

25 March 2021

Te Ara Ahunga Ora | Commission for Financial Capability  
Wellington

By email: [consultation@cffc.govt.nz](mailto:consultation@cffc.govt.nz)

Tēnā koe,

**Re: Retirement Villages Legislative Framework: Assessment and Options for Change 2020**

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on Te Ara Ahunga Ora | Commission for Financial Capability's White Paper, *Retirement Villages Legislative Framework: Assessment and Options for Change 2020 (White Paper)*.

The Law Society's Property Law Section has reviewed the White Paper and provides responses to consultation questions that raise practical concerns or issues of workability.

**Q1 Has this White Paper canvassed the issues fairly and accurately?**

Yes. The White Paper canvasses the issues fairly and accurately, acknowledging the tensions between operators, residents and statutory supervisors. It also recognises that the existing regime has become weighted in favour of retirement village operators' business models and considers how it could be evened up to take better account of residents' needs and interests.

**Q2 Are there any important points that are missing?**

Yes.

**Q2.1 If you replied Yes, please describe the missing points.**

*More detail and transparency are needed about all elements that feed into wider policy settings for the sector*

The White Paper proposes a full policy review. However, the paper does not explicitly address the essential issue of New Zealand's need for a well-functioning private elder care sector with sufficient capacity to meet demand, and in the context of the proposed full policy review should do so. Specific issues are identified but the paper does not expressly address:

- the growth in need for private residential and care facilities to cater for a growing population aged 65 years and over; and
- whether the public health system is able to cope with the increased numbers and specialised care requirements.

It is essential the private retirement village regime (and related elder care facilities) functions well for all involved, and with capacity going forward. These concerns are alluded to in the paper, but are not dealt with in detail.<sup>1</sup>

### *Exploring whether a separate Retirement Commissioner is required*

The White Paper acknowledges the limited remit of the Retirement Commissioner under the current framework,<sup>2</sup> but options to address this – such as a standalone Retirement Commissioner (separate from the Commission for Financial Capability), similar in scope to other Ombudsmen roles – are not explored in depth:

“The RC’s functions and powers under the Act are limited compared to those available under legislation empowering equivalent commissioners or ombudsmen. Extending the RC’s remit or engaging another agency with specific powers would provide more certainty for residents and their families.”

The Retirement Commissioner’s currently limited role and powers appear to be inadequate to respond to significant demand growth in the retirement and care facility sector. In addition, the current oversight regime (involving the Ministry of Housing and Urban Development, Ministry of Business, Innovation and Employment, Minister for Building and Construction, and the Registrar of Retirement Villages) is overly complex, and statutory supervisors are funded by operators.

The number of residents going into retirement villages over the next 15 to 20 years warrants a dedicated crown entity being established. This could be a dedicated Retirement Commissioner or Retirement Ombudsman with a team similar to the Ombudsman’s office, focused on being the sole watchdog of the retirement industry and dealing with disputes in retirement villages and monitoring operator performance. This would streamline processes and provide greater transparency and certainty for residents.

### **Q3 Do you agree that a full review of the retirement villages framework should be undertaken?**

The Law Society agrees that a full policy review is required to deal with the issues outlined in the White Paper. The other options outlined in Part 9 of the paper would not adequately address the issues.

The review should involve a taskforce with industry representatives, in addition to officials from the Ministry for Housing and Urban Development and Commission for Financial Capability. A multi-stakeholder approach drawing on perspectives of experienced people involved in the sector would provide balance to the review, alongside the expertise of officials.

From the perspective of the legal profession, the Law Society hopes that the outcome of the review would enhance lawyers’ ability to provide clear advice to clients who are retirement village residents (or potential residents) as to:

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<sup>1</sup> Te Ara Ahunga Ora | Commission for Financial Capability’s White Paper, *Retirement Villages Legislative Framework: Assessment and Options for Change 2020*, at p36: “The policy review could also consider possible impacts from other policy settings in relevant areas such as health, building, and other forms of housing.”

<sup>2</sup> White Paper, at p5; see also p17: “The RC’s functions and powers under the Act are not as extensive as those available under legislation empowering equivalent commissioners or ombudsmen, such as the Children’s Commissioner, Health and Disability Commissioner, Privacy Commissioner, or the Banking Ombudsman. The Banking Ombudsman has power to investigate disputes between customers and banks or non-bank financial service providers.”

- a) the rights and obligations that arise when they acquire an interest in a retirement village; and
- b) how disputes in the retirement village context can be resolved quickly and effectively.

The need for clear advice is heightened given that clients are elderly and may not be confident dealing with legal documents and processes.

The Law Society specifically endorses the following recommendations from the White Paper being included in the review:

- a) How to improve and standardise information about transferring into higher levels of care.<sup>3</sup>
- b) A review of the complaints function to simplify and formalise a clear and simple process.<sup>4</sup>
- c) Disclosure statements with a view to producing simplified and accessible documentation, including online resources.<sup>5</sup>
- d) Legislative clarification reducing cross-referencing between the Act, Regulations, and Codes to make the regulatory framework easier for consumers and operators to understand.<sup>6</sup>

In addition to the above, the legal workability of a number of aspects of the retirement village process could be improved, for example:

- a) Plain language requirements or default standardised documents for the Occupation Rights Agreement, disclosure statements etc. Other suggestions include a compulsory glossary of terms, highlighting key terms, or a contract that provides a standard form of general conditions with Word form schedules to be completed with specific details or variations.
- b) Expanded requirements for disclosure and certification from solicitors attending clients on signing of Occupation Right Agreements (similar to banking solicitor certificates or Enduring Power of Attorney certificates confirming that key terms were discussed).
- c) Improved and standardised disclosure regarding termination, payment obligations until resale and procedures for increases to weekly/ongoing costs.

As a general comment, it is evident that all parties would benefit from having a streamlined set of regulations and efficient dispute resolution processes. Practitioners advising retirement village operators (and the like) would also benefit by being able to easily assess the relevant rules and provide advice on their clients' rights and obligations.

#### **Q5 Is there anything else you would like to say?**

The Law Society would welcome information on timelines for next steps, and considers the review should be undertaken with a degree of urgency.

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<sup>3</sup> Ibid, at p 25.

<sup>4</sup> At p 27.

<sup>5</sup> At p 32.

<sup>6</sup> At p 36.

We hope these comments have been helpful. If further discussion would assist, contact can be made in the first instance via the Law Society's Law Reform and Advocacy Manager, Vicky Stanbridge ([vicky.stanbridge@lawsociety.org.nz](mailto:vicky.stanbridge@lawsociety.org.nz) / (04) 889 7709).

Naku noa nā,

A handwritten signature in black ink that reads "Frazer Barton". The signature is written in a cursive, flowing style.

Frazer Barton  
**NZLS Vice-President**