following the public consultation on the proposed Retirement Villages Code of Practice 2008.

The list of submitters is also attached.

Background

The Minister for Building and Construction prepared a Retirement Villages Code of Practice under section 89(4) of the Retirement Villages Act 2003. This proposed Code of Practice 2008 built on the Retirement Villages Code of Practice 2006 that was declared invalid by the High Court in December 2007.

Consultation process

The Department of Building and Housing ran the consultation on the proposed Code of Practice. The Department worked with the Office of the Retirement Commissioner to promote the consultation.

Promotion

This promotion included an announcement in the *New Zealand Gazette* and public announcements in the *New Zealand Herald*, the *Dominion Post*, *The Press* and the *Otago Daily Times* requesting written submissions during the nine-week consultation period from 16 June to 15 August 2008.

Hard copies

The Department supplied three copies of the proposed Code to each of the 320 known village operators and requested that they make two copies available to their residents. In total 967 copies of the Code were sent to villages in the initial mailing.

As well as the proposed Code, the Department sent, with each pack, consultation guidance and a copy of the regulatory impact statement prepared in May 2008 that had been presented to Ministers.

We sent 123 copies of the Code to the Healthcare Providers New Zealand, the Retirement Villages Association of New Zealand Inc, Trustees Corporation Association, Citizens Advice Bureaux, Age Concern New Zealand, Community Law Centres, the New Zealand Law Society, Grey Power, the Retirement Commissioner, Insurance Council of New Zealand, Institute of Legal Executives, Retirement Villages Disputes Panel members, Royal New Zealand Returned Services Association, retirement village developers, and the regional offices of the Department of Building and Housing.

We distributed 607 copies following public enquiries made via the Department's 0800 number.

Additional promotion

We also produced a poster advertising the consultation. The poster was sent to all known retirement villages, the above organisations, and every main library in the country.

Articles were placed in *Older and Bolder*, New Zealand's only newspaper aimed at the over 50s and available free in Christchurch, Wellington, and Auckland. A news brief appeared in *RSA Review* in August. *Ryman Times* published an article as did *Good Life*, and *Grown Ups* and *Elder Net* (two web-based publications).

We also sent a media release to all community newspapers in New Zealand.

All of the consultation material was placed on the Department's website and 1615 hits were received between 16 June 2008 and 15 August 2008.

Submissions received

Overview

The Department has considered carefully all submissions made on the proposed Code. The Retirement Commissioner must, under the Act, also provide the Minister for Building and Construction with an analysis of the submissions. The Department worked with the Office for the Retirement Commissioner before and during the consultation period. Part of the working together was to share any submissions received. The Retirement Commissioner will report separately on her analysis.

We received 299 submissions from residents, residents' committees, retirement village operators, the industry association, statutory supervisors, lawyers, and groups representing older peoples' interests. Of these submissions 183 were 'form letters':

- 47 residents from a retirement village in Tauranga
- 48 residents from a retirement village in Mt Maunganui
- 8 similar submissions were received from the Kapiti Coast, either from residents or Grey Power members
- 80 members of the Retirement Villages Association made very similar submissions (this number includes each major commercial operator making individual village submissions).

The submissions varied from commenting on the Code as a whole to focusing on specific clauses of the Code.

There is great variation in what the submitters consider to be the focus of the Code. Many submissions compared the contents of the invalid Code of Practice 2006 to the proposed Code of Practice 2008. Many existing residents in retirement villages wish to see some of the wording from the invalid Code of Practice 2006 reinstated. Other submitters welcomed the improvements to the wording and clarity that the Code of Practice 2008 provides. Some residents felt that the government had moved away from the consumer protection basis that the Act and Code should provide.

Some of the requests for change from submitters go beyond the scope of the Code of Practice and would require legislative change. The Department has retained these comments on file and will refer to them in any future review of the Act.

Views of key stakeholders

The majority of resident responses concentrated on clauses where they felt that the proposed changes are financially detrimental to them individually. Other responses from residents commended the Department on the Code and discussed issues of clarity.

In the main, operators were favourable in their responses. They welcomed the proposed Code and counselled against making any major policy changes at this stage. Most operators accepted the policy of limiting the application of a key clause on refurbishment to contracts entered into after 25 September 2006.

Residents

The majority of submissions from individual residents focused on clauses that have a financial impact on them. These clauses relate to refurbishment of the residential unit on termination of the occupation right agreement (the contract) and how operators calculate fixed deductions as part of the financial settlement. In the main, these submissions rejected the two proposed clauses in the Code of Practice 2008, requesting that the wording from the invalid Code of Practice 2006 be reinstated.

Other residents focused on staffing levels and the quality of care provided in retirement villages. This was not surprising as during the consultation period, there was much media attention on the level of care provided in rest homes, which may have coloured submitters' views.

Residents were concerned that the consumer protections 'promised' to them by the Act were taking a long time to implement. A very small number of respondents laid equal blame for this state of affairs with the Department and the operators. They were also concerned at a perceived increase in the role of the statutory supervisor within the Code. A number of submissions expressed concern and disappointment that the statutory supervisors did not appear to be neutral in the running of the village, and commented that when problems arose or criticisms were made the statutory supervisor sided with the operators.

Many of the residents' committees and associations discussed the financial clauses, but also reviewed the whole Code of Practice, with mixed opinions.

Some committees were pleased to see an overall improvement in the Code, feeling that the Minister had struck the right balance between the needs of residents and operators. Other committees rejected the Code, stating that it still favours operators and has failed to address the very real need for consumer protections.

Views of submitters who are residents of the large commercial villages and residents in smaller or religious, welfare, and charitable villages varied. In the main, residents in commercial villages rejected the Code while residents in the religious, welfare, and charitable villages supported it. The concern of residents living in religious, welfare and charitable villages was that the Code could have a negative effect on the strong relationship that they had with their operators. Where they raised financial concerns, the issues related to the amount of policies and procedures that their operators were now required to produce and whether it was necessary to provide so much material to intending residents (as the existing residents were likely to pay for these costs).

Almost all submissions from residents objected to the proposed requirement that residents be provided with a monthly invoice for village outgoings.

Some residents wished to see this Code of Practice treated as the 'second' Code so that it could come into force immediately, rather than the required 12 months after its publication date (if the Minister approves the Code).

Operators

In the main the operators welcomed the proposed Code of Practice. Again, views were split between operators running commercial villages and operators running religious, welfare, and charitable villages for the same reasons as residents - namely, the costs of producing required paperwork and how or whether these costs were passed on to their residents.

Although there was less opposition towards the proposed refurbishment clause, not all operators agreed with the date limiting which residents' contracts could be over-ridden by the proposed Code. Other operators requested that the same date limit also be applied to the fixed deductions clause.

However, in the main operators were generally pleased that the Code of Practice 2008 developed the themes and concepts put forward in the invalid Code. They felt that this was especially useful for their business planning and would allow for a period of stability while the industry fully adapts to the new legislative regime.

Statutory supervisors

One full submission was received and one submission of support for the full submission. The company that made the submission was not pleased to see the reinstatement of the requirement to provide written information to residents. The company believed that in the information age, information could be provided in a wider range of formats.

The company was also disappointed with the refurbishment clause and reported that since the introduction of the invalid Code many of the operators that they worked with had removed the option to allow residents to share any capital gain made when the residential unit was sold. The refurbishment clause as proposed would not entice operators to reinstate the capital gain option and as a result residents would be worse off. The Company also felt that the proposal that statutory supervisors need not be the Chair of annual general meetings and special meetings was in conflict with their role as set out in the Retirement Villages (General) Regulations 2006.

Lawyers

The submissions from lawyers were split between lawyers who represented residents and lawyers who represented operators. Many of the residents' lawyers objected to the refurbishment clause, reporting that the financial impact of the clause on both their existing and future clients was negative. Many lawyers felt that the cost to the resident of refurbishment was disproportionate to the capital repayment that their clients received from operators.

For future residents, the rise in the amount of fixed deduction, alongside the reduction in the amortisation period, also meant that they would lose out.

A number of lawyers also objected to the use of the term 'sell' throughout the Code of Practice arguing that in the majority of villages where residents did not hold the property title, lawyers were unsure what was being bought and sold. These lawyers also objected to their clients being charged marketing and real estate agency fees.

One lawyer acting for operators objected to the date that refurbishment would apply from, preferring to see a later date. This was the major concern about the proposed Code. Many of the other criticisms of the Code were aligned to interpretation and language issues rather than major policy content, with the exception of the fixed deductions clause where they wanted to see a time limit included.

Other government agencies

Only the Ministry of Health made a submission. Their concern related to whether retirement villages really meet the changing needs of an ageing population. Of particular concern was the ability of residents to alter their residential unit on the grounds of disability needs.

The Ministry supports the clause in principle, but is concerned about the requirement by operators that residents should return the unit to its pre-altered state at the end of the occupation right agreement. The Ministry reported that in some cases funding for this refurbishment came from District Health Boards. The Ministry wishes to see the introduction of an option to leave the unit in its altered state. Some residents' submissions support this view..

Other responses

A joint submission from Age Concern New Zealand, Grey Power, and the Returned Services Association felt that the consumer protections proposed in the Code do not go far enough. The

submission also rejected the proposed refurbishment clause, questioning its validity and legality.

The New Zealand Nurses Organisation raised issues about the staffing levels of retirement villages as well as reiterating the concerns raised by the Ministry of Health about disability alterations.

The Lifetime Design Foundation also felt that the disability access in retirement villages was not as high as it could be.

Main themes and issues arising

Compliance costs

Many operators questioned the value of providing all intending residents with a copy of every policy and procedure that the Code of Practice requires. They felt that the amount of paperwork required is much greater than the likelihood of the intending resident (or even their lawyer) reading all of the material. Furthermore, the only way to recoup the cost of supplying all of the information was to pass the cost on to existing residents. Some residents also questioned the worth of supplying so much paperwork to intending residents as they realised that the costs were passed to them.

In the same vein, almost all respondents rejected the requirement that ongoing weekly or monthly fees were accompanied by an invoice. Both operators and residents agreed that this was a wasteful and costly exercise that could lead to some residents paying twice. Residents reported that a monthly invoice was unnecessary because almost all of them paid by some form of automatic bank payment, so their bank statements provided them, if not with an invoice, a confirmation that money had been paid.

All the operators who responded to this clause reported similar issues and were prepared to supply regular invoices if requested by the resident or required under an Enduring Power of Attorney. Furthermore, they confirmed that they would always issue an invoice if a fee amount had changed.

Comment

The Department notes that the requirement of the Act is that the Code of Practice is made available to every resident and intending resident *on request* only.

The Protection of Personal Property Rights Amendment Act 2007 comes into effect on 28 September 2008. Part of the new requirements for holders of an Enduring Power of Attorney is to provide invoices demonstrating that all expenditure made has been for the benefit of the donor (the person for whom they are acting). The Department felt that it was likely that a high number of retirement village residents may appoint an Enduring Power of Attorney, and the monthly invoicing requirement was set in place to support them in this important role.

The overwhelming weight of opinion from submitters, however, is that monthly invoicing is unnecessary and costly to both parties. The Department therefore considers that the monthly invoice requirement should be amended. The circumstances that trigger the requirement for an invoice should, however, be stipulated. These are: for the first payment after a resident has moved in; when any fee or charge changes; and when a resident, support person, or holder of an Enduring Power of Attorney requests one.

We also recommend that once the Code is approved the Department undertakes further work to determine the need or otherwise for exemptions to allow operators more time if necessary to adjust their business models.

Role of statutory supervisor

Residents perceived that the proposed Code extends the role of the statutory supervisor in relation to their involvement in the complaint or disputes process. At the same time, the statutory supervisor's role in chairing annual general and special meetings appears to have been 'withdrawn'.

In relation to the statutory supervisor's role in complaints, some residents welcomed the greater involvement while other residents rejected this completely. The main reason for rejecting the greater involvement is that statutory supervisors are not seen by residents as having a neutral role in the running of a retirement village, with many resident respondents reporting that the statutory supervisor often took the operator's side. Some residents suggested that if the statutory supervisor could be involved in a complaint or dispute notice then there should be a role for residents' committees.

In the main, operators welcomed the greater involvement of statutory supervisors in managing complaints and disputes.

Many operators, lawyers, and the statutory supervisor's submissions referred to regulation 53(1)(e) [of the Retirement Villages (General) Regulations 2006] in relation to the statutory supervisor's role in chairing annual general or special meetings. The Department reviewed regulation 53(1)(e) and regulation 10(1)(b) to determine the role of the statutory supervisor in chairing annual general and special meetings.

Comment

The wording was changed from the invalid Code of Practice 2006 to the proposed Code of Practice 2008 to reflect concerns raised by residents, especially over the perceived 'dual' role that statutory supervisors hold at annual general meetings. Residents expressed disquiet at having the statutory supervisor, who is obligated to report to the annual general meeting about their performance in relation to the village, also chairing the meeting as they could not work out how they could hold the statutory supervisor to account.

The Code provision relates to the requirements of regulation 10 of the Retirement Villages (General) Regulations 2006.

Regulation 10 relates to meetings that the operator is obliged to call, and regulation 53 relates to meetings called by the statutory supervisor. The wording in the proposed Code recognises that the operator is obliged to hold an annual general meeting. We suggest adding in a reference to regulation 10 of the Retirement Villages (General) Regulations 2006 to provide clarity.

We recommend that the person who chairs either an annual general meeting (called by the operator) or a special general meeting (called by either the operator or residents) be chaired by a person appointed by the statutory supervisor or by the majority of the residents who are at the meeting [aligns with regulation 10(1)(b) Retirement Villages (General) Regulations 2006].

If the statutory supervisor calls a meeting under regulation 53(1) then the statutory supervisor may appoint a chair. If a chair is not appointed by the statutory supervisor, then the meeting is chaired by a person appointed by the majority of the residents who are at the meeting.

Refurbishment costs

This was the issue that generated the most response from all submitters. Refurbishment is referred to twice in the proposed Code, first in relation to a resident making alterations for disability needs to their unit, and second in relation to refurbishment when a resident terminates an occupation right agreement.

1 Alterations for disability needs

Residents, some government officials, and some health professionals questioned the logic of requiring residents who had modified their residential units to make it more accessible for disability needs to return the unit to its original condition on termination of the contract. All of these respondents were of the opinion that such modifications 'added value' to the unit, rather than devalued it. Furthermore, in some cases the alterations had been paid for by the District Health Boards and so the clause as it stands can be seen as 'wasting public funds'.

Many of the residents who responded on this issue felt that intending residents should be offered a choice whether to purchase the unit with the changes made left intact or to have the unit returned to its 'original state'. Residents stated that any alterations made under the protections of the Human Rights Act were at their expense – not the operator's. An aligned clause commented upon was the transfer of residents between units, and comment was made that by retaining a fully accessible unit some residents would be able to live independently for longer.

Comment

Neither external bodies nor the exiting resident can exercise control over operators once a residential unit has been vacated. Any commercial obligations upon the resident will have been knowingly agreed to under the occupation right agreement. This means that even if an operator were to say they would take out disability alterations, they could still do so if the agreement permits this.

It is the responsibility of District Health Boards who provide this type of funding to place any additional obligations on the operator, if they wish. However, they should only require the same conditions, if any, that they place upon all other people who receive this funding and do not live in a retirement village.

Any alteration to this clause risks a consequential impact on the main refurbishment clause. The Department does not have yet any evidence on which to base a proposal for a change to this clause. And, the Code of Practice may not be the appropriate vehicle to deal with this issue. We therefore recommend that the Department meets with the Ministry of Health and the Office for Disability Issues to discuss these issues further.

2 Refurbishment on termination

The main discussion in submissions related to refurbishment at the end of the occupation right agreement. Many submissions from residents were against the proposed wording as they perceived the proposal to be unfair, against the purpose of the Act, and discriminatory.

The overwhelming request from residents was for the refurbishment clause from the invalid Code of Practice 2006 to be reinstated. However, many residents who requested the reinstatement of the invalid clause provided little evidence to demonstrate how they had been unfairly treated by their operator at the time of signing their original occupation right agreements.

Residents also expressed concern at rising labour prices, which they felt added to the cost of refurbishment and the unclear definition of refurbishment both in the proposed Code and their occupation right agreement. The terms in occupation right agreements that appear to cause most concerns are 'to as new' or 'return to pristine'.

Not all operators, lawyers representing operators, and statutory supervisors agreed with the proposed clause either. A number of operators and lawyers felt that the earliest date that refurbishment 'less fair wear and tear' should be applied was 1 May 2007 (the first day of

registration) and not 25 September 2006 (the date that the invalid Code of Practice 2006 was gazetted).

Some operators went further, stating that there should be no changes to existing contracts until the day that the proposed Code comes into force.

Comment

Some residents reported they had experienced a change to the occupation right agreement when their village had been bought by another operator. These sales and resultant contractual changes appear to raise issues between the operator and their residents, and has likely coloured their view of the clause. However, terms and conditions set for any occupation right agreement have to be agreed by the resident, in full knowledge of their obligations.

In their submissions to this consultation, residents demonstrated that operators had made adjustments to their business models after the publication of the invalid Code in the New Zealand Gazette on 25 September 2006.

There appear to be few submissions from residents who moved into retirement villages after 25 September 2006. It is therefore difficult to state with certainty that the invalid Code affected their behaviours. However, any resident who signed occupation right agreements after 1 May 2007 would have had to take independent legal advice before signing their occupation right agreement and the Department has to assume that lawyers for these people drew these types of contractual issues to the intending residents' attention before they signed their contract.

The majority of residents who made submissions on this clause have demonstrated that they were aware of their original contractual terms and conditions and that the invalid Code overwrote their existing contracts where it was more favourable.

The Department has undertaken a financial analysis on the impact of the proposed refurbishment clause on residents whose contracts pre-date 25 September 2006 and those whose contracts are after that date. We have found that the financial impact on residents whose contracts pre-date 25 September 2006 compared to residents on the new contractual arrangements is less than 5 percent of the residents' respective capital investment.

We recommend that there be no change to this clause.

We do however acknowledge that some operators use refurbishment to bring about upgrades. Any dispute over the level or nature of work can and should be addressed through the complaints and disputes process.

Sales processes and associated costs

A number of lawyers who advise intending residents questioned the use of the term 'sales' in both the proposed Code of Practice and occupation right agreements. These lawyers argued that in the majority of cases there is no 'sale', merely a change of resident. The financial transaction, the lawyers argue, is an interest free loan that the resident is repaid (less a capital deduction) when the operator is able to enter into a new interest free loan with the next resident. These lawyers were concerned that their clients were paying marketing costs and real estate agency fees when no property rights were changing hands.

Some residents also picked up on this issue.

Comment

What is being sold is usually the right to occupy a village unit. Marketing and real estate agent fees may still be incurred whether operators are selling a unit-title or 'disposing' of an

occupation right agreement. We do not propose deleting the word sale from the relevant clauses as the headings make it quite clear that there may be a distinction between selling and disposal.

Payments due to the resident on termination or end of contract

After refurbishment, the payments due to residents at the end of their contract were perhaps the biggest issue and generated many responses.

First, many residents did not distinguish between charges for personal services and general village outgoings. Operators stop charging for personal services when the resident has moved out of the residential unit. Personal services can include providing meals, cleaning, and laundry. Ongoing charges are the general running costs of the village and include in some cases, insurance, rates, some utility fees, maintenance etc. Many operators continue to charge the exiting resident or their estate the full ongoing charges for six months, which then drop to 50 percent of the costs until the residential unit is sold.

The majority of residents felt that either the ongoing charge should be halved after three months, or this charge should stop once the unit was vacant. These residents argued that their operators could afford such a loss, based on previous years' profit margins. Residents in religious, welfare, and charitable villages actually oppose the drop in charges after six months if the unit is not sold, because these costs are borne by the remaining residents.

Many residents also rejected the proposed capital charge (fixed deduction) clause, arguing that it benefited the operator who can continue to charge up to the date the operator pays out the former resident.

Operators welcomed this clause, but wanted to see it limited to contracts entered into after 25 September 2006.

Comment

There is a relationship between this clause and clause 49 'Refurbishment costs and process'.

The gazetting of the previous Code led to constructive knowledge on the part of the operators and intending residents.

We therefore considered whether:

- there is evidence that operators altered their business models following publication of the invalid Code in the New Zealand Gazette on 25 September 2006
- it is possible that intending residents made choices in determining their retirement village after publication of the invalid Code in the New Zealand Gazette on 25 September 2006
- existing residents were aware of their original contractual agreements.

Some operators have increased their fixed deduction amount (and shortened the amortisation period) to off-set the 'refurbishment' loss brought about by the provision in the invalid Code gazetted on 25 September 2006.

Residents who entered into contracts after 25 September 2006 are likely to have been made aware of the deductions rate and period through the disclosure statement and independent legal advice. Setting a time limit from which the clause applies will not affect these residents (or any future residents).

Residents whose contracts pre-date 25 September 2006 are also likely to be unaffected, as many will have lived in their village for longer than the amortisation period. (Most operators

amortise the fixed deduction over five years – we know of some who used to amortise over eight years.)

The operators recognise that, each year, a smaller number of residents will be affected by the fixed deduction clause, and we agree.

We therefore recommend that only contracts entered into after 25 September 2006 be affected by this clause.

Termination date

The termination date is important as it affects the timing of the operators' responsibilities relating to the sale or disposal of a residential unit.

Submitters asked that the termination date be clarified, as the setting of the date has impacts that were of equal interest to both residents and operators in their submissions.

Comment

The Department recommends that the termination date definition be clarified and amended. It should be the later of the end of the notice period specified in the occupation right agreement, or the date that the resident stops living in the unit and removes all their possessions. This definition aligns with terminology used elsewhere throughout the Code.

The most likely impact of this change would be on the sale or disposal of a residential unit following vacation by a resident, which would be beneficial for the former resident. The Code places obligations on operators at three, six and nine months. Clarifying the termination date will ensure that exiting residents can hold their operators to these obligations. The proposed change would provide more certainty for residents and operators and is easier to understand. A notice period may be any length of time; this measure would also provide an incentive for operators to disclose the period in the occupation right agreement.

Insurance

Comments received on insurance were mainly about:

- a) whether residents who own their own property can take out their own insurance
- b) the requirement that operators must have a comprehensive insurance policy that contains a waiver of the right to subrogation; that is, where the insurer must waive the right to recover costs from a resident who causes damage to any retirement village property, when the operator is the insured party.

Comment

- a) Residents who own their residential unit do not live in a unit-title retirement village, and so may be able to purchase their own insurance directly from an insurance company of their choice. This should be clarified in the Code.
- b) The purpose of the requirement that operators' insurance contain a waiver of subrogation was intended to protect residents who had caused accidental damage to retirement village property from being pursued by insurers.

However, the Insurance Council of New Zealand (the Council) raised concerns about the requirement in clause 22 that the comprehensive insurance cover taken out by operators must include a waiver of subrogation. The Council stated that their members were unlikely to pursue a resident for insurance recovery where the damage was accidental. The Council also felt that leaving in the Code the requirement for insurers to waive the right of subrogation would limit the number of insurance companies willing to insure retirement villages, with an unintended

consequence that insurance premiums may be raised, and if so, this cost would be passed on to residents.

The Department agrees that obligations should not be placed on operators if they have no ability to comply with them and recommends deletion of this clause.

Complaints and disputes

1 Notification

A number of submissions highlighted an omission from the section dealing with notification of complaints [clause 36]. The omission relates to the situation where there is a complaint between two residents. The clause stated that only the resident who made the complaint needed to be notified of the outcome of the complaint. Operators felt that when a complaint has been made by one resident about another resident it was fair for the other resident involved in the matter to be notified at the same time.

Comment

The Department believes that all parties involved in a complaint should receive notification of the outcome of the complaint. We therefore recommend a minor amendment to the Code to give this effect.

2 Timeframe

Of the submissions commenting on disputes, many residents focused on the nine month delay following their residential unit becoming vacant [clause 52] and wished to see the timeframe shortened.

Some operators questioned the ability to take a complaint at any time whereas a dispute could not be taken until nine months after a residential unit becomes vacant. Other operators welcomed the ability to take a complaint at any time.

Comment

The dispute process set out in the Code mirrors the disputes process set out in the Act, and therefore any change would require amendment to the primary legislation. That is outside the scope of this process and no change is therefore recommended.

The Department considers that, given that operators have to bear the cost of a dispute, the provision to resolve an issue through the village complaints process (rather than through the formal disputes process) is beneficial to both operators and residents.

Recommendations

This part of the report covers:

- general recommendations
- specific recommendations, with discussion. Further detailed comment and recommendations on each clause in the proposed Code of Practice is also attached in Appendix 1.

General recommendations

In making our recommendations, the Department has considered and balanced a wide range of matters. Overall, the Code of Practice must reflect the purpose of the Act to protect the interests of residents and intending residents to enable the development of retirement villages

under a readily understandable legal framework. The Code must be a practical document for both residents and operators and balance, in some cases conflicting, needs.

Although some submitters requested that certain aspects be brought out more, the Department is satisfied that the proposed Code of Practice 2008 covers the requirements of the Act, is consistent with the Code of Residents' Rights, and reflects the diversity of retirement villages whatever their ownership, size, location, age groups catered for, accommodation, services and facilities offered, legal, and financial structures.

Some minor technical and typographical errors were picked up by respondents and these will be corrected. Other minor editorial changes to improve clarity and comprehension will also be made.

We recommend that the Retirement Villages Code of Practice 2008:

- 1 be amended to improve clarity and comprehension, remove errors and address minor omissions
- 2 have some policy changes made, as recommended below
- 3 be submitted to the Minister for Building and Construction for his approval.

Specific recommendations

Based on the submission analysis, the Department recommends the following changes.

Clause 21(4) – requirement for insurer to waive subrogation where operator is the insured party

The clause required operators to find an insurance company that is willing to waive the right to subrogation; that is, where the insurer must waive the right to recover costs from a resident who causes accidental damage to any retirement village property, when the operator is the insured party.

We agree that this subclause places an obligation on operators that they have no ability to ensure compliance with. The requirement would place a legal obligation on a third party (neither resident nor operator). It also would potentially limit the number of companies willing to provide insurance.

Retaining the waiver of subrogation would require an amendment to the primary legislation.

- 4 The Department recommends that this subclause be removed.

Clause 26(6) - specified timeframes for the circulation of meeting minutes

Many residents requested that a time limit for the distribution of minutes of meetings be set. This was especially important for residents who have personal support either informally from friends and relatives or in a formal arrangement through powers of attorney.

- 5 The Department recommends that operators be required to issue minutes within specified timeframes (eg 30 working days) for both annual and special general meetings.

Clause 35 – notification of complaints

The clause consulted upon stated that only the resident who made the complaint must to be notified of the outcome of the complaint.

- 6 The Department recommends that the requirement be amended so that that all parties to the complaint must be notified of the outcome.

Clause 36(2) – monthly invoices

Both residents and operators objected strongly to the requirement that monthly invoices be provided. Their arguments were based on cost, usefulness, and resource use.

- 7 The Department recommends that this subclause be amended to stipulate that an invoice must be issued by the operator if:

- it is the first payment made under an occupation right agreement
- the amount to be charged has changed
- the resident requests an invoice.

and notes that the subclause 39(3) would then not be needed and should be deleted.

Definition of termination date

Submitters asked that the termination date definition be clarified as there are potential financial impacts for both operators and residents.

- 8 The Department recommends that the termination date be amended to be the later of the end of the notice period specified in the occupation right agreement, or the date the resident stops living in the residential unit and removes all their possessions.

and notes that the most likely impact of this change would be on operators and their obligations for issuing marketing reports after three, six and nine months. It may act as an incentive for operators to specify the notice period in the occupation right agreements.

Clause 53(3) – capital charges (fixed deductions)

Based on submissions we suggest amending the title of this clause to become “fixed deductions”.

The reasoning for setting a time limit on the refurbishment clause also applies to fixed deductions and therefore the same date should apply.

- 9 The Department recommends that the fixed deductions clause apply only to contracts entered into after 25 September 2006, and the accumulation of fixed deductions must stop at the termination of the agreement.

List of submitters on proposed Retirement Villages Code of Practice 2008

Submission Number	Submitter	Status
1	Mr Steele	Resident – Metlifecare The Avenues
2	Mr Watts	Resident
3	Mr Owen	Resident
4	Mr Bryant	Resident
5	The Robertsons	Resident
6	AJ Fitchett & RN Bowden	Resident
7	N Barlow	Operator: member of RVA
8	RG and JM Appleford	Resident – Metlifecare Bayswater
9	E Oakley	Resident – Metlifecare Bayswater
10	C L M Gough	Resident – Metlifecare The Avenues
11	Thelma Gough	Resident – Metlifecare The Avenues
12	Shirley Nicholas	Resident – Metlifecare The Avenues
13	Charles Littlejohn	Resident
14	Catherine Stevenson	Resident – Metlifecare The Avenues
15	Donna Maloney	Resident – Metlifecare The Avenues
16	Jessie Thirkell	Resident
17	Anonymous	Resident
18	Lois Cruden	Residents group/cttee:Metlifecare Bayswater
19	Ronald Gamble	Resident
20	Gwenda Turfrey	Residents group/committee
21	Bernard R Coleman	Resident
22	Norman Morrell	Resident
23	J L Harrison	Resident – Metlifecare The Avenues
24	Gordon and Alfrey Taylor	Resident – Metlifecare The Avenues
25	Maureen Potton	Resident – Metlifecare The Avenues
26	S J Hannell	Resident – Metlifecare The Avenues
27	Mary J Isher	Resident – Metlifecare The Avenues
28	Jocelyn and Godfrey Devore	Resident – Metlifecare The Avenues
29	Warwick Smith	Resident
30	Jason Rowling	Operator
31	E E McLean	Resident – Metlifecare The Avenues
32	F E Mayhew	Resident – Metlifecare The Avenues
33	Mary Fisher	Resident – Metlifecare The Avenues
34	Miss B C McAlister	Resident – Metlifecare The Avenues
35	Mrs B Watts	Resident – Metlifecare The Avenues
36	Wendy Simmons	Resident – Metlifecare The Avenues
37	Sherman Smith	Residents group/ committee
38	Joan Harrison	Resident – Metlifecare The Avenues
39	Ivan Potts	Resident – Metlifecare The Avenues
40	Gail Koch	Resident
41	Rosalie M Judd	Resident – Metlifecare The Avenues
42	J Brannyan	Resident – Metlifecare The Avenues
43	E M Churchill	Resident
44	Mr R L Schofield	Resident

Submission Number	Submitter	Status
45	Residents Committee Metlifecare The Avenues	Residents group/cttee: Metlifecare The Avenues
46	E P Penny	Resident – Metlifecare The Avenues
47	David Gilbert	Resident
48	Lewis Marson	Resident
49	Alison Thompson	Resident – Metlifecare The Avenues
50	Doreen Cook	Resident – Metlifecare The Avenues
51	Doris Sanderson	Resident – Metlifecare The Avenues
52	O J Phipps	Resident – Metlifecare The Avenues
53	Zoe A Orr	Resident – Metlifecare The Avenues
54	Margaret B Webb	Resident – Metlifecare The Avenues
55	Ellen Heslop	Resident – Metlifecare The Avenues
56	Phyllis Bradley	Resident – Metlifecare The Avenues
57	C J van der Hulst	Resident
58	Graham and Colleen Follett	Resident – Metlifecare The Avenues
59	Derek Shuttleworth	Resident – Metlifecare Bayswater
60	Mrs NE Shuttleworth	Resident – Metlifecare Bayswater
61	Alexia Breed	Resident – Metlifecare Bayswater
62	Mrs Joan Siddall	Resident – Metlifecare Bayswater
63	Mavis Trebilco	Resident – Metlifecare Bayswater
64	Holden, Weaver and Mair	Residents group/cttee: Metlifecare Bayswater
65	S and A McLean	Resident – Metlifecare Bayswater
66	F and K Jolly	Resident – Metlifecare Bayswater
67	Faye Row	Resident – Metlifecare Bayswater
68	Margaret Philp	Resident – Metlifecare Bayswater
69	V and E Smith	Resident – Metlifecare Bayswater
70	Arthur Dixon	Resident – Metlifecare Bayswater
71	Desmond Watts	Resident – Metlifecare Bayswater
72	G and S Earnshaw	Resident – Metlifecare Bayswater
73	I Unsworth	Resident – Metlifecare Bayswater
74	V and G Bryant	Resident – Metlifecare Bayswater
75	Stu Smart	Resident – Metlifecare Bayswater
76	Wendy Aldworth	Resident – Metlifecare Bayswater
77	M J Dickens	Resident – Metlifecare Bayswater
78	Helen Walker	Resident – Metlifecare Bayswater
79	Wynn Godfey	Resident – Metlifecare Bayswater
80	Claire Watts	Resident – Metlifecare Bayswater
81	Joan Watson	Resident – Metlifecare Bayswater
82	D and E Farquhar	Resident – Metlifecare Bayswater
83	M and I Cruickshank	Resident – Metlifecare Bayswater
84	H and D Utlinger	Resident – Metlifecare Bayswater
85	L and L Carpenter	Resident – Metlifecare Bayswater
86	Shirley Harris	Resident – Metlifecare Bayswater
87	L O Evans	Resident – Metlifecare Bayswater
88	Eileen Mitchell	Resident – Metlifecare Bayswater
89	R and J Dickens	Resident – Metlifecare Bayswater
90	R and L Derrick	Resident – Metlifecare Bayswater
91	R L and B Curry	Resident – Metlifecare The Avenues
92	M D Wiggins	Resident – Metlifecare Bayswater

Submission Number	Submitter	Status
93	Doreen Swinburne	Resident – Metlifecare Bayswater
94	D and B Metcalfe	Resident – Metlifecare Bayswater
95	Christine McSporran	Resident
96	Summerset on the Park	Residents group/committee
97	E and E Hooker	Resident
98	Joy Marks	Resident – Metlifecare The Avenues
99	J F C Rodrigues	Residents group/committee
100	Valda Burt	Resident – Metlifecare The Avenues
101	Pat Rohde	Resident – Metlifecare The Avenues
102	Eleanora Garden	Resident
103	Bethlehem Country Club	Residents group/ committee
104	Des Manley	Resident
105	Louis Fick	Operator (individual)
106	Parkwood RV	Operator: member RVA
107	June Jennings	Resident
108	Syd and Jean Reid	Resident
109	P M Simpson	Resident – Metlifecare The Avenues
110	Lois Brown	Resident – Metlifecare The Avenues
111	R W and J E Stanton	Resident – Metlifecare The Avenues
112	Parkwood Residents' Assoc	Residents group/committee
113	A T Polglase	Resident
114	Vision Forest Lake Residents' Assoc	Residents group/committee
115	Maygrove Village Residents' Assoc	Residents group/committee
116	Margaret Hollingsworth	Resident
117	Private Life Care Holdings Ltd	Operator (individual)
118	Norfolk Apartments	Residents group/ committee
119	Rowena Jackson RV (Townhouse Committee)	Residents group/ committee
120	Denis J McCarthy	Resident
121	B G McFarlane	Resident
122	Neville Coote	Resident – Metlifecare The Avenues
123	Ann Coote	Resident – Metlifecare The Avenues
124	Margaret Marshall	Resident – Metlifecare The Avenues
125	Lois Simons	Resident
126	John Togneri	Resident
127	Hazel O'Neil	Resident – Metlifecare The Avenues
128	Ngaire Hill	Resident
129	Residents Representative Tararu RV	Residents group/committee
130	Wayne Nicholls	Resident
131	Summerset Village Havelock North Residents Assoc	Residents group/committee
132	Denise Lormans	Advocacy/interest group
133	D & G Boeglin	Resident
134	W G Clayton	Resident
135	Maureen Carbury	Residents group/committee
136	Tauranga Area Retirement Villages Residents Ass	Residents group/committee
137	R W Simmons, K Chapman, R Martin, P Russell	Residents group/committee
138	Kapiti District Residents Assoc Committee	Residents group/committee

Submission Number	Submitter	Status
139	Bill and Patricia Poysden	Residents group/committee
140	N W and A M Leaf	Resident
141	Dean Willacy, Cooney Lees Morgan	Lawyer
142	Kapiti Coast Grey Power	Advocacy/interest group
143	Waitakere Gardens Residents Assoc	Residents group/committee
144	Bruce Downer	Resident
145	Anonymous	Resident
146	J M Hopkin	Resident
147	Alex Young	Resident
148	M J McGill	Resident
149	Summerset at the Races	Residents group/committee
150	John Gallie	Lawyer
151	Metlifecare Greenwood Park	Residents group/committee
152	Nelson Bays Community Law Service	Advocacy/interest group
153	Selwyn Foundation	Operator: member of RVA
154	Lawrence and Dawn Woodley	Resident
155	N M Perfect	Resident
156	Jean Douglas	Resident
157	Perrinpark Residents Assoc	Residents group/committee
158	McBreens Solicitors	Lawyer
159	Kaye S Kenwood	Resident
160	Donald Roberts	Resident
161	Bayswater Village Residents Association	Residents group/committee
162	Neill Inkster	Resident
163	Colleen Lumacher	Resident – Metlifecare The Avenues
164	N A Brown	Resident
165	Guardian at Mary Shapley Village	Operator: member of RVA
166	Guardian at Cashmere View Village	Operator: member of RVA
167	Guardian at Fergusson Village	Operator: member of RVA
168	Guardian at Erin Park Village	Operator: member of RVA
169	Guardian at Cedar Manor Village	Operator: member of RVA
170	Guardian at Remuera Village	Operator: member of RVA
171	Guardian at Waiokaraka Village	Operator: member of RVA
172	Guardian at Telford Village	Operator: member of RVA
173	Guardian at Redwood Village	Operator: member of RVA
174	Guardian at Mitchell Downs	Operator: member of RVA
175	Guardian at Accadia Village	Operator: member of RVA
176	Guardian at Greerton Village	Operator: member of RVA
177	Guardian at Liston Heights	Operator: member of RVA
178	Guardian at Tararu Village	Operator: member of RVA
179	Guardian at Winara Village	Operator: member of RVA
180	Northbridge Lifecare Trust	Operator: member of RVA
181	Esme James	Resident – Metlifecare Bayswater
182	Carmel Country Estate Residents Ass	Residents group/committee
183	Acacia Cove Village	Operator: member of RVA
184	Kapiti District Trust	Operator (individual)
185	Mary Doyle Trust Lifecare Complex Ltd	Operator: member of RVA
186	Strathallan Lifecare Ltd	Operator: member of RVA

Submission Number	Submitter	Status
187	Village at the Park Lifecare Ltd	Operator: member of RVA
188	Park Lane Village Residents Committee	Residents group/committee
189	Steel & Co	Lawyer
190	Doug Proctor	Other individual
191	Fitzroy of Merivale	Operator: member of RVA
192	Aparangi Village	Operator (individual)
193	Cedric Wisely	Resident
194	Tainui Village	Operator: member of RVA
195	Chatsford RV Residents Committee	Residents group/committee
196	Ngaio Marsh Retirement Village	Operator: member of RVA
197	Malvina Major RV	Operator: member of RVA
198	Woodcote RV	Operator: member of RVA
199	Shona McFarlane RV	Operator: member of RVA
200	Rowena Jackson RV	Operator: member of RVA
201	Rita Angus RV	Operator: member of RVA
202	Princess Alexandra RV	Operator: member of RVA
203 a and b	Metlifecare Pakuranga	Operator: member of RVA
204	Metlifecare Pinesong	Operator: member of RVA
205	Metlifecare Powley	Operator: member of RVA
206	Metlifecare The Avenues	Operator: member of RVA
207	Metlifecare Somervale	Operator: member of RVA
208	Metlifecare Wairarapa	Operator: member of RVA
209	Metlifecare Bayswater	Operator: member of RVA
210 a and b	Metlifecare Merivale	Operator: member of RVA
211	Metlifecare Crestwood	Operator: member of RVA
212	Metlifecare Greenwood Park	Operator: member of RVA
213	Metlifecare Highlands	Operator: member of RVA
214	Metlifecare Kapiti	Operator: member of RVA
215	Metlifecare 7 Saint Vincent	Operator: member of RVA
216	Metlifecare Coastal Villas	Operator: member of RVA
217	Margaret Stoddart RV	Operator: member of RVA
218	Jean Sandel RV	Operator: member of RVA
219	Julia Wallace RV	Operator: member of RVA
220	Jane Winstone RV	Operator: member of RVA
221	Hilda Ross RV	Operator: member of RVA
222	Grace Joel RV	Operator: member of RVA
223	Frances Hodgkins RV	Operator: member of RVA
224	Edmund Hillary RV	Operator: member of RVA
225	Ernest Rutherford RV	Operator: member of RVA
226	W Brown	Resident – Metlifecare Bayswater
227	L V Watkins	Resident – Metlifecare Bayswater
228	Metlifecare Kapiti Residents	Residents group/committee
229	K Ramsay	Resident
230	Bethsaida RV	Operator: member of RVA
231	Primelife	Operator: member of RVA
232	Lifetime Design	Advocacy/interest group
233	Beckenham Courts RV	Operator: member of RVA
234	Anthony Wilding RV	Operator: member of RVA

Submission Number	Submitter	Status
235	Hillsborough Heights	Operator (individual)
236	Chatsford Management Limited	Operator: member of RVA
237	Omokoroa Country Estate Residents Committee	Residents group/committee
238	Longford Park Village	Operator: member of RVA
239	Paulger Courts RV	Operator: member of RVA
240	Maygrove Village	Operator: member of RVA
241	The Maples Lifecare 2005 Ltd	Operator: member of RVA
242	Shirley Crampton	Resident
243	Summerset RVs	Operator: member of RVA
244	Summerset by the Park	Operator: member of RVA
245	Summerset by the Lake	Operator: member of RVA
246	Summerset in the Bay	Operator: member of RVA
247	Summerset by the River	Operator: member of RVA
248	Summerset in the Vines	Operator: member of RVA
249	Summerset on Summerhill	Operator: member of RVA
250	Summerset by the Ranges	Operator: member of RVA
251	Summerset on the Coast	Operator: member of RVA
252	Summerset at Aotea	Operator: member of RVA
253	D J and E J Kane	Resident
254	Summerset at the Course	Operator: member of RVA
255	Stillwater Gardens RV	Operator: member of RVA
256	Alun Thomas	Resident
257	Cosmopolitan RV	Operator (individual)
258	Covenant Trustees Company	Statutory supervisor
259	Elvor Shaw	Resident – Metlifecare Bayswater
260	Mr and Mrs Blackman	Resident – Metlifecare Bayswater
261	Val Haslett	Resident – Metlifecare Bayswater
262	Neil Clarke	Resident – Metlifecare Bayswater
263	Matthew Clapham	Resident
264	Frank Bissmore	Resident – Metlifecare The Avenues
265	Mabeth Goldfinch	Resident – Metlifecare Bayswater
266	Age Concern/ Grey Power/ RSA	Advocacy/interest group
267	Anglican Care (Waiapu)	Operator (individual)
268	Ruapehu Masonic Assoc Trust	Operator (individual)
269	Anthony Harper Lawyers	Lawyer
270	Ministry of Health	Government Department
271	Valerie Ethel Fear	Resident
272	Burke Melrose	Lawyer
273	Geoff Currie Lawyers	Lawyer: member of RVA
274	NZ Nurses Org	Professional Association
275	Trustees Corporation Association	Statutory supervisor
276	Insurance Council of NZ	Professional Association
277	John W Drury	Resident
278	Etheridge Court Residents	Residents group/committee
279	Marcia Bush	Resident
280	Graham and Marjorie Cryer	Resident – Metlifecare Bayswater
281	Ian Brown	Resident
282	Richard Findlay	Resident: form letter

Submission Number	Submitter	Status
283	David Wolstenholme	Resident
284	Peter Maunder	Resident: form letter
285	Dr C Van Dalen	Other
286	Suzanne Deadman	Resident
287	Ian S Mathieson	Resident
288	Kathleen Knebel	Resident
289	Mona D Brider	Resident: form letter
290	Margaret L Grinham	Resident: form letter
291	John Scott	Resident
292	Resident reps RVSG	Residents group/ committee
293	H L Wylie	Residents group/ committee
294	John Cellius	Resident: form letter
295	R L Smith	Resident: form letter
296	D G Shierlaw	Resident: form letter
297	Antonius van Loenhout	Resident: form letter
298	Archer Village	Operator: member of RVA
299	Margaret Craig	Academic