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Commission for Financial Capability  
Monitoring the Effects of the Retirement  
Villages Act (2003): The effectiveness of  
statutory supervision

Report

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# Table of Contents

<b>1: Executive Summary .....</b>	<b>3</b>
<b>1.1 Background and objectives .....</b>	<b>3</b>
<b>1.2 Approach.....</b>	<b>3</b>
<b>1.3 Summary of key findings .....</b>	<b>4</b>
1.3.1 Statutory Supervision – industry overview 2018 .....	5
1.3.2 Industry-related considerations .....	5
1.3.3 Performance of duties.....	6
1.3.4 Other activities – the role of the Statutory Supervisor .....	7
1.3.5 The Retirement Villages Act – specific feedback.....	8
<b>2: Project Background and Objectives .....</b>	<b>9</b>
<b>3: Approach .....</b>	<b>11</b>
<b>3.1 Sample structure .....</b>	<b>11</b>
<b>3.2 Identification of research participants .....</b>	<b>11</b>
<b>3.3 Background research .....</b>	<b>12</b>
<b>4: Statutory Supervision – Industry Overview 2018 .....</b>	<b>13</b>
<b>4.1 Summary of key findings .....</b>	<b>13</b>
<b>4.2 Changes in the industry since the 2009 monitoring review .....</b>	<b>14</b>
<b>4.3 Current Licensed Statutory Supervisors and market share .....</b>	<b>14</b>
<b>4.4 Number of villages supervised by individuals (supervisors).....</b>	<b>15</b>
<b>4.5 Supervision compliance costs .....</b>	<b>17</b>
<b>4.6 Relationships with operators.....</b>	<b>19</b>
<b>4.7 Professional development .....</b>	<b>20</b>
<b>5: Industry-Related Considerations .....</b>	<b>21</b>
<b>5.1 Summary of key findings .....</b>	<b>21</b>
<b>5.2 Appointment of Statutory Supervisors at time of village registration – and the role of the Statutory Supervisor as industry gatekeeper .....</b>	<b>21</b>
<b>5.3 Supervision Exemptions .....</b>	<b>22</b>
<b>5.4 Consolidation of Licensed Supervisors – risks to the industry.....</b>	<b>23</b>
<b>5.5 Barriers to entry .....</b>	<b>24</b>
<b>6: Performance of Duties.....</b>	<b>25</b>
<b>6.1 Summary of key findings .....</b>	<b>25</b>
<b>6.3 Maintaining stakeholder facilities.....</b>	<b>27</b>
6.3.1 Protections around the sale of ORAs .....	27
<b>6.4 Monitoring the financial position of retirement villages .....</b>	<b>27</b>
<b>6.5 Information provided to residents .....</b>	<b>30</b>
<b>6.6 Monitoring and participating in the operation of complaints facilities .....</b>	<b>32</b>
<b>6.7 Conflict of interest issues.....</b>	<b>33</b>
<b>6.8 The use of the Statutory Supervisor’s powers under S43 and S44 of the Act.....</b>	<b>33</b>
<b>6.9 Reporting to the Registrar and the FMA .....</b>	<b>33</b>
<b>7: Other activities – the role of the Statutory Supervisor .....</b>	<b>34</b>
<b>7.1 Summary of key findings .....</b>	<b>34</b>
<b>7.3 Keeping under review levels of professional indemnity insurance .....</b>	<b>35</b>
<b>7.4 Long-term maintenance plans .....</b>	<b>35</b>
<b>8: The Retirement Villages Act (2003) – specific feedback.....</b>	<b>37</b>

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8.1	The Retirement Villages Act (2003).....	37
8.2	Suggested amendments to the Act .....	37
9:	Resident feedback - summary.....	39
10:	In conclusion.....	40

# 1: Executive Summary

## 1.1 Background and objectives

One of the roles of the Commission for Financial Capability (the Commission) is to monitor the effectiveness of the Retirement Villages Act (2003), including regulations and codes of practice made under the Act. The Retirement Commissioner (via the Commission) undertook research to assess the current level of effectiveness of statutory supervision of retirement villages. This included the effectiveness of the Act, regulations and code of practice, with regards (but not limited) to:

1. The resources required by, and available to statutory supervisors for the purposes of fulfilling their obligations under the Act, regulations and code of practice
2. Best practice adopted by statutory supervisors for a wide range of issues including:
  - a. Maintaining stakeholder facilities
  - b. Monitoring the financial position of retirement villages
  - c. Monitoring and participating in the operation of complaints facilities now that the Code variations have come into force (1 April 2017)
  - d. Monitoring compliance by operators with the terms of deeds of supervision
  - e. Receiving and acting on information and complaints from retirement village residents
  - f. Requesting information from the auditors of retirement villages
  - g. Reporting to the Registrar, FMA and residents on the performance of its duties and exercise of its powers
  - h. Keeping under review human resource and infrastructure needs in villages
  - i. Understanding long-term maintenance planning and funding for maintenance in villages
  - j. Contingency and business continuity planning
  - k. Keeping under review levels of professional indemnity insurance
  - l. The use of the statutory supervisor's powers under sections 43 and 44 of the Act
  - m. Factors considered before approving any material change proposed by an operator.

This report outlines the findings from this research.

## 1.2 Approach

This was a qualitative project, comprising a total of **N=40 in-depth interviews** with a mix of retirement village industry 'participants' and wider stakeholders including:

- N=9 interviews with managers and staff members responsible for statutory supervision across four Licensed Statutory Supervisor organisations
- N=3 interviews with lawyers with a specialist knowledge of the retirement village industry
- N=4 interviews with industry stakeholders – the Financial Markets Authority (FMA), the Trustee Corporations Association of New Zealand (TCA) and the Retirement Villages Association of New Zealand (RVA)
- N=12 interviews with operator representatives – in most cases these were at the CEO/CE, CFO, COO or Chief Legal Counsel level – and represented a mix of larger 'group' retirement villages, independent villages and charitable trusts. In some instances these interviews were attended by two operator representatives (e.g. CEO and CFO, or COO and Legal Counsel)

- N=12 interviews with resident representatives. These interviews were all with Chairs of Residents Committees but in some instances included additional committee members.

A number of documents were also reviewed as part of this project:

- The Retirement Villages Act (2003)
- Retirement Villages Code of Practice 2008 (variations included April 2017)
- Examples of the standard (template) TCA Deed of Supervision
- The 2009 Statutory Supervisors Monitoring Report
- Guidance Note: Monitoring by Securities Trustees and Statutory Supervisors –prepared by the FMA 2013
- Statutory Supervisors of Retirement Villages: An overview and insights from the FMA perspective

### 1.3 Summary of key findings

Overall, this review has found that the existing regulatory regime is ensuring that intending residents' and residents' interests are adequately protected through 'external oversight of the conditions of entry into and continuing operations of retirement villages', as specified in Section 3 (c) (iii) of the Retirement Villages Act (2003).

Where the Act, regulations and code is prescriptive with regard to specific transactional processes, these are adhered to. There are some differences in processes however where the Act allows for more discretion, mainly as a result of different commercial structures and internal systems and processes. These differences are not necessarily significant and for the most part, each of the four Licensed Statutory Supervisors described similar internal processes around the monitoring of the financial position of retirement villages, reviewing insurances and other aspects associated with monitoring compliance by operators with the terms of the deeds of supervision. There was agreement that the Act gives sufficient powers to Statutory Supervisors where an operator may be non-compliant and there is evidence to suggest that Statutory Supervisors use their powers when required.

One area of difference across Statutory Supervisors is that they appear to take into account different criteria or have different thresholds with respect to accepting (or rejecting) appointments. It is not clear how significant these differences are and what the longer-term impacts on residents may be (and as far as we have been able to determine this has occurred in only one instance). One other area of difference concerns the type of financial analysis conducted and the level of financial reporting back to residents. This varies largely depending on the ownership structure of groups. There is at least one group who does not report any village-specific financial information to its residents. Summary consolidated information is provided and Statutory Supervisors report that they are comfortable with this. As required under regulation 22, the disclosure statement to residents must state whether the operator of the village prepares financial statements relating to the operator or separate financial statements for both the operator and the village.

The consolidation of the industry since 2009 does not appear to have had a detrimental impact on the protection of residents' and intending residents' interests, and this has also taken place in the context of increased controls around market entry. Overall however, the number of individuals responsible for front-line relationship management is small and in the current context of expansion of existing villages and new villages being built this is likely to require ongoing consideration.

### 1.3.1 Statutory Supervision – industry overview 2018

1. There has been a further consolidation of Licensed Statutory Supervisors since the previous monitoring review, from nine in 2009 to four in 2018. One Licensed Statutory Supervisor provides supervision for approximately 73% of retirement villages (55% in 2009).
2. The number of villages supervised by individuals (front-line relationship managers) ranges from 10 up to 80-90. Not all individuals undertake supervision work on a full-time basis however and this is an important consideration when considering relative workloads. In general, the more villages supervised, the more resource is applied to supervision work, including business analysts and other support staff. The organisation with the largest market share provided evidence of streamlined systems as well as a team-based approach to managing workload issues. They also provided evidence of other internal support structures. Overall however there are few individuals responsible for supervision activities across the retirement villages sector.
3. There is no evidence to suggest that service levels and the meeting of obligations under the Act differ significantly between individuals supervising different numbers of villages given current numbers supervised (either on a part-time or a full-time basis), other than where different service levels are specified in the Deeds of Supervision.
4. There have been no significant changes in the compliance costs of supervision since the 2009 review. There have been no significant changes in settlement fees.
5. There are some variations in what is included in fixed (retainer) supervision fees. One Statutory Supervisor bills for AGM attendance on a time and attendance basis and there is variation among the others with respect to their physical presence on site at retirement villages (whether there are one or two visits each year). Most Statutory Supervisors take an issue-based approach in terms of their physical presence on site.
6. Relationships with operators vary and range from higher involvement with regular formal meetings, to transactional interaction only. Statutory Supervisors have little involvement with village managers, especially with respect to larger groups.
7. Staff training and professional development is an FMA licensing consideration. There is other training that takes place on an ad hoc basis, and (most) Supervisors also have their own professional continuing education requirements (as lawyers or accountants).

### 1.3.2 Industry-related considerations

1. There was agreement that the appointment of a Statutory Supervisor at the time a retirement village is registered is appropriate. This is because of the due diligence undertaken by Statutory Supervisors before an appointment is accepted or rejected, and their role therefore as industry gatekeepers.
2. The due diligence activities undertaken by different Statutory Supervisors and/or the thresholds for acceptability differ between Statutory Supervisors however. There is at least one instance of a potential operator being rejected by one Statutory Supervisor and accepted by another.
3. Most participants in this review (where relevant) agreed that the status quo with respect to supervision exemptions was acceptable. Most (but not all) were comfortable with MBIE's due diligence approach and the time taken to grant an exemption.

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4. The risks associated with the consolidation of Statutory Supervisors since 2009 were identified as (1) risks associated with a lack of competition and the possibility of increased compliance costs, and (2) risks associated with a lack of alternative Statutory Supervisors available should residents or other relevant industry stakeholders consider that supervision standards are not being met.
  5. There is no evidence to suggest the consolidation of Statutory Supervision has resulted in any significant increase in the supervision costs of compliance. With respect to the second risk, there are controls in place (including under the new licensing regime, other industry body standards and the Act itself) which work to mitigate risks associated with Supervision activities.
  6. The licensing regime has created a barrier to entry – both in terms of licensing costs and also requirements. This cannot be viewed negatively if it has meant that there is now a requirement to demonstrate robust supervision standards before a license is granted. At least one Statutory Supervisor did not meet these standards and is no longer providing supervision services to retirement villages.

### 1.3.3 Performance of duties

1. There is ongoing monitoring of compliance by operators with the terms of the Deeds of Supervision, with documentation required by, and available to Statutory Supervisions specified under the Act, regulations and code. This review has not found significant evidence to suggest that Statutory Supervisors are not receiving the information they require, although it was noted that some operators provide information on a less timely basis than others, and that there can be differences in the quality of information provided.
2. The Act gives power to Statutory Supervisors to take action where an operator may be non-compliant. There is evidence to suggest that Statutory Supervisors use their powers when required.
3. In most instances Statutory Supervisors are using the standard TCA Deed of Supervision. One Statutory Supervisor uses a variation on this for one group.
4. Section 29 of the Act specifies what is required with regards to the maintenance of stakeholder facilities. This review has found no evidence to suggest these transactional processes are not being adhered to. All four Statutory Supervisors have their trust accounts audited on an annual basis.
5. While there are sufficient protections in place for incoming residents of retirement villages there are fewer protections for 'out-going' residents. Payment to the estate is contingent (in most instances) on the resale of the ORA. While Clause 51(3) of the Code of Practice does require the operator to 'take reasonable steps to enter a new ORA in a timely manner', there is more discretion with regard to the processes used to achieve this. Although some operators are taking on the inventory themselves, in the majority of instances this does not appear to be the case.
6. There is general consistency with regard to the internal processes undertaken by Statutory Supervisors to review and certify the financial position of operators. All four Statutory Supervisors report that they are now using checklists as part of this process. These checklists are internally developed documents rather than standard templates however.
7. There is little evidence of Statutory Supervisors querying audited accounts or requesting further information from auditors.

8. There is inconsistency with regard to the specific level at which financial statements are being reviewed (i.e. whether at a village level and at a consolidated level for groups, or at a consolidated level only). Approximately 25-30% of villages are managed on a consolidated basis.
9. The level of financial information provided to residents varies depending on the ownership and operating structures in place. Some villages do not receive any village level financial statements – only receiving consolidated financial statements. As required under regulation 22, the disclosure statement to residents must state whether the operator of the village prepares financial statements relating to the operator or separate financial statements for both the operator and the village.
10. Statutory Supervisors reported that there is no cause for concern with regard to operators being managed on a consolidated basis because the operators concerned are in a strong financial position.
11. There is a reluctance to bring financial issues to the attention of residents unless they are considered material and if the operator is taking steps to address the issue. There may be some discretion in what is considered material.
12. There is agreement that the code variations with regard to complaints facilities have provided more clarity for all parties. All steps are taken to resolve issues before they get to the formal complaint stage and before a formal dispute notice is issued. There are few formal dispute notices issued.
13. This review has not found any evidence to suggest that there are conflict of interest issues with regard to the relationship between Statutory Supervisors, operator and residents. The duty of the Statutory Supervisor is clearly set out in legislation. Should a conflict of interest issue arise, residents have external avenues available to them to pursue a complaint.

#### **1.3.4 Other activities – the role of the Statutory Supervisor**

1. Statutory Supervisors do not formally review or have input into human resource requirements in retirement villages. There is some evidence to suggest they do provide informal feedback at times based on their own observations, feedback from residents and levels of staff turnover.
2. Statutory Supervisors do not formally review infrastructure needs in villages. Some operators keep Statutory Supervisors informed regarding their infrastructure plans prior to the requirement to formally involve them. Statutory Supervisors report that they encourage operators to keep them informed of possible changes and issues.
3. Three out of four Statutory Supervisors do not review operators' professional indemnity insurance levels. One reported that they do.
4. Statutory Supervisors are not involved in the development of LTM plans for villages. These plans are reviewed (but not always annually) in terms of their level of general reasonableness but without examining any detail. All Statutory Supervisors reported that they are not experts in this respect. They also reported that the quality of LTM plans can vary significantly across operators. There was no evidence to suggest that the consideration of the LTM plan being proposed by an operator at the commencement of a relationship with a Statutory Supervisor is not part of the due diligence that is carried out at this time.



### 1.3.5 The Retirement Villages Act – specific feedback

The overall feedback was that the Retirement Village Act (2003) works very well and that New Zealand has a very good system to protect residents, particularly compared to some other countries such as Australia, the United Kingdom and the United States. The general view expressed was that people have confidence in New Zealand's system. A small number of amendments were suggested.

## 2: Project Background and Objectives

The retirement village (villages) sector is experiencing significant growth in New Zealand. Currently there are 401 registered villages (some of these are still being built) and as of March 2017, 15,847 new village units were in the planning pipeline. Approximately 56% of these are new villages with the remainder being expansions of existing villages. In terms of village ownership and operating, while there is significant ongoing growth of current owners and also operators, new investors, developers and operators are also entering the sector.

Retirement villages in New Zealand must operate under the Retirement Villages Act 2003 (the Act) – which is the legislation that strengthens consumer protection for residents and intending residents. One component of protecting these rights is the requirement that each village appoints a statutory supervisor who is licensed by the Financial Markets Authority.


Under the Act the statutory supervisor has four duties, these being to:

1. Act as an independent party for deposits and progress payments made by residents to operators
2. Monitor the financial position of the village – on an ongoing basis
3. Report annually to the Registrar of Retirement Villages and also to residents on the performance of their duties, and
4. Carry out any other functions specified by the Act or the deed of supervision with the village.

In net, the role of the supervisor is to act as a representative of the collective interests of village residents, primarily with regards to the financial interests of residents, but also in other matters. In undertaking this role supervisors draw on the services of other professionals, often accountants and/or analysts.

One of the roles of the Commission for Financial Capability (the Commission) is to monitor the effectiveness of the Retirement Villages Act (2003), including regulations and codes of practice made under the Act. The Retirement Commissioner (via the Commission) undertook research to assess the current level of effectiveness of statutory supervision of retirement villages. This included the effectiveness of the Act, regulations and code of practice, with regards (but not limited) to:

3. The resources required by, and available to statutory supervisors for the purposes of fulfilling their obligations under the Act, regulations and code of practice
4. Best practice adopted by statutory supervisors for a wide range of issues including:
  - a. Maintaining stakeholder facilities
  - b. Monitoring the financial position of retirement villages
  - c. Monitoring and participating in the operation of complaints facilities now that the Code variations have come into force (1 April 2017)
  - d. Monitoring compliance by operators with the terms of deeds of supervision
  - e. Receiving and acting on information and complaints from retirement village residents
  - f. Requesting information from the auditors of retirement villages
  - g. Reporting to the Registrar, FMA and residents on the performance of its duties and exercise of its powers
  - h. Keeping under review human resource and infrastructure needs in villages
  - i. Understanding long-term maintenance planning and funding for maintenance in villages
  - j. Contingency and business continuity planning
  - k. Keeping under review levels of professional indemnity insurance

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- l. The use of the statutory supervisor's powers under sections 43 and 44 of the Act
  - m. Factors considered before approving any material change proposed by an operator.

This report outlines the findings from this research.

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## 3: Approach

### 3.1 Sample structure

This was a qualitative project, comprising a total of **N=40 in-depth interviews** with a mix of retirement village industry 'participants' and wider stakeholders as follows:

- N=9 interviews with managers and staff members responsible for statutory supervision across four Licensed Statutory Supervisor organisations
- N=3 interviews with lawyers with a specialist knowledge of the retirement village industry
- N=4 interviews with industry stakeholders – the Financial Markets Authority (FMA), the Trustee Corporations Association of New Zealand (TCA) and the Retirement Villages Association of New Zealand (RVA)
- N=12 interviews with operator representatives – in most cases these were at the CEO/CE, CFO, COO or Chief Legal Counsel level – and represented a mix of larger 'group' retirement villages, independent villages and charitable trusts. In some instances these interviews were attended by two operator representatives (e.g. CEO and CFO or COO and Legal Counsel)
- N=12 interviews with resident representatives. These interviews were all with Chairs of Residents Committees but in some instances included additional committee members.

Subsequent to the in-depth interviews undertaken with managers and staff members within each of the Licensed Statutory Supervisor organisations, additional information was sought and received (either in writing or during a follow-up interview).

Interviews ranged from one to two hours in duration (most were one hour). All Auckland interviews and one Christchurch interview were conducted face-to-face. All other interviews were conducted by telephone. Interviews were conducted during February and March 2018.

Some interviewees requested a copy of the research questions prior to their interview. These were provided.

### 3.2 Identification of research participants

Research participants and/or organisations to be approached and invited to take part were either suggested by the Commission or identified through a snowballing approach during interviews with other participants. Operator representatives assisted in providing contact details of appropriate resident representatives. Note however that the specific retirement villages to include here were suggested by the Commission and selected to represent a mix of size, location, and financial and operational models.

### 3.3 Background research

The following documents were also reviewed as part of this project:

- The Retirement Villages Act (2003)
- Retirement Villages Code of Practice 2008 (variations included April 2017)
- Examples of the standard (template) TCA Deed of Supervision
- The 2009 Statutory Supervisors Monitoring Report
- Guidance Note: Monitoring by Securities Trustees and Statutory Supervisors –prepared by the FMA 2013
- Statutory Supervisors of Retirement Villages: An overview and insights from the FMA perspective

## 4: Statutory Supervision – Industry Overview 2018

Section Four provides an overview of the current industry status with respect to statutory supervision including changes in the industry since the 2009 review, the number of villages supervised by Statutory Supervisors at an organisational (Statutory Supervisors) as well as at an individual (Supervisor) level, how workloads are managed, the compliance costs of supervision, and levels and types of interaction between supervisors, and operators and residents.

### 4.1 Summary of key findings

#### Summary of key findings:

1. There has been a further consolidation of Licensed Statutory Supervisors since the previous monitoring review, from nine in 2009 to four in 2018. One Licensed Statutory Supervisor provides supervision for approximately 73% of retirement villages (55% in 2009).
2. The number of villages supervised by individuals (front-line relationship managers) ranges from 10 up to 80-90. Not all individuals undertake supervision work on a full-time basis however and this is an important consideration when considering relative workloads. In general, the more villages supervised, the more resource is applied to supervision work, including business analysts and other support staff. The organisation with the largest market share provided evidence of streamlined systems as well as a team-based approach to managing workload issues. They also provided evidence of other internal support structures. Overall however there are few individuals responsible for supervision activities across the retirement villages sector.
3. There is no evidence to suggest that service levels and the meeting of obligations under the Act differ significantly between individuals supervising different numbers of villages given current numbers supervised (either on a part-time or a full-time basis), other than where different service levels are specified in the Deeds of Supervision.
4. There have been no significant changes in the compliance costs of supervision since the 2009 review. There have been no significant changes in settlement fees. There were no observations by Statutory Supervisors that the costs of compliance had increased as a result of changes made to the Code in 2016 regarding the complaint process.
5. There are some variations in what is included in fixed (retainer) supervision fees. One Statutory Supervisor bills for AGM attendance on a time and attendance basis and there is variation among the others with respect to their physical presence on site at retirement villages (whether there are one or two visits each year). Most Statutory Supervisors take an issues-based approach in terms of their physical presence on site.
6. Relationships with operators vary and range from higher involvement with regular formal meetings, to transactional interaction only. Much of the interaction with individual villages is issue-based. Statutory Supervisors have little involvement with village managers, especially with respect to larger groups.
7. Staff training and professional development is an FMA licensing consideration. There is other training that takes place on an ad hoc basis, and (most) Supervisors also have their own professional continuing education requirements (as lawyers and accountants).

## 4.2 Changes in the industry since the 2009 monitoring review

At the time of the 2009 monitoring review, there were nine active Statutory Supervisors. They were either from a Trustee or a Chartered Accountancy Background. At this time, it was reported that there was a concentration of village supervision with one company supervising 55% of retirement villages.<sup>1</sup> There are now four active Statutory Supervisors: Covenant Trustee Services, Anchorage Trustee Services, Trustees Executors and Public Trust. Three of the previous nine organisations have since amalgamated with, or transferred to Covenant Trustee Services, one was already wholly owned by Public Trust and one was wound up prior to the introduction of the Financial Markets Supervisors Act 2011 licensing regime.

**Table 1: Statutory Supervisors: 2009 and 2018**

2009	2018	Reason for change
Covenant Trustee Services	<b>Covenant Trustee Services</b>	
Perpetual Trust/Corporate Trust (trading as Foundation)		Amalgamated with Covenant Trustee Services
Prince and Partners		Transferred to Covenant Trustee Services when Prince and Partners license application was declined by the FMA
Statutory Supervisors Solutions		Amalgamated with Covenant Trustee Services
Anchorage Trustee Services	<b>Anchorage Trustee Services</b>	
Trustees Executors	<b>Trustees Executors</b>	
Public Trust	<b>Public Trust</b>	
NZ Permanent Trustee Services		Wholly owned by Public Trust in 2009
Roger Midgley		Wound up prior to the introduction of the Financial Markets Supervisors Act 2011 licensing regime

## 4.3 Current Licensed Statutory Supervisors and market share

There are four Licensed Statutory Supervisors supervising a total of 376 registered retirement villages. The number of villages supervised by each organisation was identified by the relevant organisation at the time of the in-depth interviews. There has been a further concentration of village supervision, with one organisation now supervising 73% of villages.

<sup>1</sup> Statutory Supervisors Monitoring Report, 18 March 2009

**Table 2: Licensed Statutory Supervisors and Retirement Village Market Share**

Licensed Supervisor	Number of Villages	Market Share
Covenant Trustee Services	275	73%
Anchorage Trustee Services	50	13%
Trustees Executors	29	8%
Public Trust	22 (soon to be 23)	6%

Unlike in 2009 where Statutory Supervisors were a mix of Trustee or Chartered Accountancy organisations, all Statutory Supervisors are now Trustee organisations and all will be members of the TCA from 1 May 2018. Three are already members and one is in the process of becoming a member.

#### 4.4 Number of villages supervised by individuals (supervisors)

Across the four Statutory Supervisors there are approximately nine individuals who have overall responsibility for the supervision of the 376 retirement villages. This excludes analysts, settlements or any other support staff, but does include any individual who is in a relationship management role or a client services role with respect to retirement villages (i.e. a front-line role). Titles of individuals responsible for supervision activities varied by organisation but included: Relationship Manager, Head of Client Services, General Manager, Monitoring Manager – Governance and Investment Oversight.

In addition to relationship or client management roles, there are other individuals in these organisations (or in one instance in an associated organisation) who are also directly involved in retirement village supervision including analysts/accountants, settlement staff, administration, operations and other support staff, and legal staff.

The number of villages supervised by individuals (in a relationship or client management capacity) ranges from approximately 10 villages up to approximately 80-90 villages. However:

- In two of the four organisations supervision of villages is a part-time role (i.e. these individuals have other responsibilities in addition to retirement village supervision)
- In one organisation supervision is a full-time role
- In one organisation supervision is undertaken on both a full-time basis (by some individuals) and on a part-time basis (by other individuals).

In the two organisations where supervision is only a part-time activity it was reported that supervision activities make up less, or significantly less than half of an individual's full-time role.

In general, the more villages under supervision by any one individual, the more time that individual spends on supervision. Furthermore, as the number of villages supervised by any one organisation increases (refer Table 2) the more relationship management/client services and support staff (analysts, settlement staff) there are. Some individuals also have responsibility for retirement village groups and in some instances this can mean a reduced reporting workload (i.e. where the review of financial documents is undertaken at a group or consolidated level rather than at an individual village level). This is discussed in more detail in Section Six.

In addition to the support staff described above, one Statutory Supervisor organisation reported that they have also established an internal Retirement Village Compliance Committee, made up of non-executive directors of this



organisation's Board. The Committee provides additional support to frontline relationship managers. The activities of this Committee include:

- Considering consents under the Deeds of Supervision
- Addressing operator non-compliance
- Approving the acceptance of appointments for new retirement villages
- Overseeing the risk assessments of clients (including their financial position and performance).

#### **4.4.1 Service levels and obligations under the Act – an overview**

Overall, there was no evidence to suggest that there were any significant differences in service levels or the extent to which their obligations under the Act were being met, across those individuals responsible for the supervision of a smaller versus a larger number of retirement villages either on a full or a part-time basis, other than where different services levels were specified in the Deed of Supervision (i.e. fixed fee inclusions).

#### **4.4.2 Managing workloads**

It was reported that supervision responsibilities can “ebb and flow” largely driven by statute and by village or group balance dates (when there is more work around financial reporting and village AGMs). However, none of individuals responsible for supervision reported any workload related concerns, nor did any of the operator or resident representatives interviewed. Some residents provided examples of where they had specifically requested advice from their Supervisor on a particular matter and reported that that advice had been provided on a timely basis. One Statutory Supervisor did report however that due to continued growth of the retirement villages sector they are currently in the process of reviewing their resourcing requirements.

It was reported that there is a “reasonable spread” of AGM activity across villages, but mainly during the months May-December, so that it is possible to schedule in and plan for additional work during these busy periods. Analysts/accounting staff in each of the four organisations (or in one case, in an associated organisation) also play a key role in the review of the financial information provided by operators (this is discussed in more detail in Section 6).

Ways in which workload is managed where an individual may have responsibility for a larger number of retirement villages (especially during periods of increased workload) include:

- Efficiencies that are able to be achieved by having a number of villages in the same geographical location – so that meetings and AGM attendance is able to be scheduled in over a fixed time period
- Other relationship managers in the organisation being able to ‘step in’ where there is a clash of AGM timing
- Having a small number of appropriately experienced contractors able to ‘step in’ when required (although it was reported that this is not a frequent occurrence).

## 4.5 Supervision compliance costs

The 2009 monitoring report identified fees being made up of an initial acceptance fee for setting up the village (in the range \$3,000-\$6,000), an annual fixed fee (in the range \$1,750-\$12,000 – but averaging \$4,000-\$8,000) and additional settlement fees of \$100-\$250 per settlement.

As part of this current review Licensed Supervisors have reported that the average fixed fee per village is in the vicinity of \$5,000-\$12,000, with most falling between \$5,000 or \$6,000-\$10,000. Settlement fees and initial acceptance fees have remained largely unchanged. In some instances, the fixed fee component is calculated on the number of units in each village – the more units, the higher the fixed fee.

Licensed Supervisors report that differences in fees charged can also be based on commercial negotiations (e.g. negotiated fees for retirement village groups) and that there is sometimes “more sympathy” with respect to fees charged to smaller and/or welfare villages.

None of the operator representatives interviewed were able to specifically recall their annual supervision compliance fees, but all were of the general view that the fees were “not unreasonable”.

One Statutory Supervisor undertook a review of the compliance costs disclosed in the financial statements of their clients (not all operators disclose these). The compliance costs reviewed consisted of audit, accounting, valuation and Statutory Supervisor costs. Of the sample that disclosed all of their compliance costs, it was reported that the average Statutory Supervisors fees increased by 24.9% between 2009 and 2017 and that all compliance fees (including Statutory Supervisor fees) have increased by 33.5%. It was also noted that both Statutory Supervisors and auditors have had increased compliance costs, including FMA licensing over the same period.

There were no observations by Statutory Supervisors that the costs of compliance had increased as a result of changes made to the Code in 2016 regarding the complaint process.

### 4.5.1 Fixed fee inclusions

The fixed fee inclusions were similar overall for three out of four of the Statutory Supervisors. For these organisations the fixed fee component of their charges included:

- Attendance and chairing of village AGMs – including time spent (around an hour) after the AGM interacting with residents
- A review of audited financial statements – either on a per village basis or (depending on the ownership/operational structure of groups) at a consolidated level. It appears that fees are adjusted accordingly based on the extent of financial review required by a supervisor (i.e. per village and/or on a consolidated basis)
- Preparation of a Supervisor’s Letter to residents, provided as part of residents’ AGM pack
- A review of property-related insurances
- Interaction as required (and pre agreed) by the operator e.g. regular quarterly meetings, annual meetings etc.

- A certain amount of ad hoc interaction e.g. where a resident may call a Supervisor directly with a question or to make a complaint. In these instances Supervisors reported that they do not charge additional fees if the question or issue is able to be dealt with relatively quickly.

One Statutory Supervisor does not include AGM attendance as part of their fixed fee. This organisation bills the chairing of AGMs on a time and attendance basis, and this organisation reported that in the last 12 months the chairing of the AGMs of two small villages outside of Auckland (with around eight units each) were delegated back to the operator. It was reported that the reason for this was that it was not “logistically feasible” for the supervisor to attend these meetings. In these instances it was reported that the operator provides the minutes of the AGM to the Supervisor and if there are any material matters raised at the meeting they are followed up with the operator.

The extent to which supervisors will visit a village for a second time during any given year appears to be highly variable:

- One Statutory Supervisor reported that their fixed fee does not include a second visit – and any additional visits are issues-based and billed on a time and attendance basis. There are no “courtesy calls”
- One Statutory Supervisor (as discussed above) does not include any visits (including AGM attendance) as part of their fixed fee
- One Statutory Supervisor reported that that a second visit (usually timed to coincide with a residents committee meeting) is included in the fixed fee for one group client. Also included in the fixed fee is a report back to this operator (on a per village basis) subsequent to each visit. The report includes: any issues raised by residents as well as any general observations noted during the visit. Some other villages supervised by this organisation (if local) sometimes receive a second visit, while others do not
- One Statutory Supervisor initially reported that in terms of being physically present, the “rule is one AGM visit plus one other visit each year”. However, this does not appear to always be the case. If villages are small and/or independent and/or have no apparent issues or problems (e.g. around their financials, around resident satisfaction) then they are more likely to receive only one visit per year (chairing of the AGM).

One Statutory Supervisor reported that the fixed fee they have negotiated with their group client includes a “more heightened advocacy role for residents”, meaning that a certain amount of additional resident interaction is included in the fixed fee and not that they will act as a stronger advocate for residents than they might otherwise have done.

Other interaction with operators is by email and telephone, and this appears to be very regular for some villages and less regular for others (and is generally issues based).

#### 4.5.2 Additional fees – time and attendance

Additional fees are charged on a time and attendance basis. Reasons for additional fees being charged include:

- Dealing with resident complaints (informal and formal complaints)
- Providing advice to residents when it is requested
- Dealing with issues around operator non-compliance/breaches of the Act or the Deed of Supervision.

Most (but not all) Supervisors also reported that they are generally “fairly flexible” about time and attendance charges and will often not charge for additional time (especially if contacted directly by a resident) unless the time taken to address a particular issue is likely to exceed a certain number hours.

In recent years, for many villages there has been a shift away from a variable weekly levy charged to residents to a fixed weekly fee. Resident representatives interviewed in villages with fixed weekly fees who said that they sought advice from their Supervisor on a particular issue, reported not having had to pay for that advice. They were also unsure as to whether any time and attendance fee had been charged back to the operator. One resident representative in a variable levy village reported that the fee charged by their Supervisor for advice they had sought was extremely reasonable. However, in another village with a variable levy, the resident representative interviewed reported dissatisfaction with the level of fees charged as a result of advice sought. The Licensed Supervisor was the same for both of these villages and, based on the interviews conducted, the main differences in experiences appeared to be more to do with different levels of expectation rather than different levels of service on the part of the Statutory Supervisor.

Some villages specify the Statutory Supervisors’ fee in residents’ weekly fee, while others do not.

One Statutory Supervisor reported that it is “appropriate for residents to pay our fee because we act for them and in their interests ... [it is also] positive in terms of perceived independence and transparency”.

## 4.6 Relationships with operators

There are different levels of interaction evident between Supervisors and villages (and operators), with some Supervisors having more interaction with villages (and operators) than others. There appears to be more interaction on the whole with group operators than there is with independent operators. This is a result of there being more villages in a supervisor’s portfolio as well as more interaction at a head office or corporate level. As discussed earlier however, more groups in a Supervisor’s portfolio can also mean less documentation to review (depending on how village/operator ownership is structured). Statutory Supervisors appear to utilise more of an account management approach (as opposed to a transactional approach) with larger operators, with more informal interaction as well as more formally scheduled meetings. Overall:

- There can be regular (sometimes daily) interaction with regard to settlements
- There is issue-based interaction e.g. often around resident complaints. Note again however that there were no mentions made by Statutory Supervisors regarding any increased costs of compliance as a result of changes made to the complaints process in 2016.
- Levels of interaction can be dependent on the personal style of the individual responsible for front-line supervision (some individuals appear to have stronger relationships, and more interaction with operators – both group and independent)
- Some supervisors report being invited to attend resident committee meetings (although this is infrequent)
- Some relationships are purely transactional (mainly in the case of smaller and/or independent operators).

The formally scheduled meetings with group operators (some are quarterly, some are less often) are generally positioned as formal review meetings and provide an opportunity for operators to inform supervisors of any future plans they may have, and for supervisors to ask any questions or raise any issues. Most of the operators interviewed report having open and two-way communication with their Supervisor, and a strong desire to keep

Statutory Supervisors informed of any future plans, which may impact on residents and therefore the activities of the Supervisor.

Statutory Supervisors reported that they encourage operators to keep them up-to-date with future plans and activities prior to any requirement for formal involvement. In general, it was reported that groups are “easier to deal with” than independent villages (particularly smaller ones). It was reported that the quality of information received from groups is higher, and their timeliness of delivery is better. This means that they require fewer follow-ups and/or prompting for information.

Overall there is little interaction between village managers (particularly for groups) and Statutory Supervisors, other than when an issue arises or around the time of the AGM. One lawyer interviewed was of the view that there should be more of a relationship between village managers and supervisors, with open channels of communication. This is supported to some extent by the process of inviting operator representatives to take part in this review. Where a village manager (group village) was contacted (in the first instance) most referred us back to their corporate head office, explaining that they had little to do with their Statutory Supervisor.

## 4.7 Professional development

Staff training and professional development is an FMA licensing consideration, although the type and range of in-house professional development undertaken appears to differ based on the size of Licensed Statutory Supervisors and the number of individuals with front-line supervision responsibility. One Statutory Supervisor reported that training is undertaken for one day per quarter, sometimes managed entirely in-house and sometimes with external trainers.

Most (if not all) of the individuals involved have accounting or legal backgrounds and so undertake the professional development required by their industry bodies. All Statutory Supervisors also report the need to keep up with any legislative or industry changes. Training (in the form of forums and seminars) is also provided by the TCA, the FMA, the RVA and the Commission on an ad hoc basis. In 2017 the TCA organised group training for its members when the code of practice regarding complaints changed.

Each of the Statutory Supervisors also reported seeking external legal advice and support for any issues they may be unclear about or need clarification on. The lawyers interviewed confirmed this with one reporting that “if there’s anything they’re uncomfortable with or not familiar with they will come to us”.

## 5: Industry-Related Considerations

Section Five discusses a range of wider industry-related considerations including the timing of the appointment of Statutory Supervisors, the gatekeeping role played by Statutory Supervisors, the consolidation of the industry and any associated risks, and barriers to entry.

### 5.1 Summary of key findings

#### Summary of key findings:

1. There was agreement that the appointment of a Statutory Supervisor at the time a retirement village is registered is appropriate. This is because of the due diligence undertaken by Statutory Supervisors before an appointment is accepted or rejected, and their role therefore as industry gatekeepers.
2. The due diligence activities undertaken by different Statutory Supervisors and/or the thresholds for acceptability differ between Statutory Supervisors however. There is at least one instance of a potential operator being rejected by one Statutory Supervisor and accepted by another.
3. Most participants in this review (where relevant) agreed that the status quo with respect to supervision exemption was acceptable. Most (but not all) were comfortable with MBIE's due diligence approach and the time taken to grant an exemption.
4. The risks associated with the consolidation of Statutory Supervisors since 2009 were identified as (1) risks associated with a lack of competition and possibility of increased compliance costs, and (2) risks associated with a lack of alternative Statutory Supervisors available should residents or other relevant industry stakeholders consider that supervision standards are not being met.
5. There is no evidence to suggest the consolidation of Statutory Supervision as resulted in any significant increase in the supervision costs of compliance. With respect to the second risk, there are controls in place (including under the new licensing regime, other industry body standards and the Act itself) which work to mitigate risks associated with Supervision activities.
6. The licensing regime has created a barrier to entry – both in terms of licensing costs and requirements. This cannot be viewed negatively if it has meant that there is now a requirement to demonstrate robust supervision standards before a license is granted. At least one Statutory Supervisor did not meet these standards and is no longer providing supervision services to retirement villages.

### 5.2 Appointment of Statutory Supervisors at time of village registration – and the role of the Statutory Supervisor as industry gatekeeper

Operators, Statutory Supervisors and other industry stakeholders agreed that the appointment of a Statutory Supervisor at the time a village is registered is appropriate. The resident representatives interviewed did not have an opinion on this. The key reason for this is that Statutory Supervisors play a gatekeeper role in terms of the due diligence they carry out before accepting (or rejecting) an appointment.

It appears however that the due diligence activities undertaken across Statutory Supervisors may not be entirely consistent and/or that thresholds for acceptability of certain operator criteria may vary. One Statutory Supervisor reported rejecting four potential operators in the last 12 months, one of whom was accepted by another Statutory Supervisor. We note here however that this operator did make some changes based on the recommendations (or acceptance/rejection criteria) of the first Statutory Supervisor but that these were still not sufficient from the perspective of that supervisory organisation. The changes that were made included appointing a New Zealand-based Director and making improvements to certain financial criteria.

At a high level as part of their due diligence, Statutory Supervisors will consider the reputation and history of the “people” behind any potential operator (this includes with respect to ownership and governance), its financial position (e.g. how well capitalised the operator is, debt levels etc.). Other considerations will include the reasons why an operator may be seeking a new supervisor (if they are an existing operator).

One Statutory Supervisor provided more detail regarding their due diligence which included looking at:

- The village details – the plan for village, timing, size, location, geography topography, zoning
- Shareholders – the extent to which they are fit and proper, their capacity
- Directors, village manager, advisors
- The operating structure of the village
- Financing – financial viability based on financial projection, debt facilities
- Legal documentation – deed of supervision, the ORA, disclosure statement, security sharing deed, sale and purchase agreements, management agreement
- Security – General Security Agreement (GSA)
- Insurance
- Other – including marketing and contingencies.

One Statutory Supervisor noted that because there is no licensing regime for operators the role of the Statutory Supervisor in ensuring any new operator can meet its obligations is very important to the protection of residents.

As part of the due diligence that is carried out by Statutory Supervisors prior to accepting or rejecting an appointment, it would also be consistent therefore for a Statutory Supervisor to consider the long term maintenance plan being proposed by that operator at the commencement and throughout the relationship.

### 5.3 Supervision Exemptions

The general view with regard to villages seeking exemptions from supervision is that the status quo is acceptable. This is because the process undertaken by the Ministry for Business, Innovation and Employment (MBIE) in granting exceptions is considered robust (although one Statutory Supervisor expressed concern that the number of exemptions granted by MBIE has been excessive and has defeated the purpose of the Act). Other research participants noted that:

- MBIE undertakes their own due diligence before granting or rejecting an exemption
- This process can take some time (it was reported that this process can take up to several months).

It was also reported that not all villages require a supervisor if, for example the village has strong governance, is financially sound and only has a small number of units. Other considerations here included whether the village is

operating as a charity (and affordability of supervision may be an issue) or whether the core business of a village is providing care facilities, with only a small retirement village component.

While current exemption protocols were considered acceptable, there was a general view that any loosening of the exemption criteria would not be optimal and would likely result in increased risks to residents.

## 5.4 Consolidation of Licensed Supervisors – risks to the industry

There has been a consolidation of Statutory Supervisors, from nine at the time of the 2009 review, to four in 2018 and the market share of one of these four organisations has increased from 55% to 73%. The general view expressed by industry stakeholders was that any fewer than four Statutory Supervisors would not be optimal.

The following risks were identified:

1. Risks associated with a lack of competition and the potential increased cost of compliance to operators, which may be ultimately passed on to residents
2. Risks associated with a lack of alternative Statutory Supervisors in the event that residents (or the FMA or the Registrar) consider that a current Statutory Supervisor is not meeting expected standards

With respect to the first risk, there is no evidence to suggest that the consolidation of Statutory Supervisors over the last eight years has resulted in any material increase in fees.

With respect to the second risk, feedback obtained during this review suggests that the introduction of the FMA licensing regime under the Financial Markets Supervisors Act 2011 has increased the standard and consistency of supervisory services provided to residents of retirement villages and has helped to ensure that current and future Statutory Supervisors have proper processes and controls in place to ensure they meet all of their obligations under the relevant legislation and deeds of supervision.


The FMA licensing regime also means that residents, operators and the Registrar can remove a statutory supervisor if it is not meeting the standards expected. It was reported that this creates a strong commercial incentive to ensure that Statutory Supervisors maintain sound supervisory standards and meet all their obligations under the relevant legislation and Deeds of Supervision.

Furthermore, the introduction of the FMA licensing regime resulted in one of the 2009 Statutory Supervisors having their license declined, with this firm amalgamated into another firm. While this resulted in further consolidation, it also meant the villages being supervised by the former are now benefiting from the systems and processes of an organisation that did meet the FMA's licensing requirements (i.e. it would be logical to assume that the extent to which the financial interests of the residents in these villages are being protected has improved).

In addition, another benefit of having a smaller number of larger Statutory Supervisors with economies of scale has meant that at least one organisation has been able to accept appointments by smaller and/or independent operators which have been rejected by another Statutory Supervisor simply because they were not profitable relative to the amount of time and input required.

One Statutory Supervisor noted that one of the benefits of having a smaller number of larger Statutory Supervisors is the ability for Statutory Supervisors to work together to ensure that robust supervisory standards are maintained. While we did not find any evidence to suggest that supervisors "work together", all current Statutory Supervisors will be members of the TCA by 1 May 2018. The TCA maintains codes of practice and template Deeds of Supervision, all of which are designed to mitigate the risks associated with arbitraging Statutory Supervisors and appointing supervisors that have lower standards and/or minimum requirements.





It was reported that the TCA also helps with engagement with regulators and other industry bodies, with the result that the concerns or requirements of those parties can be quickly disseminated, considered and addressed by all Statutory Supervisors result in timely changes and improvements across the industry.

## 5.5 Barriers to entry

The FMA licensing regime has created a barrier to entry both as a result of licensing fees and licensing processes but this can only be viewed positively if it has meant that there is now a requirement to demonstrate robust supervision standards before a license is granted.

Other barriers to entry are the costs (in addition to licensing) associated with establishing a commercial organisation of this nature, which were estimated to be in the vicinity of \$250,000-\$300,000 (including at least one full-time salary). This is before any supervisory appointments are made. A key issue for the consideration of any new player is that there appears to be little evidence of switching behaviour among operators (although we are aware that this does occur).

The FMA has recently granted a new license to Heritage Trustee Company Limited to be a supervisor of registered schemes and debt securities, and although this does not extend to being a supervisor of retirement villages, it appears to indicate that the barriers to entry are not so significant that no further Statutory Supervisor licenses will be granted.

## 6: Performance of Duties

Section Six discusses the range of ways in which Statutory Supervisors perform the duties required by the Act, regulations and code of practice including the maintenance of stakeholder facilities, monitoring the financial position of retirement villages, monitoring and participation in the operation of complaint facilities and dealing with any conflict of interest issues.

### 6.1 Summary of key findings

#### Summary of key findings:

1. There is ongoing monitoring of compliance by operators with the terms of the Deeds of Supervision, with documentation required by, and available to Statutory Supervisions specified under the Act, regulations and code. This review has not found significant evidence to suggest that Statutory Supervisors are not receiving the information they require, although it was noted that some operators provide information on a less timely basis than others, and that there can be differences in the quality of information provided.
2. The Act gives power to Statutory Supervisors to take action where an operator may be non-compliant. There is evidence to suggest that Statutory Supervisors use their powers when required.
3. In most instances Statutory Supervisors are using the standard TCA Deed of Supervision. One Statutory Supervisor uses a variation on this for one group.
4. Section 29 of the Act specified what is required with regards to the maintenance of stakeholder facilities. This review has found no evidence to suggest these transactional processes are not being adhered to. All four Statutory Supervisors have their trust accounts audited on an annual basis.
5. While there are sufficient protections in place for incoming residents of retirement villages there are fewer protections for 'out-going' residents. Payment to the estate is contingent (in most instances) on the resale of the ORA. While Clause 51(3) of the Code of Practice does require the operator to 'take reasonable steps to enter a new ORA in a timely manner', there is more discretion with regard to the processes used to achieve this. Although some operators are taking on the inventory themselves, in the majority of instances this does not appear to be the case.
6. There is general consistency with regard to the internal processes undertaken by Statutory Supervisors to review and certify the financial position of operators. All four Statutory Supervisors report that they are now using checklists as part of this process. These checklists are internally developed documents rather than standard templates however.
7. There is little evidence of Statutory Supervisors querying audited accounts or requesting further information from auditors.
8. There is inconsistency with regard to the specific level at which financial statements are being reviewed (i.e. whether at a village level and at a consolidated level for groups, or at a consolidated level only). Approximately 25-30% of villages are managed on a consolidated basis.
9. The level of financial information provided to residents varies depending on the ownership and operating structures in place. Some villages do not receive any village level financial statements – only receiving

consolidated financial statements. As required under regulation 22, the disclosure statement to residents must state whether the operator of the village prepares financial statements relating to the operator or separate financial statements for both the operator and the village.

10. Statutory Supervisors reported that there is no cause for concern with regard to operators being managed on a consolidated basis because the operators concerned are in a strong financial position.
11. There is a reluctance to bring financial issues to the attention of residents unless they are considered material and if the operator is taking steps to address the issue. There may be some discretion in what is considered material.
12. There is agreement that the code variations with regard to complaints facilities have provided more clarity for all parties. All steps are taken to resolve issues before they get to the formal complaint stage and before a formal dispute notice is issued. There are few formal dispute notices issued. Furthermore, there were no observations by Statutory Supervisors that the costs of compliance had increased as a result of changes made to the Code in 2016 regarding the complaint process.
13. This review has not found any evidence to suggest that there are conflict of interest issues with regard to the relationship between Statutory Supervisors, operator and residents. The duty of the Statutory Supervisor is clearly set out in legislation. Should a conflict of interest issue arise, residents have external avenues available to them to pursue a complaint.

## 6.2 Resources required by, and available to Statutory Supervisors for the purpose of fulfilling their obligations under the Act, regulations and code of practice

Statutory Supervisors report that there is on-going monitoring of compliance by operators with the terms of the deeds of supervision. Reports are required to be provided by villages, which include quarterly lists of complaints and directors certificates, 6 monthly financial statements, insurance certificates, all Regulation 9 reports, auditors letters, AGM information, ORA sale and purchase information.

Overall, this review has found that Statutory Supervisors are receiving the information they require from operators in order to fulfil their statutory duties. Statutory Supervisors report that groups tend to be more compliant in providing all of the information required under the Act and Deeds of Supervision, but that the information is sometimes provided on a less timely basis by smaller and/or independent operators. It was reported that this is generally due to the resourcing constraints faced by some of these operators. The Act gives power to Statutory Supervisors to take action where an operator may be non-compliant. There is evidence to suggest that Statutory Supervisors use their powers when required.

Three out of four Statutory Supervisors are using the standard TCA Deed of Supervision, which specifies the financial (and other) reports that must be provided to by operators. One Statutory Supervisor uses a variation on the standard TCA Deed of Supervision for one retirement village group, but uses the standard TCA Deed of Supervision for other villages. It was reported that the adapted Deed of Supervision has the content of the TCA Deed of Supervision but is in a different format with more of an emphasis on “plain English”.

Supervisors report that when necessary they will prompt operators for the required or additional information, and it is then provided. A recent example is where an operator had not been required to provide Profit and Loss Statements on a village-by-village basis (as a result of the corporate ownership structure and a multi-party Deed of

Supervision) but provided these when requested by their Statutory Supervisor as part of due diligence being carried out prior to considering a consent with respect to then sale of these villages. It was reported that these were provided on a timely basis.

A further example was identified which concerned a village with financial difficulties not providing financial information to residents when it was requested. The end result of this was that a formal dispute notice was issued and later the village was placed in liquidation.

### 6.3 Maintaining stakeholder facilities

Section 29 of the Retirement Villages Act (2003) specifies what is required with regard to the maintenance of stakeholder facilities for all deposits, progress and other payments. This is also specified in the Deeds of Supervision. The Act is prescriptive with regard to the processes here, and the timing of the release of funds. As with the 2009 findings, this study has found no evidence to suggest that these transactional processes are not being adhered to appropriately.

Three out of four Statutory Supervisors have in-house stakeholder facilities. The fourth utilises an associated organisation. One village uses an independent legal firm (reportedly for historical reasons) but an independent organisation receives all monthly settlements and cancellations.

In 2009 an issue was raised regarding the level of trust account audit and review required, which varied depending on whether the Statutory Supervisor was a Trustee or a Chartered Accountancy firm. It was reported in 2009 that Chartered Accountancy firms do not generally have their trust accounts externally audited but have a practice review undertaken by the Institute of Chartered Accountants once every three years. Trustee firms are required to have their trust accounts audited on an annual basis.

All four Statutory Supervisors are Trustee organisations and all will be members of the TCA from 1 May 2018. The trust accounts of the current members as well as the pending member are all currently audited annually. The stakeholder facility operated on behalf of the Statutory Supervisor by the associated organisation, which is a law firm must also meet the strict requirements of the Law Society.

#### 6.3.1 Protections around the sale of ORAs

While there are sufficient protections in place for incoming residents of retirement villages there are fewer protections for 'out-going' residents. Payment to the estate is contingent (in most instances) on the resale of the ORA. While Clause 51(3) of the Code of Practice does require the operator to 'take reasonable steps to enter a new ORA in a timely manner', there is more discretion with regard to the processes used to achieve this. Although some operators are taking on the inventory themselves, in the majority of instances this does not appear to be the case.

One of the key future challenges facing the industry raised by a number of participants in this review is likely over-supply relative to demand (given the rate at which new units are being built by existing operators), along with potential affordability issues impacting on older people in the future.

### 6.4 Monitoring the financial position of retirement villages

There is general consistency with regard to the internal processes that Statutory Supervisors go through as part of reviewing the financial position of operators.

There is inconsistency with regard to the specific level at which financial statements are being reviewed (i.e. whether financial statements are provided and reviewed at a village level or at a consolidated level).

#### 6.4.1 Internal review processes – reviewing and certifying financial statements

Three out of four Statutory Supervisors follow a similar process in reviewing and certifying financial statements. Once audited financial statements are received they are reviewed in the first instance by a business analyst (who in most, if not all cases appears to be a qualified accountant). The business analysts utilise checklists to review specific items against specific criteria.

One of the best practice recommendations in the 2009 review was around the improvement of systems such as the use of worksheets or checklists to “provide evidence of the thorough consideration of the financial position of villages”. This current review has found that worksheets or checklists are now being used by all four Statutory Supervisors in their review of the financial position of villages. During an interview with one Statutory Supervisor hard copy examples were provided of the range and content of checklists used. These were comprehensive with detailed criteria provided for analysis.

Business analysts populate the checklists (which are either in the form of word documents or spreadsheets) and ‘red flag’ any items that require further attention. The Supervisor will then discuss these with the business analyst, review the checklists and the audited financial statements and take action as appropriate on any red flagged items. Examples of items that might be red flagged include:

- Borrowings the Supervisor had not been aware of prior
- Not disclosing a guarantee as a contingent liability
- Changes in the cashflow position
- Changes in the equity position.

In one out of the four Statutory Supervisor organisations, the individual with front-line relationship management responsibility reviews the audited financial statements first (also against a checklist) and these are then peer reviewed by accounting staff in an associated organisation.

Despite slightly different internal approaches, the overall process for reviewing and certifying financial statements appears to be consistent. The checklists used by Statutory Supervisors are internally developed documents however, rather than standard and independently developed forms or guidelines and as such are likely to vary. While only one example checklist was reviewed as part of this study, descriptions provide of the checklists used by other Statutory Supervisors were similar overall.

All also included a section for feedback based on “qualitative measures” and/or space for the Supervisor to make commentary regarding the overall financial position and any other observations about the specific village and/or the operator.

Two out of the four Statutory Supervisors also apply an overall “risk rating” annually on a per village basis. Where the village is part of a larger group, this risk rating is a consolidated risk rating and so all villages within a given group receive the same rating (regardless of the financial performance of individual villages). Two Statutory Supervisors do not apply an overall risk rating to villages.

One Statutory Supervisor described an internal peer review process whereby annually all relationship managers meet to discuss all retirement villages in their portfolios. This involves a review of changes since the previous year and a comparison across villages. This peer review process results in a formal, jointly agreed application of the risk

rating. Once again however, we note that the same risk rating for groups is applied across all villages within each group. This organisation also holds monthly compliance meetings, which includes specific discussion of high risk (rated) villages.

None of the operators interviewed said that they were aware of the internal processes undertaken by Statutory Supervisors to review their financial position and certify their financial statements.

## 6.4.2 Review and certification of financial statements

There was overall consistency in the review and certification of operators' financial statements. As already discussed, while it was not possible to review the specific checklists used by all four Statutory Supervisors, there was consistency in how the process was described and the specific items reviewed. Again as already discussed, one Statutory Supervisor provided examples of the types of checklists they use and these were comprehensive. It is not apparent whether other checklists used by other Statutory Supervisors are quite as comprehensive, but it would appear that for all, there is thoroughness in the process.

Statutory Supervisors reported that they undertake a full financial analysis of village and/or consolidated financial statements, which can include the following quantitative measures. Supervisors also report that they review trends and changes in this information over time (e.g. over the last three years):

- Asset funding levels
- Equity percentages
- Profitability
- Number of years of total positive cashflow/cashflow solvency
- A review of disclosures (i.e. whether they look appropriate)
- Property values
- Balance sheet solvency
- Validation of planning budgets
- Validation of cashflow budgets
- Levels of borrowing
- Debt/equity ratio

Qualitative measures are also used as part of the supervisor's commentary, which can include:

- Commentary on the Board (levels of experience/competency)
- Financial backing
- Administration
- Internal culture
- Extent of complaints
- Timeliness of compliance reporting
- Quality of professional external advisors (e.g. auditors, lawyers, valuers)
- Consultation processes between operators and residents (e.g. with respect to proposed changes).

## 6.4.3 Requesting information from auditors of retirement villages

Most Statutory Supervisors appear to rely on the information contained in the audited financial statements. One Statutory Supervisor reported that they do sometimes query information in the audited accounts and may ask the

auditors to re-look at a specific item but that the auditor, subsequent to a re-review, will generally (if not always) respond that the item is correct. One Statutory Supervisor reported that audit reports are “generally clean so there is no need to query them”.

It was pointed out that the pool of auditors responsible for retirement villages is fairly small and that the auditing firms involved in this industry are reputable.

#### 6.4.4 Differences in financial statement review – village level and consolidated

For groups of retirement villages, the level at which financial statements are reviewed is dictated by ownership and operating structures. This means that there are differences in the level at which financial statements are reviewed, and consequently what is reported back to residents of individual villages.

Different ownership structures means that financial statements either reviewed at a village level or they are reviewed on a consolidated (group) basis. Based on feedback received during the operator and Supervisor interviews it is estimated that approximately 25-30% of all villages are managed on a consolidated basis, although reporting levels differ across these. In some cases financial statements are also provided on a per village as well as a consolidated basis, and in other cases they are not.

There were some examples provided of where individual villages within a group operating structure are operating at a loss. Statutory Supervisors reported that they have no concerns in these instances because the groups in question are in a strong financial position, with limited or no debt. While these loss-making villages are continuing to be supported as part of the wider group structure (and in accordance with the village ORAs), but this does not preclude the sale of loss making villages in the future. It is not clear whether intending residents are made aware (in the absence of audited village financial statements) that they may be purchasing an ORA in an unprofitable village and what the implications of this might be. However, as required under regulation 22, the disclosure statement to residents must state whether the operator of the village prepares financial statements relating to the operator or separate financial statements for both the operator and the village.

**Table 4: Villages managed on a consolidated basis**

Licensed Supervisor	Total number of villages	Percentage of villages managed on a consolidated basis
Covenant Trustee Services	275	Estimated 20%
Anchorage Trustees	50	0%
Trustee Executors	29	Most
Public Trust	22	0%

Reduced costs of compliance (including Statutory Supervisor, accounting and auditing fees) were identified as the main benefit of a consolidated approach.

## 6.5 Information provided to residents

There is some variation in the range (detail) of financial information provided to residents as part of their AGM pack, largely because of the ownership and operating structure of groups. Across the sample of villages and groups included as part of this review, the range of financial reporting back to residents included:

- Summary village financial statements (P&L and B/S) and summary consolidated financials
- Summary village financials and a summary of the group position (but not summary financials)
- Summary village financials (for independents) and full financials in some cases
- Summary consolidated financials only – cashflow, P&L, B/S (but no village level financials).

Residents are also informed as part of their AGM pack that full sets of financial statements (ether consolidated or at the village level, where these are reported separately) can be requested. At least one village also kept a full set of financial statements on file where they were able to be accessed by residents at any time. It was reported that few residents request this information, and this was supported by feedback from the resident representatives taking part. The resident representatives reported that residents do not necessarily read the summary financial statements in any detail, although results are explained to residents as part of the AGM process. The resident representatives interviewed during this study reported that most residents are comfortable with, and have confidence in these processes. During the interviews, the only resident who said they had ever requested a full set of financial statements was an accountant.

As part of their AGM pack, residents also typically receive:

- Minutes of the previous year's AGM
- A letter from the Village Manager
- The Statutory Supervisors letter – which can include information about the role and purpose of the Statutory Supervisor, any financial items they need to bring to the attention of residents, whether or not they have exercised their powers under S43 of the Act, and confirmation of what has been reviewed and certified
- Budget forecasts
- The long-term maintenance plan for the village
- The annual maintenance schedule for the village.

One resident representative reported that since the weekly fee for their village transitioned from variable to fixed, residents at that village have less interest in the financial projections, including LTM plans for villages.

### 6.5.1 Ways of bringing attention of financial issues or other offences to residents

There is a general reluctance to bring financial issues to the attention of residents unless they are considered material. The typical approach is to discuss the financial issue with the operator and agree with them steps to resolve any issue. Statutory Supervisors report that if they are satisfied that the issue is going to be resolved by the operator, then it will not be raised with residents. There was concern expressed about not wanting to unduly alarm residents in instances such as these. All Statutory Supervisors reported that any material concern would be raised and reported to the Registrar.

Any material breaches by the operator are reported to residents in the Supervisor's Letter, which forms part of the AGM pack. There is provision in the Deed of Supervision if a special meeting is required, although this rarely appears to happen. One Statutory Supervisor reported that they would only call a special meeting with residents if "things were going pear-shaped".

One Statutory Supervisor reported that they would bring an issue to the attention of residents when they have concerns that a problem might exist that would have long-term consequences for residents. This would be a determination made after discussions with the operator (i.e. in regards to the financial position of the operator or village). If the issue is a short-term one and is being addressed by the operator, and would not necessarily affect residents in the short term, it would not be brought to their attention.



## 6.6 Monitoring and participating in the operation of complaints facilities

Code variations with respect to complaints processes came into effect on 1 April 2017. Feedback on the new complaints process was, on the whole, positive and there was agreement that there is now more clarity around complaints processes. It was reported that just after the new code variations came in effect that there was a “flurry of complaints” but that complaint levels have now settled back down.

Operator and resident representatives confirmed that there has been significant communication to residents regarding these changes. This has been via letters to residents, presentations and information posted on noticeboards. Information communicated has included the stage at which the Statutory Supervisor should be involved. The operators interviewed also reported that they had undertaken training with village managers and other staff regarding the new complaint processes.

It does appear however that some residents (a small number overall) will contact their supervisor directly before the supervisor is required to become formally involved (i.e. before the 20 day period and in some instances before an issue has been raised with a village manager). In these instances the nature of the complaint will dictate how the supervisor acts (i.e. whether they will refer the resident back to the village manager if the resident has not discussed the issue with them first or if the issue is not relevant to the role of the supervisor, or whether the supervisor may begin to take an active involvement by speaking with the village manager and/or the operator directly).

Overall, there is a strong desire evident on the part of operators and Statutory Supervisors to resolve complaints before they get to the formal disputes stage. As a result, there have been very few formal dispute notices issued. Operators report that they will try and resolve the dispute at the village level first, but that if they believe a complaint is going to escalate they will informally inform or ‘give a heads up’ to the Statutory Supervisor prior to the formal requirement for the Supervisor to be involved.

When a Supervisor is formally brought into a complaints process, it was reported (by all) that their first response is to try and resolve the complaint. They typically do this by speaking with the village manager in the first instance. They may also raise the issue with the operator (regionally and/or at corporate head office level for groups), again with the intent to resolve the issue. This may include encouraging or suggesting (sometimes strongly) that the operator deal with the problem at hand (i.e. provide the resident with the outcome they are seeking). This was supported through feedback from operators who reported that supervisors generally play the role of negotiator in these situations. Some operators reported that their supervisor will sometimes (where appropriate) direct them to address the complaint in a certain way (i.e. “tell them to fix it”). Statutory Supervisors also reported that they often encourage residents and operators to enter into mediation. The very last resort is that a formal disputes notice is issued.

Statutory Supervisors reported that they will instruct an operator to address the complaint if there is a clear breach of the Deed of Supervision, the ORA or legislation, but that where this is marginal, dealing with the complaint can take more time.

A brief review of the informal and formal complaints register held by the Commission suggests that only a small number of complaints (3%) have supervisor involvement. This study has found that supervisor involvement in informal complaints is likely to be higher than this. It is unclear why Supervisor involvement is not recorded here.

With respect to entering data into the complaints register, one operator reported frustration that it is a time-consuming and somewhat “clunky” process, especially given that certain steps are required to be followed even if there are no complaints for a particular time period.

## 6.7 Conflict of interest issues

This review has not found any evidence that there are any conflict of interest issues with respect to the relationship between Statutory Supervisors, operators and residents. Anecdotal evidence suggests that it is only a minority of residents who believe this to be the case and in most instances this has been where there has been a dispute between a resident and an operator and the resident did not feel that the supervisor was supporting them because the resident had not received the outcome they had wanted.

Statutory Supervisors, operators and other stakeholders interviewed emphasised that the duty of the Statutory Supervisor to residents is clearly set out in legislation. Furthermore, the new complaints regulations now mean that any resident who is unable to come to an agreement with an operator has further external avenues to pursue their complaint (outside of the jurisdiction of the Statutory Supervisor), including to the FMA, the Retirement Commissioner and the Registrar of Retirement Villages. Feedback from the resident representatives interviewed suggests that the majority of residents do not believe there to be any conflict of interest issues in the supervision process.

One Statutory Supervisor provided a best practice example, whereby they have a clear, delegated authority framework, which requires the frontline relationship manager to seek at least a 'one up' approval (supported by a memorandum) from either the General Manager or the internal Retirement Village Compliance Committee, before exercising any material discretions. It was reported that this helps ensure the relationship manager's decision is not impaired by their relationship with the operator.

In addition:

- Operators can only change Statutory Supervisors with the Registrar's Consent (which is a control over the power of the operator)
- Residents (under the Deed of Supervision) have a right to call a meeting (where 10% or more residents are in agreement) and can remove the supervisor if 75% of those at the meeting agree.

The FMA has stated that Statutory Supervisors should demonstrate qualities such as professional skepticism and that their decisions should not be influenced by their own commercial interests. This review has not found any evidence that any of the four Licensed Statutory Supervisors are acting in a manner contrary to this.

## 6.8 The use of the Statutory Supervisor's powers under S43 and S44 of the Act

There were limited examples of where Statutory Supervisors' powers had been exercised under S43 and S44 of the Act. There are very few examples of where a retirement village has been placed into liquidation by a Statutory Supervisor. The largest Statutory Supervisor reported that there had been three instances in the last eight years.

## 6.9 Reporting to the Registrar and the FMA

Any material issues are reported to the Registrar under S11 of the Act. Statutory Supervisors report to the FMA under S25 on a six monthly basis. There is no evidence to suggest that Statutory Supervisors are not meeting their obligations here.

## 7: Other activities – the role of the Statutory Supervisor

Section Seven discusses the role of the Statutory Supervisor with regard to any involvement they may have in wider operational aspects, including human resource decisions, input into long-term maintenance plans, professional indemnity insurance, and contingency and business continuity planning.

### 7.1 Summary of key findings

#### Summary of key findings:

1. Statutory Supervisors do not formally review or have input into human resource requirements in retirement villages. There is some evidence to suggest they do provide informal feedback at times based on their own observations, feedback from residents and levels of staff turnover.
2. Statutory Supervisors do not formally review infrastructure needs in villages. Some operators keep Statutory Supervisors informed regarding their infrastructure plans prior to the requirement to formally involve them. Statutory Supervisors report that they encourage operators to keep them informed of possible changes and issues.
3. Three out of four Statutory Supervisors do not review operators' professional indemnity insurance levels. One reported that they do.
4. Statutory Supervisors are not involved in the development of plans for villages. These plans are reviewed (but not always annually) in terms of their level of general reasonableness but without examining any detail. All Statutory Supervisors reported that they are not experts in this respect. They also reported that the quality of LTM plans can vary significantly across operators. It would also appear that the consideration of the LTM plan being proposed by an operator at the commencement of a relationship with a Statutory Supervisor is not part of the due diligence that is carried out at this time.

### 7.2 Human resource and infrastructure needs in retirement villages

There is no evidence to suggest that Statutory Supervisors formally review human resource needs in villages. Large operators have in-house human resource departments with formal recruitment processes in place and it does not appear that operators actively seek the advice or input of Statutory Supervisors in these processes. This appears to be the case with respect to other types of villages, including those that are smaller and/or independent.

Statutory Supervisors on the whole report that they do not review human resource needs in villages, although there was feedback to suggest that some supervisors (at an individual not an organisational level) may informally make note of any human resource related issues in villages and that they will raise any concerns with operators as appropriate (i.e. if a supervisor does not think a village manager is running the village appropriately).

Informal feedback with regard to human resources in villages is through:

- Observations of the conduct of village managers at AGMs and other meetings – one Statutory Supervisor provides formal reports back to the group which includes observations around the behaviour of village managers
- Feedback from residents about specific staff members (this includes complaints or concerns raised by residents about some staff they may be unhappy with or others that they perceive to be overworked)
- Awareness of staff turnover (if high) – but this tends to be only around AGM time.

There was some feedback around what a supervisor can actually do if they feel that there are human resource issues in specific villages. This was particularly the case for some smaller independent villages that may not have the financial resources to either (1) hire additional staff that may be required or (2) hire staff with better levels of experience and expertise. In these instances (and if there is no material negative impact on residents) supervisors report that there is little they can do.

There was no evidence to suggest that Statutory Supervisors review infrastructure needs in villages, other than (1) via informal observations (but generally these are more around maintenance-related issues rather than infrastructure or (2) via residents' complaints. Infrastructure needs as far as they pertain to group operators' future intentions are (as described earlier) generally raised with supervisors as a 'heads up' at regularly scheduled formal meetings (where these occur) and then formally when a Statutory Supervisor's consent is required. On the whole supervisors report that they are not involved in decisions about village operations, including contingency and business continuity planning (unless a specific issue becomes apparent). Operators confirmed this.

### 7.3 Keeping under review levels of professional indemnity insurance

The Act requires Statutory Supervisors to review insurances that are to do with property, but there is currently no legal requirement to review levels of professional indemnity insurance. Three out of four Statutory Supervisors said that they do not review Professional Indemnity Insurance. One Statutory Supervisor reported that they do and in particular when deciding to accept a new appointment.

Statutory Supervisors report that relevant property related insurances are reviewed annually for reasonableness.

### 7.4 Long-term maintenance plans

There is no evidence to suggest that supervisors have any role in the development of LTM plans for villages or that the consideration of the LTM plan being proposed by an operator at the commencement of a relationship with a Statutory Supervisor is part of the due diligence that is carried out at this time.

Once the plans are in place, Statutory Supervisors review them only to the extent that they look over them and make a judgment (in the absence of any formal discussion with an external relevant building or QS expert) that the LTM plans look acceptable. This judgment is generally based on comparisons with other LTM plans across the range of villages supervised and whether or not they look acceptable. Some Statutory Supervisors reported that they will look at the reputation (quality and professionalism) of an external organisation involved in the preparation/costing of LTM plan.

While some supervisors said that they may ask questions in terms of "reasonableness" or whether there are enough funds allocated, they reported not having any other input in terms of how the LTM plan will be funded.

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Most of the Statutory Supervisors interviewed noted that they do not have specific QS experience and none said that they ever seek the advice or input of external experts (they report that to do so would increase the costs of compliance). They did report however that there is significant variation in LTM plans – from “one pagers” through to comprehensive documents. One Statutory Supervisor commented that a template for the preparation of LTM plans might be useful.

Larger operators all have in-house property teams and formal processes in place for the development and review of both short-term/on-going and long-term maintenance in villages.

One Statutory Supervisor reported that they take a greater degree of interest in LTM plans where the weekly fee charged to residents is not fixed. This organisation reported taking a “risk-based approach” to reviewing LTM plans. One Statutory Supervisor reported that they do not review LTM plans on an annual basis but that they do receive general updates for operators about what is in the plan, as well as any current activities.

There are some informal reviews of maintenance issues in villages, which include the following:

- Visual identification of maintenance issues while visiting villages (although we note here that at least two villages in the last year have not received any visits by a Statutory Supervisor)
- One Statutory Supervisor reviews the maintenance register of villages
- Residents will raise maintenance issues. Sometimes this is at the AGM or informally privately after the AGM has concluded, or directly by contacting the Statutory Supervisor
- Maintenance issues being addressed via the formal complaints process.

Overall, Statutory Supervisors’ engagement in LTM plans is risk-based. They see it as the operator’s role to develop and maintain the LTM Plan. Statutory Supervisors will only become involved if it is evident that the operator is not performing its role in this respect. LTM plans are also reported at each AGM. Residents are only required to fund the LTM plan in a small minority of villages given that most are now operating on a fixed fee basis.

One of the emerging risks identified by at least one Statutory Supervisor however is that as villages are aging, maintenance needs will increase.

## 8: The Retirement Villages Act (2003) – specific feedback

### 8.1 The Retirement Villages Act (2003)

The overall feedback was that the Retirement Village Act (2003) works very well and that New Zealand has a very good system to protect residents, particularly compared to some other countries such as Australia, the United Kingdom and the United States. The general view expressed was that people have confidence in New Zealand's system.

### 8.2 Suggested amendments to the Act

One Statutory Supervisor provided the following written suggestions for amendments to the Act.


1. A revision to Regulation 9 to remove capital items from a forecast statement of financial performance. The rationale for this suggestion is that the forecast statement of financial performance, provided by the operator to residents, is used to set residents' weekly fee. Given that the weekly fee is calculated based on expenses, capital items should not be included here.
2. Adding to the Act a power for the supervisor to require the security it considers necessary to protect the security of interests of residents. This may include at a minimum a first ranking encumbrance over the title to village land and a GSA registered on the PPSR over the operator. At present (and in most instances), the Deed of Supervision specifies that the Statutory Supervisor may take a first ranking encumbrance over the title to the village land. This is not specified in the Act however. The Statutory Supervisor who made this suggestion believes that it should be.
3. A requirement to provide prospective residents with a separate one page document explaining who the supervisor of the village is, its role and the supervisor's contact details.
4. Adding a statutory requirement that a receiver, liquidator or statutory manager must act as the operator of the village until retirement under Section 24 of the Retirement Villages Act. This means that there is (under relevant circumstances) always a receiver in place for as long as one might be required.

#### **Regulation 9: Operator's obligation to provide financial statements**

(3) An occupation right agreement must include a provision requiring the operator of the retirement village –

- (a) to prepare, at the start of each accounting period of the operator, a statement of financial performance forecasting for the period –
  - i. ~~deleted~~
  - ii. all expenditure relating to the village (including disclosure of all operating expenditure); and

**Section 24 Receiver, liquidator, and statutory manager (deleted: must ask statutory manager to represent residents' duties)**

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- (1) *no change*
- (2) *If a receiver is appointed in respect of property of an operator that includes a retirement village or a liquidator or statutory manager is appointed for an operator, the receiver or liquidator or statutory manager must take on the responsibilities of the operator until their retirement.*

One operator (legal counsel representative) felt that there is ambiguity in the Act and that some clauses are quite circular (e.g. S66). They also feel that there needs to be more clarification around differences between informal complaint and comment – i.e. “if its just a grumble then there’s no need to respond in writing vs. should it be logged as an informal complaint?”

One lawyer commented that information around operators’ financials in the Act was not drafted well.

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## 9: Resident feedback - summary

Where relevant, feedback from the resident representatives interviewed is included in the main body of this report. Section Nine provides an overview of other content discussed during these interviews.

The majority of the non-resident participants interviewed as part of this review were of the opinion that residents have a very low level of understanding of the role of the Statutory Supervisor. This is supported to some extent by examples provided by Statutory Supervisors of residents contacting them directly regarding issues that should (and can) be dealt with at a village level (i.e. operational issues that are not within the scope of the role of the Statutory Supervisor), or where residents may have unrealistic expectations of the Statutory Supervisor as a personal advocate for them.

Based on a relatively small number of resident representative interviews (Chairs and other members of residents committees) it would appear that residents *in these roles* have a relatively good understanding of the role and purpose of a Statutory Supervisor. They did acknowledge however that other residents may have less of an understanding, and that some residents completely misunderstand the role of the Statutory Supervisor. For the most part, the resident representatives interviewed felt that other residents in their village had a fairly low involvement relationship with their Supervisor (i.e. that the Statutory Supervisor was not a top of mind consideration for them). They did point out however that information regarding the role and purpose of the Statutory Supervisor, including when to involve them in any issue, had been clearly communicated and/or was readily accessible should residents require it.

The resident representatives interviewed confirmed that the Statutory Supervisor introduces themselves and explains their role at each AGM, and that residents have the opportunity to ask questions during (or after) the meeting should they wish to do so. We note again here that residents in at least two villages in the last 12 months have not seen a Statutory Supervisor. Operators, resident representatives and Statutory Supervisors all confirmed that the resident turnout at most AGMs is high. It would appear communication of this information at AGMs will continue to be important.

Based on the feedback obtained during this review (other than in one instance) residents report being comfortable with Statutory Supervision arrangements. Some were more familiar with their Supervisor although this appeared to be a result of the different personal styles some Supervisors had and/or the extent to which resident committees had actively sought the advice of a Statutory Supervisor. The sample of residents interviewed here did not believe that there were any conflict of interest issues on the part of the Statutory Supervisor, other than in one case where the advice sought (and the fee charged) was not considered acceptable to a particular resident.

None of the residents interviewed identified any gaps in their understanding or any further information they wanted with regard to supervision. Once again, these were Chairs or other members of resident committees rather than general residents. It should also be recognised that not all villages have residents committees.

As already discussed, all of the resident representatives interviewed felt that their operator had explained the changes to the complaints process adequately.



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## 10: In conclusion

Overall, this review has found that the existing regulatory regime is ensuring that intending residents' and residents' interests are adequately protected through 'external oversight of the conditions of entry into and continuing operations of retirement villages, as specified in Section 3 (c) (iii) of the Retirement Villages Act (2003).

Where the Act, regulations and code is prescriptive with regard to specific transactional processes, these are adhered to. There are some differences in processes however where the Act allows for more discretion, mainly as a result of different commercial structures and internal systems and processes. These differences are not necessarily significant and for the most part, each of the four Licensed Statutory Supervisors described similar internal processes around the monitoring of the financial position of retirement villages, reviewing insurances and other aspects associated with monitoring compliance by operators with the terms of the deeds of supervision. There was agreement that the Act gives sufficient powers to Statutory Supervisors where an operator may be non-compliant and there is evidence to suggest that Statutory Supervisors use their powers when required.

One area of difference across Statutory Supervisors is that they appear to take into account different criteria or have different thresholds with respect to accepting (or rejecting) appointments. It is not clear how significant these differences are and what the longer-term impacts on residents may be (and as far as we have been able to determine this has occurred in only one instance). One other area of difference concerns the type of financial analysis conducted and the level of financial reporting back to residents. This varies largely depending on the ownership structure of groups. There is at least one group who does not report any village-specific financial information to its residents. Summary consolidated information is provided and Statutory Supervisors report that they are comfortable with this. As required under regulation 22, the disclosure statement to residents must state whether the operator of the village prepares financial statements relating to the operator or separate financial statements for both the operator and the village.

The consolidation of the industry since 2009 does not appear to have had a detrimental impact on the protection of residents' and intending residents' interests, and this has also taken place in the context of increased controls around market entry. Overall however the number of individuals responsible for front-line relationship management is small and in the current context of expansion of existing villages and new villages being built this is likely to require ongoing consideration.