



Monitoring Project on the Operators of Retirement Villages

March 2010

Final Report

MARTIN^IJENKINS

Preface

This report has been prepared for the Retirement Commission by Dr David Dundon-Smith, Emily l'Ami and Bennick Harding from MartinJenkins (Martin, Jenkins & Associates Limited).

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Introduction

Objectives

This project is required under section 36 of the Retirement Villages Act 2003 to assist the Retirement Commissioner in carrying out her function:

“a) to monitor the effects of this Act and the regulations and code of practice made under this Act.”

This review of the operators of retirement villages is part of a five-year monitoring programme and follows on from a 2008/09 project examining the role and functions of Statutory Supervisors.

The specific objectives of this project were to determine *to what extent* and *how* retirement village operators are complying with their statutory requirements; namely with regard to:

- 1 Financial and information requirements (s 13, s 16, s 17)
- 2 Communication with intending and current residents (s 26, s 30, s 33, s 34)
- 3 Complaints and disputes process (s 51, s 55, s 59)
- 4 Appointing a Statutory Supervisor (s 38).

The project also needed to show how retirement village operators are complying with general provisions of the Act and what, if any, issues are arising. These include:

- the appropriate management of the village
- the provision of financial statements
- holding resident meetings
- finding new residents for vacant units.

The Request for Proposal also emphasised the need for the project to focus on the relationship and arrangements between operators and Statutory Supervisors, the disputes process and the development of long-term maintenance plans for retirement villages.

Findings are intended to inform and promote sector best practice and contribute to the development of legislation.

Methodology

The research comprised a number of stages:

- i. Scoping
- ii. Online survey and follow-up interviews with retirement village operators
- iii. Testing and validation
- iv. Analysis and reporting.

Our approach was designed to aid a detailed understanding of the broad compliance and operational requirements facing operators, as well as to provide an in-depth analysis of specific issues. Given the varied nature of the retirement village sector, in terms of legal entity, management structure, size, type of services provided, nature of residents, length of operation and future plans, etc, it was decided that an online survey of all retirement village operators was required to inform the monitoring research.

The online survey provides the Retirement Commission with a **baseline** of operator compliance in 2009, which can be updated as required in the future, to monitor trends in compliance and how issues are being addressed within the sector. In many respects, this project can be seen as a **health check** of the retirement village sector, in terms of both how operators are meeting their obligations and the key issues they face in doing so.

To inform the online survey, an initial scoping phase was carried out. This consisted of:

- a project inception meeting between the monitoring team and the Retirement Commission
- reviewing the range of documents available relating to the 2003 Retirement Villages Act and any monitoring and/or evaluation studies undertaken since the Act came into force
- meeting a small number (n=9) of key informants (including two resident associations and a sector interest group) from the project and wider stakeholder group to clarify the context for the project and to identify key issues to follow-up with retirement village operators (in both the online survey and follow-up interviews)
- ongoing dialogue with the project team to test ideas and discuss emerging thinking.

During this phase of the research a project Reference Group was established to help provide input into the research and to help validate emerging findings. The reference group was comprised of:

- David Brown Douglas, Trustee Corporations Association
- John Greenwood, Greenwood Roche Chisnall
- Jade Badcock, Department of Building and Housing
- John Collyns and Nora Barlow, Retirement Villages Association

- Louise Hornabrook and Sarah Burnett, Ministry of Economic Development
- Susan Rutherford and David Feslier, Retirement Commission.

In designing the online survey it was agreed to sample all 179 village operators, rather than the 321 individual retirement villages, as many of the compliance and operational requirements of the Act are dealt with at group or headquarter level. See Sector Profile (overleaf) for further information about the structure of the sector.

Following an introductory email sent from the Retirement Commission advising operators of the survey and encouraging participation, an email link to participate in the survey was sent to village owners and/or managers (CEOs or operations managers in the case of larger, multi-village organisations) using a list obtained from the Retirement Commission. Two reminder emails were sent to those operators not responding to the survey and many operators were also phoned to explain the objectives of the survey and to encourage participation. The survey was carried out over a four week period, between 30 October and 1 December 2009, and was designed to take approximately 20 minutes.

The list of retirement village operators provided to us by the Registrar of Retirement Villages however, did not have complete information on the nature of the ownership and management structure. Prior to undertaking the survey, it was necessary to phone a number of operators to confirm their details. Without a full and up to date contact database of retirement villages and operators it will be difficult for the Retirement Commissioner to perform her function in monitoring the effects of the Act and the regulations and Code of Practice. Key regulatory agencies (ie the Ministry of Economic Development, the Department of Building and Housing and the Retirement Commission) could investigate the potential for a shared contact database including processes and procedures to maintain village and operator information.

Ninety operators completed the survey, including seven partial completes,¹ representing a response rate of 50%. It is estimated that those operators responding to the survey jointly manage around 230 (72%) of the 321 retirement villages currently registered in New Zealand. The findings set out in this report therefore represent a robust baseline from which to monitor operator compliance with the Act.

Follow-up interviews were then undertaken with 17 operators (including a mix of operator sizes, types and locations) to unpick key areas and issues identified in the survey. Interviews were guided by an interview schedule which focused on issues facing the operator (as identified by their survey responses) followed by a broader discussion about sector trends and challenges.

Findings have been validated by the Retirement Commission and Reference Group members.

¹ We included in the analysis those operators completing the questionnaire up to (and including) question 24.

Sector Profile

Of the 90 operators responding to the survey, 53 were commercial retirement village operators and 37 charitable and not for profit operators. For the purposes of this review we have also categorised retirement villages into three size groups; small (1 retirement village), medium (2-5 retirement villages) and large (6 or more retirement villages). Sixty six respondents were small operators, 16 medium and 8 large (which represents all large operators in New Zealand).

Nearly three quarters (72%) of the respondents are full accredited members of the Retirement Village Association (RVA) and a further 7% are 'provisional' members. Nearly all medium (94%) and large (100%) operators are full members of the RVA, compared with 64% of small operators.

Nine in ten villages (93%) offer independent living to their residents (in a private apartment, villa or townhouse) and half offer serviced apartments (46%) and rest home and hospital care (51%). Four in five (81%) operators predominantly provide Licence to Occupy tenancies, while 12% have unit title occupancy. Twelve per cent of operators say the Act has resulted in significant changes to the occupancy type they provide, with all affected operators saying they will be moving to more Licence to Occupy tenancies.

Three-fifths (58%) of operators do not pay a 'capital gain payment' to a resident (or their family/trust). A quarter (24%) offer this payment sometimes and 18% offer it all the time.

Appendix 1 outlines in full the findings from the online survey of operators.

Overview of Findings

The majority of operators are complying with the regulations and provisions set out in the Act, its regulations and the Code.

Although many operators consider compliance costs to be a significant concern, half of the sector is planning to grow in the next three years. Small operators and some charitable and not for profit operators however are finding conditions more difficult. Further investigation is needed to ascertain the extent to which their viability as a retirement village operator has been impeded by an increased compliance burden and the implications that this may have on the diversity of the sector.

Communication with Residents (existing and intending)

Although the majority of operators are meeting their statutory requirements to communicate with residents (ie provision of information to intending and existing residents, an annual general meeting of residents and providing for residents to be represented) this does not always mean residents are better informed. Operators and stakeholders describe some documentation, in particular the disclosure statement, as being long and complex leaving residents feeling overwhelmed and confused. To manage this issue some operators are supplying summary documents to residents.

Complaints and Disputes

While operators are meeting their obligation to run a complaints' facility, many report receiving few, if any, complaints. The Act (and its regulations) does not provide a definition of a 'complaint' and interviews with operators highlighted many experiencing 'issues' but not 'complaints'. Operators and residents see the disputes panel as a last resort and there is considerable support for a formalised mediation step. The role of Statutory Supervisors in the complaints and disputes process however requires clarification.

Statutory Supervisors

There are mixed views in regards to the purpose, role, performance and value of Statutory Supervisors. Some operators view Statutory Supervisors as beneficial for both operators and residents while others (especially some smaller operators) feel they are unnecessary and a financial burden. Stakeholders are concerned that there is an insufficient number of Statutory Supervisors and thus choice for operators, and both operators and stakeholders feel the role of Statutory Supervisors requires additional clarity.

Vacant Units

Some operators have or are experiencing issues with residents due to a mixture of 'old' and 'new' occupation right agreements (ie pre and post 25 September 2006). However they expect this issue to decrease overtime. The economic downturn has negatively affected sales times (and values \$) but in general communication processes between operators and vacating residents are working and few complaints are occurring as a result. Of the complaints received by the Commission in 2009 around this issue, poor communication was a common factor.

Village Operations and Management

In general operators are meeting their operational and management requirements (eg filing an annual return, having a long-term maintenance plan). The majority of operators (especially small operators) report that compliance costs are a significant proportion of their operating costs and many believe their costs have increased as a result of the Act. While operators do face some additional costs (Statutory Supervisor costs being the most significant), some costs are not a direct result of the Act (eg the new International Financial Reporting Standards (IFRS)).

Sector Trends and Challenges

While half of the sector is planning to grow in the next three years, increased compliance costs may be forcing some small and some charitable and not for profit operators to put off any plans for expansion.

Operators recognise that the sector will have to adapt to meet the expectations and demands of New Zealand's ageing population and some expect new business models to emerge.

The review also identified other operator concerns including issues surrounding the requirement for residents to seek legal advice and the mandatory cooling off period, both of which are perceived by operators as an impediment for some residents.

Context

The Retirement Villages Act 2003 had a phased introduction with the major changes coming into force on 1 May 2007. The Act sets out the requirements and procedures operators must comply with, including village registration, occupation right agreements, the role of Statutory Supervisors, the disputes process, the role of the Registrar and the Code of Practice 2008.

The Statutory Code of Practice 2008 (the Code) was passed in October 2008, and came into effect one year later on 2 October 2009. It outlines general requirements in regards to policies, procedures, notices and induction requirements, and minimum requirements to be included in any occupation right agreement (eg operating a complaints facility and communication with residents).

These regulations seek to protect the interests of both intending and existing residents and to support the sector to develop and grow.

This report looks at the level of compliance within the sector and identifies any issues or areas operators are struggling with, where possible presenting potential explanations identified through interviews with operators and key stakeholders (including Reference Group members). As part of the interviews with stakeholders two resident's associations and one sector interest group were interviewed to obtain a resident perspective. Where these interviews provide additional information they have been included. However, only a limited number of interviews with stakeholders, including resident bodies, were undertaken and thus caution should be used when interpreting these findings.

As part of its ongoing monitoring function the Retirement Commission intends to undertake research into resident views and experiences. It is recommended that this research should be undertaken as soon as practicable.

The following key areas of compliance are covered:

- communication with residents
- complaints and disputes
- Statutory Supervisors
- vacant units
- village operations and management.

The future of the sector is then discussed including potential barriers to growth and views on key issues facing the sector. Aggregate findings from the online survey are set out and where appropriate differences between type of operator (eg size and ownership) are highlighted. Further insight is gathered from interviews carried out with both operators and stakeholders.

Perceptions of the Act

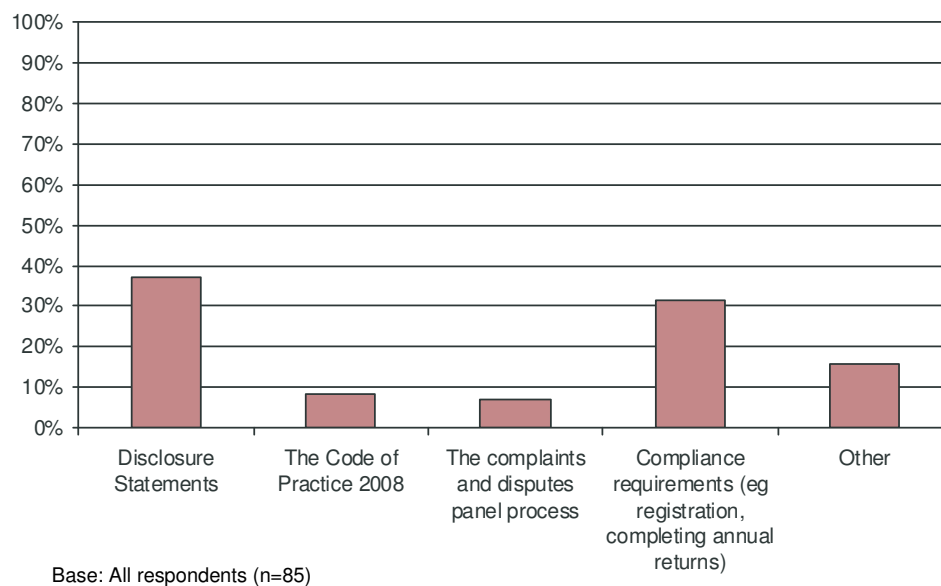
In general, operators and stakeholders are in favour of the Act, its regulations and the Code and feel the standard of the sector has improved.

Standards have gone up and I think on the whole things have improved. (Medium commercial operator)

If we're going to protect ourselves from fly-by-nighters they're going to have a much tougher time than before the Act – so there is a lot of good things that have been done. (Large commercial operator)

When asked to choose what they would like to change with regard to the regulations,² 37% of operators selected changes to the disclosure statement and 31% to overall compliance requirements (see figure 1). Costs associated with meeting compliance requirements and the length and complexity of the disclosure statement are key concerns within the sector.

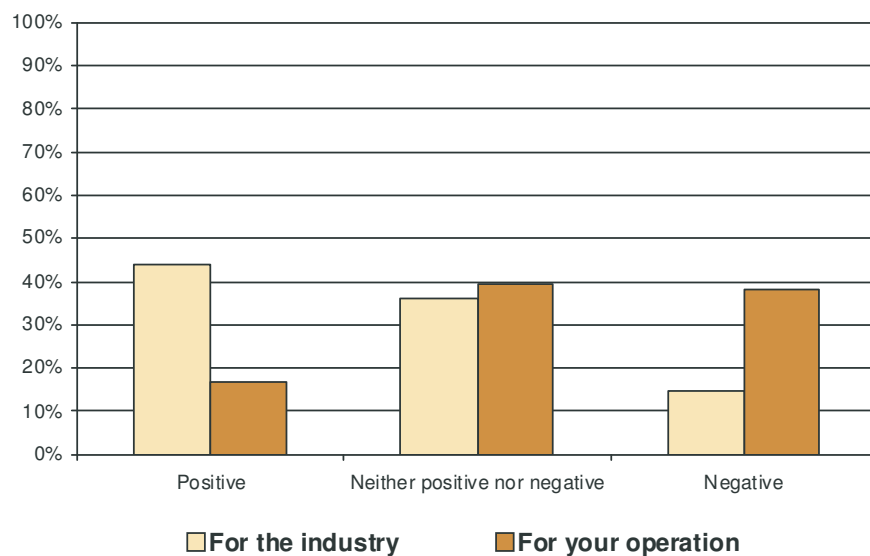
Figure 1: The key aspect of regulations that operators would like to change



² Respondents were asked to pick one thing from the following options: disclosure statements, the Code of Practice 2008, the complaints and disputes process, compliance requirements (eg registration, completing annual returns), other.

Figure 2 below highlights that while two-fifths of operators (44%) feel the Act (including its regulations and the Code) has been positive for the industry; this is more than twice the number that regard it as being positive for their own operation (17%). One reason identified for this is that some operators feel that the Act may have raised the standards of other operators while their own standards were already high. This sentiment came up in a number of areas and is likely to be a contributing factor to many operator views on issues, such as compliance costs, where they will not perceive changes to have benefited them directly.

Figure 2: Operator perceptions of the Act, its regulations and the Code on the industry and their operation



Base: All respondents (n=89)

Smaller operators and charitable and not for profit operators are more likely to perceive the Act as being negative for their operation. Some of these operators perceive the increase in resident protection to be far outweighed by the increase in compliance costs faced. Although they may agree with the intent of the Act they believe their residents were already well catered for. For these operators the additional costs of compliance are regarded as unwarranted.

The definition of a retirement village is broad and encompasses villages that range significantly in terms of size and the nature of facilities and services provided (eg a village with two units that only offers gardening services through to a village with 150 units, pools, libraries and restaurants). The Act treats all retirement villages equally and many operators feel this is inequitable and needs to be addressed, especially small operators and operators offering unit titles. Some operators also feel the Act is overly prescriptive and prevents them from 'being themselves' and offering a unique experience.

You can't compare us with Rymans etc, but we're all governed by the same rules....we're just so different, we've got no extra facilities, we just provide them with elderly housing, I mean they could be in their home. (Small charitable and not for profit operator)

When the Act came along it was fairly prescriptive in the way it was applied and it didn't seem to have any room for our model at all [ie unit title] and in fact when we have gone through the process of registering our village we have struggled to use any of the templates available because they are all built around the assumption that all villages will be done somewhere close to the license to occupy model. (Small commercial operator)

If you don't have a pile of complaints about us can't we soften it and do it our own way a little bit more....you're taking away our ability to be us and you're making us conform with everybody else. (Small charitable and not for profit operator)

Some operators would like to have stratified levels of compliance, reflecting size, level of risk and historical performance. The Retirement Commission may wish to work with the sector to look at how best to achieve a balance between effective protection of residents and minimising burden to operators (eg the potential for more thresholds to be built into the regulations).

Key Areas of Compliance

This section of the report looks at the following key compliance areas (as identified in the request for proposal):

- communication with residents
- complaints and disputes
- Statutory Supervisors
- village operations and management.

Each area begins with an overview of the requirements, followed by findings on levels of compliance and challenges and issues faced by operators.

Communication with Residents

Requirements of the Act

The Act (in particular sections 26, 30, 33, 34) states the information that must be provided (or available upon request) to intending and existing residents. It also covers matters on which residents must be promptly informed (eg the appointment of a new Statutory Supervisor or proposals to develop the village).

The Code of Practice (in particular clauses 26-31 and clauses 55-57) outlines the type and frequency of meetings of residents with the operator and requirements as to the opportunity for residents to participate in decision-making, including resident committees and resident access to the operator and Statutory Supervisor. It also notes that communication policies, systems and procedures must be in place.

These provisions seek to ensure residents are informed and protected when considering, entering and living within a retirement village.

Compliance

There is a high level of compliance amongst operators in meeting their communication requirements (ie supplying required documentation to intending and existing residents). Operators interviewed often noted a desire to inform residents as much as possible to reduce the potential for issues to arise later.

You face them everyday...its not like a real estate agent who never sees them again, you have to be honest with them and their families otherwise you're the one at the end of the day that will have to deal with the problem. (Large commercial operator)

Two thirds of operators (64%) think that residents are better informed now than prior to the Act, with commercial operators slightly more likely than charitable and not for profit operators to agree with this statement (69% of 56%). However, a number of operators suggest that this could be a reflection of some operators' perceptions that the Act has improved **other** operators' communication with residents, rather than their own.

It is the few bad operators who have made us have to have all these documents for the residents; nobody ever wants to look at them. (Small charitable and not for profit operator)

While many operators feel residents are better informed some feel the Act has gone 'too far' and that residents are now 'bombed and overwhelmed' by large amounts of information. The disclosure statement in particular was noted as too long and complex for residents to understand and expensive for operators to produce.³ To manage this issue some operators are supplying summary documents to residents.

The resident bodies interviewed for this study suggest that while those residents who have entered a village after the Act and/or Code came into force may be better informed, this may not be the case for the majority of residents who have been in their current unit for three years or longer (ie before the Act and/or Code).

Section 26 of the Act states that an 'operator must ensure that advertisements are not misleading or deceptive'. Based on complaints received, the Commission has concerns that the nature of the occupation right agreements are not being made clear in a number of advertisements and feels there is room for improved compliance in this area.

Provision of information to intending and existing residents

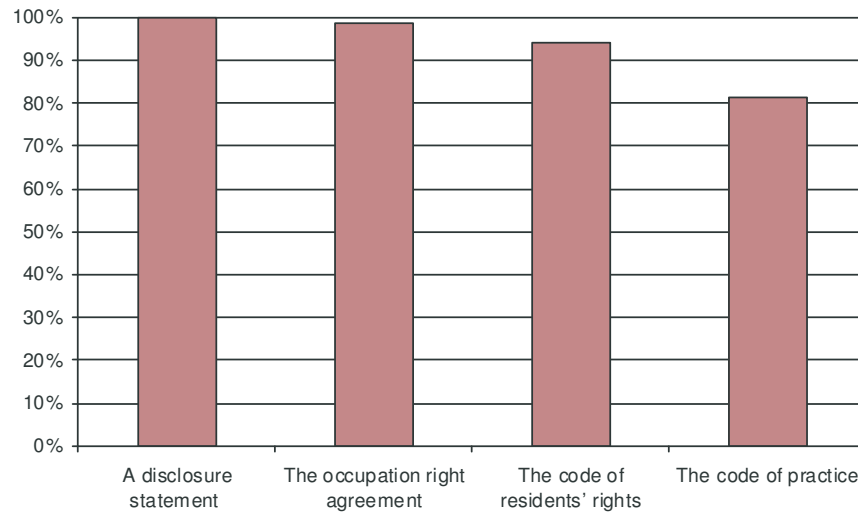
The contractual and financial arrangements faced by intending residents are complex and come with significant consequences. The Act and Code have put in place a number of measures, including provision of information, to ensure residents are protected and understand (as much as possible) their decision.

As shown in figure 3, most operators (81% - 100%) are supplying the required documentation (ie a disclosure statement, the occupation right agreement, the code of residents' rights and the Code of Practice). Some small operators are not supplying the Code of Practice however this may be due to its relatively recent introduction and the provision that operators only have to supply existing residents with the Code if asked. Some operators noted a lack of resident interest in the new Code and were happy that it was not mandatory (to supply existing residents) as it helps to reduce costs.

To be perfectly honest my residents generally couldn't care less [about changes to regulations]...when the new code came out I wrote to them all and said I could send them a copy...I only got one request [out of more than 100 residents]. (Large charitable and not for profit operator)

³ While writing this report, the Department of Building and Housing completed a consultation with the retirement village sector on the style and content of the disclosure statement.

Figure 3: Provision of information to intending and existing residents



Base: All respondents (n=85)

Annual General Meeting of Residents

Almost all operators (94%) are meeting their obligation to have an annual general meeting of residents (AGM). The five operators not meeting this obligation are small.

At the annual general meeting of residents all operators supply at least one form of financial statement (ie full financial statements, an audited summary of financial statements, a summary of financial statements) although one operator only supplies a non-audited summary. Some operators report providing summaries of financial statements as they consider the full financial statements to be too complex for residents to understand.

A quarter of operators report not supplying a maintenance report at the AGM, however this could be due to their AGM falling prior to this requirement coming into effect as part of the Code.

All operators with a Statutory Supervisor (ie not exempt) supply the Statutory Supervisors report.

Resident representation

While 14% of operators report that residents are not represented in their village(s), one in ten operators (9%) have a resident representative in management meetings and two-thirds (65%) have a resident's committee or association. Some resident's committees and associations have been established with the help and support of the village's Statutory Supervisor and at least one Statutory Supervisor has provided funding for this through the Retirement Commission.

Operators were also asked to specify other ways in which residents are represented in their village(s). The most common response was 'regular meetings with residents' which is reflected in the large number of operators (88%) that have had informal meetings with residents in the last 12 months. Operators also noted that they have an open door policy and residents have access to them as required, especially some small and/or charitable and not for profit operators that describe having a very close relationship with each resident.

Residents interviewed feel resident representation is an area that needs to be improved and in particular highlighted the desire for a national resident body, equivalent to the RVA. There are currently three regional resident associations with a fourth in the process of establishment.

Complaints and Disputes

Requirements of the Act

The Act (in particular Sections 51, 55 and 59) specifies requirements on operators in regards to complaints and disputes in particular to operate a complaints facility, notify Statutory Supervisors of certain disputes and the appointment a disputes panel.

The Code of Practice (in particular clauses 32-36) outlines the procedures that must be followed in operating a complaints facility including time limits on decisions and options for resolving a complaint.

The aim of these provisions is to ensure a transparent system that allows complaints to be made, received and resolved simply, fairly and quickly.

Compliance

Given the nature of retirement villages resident issues are a normal and expected part of operations.

It's like family, you're going to have squabbles in a family and you just need to work them through. (Large commercial operator)

While operators are meeting their requirements to operate a complaints' facility, few, if any, complaints are being received. The Act (and its regulations) does not provide a definition of a 'complaint' and interviews with operators highlighted many operators experiencing 'issues' but not 'complaints'.

We have hardly any [complaints], in fact I was wondering if we were getting them and they weren't being put forward to us but we've been pretty active and they [village managers] have to fill in a weekly report and then there's a monthly summary so we are tracking it quite closely. (Large commercial operator)

Operators currently bear the financial costs of a disputes process and one quarter of operators view the costs as being high. Given the onus on the operator some feel there is less incentive on a resident to resolve the complaint and that a formalised mediation step would be beneficial for both the operator and resident. Residents interviewed also noted that the legal costs they face can be high and potentially prohibitive.

Operation of a Complaints Facility

Almost all operators (98%) have a written procedure for dealing with complaints. The two operators that do not are small charitable and not for profit operators. Interviews indicate that in general operators are happy with the complaints process with many noting they already had a complaints facility in place (ie prior to the Act).

The complaints process is fine, I've always done that anyway (recorded it), we get more written compliments than complaints. (Medium commercial operator)

We were doing those things before (operating a complaints facility) but you've got those couple (of operators) that won't do it or will take an entrenched position. (Large commercial operator)

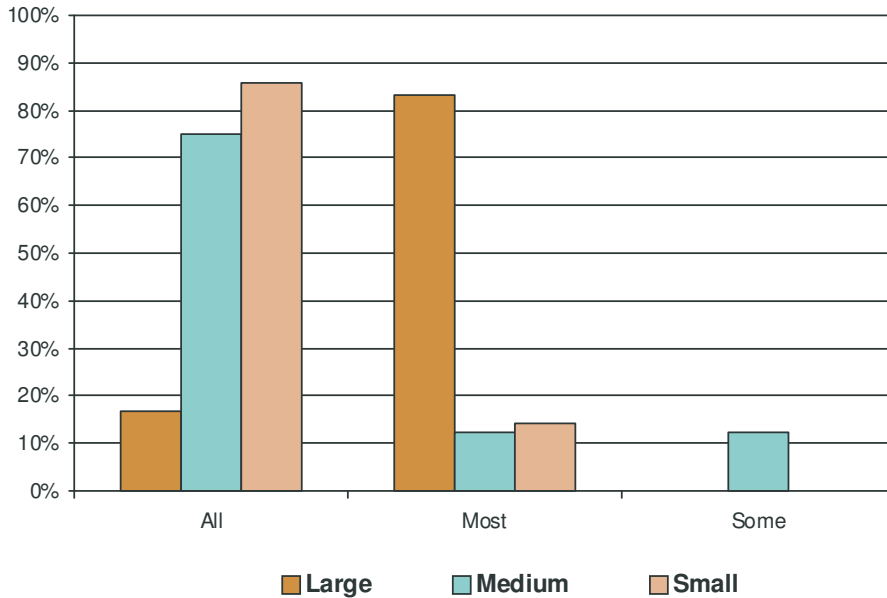
In the last 12 months, three out of five (62%) operators did not receive a complaint.⁴ As would be expected (ie given resident numbers), small operators are more likely than large operators not to have received a complaint (81% cf 4%).

Complaints Resolution and Disputes

Of those operators that did receive a complaint, 71% report that all complaints were resolved within the allocated 20 working days. Figure 4 shows that complaints are more likely to be resolved quickly within smaller operators. One reason for this could be that smaller operators may have fewer steps in their complaints process than large operators.

⁴ It should be noted that of those operators that reported having 'no complaints' four reported having a complaint in regards to finding a resident for a vacant unit later in the survey.

Figure 4: Number of complaints resolved within 20 working days by operator size



Base: Respondents who have received complaints (n=35)

Fifteen per cent of operators report using financial settlement to avoid a complaint going to dispute and 27% report using mediation. Some operators also specified other ways they resolve a complaint including having a discussion or meeting with the resident concerned and/or engaging the Statutory Supervisor.

Since the Act came into force only eight complaints have been referred to a disputes panel. Although few operators have experienced the process, the general perception is that it is expensive and that an intermediary step is required. While operators are pleased that the Code has introduced the option of mediation many would like to see mediation become a formalised step in the process.

I think that one of the big plusses of the new Code is that they have introduced that mediation step as well. (Large commercial operator)

I think the biggest flaw in this process is that a resident is not required to go into mediation, so they can refuse mediation and we are then forced to go to adjudication and in going to adjudication you can't avoid the cost...[in terms of] legal costs, the hours of time and the damage to resident relationships. (Large commercial operator)

The public nature of the disputes process was also highlighted by some operators and stakeholders as an issue. Interviewees stressed that the process can impact on all village residents not only the operator and resident involved.

To resolve situations before they become public is beneficial to everyone concerned because anything that occurs in the public arena has the potential to impact your ability to re-sell and your ability to re-sell is vital to the outgoing resident as well as to the ability to bring residents in - and its not that you're trying to avoid people's right to complain, because they have the right to complain, it's just how public that complaint becomes..... I don't think that the disputes environment is necessarily healthy in the relationship for both resident and operator. (Large commercial operator)

This [formal disputes] takes it to another level cause this makes it public and what we've found is that the resident (that took the formal dispute) has been isolated by the other residents and it has created quite a division within the village. (Large commercial operator)

The Act (its regulations and the Code) provides for residents to inform and/or involve the Statutory Supervisor in a complaint or dispute and outlines circumstances in which the operator must inform the Statutory Supervisor of a dispute. Statutory Supervisor involvement can vary greatly and some operators and stakeholders feel there is a need for their role to be further clarified and/or formalised. While some operators have had positive experiences and perceive Statutory Supervisor involvement to be beneficial, others do not.

One of the things he [the Statutory Supervisor] has had some involvement in recently is that mediation step before formal dispute and as I understand it, from what he has told me, he has had some success in that. (Large commercial operator)

The trouble is instead of him [the resident] coming to us he incurred costs by going to the Statutory Supervisor, well the Statutory Supervisor has failed in some ways in that they didn't insist that he come to us, which I felt is what they're supposed to do. (Small commercial operator)

The Retirement Villages Association is also in the process of establishing a Disciplinary Authority which will be a separate, and additional facility, to the disputes panel process.

Statutory Supervisors

Requirements of the Act

The Act (in particular section 38) states that a retirement village operator must appoint a Statutory Supervisor for the village (unless an exemption has been granted).

The Code of Practice describes the role of the Statutory Supervisor in village operations, for example the chairing of annual general meeting of residents and the ability of the Statutory Supervisor to call a special general meeting.

The Statutory Supervisor oversees the management of the village, with particular concern for the financial position of the village and the security of the residents' interests.

In 2008/09 the Retirement Commission undertook research examining the role and functions of Statutory Supervisors which looked at Statutory Supervisor compliance and issues, and findings from this report were considered during our analysis.⁵

Compliance

Statutory Supervisor services

Twelve per cent of operators report that their village(s) does not have a Statutory Supervisor which is in-line with the proportion of operators that have received a Statutory Supervisor exemption.⁶ A number of operators that are interested in seeking an exemption from appointing a Statutory Supervisor have not done so as they have either been advised, or have heard, that it is difficult and costly. Of the 30 operators that have applied, six have, to date, been turned down.

We have looked at legal advice in regard to that [applying for an exemption]. Last time we looked at it, and I haven't addressed it in the last 6 months, they said none had been approved and it would be very difficult. (Small commercial operator)

Some Statutory Supervisors appear to be more proactive than others in the services or support provided to operators and/or residents. Half of operators (48%) receive additional services from their Statutory Supervisor (outside of those mandated under the Act) including advice and guidance on third party professionals (valuators/auditors/accountants), help establishing a residents association, mediation services and financial advice. Although large operators are more likely to receive these additional services, interviews with stakeholders indicate that small operators may be the most in need.

⁵ Statutory Supervisor Monitoring Report 2009, Retirement Commission.

⁶ Twenty four operators have received an exemption from appointing a Statutory Supervisor and a further 3 had applied at the time of writing this report.

While operators use a range of Statutory Supervisors, the majority use Covenant Trustee Services, and some stakeholders expressed concern as to their dominance in the market. There are currently 13 approved Statutory Supervisors however only nine are known to be active and we have been made aware of two that may be in the process of resigning. Stakeholders are concerned that the Statutory Supervisor market is 'too small' and may become a barrier to the effective operation of the sector, including safeguarding residents' interests. The complexity of the sector, combined with a perception amongst some that the financial incentive to become a Statutory Supervisor is not sufficient, remain potential barriers to entry.

Nonetheless, most operators (91%) feel they have a good relationship with their Statutory Supervisor, with only one small commercial operator experiencing a poor relationship. Four-fifths (81%) of operators also think their residents have a good relationship with the Statutory Supervisor. Operators recognise that Statutory Supervisors have a dual role to support operators and protect residents and that this can be a fine line for Statutory Supervisors to walk.

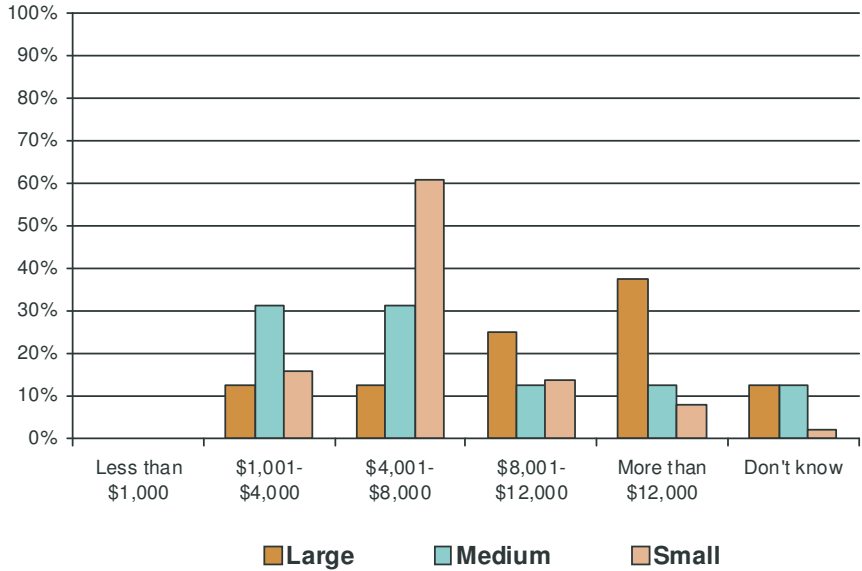
'I think they do demonstrate the ability to look at both sides and to be that common ground.'
(Large commercial operator)

Some residents however feel Statutory Supervisors are aligned to operators (due to their contractual arrangements) and disagree with Statutory Supervisor costs being passed onto residents through their annual fees.

Costs and perceived value

One-third (33%) of operators were not charged an acceptance fee by their Statutory Supervisor and of those that were, the most common charge was between \$3,000 and \$6,000 per village. Half of all operators report that their annual Statutory Supervisor costs are between \$4,000 and \$8,000 per village. Large operators are less likely to have paid an acceptance fee but are more likely to pay higher average annual Statutory Supervisor costs per village (as seen in figure 5 overleaf), which could be a result of accessing additional services.

Figure 5: Average annual Statutory Supervisor costs per village



Base: Respondents who have a Statutory Supervisor (n=75)

More than half (56%) of all operators feel the services they receive from their Statutory Supervisor represent value for money, highlighting the advice and assistance received and/or having someone independent/neutral to call on. Some operators also stated that Statutory Supervisors provide an important ‘peace of mind’ for residents.

I’m quite happy to have a Statutory Supervisor, I think it gives the residents some sort of security in their own minds. (Large charitable and not for profit operator)

I think you need to have that independent body for both (operators and residents) because very often I have meetings with resident committees and the statutory supervisor because the residents interpret something in their occupation license one way and we interpret it another. (Medium commercial operator)

Because I work on my own it’s [the Statutory Supervisor] a very good network I guess you could say and back-up for me...I believe in our circumstances they’re good value. (Large charitable and not for profit operator)

Small and medium sized operators (compared to large operators) and charitable and not for profit operators (compared to commercial operators) are slightly more likely to feel their Statutory Supervisor does not represent value for money. Some of the reasons provided were that ‘Statutory Supervisors are unnecessary’ and that ‘the costs are too high’. These operators were more likely to consider that their residents were already well protected and did not require (or want) a Statutory Supervisor. Others described the associated costs as very high and too much for residents to bear.

But they [Statutory Supervisors] don't do anything, he's a nice enough bloke, I've got nothing against him, but they don't earn their money, what are they doing to earn their money? (Small charitable and not for profit operator)

I can see the protection required in the more commercial operation when they're paying \$200-\$300k for a unit.....but our lot aren't and they're getting nearly all of it back.... the one size fits all thing is ridiculous, its draconian for what we're doing. (Small charitable and not for profit operator)

The residents don't see they get any value from the Statutory Supervisor, I can see why [they were needed] because there were shonky villages...I can see it's a good thing for some, but really it didn't apply here. (Small charitable and not for profit operator)

Our Statutory Supervisor is not adding any value at all, if you wanted to be really blunt it has the potential to destroy the whole viability of the village, in terms of what he requires under the act and associated costs. (Small commercial operator)

The Statutory Supervisor role

There are some concerns that the Act and Code do not adequately describe the role of the Statutory Supervisor and that clarity is required especially in regards to their role in the complaints and disputes process. Some operators and stakeholders feel residents in particular perceive Statutory Supervisors as their advocates and do not understand the dual role they play. The Statutory Supervisor monitoring project also highlighted the difficulty Statutory Supervisors face in performing a watchdog role in addition to an advocacy role.

Statutory Supervisors are contracted (and paid) by the operator and in the views of some this may result in the Statutory Supervisor being aligned to the operator. Some stakeholders suggested alternative arrangements may be necessary for the appointment, contractual arrangements and funding of Statutory Supervisors to increase their independence.

In August 2009 Cabinet agreed to the establishment of a licensing regime (to be operated by the Securities Commission) for trustees and Statutory Supervisors with the aim of improving competence, capability and accountability. Given the relatively small number of Statutory Supervisors in the market, the effect of licensing on potential and current Statutory Supervisors will need to be monitored closely to ensure it does not act as a barrier to entry.

Vacant Units

Requirements of the Act

The Act, and the new Code in particular, outline the processes and procedures that operators must follow when finding new residents for vacant units. A recent DBH publication on refurbishment should further assist operators and residents in this area. Many of the provisions only apply where the operator is responsible for selling the residential unit (eg marketing, reporting and payments due to the resident and/or their executor).

Compliance

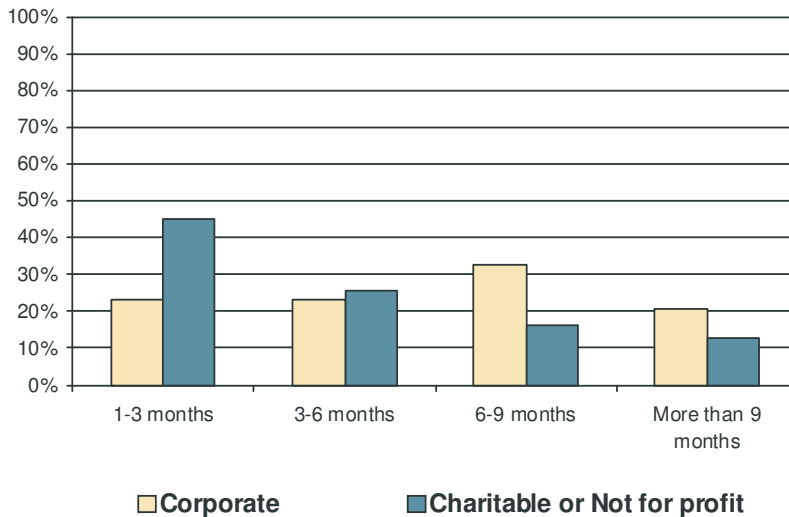
While most operators had to fill vacant units in the last 12 months few have experienced issues with former residents (or their executors). Many operators however have noted that the economic downturn has had detrimental impact on both the demand for and sale prices of units and that operator and resident expectations have had to be adjusted.

Residents interviewed perceive the charging of ongoing fees (ie once the resident has vacated the unit) and the inability of vacating residents to share in capital gains (if there are any) to be unfair.

Finding new residents for vacant units

Nine out of ten operators (88%) had to find new residents for vacant units in the last 12 months.⁷ Figure 6 below shows that charitable and not for profit operators are more likely to find new residents quickly. Initial findings from the operator interviews have identified that some charitable and not for profit operators have waiting lists and that their (sometimes) lower price point and/or religious/philosophical identity may increase their attractiveness to some intending residents.

Figure 6: Average time to fill a vacant unit



Base: Respondents who had to find new residents in the last 12 months (n=74)

Four-fifths of operators (80%) have had no issues with former residents in relation to refurbishment costs and processes (eg gaining access to enter the unit to do work). Of those that did the most common issue was in regard to the division of costs (16%), with medium, large and commercial operators identifying this as their most common issue.

⁷ This is due to a mix of units becoming vacant (ie replacement) and new units being built (ie expansion).

The Code outlines refurbishment costs and processes for occupation right agreements entered into after 25 September 2006 and states that residents are not liable for fair wear and tear. This means that in many villages residents are on a mix of old and new arrangements (in relation to refurbishment costs) which can create a sense of inequity. Some operators however note that with time this issue should decrease as fewer residents remain in a village on an old occupation right agreements. Interviews identified that some operators have increased management fees to recover the costs associated with fair wear and tear.

With the way the Act has changed what the person gets back when they sell it is simply now a mathematical calculation and it is very straightforward and it is a very good thing...it's better than it was. (Large commercial operator)

Seventy per cent of operators have also not had any issues with a former resident regarding finding a new resident for a vacant unit. Of those that did the most common issue was 'the nature of the marketing plan' (14%).

Nine out of ten operators (88%) have not received any complaints concerning the disposal of a unit and those that did were most likely to be with regard to the time taken to sell the unit, which given the economic climate is not surprising.

Village operations and management

Requirements of the Act

The Act (in particular Sections 13, 16 and 17) sets out the financial and information requirements associated with being a registered retirement village, such as completing annual returns.

The Code (in particular Part 2) outlines general requirements on how operators should run their village(s), including policies and procedures, notices and induction requirements.

Compliance

Village management

Four-fifths of operators (81%) have a local on-site village manager, rising to 92% for commercial operators (65% for charitable and not for profit operators). Large operators are more likely to have processes to familiarise a new manager and update existing managers on regulatory requirements than small operators.

Code of Practice 2008

Nine out of ten operators (91%) believe that they are fully compliant with the new Code of Practice. The eight operators that are only 'partly' compliant, are predominately small and charitable and not for profit. Only seven operators identified that the Code as the key aspect of the regulations that they would change (if they could).

Financial and information requirements

Only five operators (6%) have not completed an annual return in the last 12 months.⁸ Two-fifths of operators report that the time (42%) and expense (37%) involved in producing an annual return has a significant impact on their ability to meet their financial and information requirements.

Nine out of ten operators (88%) have a long-term maintenance plan and half of these operators have had their plan in place for over three years.

Forty one per cent of operators have filed a 'change of circumstances and documentation' in the last 12 months. As would be expected, large operators are more likely to have filed a notice than small operators (88% cf 34%). Follow-up interviews with operators have identified that some operators feel the changes requiring notification are too minor leading to large amounts of filing time and cost.

You sort of have to blow your nose really before you have a change of circumstances; it is not like a major issue it is very minor. (Large commercial operator)

Costs

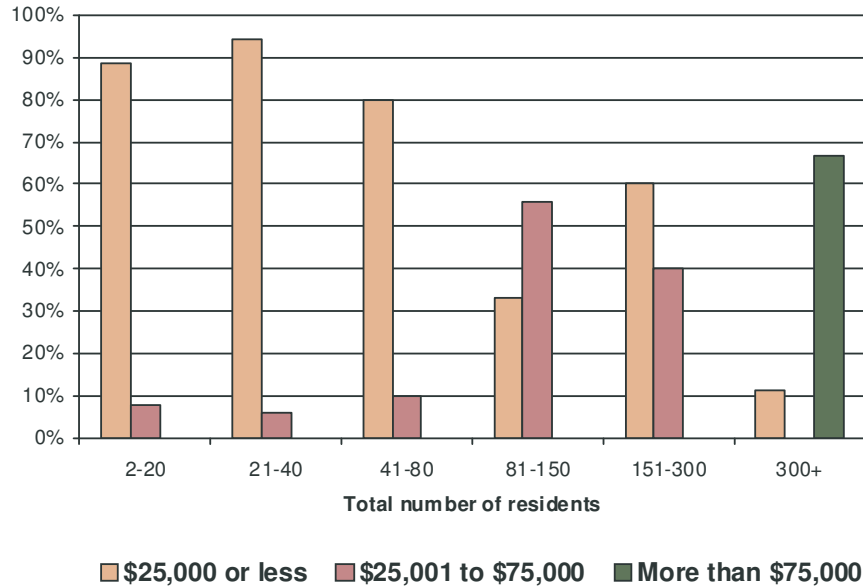
The purpose of this research was not to seek detailed information on costs in order to quantify individual or sectoral costs incurred. Survey and interview questions instead were designed to see how different types of operators have been relatively impacted. Costs however came through as a significant issue for operators and it may be an area for the sector to come together to investigate further.

The majority of operators (82%) report that compliance costs are a significant proportion of their operating costs.

Total compliance costs seem to be driven by operator size and to a lesser degree resident numbers. As can be seen in figure 7, operators with between 2 and 80 residents (in total) are most likely to incur costs of \$25,000 or less per year, accounting for 67% of operators.

⁸ Operators do not have to file an annual return in their first year of being registered. In the last 12 months two operators had their registration suspended due to not filing an annual return.

Figure 7: Total annual compliance costs by number of residents



Base: All respondents (n=90)

Retirement village operators face a range of costs, some of which are common to any business (eg accountancy and legal fees) and others which are unique to retirement village operators including:

- initial registration and annual return filing fees
- Statutory Supervisor fees (unless an exemption has been granted)
- costs associated with developing and producing required documentation such as the disclosure statement.

One area that is less clear is the costs retirement village operators face in meeting the new International Financial Reporting Standards (IFRS), which became a requirement for all New Zealand reporting entities with financial years commencing on or after 1 January 2007. All retirement village operators meet the Financial Reporting Act 1993 definition of a reporting entity and therefore must prepare annual audited financial statements that meet these standards. Many operators identified costs associated with meeting these requirements as a significant proportion of their compliance costs.

Our accountancy fees have gone from about \$2,400 to \$8,500, that's on the IFRS reporting standard... on top of that we have got auditor's fees of \$1,500, then we've got the annual filing fee of \$1,500, we've got valuation fees \$2,300, we've got Statutory Supervisor's costs \$6,500-\$7,000may as well say our total costs are around \$22,000 and that's blown out from around \$3,000.....it's about 20% of my profit. (Small commercial operator)

When interviewed, smaller operators have suggested that they face an unfair compliance costs, with little gradation for size of operator. While initial registration and annual return filing fees are staggered (eg annual return filing fees: 1-34 units \$450; 35-84 units \$1,500; 85+ units \$3,850) other compliance costs such as Statutory Supervisor fees are negotiated by the operator and smaller operators may find it more difficult to access and negotiate with providers. An interview with a not for profit operator identified that some small not for profit operators are looking into ways to group together and share costs.

Sector Trends and Challenges

In the last 12 months a third of the sector (37%) has expanded, rising to 45% for commercial operators and/or 63% for large operators. The short-term future of the sector looks positive with half of operators (53%) planning to grow in the next three years (75% for large operators). Three small operators are struggling financially, with two planning to downsize, and four operators are planning to sell in the next 12 months.

The top three issues facing the sector as identified by operators are:

- 1 compliance costs (54%)
- 2 other costs and the impact of the economic downturn (26%)
- 3 the impact of New Zealand's ageing population (23%).

Operators recognise that they are operating in a complex sector that has experienced significant change in recent years and many feel the sector needs time for regulations to 'bed in'. Even though operators have identified issues and concerns with the current regulations there is little appetite for regulatory change. Any change would require significant consultation with the sector and would need to simplify and reduce compliance costs.

Now that we have our legislation and regulations and our code I think it's best if everybody just sticks out of it – I mean we've had enough cost (from change) – I think give it some time to work through – at the end of the day it is about looking after the residents and we totally support that and I think on the whole it works well – and we're lucky that our industry works well together.... I think a lot of the hard work has been done and we sort of got there. (Large commercial operator)

Compliance and operating costs

As previously discussed, the perception amongst many operators is that costs have increased significantly as a result of the Act, and for a few these costs are impacting on their ability to run a sustainable and/or profitable operation. While many operators have sought to pass on most, if not all, of these additional costs to residents, some operators are unable to do so. These operators are concerned that their residents cannot afford increased fees to cover higher compliance costs. Many operators expect annual compliance costs to increase overtime and are concerned about how they will manage this given the potential impact of the current economic downturn.

Because we were well set-up by the time the new Act came in there's been no major difference except for the costs – the cost was huge. (Large charitable and not for profit operator)

Some operators also identified local and regional government costs as an issue. Local body rates, in particular recent rates increases, and the inability of residents to obtain rate rebates (even though the village often provides the equivalent of some local body services) were highlighted. The time and costs associated with obtaining consent to develop and/or expand an existing village is also an issue for some operators, potentially acting as a barrier to entry to the sector for new operators.

Aforementioned compliance and operating costs however do not seem to be negatively impacting on the growth plans of at least half the sector. This growth however is dominated by large operators which could result in a lack of market diversification. A question for further investigation is whether increased compliance costs have curtailed potential growth plans of those operators not planning to grow.

We were looking at adding all sorts of various other amenities...but all that has gone by the wayside because we're struggling to meet the financial demands of the whole operation. (Small commercial operator)

Future demand

Operators are aware that the sector will need to change and grow to accommodate the ageing New Zealand population. Some are worried about the sectors' ability to meet this demand (in terms of capability and capacity) and perceive baby-boomers as likely to have higher expectations and less ability to pay. Some noted that baby boomers may be resistant to the licence to occupy model and that the sector may need to develop new business models.

It's hard looking forward when you know that the baby boomers have a completely different mindset, life-view, have generally spent their money etc... so a whole lot of things that mean the kind of thing they want to live in is not necessarily the same as what people currently want to live in and will they be able to afford it? And I believe that lots of them won't. (Large commercial operator)

We just don't think that the baby boomers will be willing to lose 30% [ie through the deferred payment model], they'll be more interested perhaps in a different sort of title, we don't know exactly what but we think baby boomers' needs will be different. (Medium commercial operator)

While some operators believe there is potential for a rental option they are not sure how or if it could work given current legislation and operator business models.

We've often discussed rentals but it's how do you mix it [ie people on different contracts in one village] ...but I think it has to be looked at but probably our legislation doesn't really allow it yet. (Medium commercial operator)

I think there is probably a market for rental; I often get requests for that. (Small charitable and not for profit operator)

It is really challenging here [to offer a rental option]....it's not necessarily the legislation it's just that to get a return for shareholders, the rental costs are so high that you either have to be very high end with large cash flow opportunities and the only way that really works for the resident if they're willing to take a bet on how long they're going to live...so the rental model is probably better if you think you're going to be in there a short time and the deferred management fees model is better if you think you're going to be in there a long time. (Large Commercial operator)

Most operators agree that there are a range of clients in terms of needs, desires and budget, and that a healthy sector needs a mix of operator sizes and types to meet demand. However, compliance costs and complexity do seem to be a potential barrier for some small and/or charitable and not for profit operators. One operator identified the need for groups of small operators to band together in attempt to reduce their respective compliance costs.⁹

Legal advice to intending residents

The contractual and financial arrangements faced by intending residents are complex and come with significant consequences.

To improve intending resident understanding and protection the Act states that 'an intending resident must seek independent legal advice before signing the occupation right agreement'. Operators have highlighted that while this step may be an important safeguard for them they do not believe it is meeting its intended aims. Stakeholders, including residents, echo this sentiment noting that there is a lack of lawyers that understand the sector, which can result in poor quality advice. The associated costs were also raised as an issue facing intending residents.

It's brilliant...it hasn't [improved resident understanding] but it protects us. (Medium commercial operator)

The certificate that they [the intending resident's solicitor] sign that they've actually explained this, I think this is just nonsense because they are just signing off on something that they don't even understand. (Small charitable and not for profit)

Solicitors take a much more directive approach since they now have to sign the document....they hold quite a lot of sway.... and I think some solicitors out there still have a lot of learning to do about the [financial] model. (Large commercial operator)

Being urged to have a lawyer peruse conditions of tenure, occupation agreements, disclosure statements etc before signing up to residency is not the solution to residents' sense of injustice in this living environment. (Stakeholder)

⁹ Section 38(4) of the Act provides operators with the option to share a Statutory Supervisor.

Cooling off period

The Act allows an intending resident to cancel an occupation right agreement within 15 working days. Although a resident can move in within the 15 days, it is at the operator's discretion and some do not allow this as they perceive the risk as too high. To mitigate this risk one operator reported offering a lease arrangement.

In some cases a resident wants and/or needs to move into the village before the 15 days has expired (eg a person may have sold their home and have no where else to go), and some believe residents should have the right to waive this provision thereby removing the risk from operators.

With the change in the economic environment we've found what's been happening is that residents have been waiting [less time] to go unconditional because there are more cash buyers in the market so those people are being really squeezed on the time they have to move out of their existing home [and into the village]. (Large commercial operator)

A stakeholder also noted operators requiring documents to be signed early in the process which results in intending residents incurring legal costs while the sale is still conditional.

Further investigation is needed to see if the intent of the cooling off period is being achieved and this should form part of any review of residents' attitudes to the Act.

External factors

Current Government policy seeks to help older people remain in their homes as long as possible through access to home care services (instead of moving them to residential care). Publicly funded home care services are delivered by the local District Health Board but there is variation across the country making it difficult for large operators (with villages in more than one area) to ensure consistent and reasonably priced home care services to their residents.

Where it negatively impacts us (the operator) is that only one DHB will contract directly with retirement operators for the provision of home care services so therefore we have to sub-contract with a provider (for home care services) that generally means we are operating at a loss so as a business we have to offset that against other business model means. (Large commercial operator)

In general home care services are less comprehensive than residential care services (which are often 24/7). One operator also noted that the level of dependency at which people are assessed to go into a rest home is now higher which can place extra pressure on the operator and other residents who help 'fill the gaps'.