



**TE ARA  
AHUNGA ORA**  
Retirement Commission

# Retirement Villages Annual Investigation Report 2021-22

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# Retirement Villages Annual Investigation Report 2021-22

Investigation of the feasibility of introducing a standardised  
Occupation Right Agreement

Investigation of the duplication of information in the Disclosure  
Statement and Occupation Right Agreement

Prepared for Te Ara Ahunga Ora Retirement Commission

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# Background

This report is the 2021-22 Investigation Report of Te Ara Ahunga Ora Retirement Commission (Commission) that investigates the feasibility of introducing a standardised Occupation Right Agreement (ORA).

This Investigation Report was commissioned following feedback that the Commission received from the White Paper issued in December 2020<sup>2</sup> and a recommendation in the White Paper Summary Report and Recommendations to “review introducing a standard-form, plain English ORA for sector-wide use”.<sup>3</sup>

A secondary area of investigation relates to the Disclosure Statement. The Commission has requested an investigation that provides it with a clearer understanding of:

- the degree of duplication between the information contained in a disclosure statement and the terms of an ORA; and
- the legal enforceability of disclosure statements and what remedies currently exist if statements made in a disclosure statement about a village do not materialise.

The report is divided into 11 parts as follows:

1. Executive Summary with Conclusions and Recommendations
2. Occupation Right Agreement
3. The call for a standardised ORA
4. Meaning of “plain English” and “standard form contract”
5. Use of standard form contracts by the Australian retirement village industry
6. A review of selected provisions from a sample of seven ORAs
7. Stakeholder feedback on a standardised ORA
8. Consideration of other options as an alternative to a standardised ORA
9. Conclusions on the feasibility of introducing a standardised ORA
10. Duplication of information between the disclosure statement and the ORA
11. Legal enforceability of disclosure statements and what remedies exist if promised facilities set out in a disclosure statement do not materialise

<sup>2</sup> Te Ara Ahunga Ora Commission for Financial Capability, “White Paper Retirement Villages Legislative Framework: Assessment and Options for Change 2020”.

<sup>3</sup> Te Ara Ahunga Ora Retirement Commission, “Retirement villages legislative framework: Assessment and options for change Submissions Summary and Recommendations 2021”, June 2021, page 21.

# 1. Executive Summary with Conclusions and Recommendations

## Feasibility of introducing a standardised ORA

The Commission recommended a review on introducing a “*standard-form, plain English ORA for sector wide-use*”. This recommendation followed the review of the submissions received by the Commission to its 2020 White Paper.

The brief of this Investigation Report (**report**) was to investigate the feasibility of introducing a standardised ORA. In undertaking this brief, the following topics were investigated:

1. A review of the ORA and the specific provisions that the legislative framework for retirement villages prescribes for inclusion in an ORA;
2. The reasons why there has been a call for a standardised ORA;
3. The meaning of a “standard form contract” and a review of example contracts used in New Zealand
4. A review of standard form contracts prescribed by legislation for use by the retirement village industry in the Australian states of New South Wales and Victoria;
5. A review of selected provisions from a sample of seven ORAs;
6. Feedback from invited stakeholders on questions relating to the standardisation of ORA provisions;
7. Feedback from invited stakeholders on the benefits and drawbacks of a standardised ORA;
8. Consideration of other options as an alternative to introducing a standardised ORA.

Based on the investigation and analysis of the above topics, this report makes the following conclusions and recommendations.

**Concludes** that from a legal perspective it is feasible to draft and introduce, by regulation, a standard form ORA for the retirement village industry that includes:

- standardised provisions where the legislative framework prescribes both the subject and substance of those provisions;

- standardises the licence to occupy (LTO) model including the terminology and definitions that relate to this model. Operators to then insert their unique monetary figures into a standard framework for this LTO model. Any additional payment terms that are unique to that operator can be included in a separate section of the ORA for unique operator terms;
- a separate section where an operator can set out their own unique terms on prescribed subject matters that are unique to the village generally and that may be separately negotiated and unique to a particular resident;
- standardised terms and definitions for those terms that are used across the RV industry and are applicable to the offerings of all operators; and
- a standardised layout for the form including order of provisions, headings and sub-headings and the font to be used and size of that font for provisions and headings. The separate section for unique operator terms could also have a standardised layout and subject headings determining what an operator may include in this section.

**Concludes** that the ORAs of a significant number of operators in New Zealand are now written in plain language.

**Concludes** that despite the use of plain language, ORAs remain complex given the length and breadth of subject matter that is required by the legislative framework to be included in an ORA. The main adverse consequence for residents of this complexity is that the important terms that set out the financial implications of entering into an ORA can be obscured by the mass of other less important prescribed terms.

**Concludes** that after considering the drawbacks against the benefits of introducing a standardised ORA for the RV industry, with the exception of the drawback that relates to the costs to the RV industry and government of introducing a standardised ORA, the benefits outweigh the drawbacks. The drawback that has been raised regarding the significant costs associated with introducing a standardised ORA requires further consideration and analysis by regulators and the RV industry.

**Concludes** that there are other options open to regulators and the RV industry that could also address the concerns that have given rise to the call for a standardised ORA. These options include:

- requiring by regulation a document like the RVA's "Key Terms Summary" that sets out a summary of the important financial terms and rights and obligations of residents that could be attached to an ORA; and/or
- review of the legislative framework with the aim of simplifying the regulation of prescribed terms for the ORA, determining standard definitions for terms relating to the licence to occupy model, and introducing a standard contract template for an ORA which includes a high-level framework, prescription of the order of terms in an ORA combined with standardisation of provisions in the legislative framework that prescribe both the subject and substance of a provision; and/or
- industry and/or Commission and/or other government agency to consider preparing a guide to assist operators in the drafting of a good ORA; and/or
- continuing education of lawyers who advise intending residents on the legal and financial implications of entering into an ORA.

**Recommends** the undertaking of a detailed review and analysis of the costs to government and the RV industry of introducing a standardised ORA in the form concluded as legally feasible by this report.

**Recommends** the other options that this report has concluded could also address the concerns that have given rise to the call for a standardised ORA are considered further and discussed at the Stakeholders Forum scheduled for August 2022 with a view to having these options costed as well so that they can be compared against the costs of introducing a standardised ORA.

**Recommends** that any standardised ORA introduced by regulation is drafted by regulators in conjunction with lawyers that specialise in the drafting of ORAs who will consult with the New Zealand Law Society – Property Law Section.

**Recommends** that the experience of the New South Wales and the Victoria jurisdictions that have introduced standard form contracts, is

taken into consideration when drafting and introducing a standardised ORA for the New Zealand Retirement Village industry.

### Investigation of duplication of information between the disclosure statement and the ORA

A secondary area of investigation in this report related to providing the Commission with a clearer understanding of the duplication of information in a disclosure statement and the prescribed terms of an ORA and the legal enforceability of the disclosure statement and remedies available.

Based on the investigation and analysis of the provisions of the retirement village legislative framework, stakeholder feedback on questions relating to the duplication of information and analysis of the provisions of the Retirement Villages Act 2003 in relation to the disclosure statement, this report makes the following conclusions and recommendations.

**Concludes** that the duplication of information between the disclosure statement and the ORA is created by the highly prescriptive legislative framework. Because of this legislative framework it is not possible for operators to draft a shorter and more concise disclosure statement.

**Concludes** that there is significant duplication of the same information between the disclosure statement and the ORA over many of the subject areas that relate to living in a retirement village. That said, for many of these subject areas the regulations require the disclosure statement to contain much more detail on the subject area compared to what is required on the subject matter for the provision in the ORA.

**Concludes** that the two main implications of this duplication are first, the risk that information is being inconsistently presented across the disclosure statement and ORA and second, that the amount of information that is duplicated across the ORA and disclosure statement can contribute to residents feeling overwhelmed and confused by the amount of information they are required to read and understand.

**Recommends** a review of the legislative framework with the aim of simplifying the pre-contract disclosure process for the retirement village industry. The review process to consider in more detail the option of adapting the disclosure processes of the Managed Investment Scheme for the RV industry.<sup>4</sup>

<sup>4</sup> Scheme set up under the Financial Markets Conduct Act 2013.

**Concludes** that as the disclosure statement is not a contractual document a resident cannot bring a breach of contract claim against an operator based on “misinformation” contained in a disclosure statement.

**Concludes** that in certifying and publishing disclosure statements the Act imposes certain statutory duties on operators (and promoters) not to mislead and deceive the public about their retirement village in the information they provide. In the example given of future facilities set out in a disclosure statement not being provided, possible remedies under the Act that a resident could consider with their lawyer are:

- the prosecution of an operator for contravention of the operator’s statutory duties under the Act in relation to disclosure statements;
- seek to avoid the ORA under section 31(1) of the Act for contravention of section 30(1) of the Act; or
- where there is evidence of a contravention of the statutory duty relating to the publishing of a disclosure statement and a resident can show they have suffered loss or damage arising from that act of publishing, consider seeking court orders for a remedy as prescribed in the Act.

**Recommends** that the best protection for a resident who enters a village relying on the availability of certain future promised facilities is to negotiate a clause with their operator to include in the ORA that the operator will provide those new facilities (as set out in the disclosure statement).

**Recommends** that any continuing education offered to lawyers who advise residents includes a discussion about the duplication of information between the ORA and disclosure statement and what legal remedies are available to residents where information in a disclosure statement is either incorrect or is misleading in circumstances where an operator does not provide the future services or facilities that were set out in a disclosure statement.

**Recommends** that the full legislative review considers including a right for residents to treat a statement or promise by an operator in a disclosure statement as a contractual obligation in certain circumstances where to assert otherwise would be manifestly unfair to a resident.



## 2. Occupation Right Agreement

### What is the ORA?

The ORA is the written contract between an operator and resident that confers on a resident the right to occupy a unit in a retirement village and sets out the rights and obligations of each party in relation to that occupancy right.<sup>5</sup>

The legal provisions, or terms, that are required to be included in an operator's ORA are prescribed by the Retirement Villages Act 2003 (**the Act**), the Retirement Villages (General) Regulations 2006 made under the Act (**RVGR**) and the Code of Practice 2008 (**the COP**).

In addition to the ORA, there are other documents that provide information to residents and intending residents about living in a retirement village or set out further legal terms that are relevant to a resident's occupancy right. These documents include:

- Code of Practice 2008- issued under the Act, administered by the Ministry of Housing and Urban Development and enforceable as a contract by a resident and prevails over any less favourable provision in the ORA;<sup>6</sup>
- Code of residents' rights – set out at Schedule 4 of the Act and includes a summary of the basic rights given to residents by the Act;
- Operator's disclosure statement for the retirement village – all provisions prescribed by the Act, RVGR and the COP;
- Operator's Application Form – completed by the operator and intending resident prior to entry into ORA and may include some conditions that are legally enforceable as between the parties; and
- Summary of Key Terms – issued by the Executive of the Retirement Villages Association of New Zealand Incorporated (**RVA**) that member-operators must complete and provide to intending residents.

### Current ORA forms

In 2020 there were 422 villages in New Zealand offering 36,345 units.<sup>7</sup> This equates to 422 separate ORA forms registered with the Registrar of Retirement Villages with approximately 36,345 current ORAs in place between operators and residents.

The retirement village industry in New Zealand (**RV industry**) is dominated by the six largest retirement village operators that include Ryman Healthcare, Metlifecare, Summerset, Bupa, Oceania and Arvida. It is estimated that between them they hold 43% of villages and 60% of national unit numbers.<sup>8</sup>

For ORAs this means that 60% of residents sign up to an ORA form that has been prepared by one of these six larger operators. The RVA has submitted that these ORAs generally use plain English terms and are well presented, clear and precise.<sup>9</sup>

The remaining villages are either independently owned by mid-sized or smaller operators or are in the not-for-profit sector. In commenting on the forms of these village operators the RVA noted:<sup>10</sup>

*“A considerable number of mid-sized and smaller operators use forms similar to those used by the larger operators, or use the form of ORA developed by Anthony Harper (or a variation thereof) which, while more legal in style, uses plain English and again we consider the terms are clear and comprehensible;*

*The balance of operators generally use bespoke forms, some of which will potentially be complex and difficult to follow.”*

The drafting of an ORA is a complex task that requires the input of a number of stakeholders. The overall responsibility for preparing the ORA is with the operator. Given the complex legislative framework an operator would be wise to instruct a lawyer to assist with the drafting of the ORA. Once drafted the ORA is checked by the statutory supervisor of the village and their lawyers and then it is lodged

<sup>5</sup> The ORA is specifically defined in section 5 of the Retirement Villages Act 2003.

<sup>6</sup> Section 92.

<sup>7</sup> The JLL's 2020 New Zealand Retirement Village Database report June 2021, page 6.

<sup>8</sup> Above, n 7.

<sup>9</sup> MinterEllisonRuddWatts response to 2021-22 Investigation Report addressing the introduction of a standardised ORA and duplication between disclosure statement and ORA that was adopted and endorsed by the RVA, 6 May 2022 (**MERW/RVA submission**), page 4.

<sup>10</sup> MERW/RVA submission, pages 4-5.



by the operator with the Registrar of Retirement Villages.<sup>11</sup> An operator is able to change the provisions of their ORA from time to time as required and must register their amended and new ORA with the Registrar of Retirement Villages.<sup>12</sup>

### The ORA and intending resident

To enter a retirement village an intending resident is legally required to sign the ORA that an operator presents to them and that has been explained to them by their lawyer.<sup>13</sup> In theory the provisions of an ORA, the substance of which is not prescribed by the legislative framework, are negotiable between an operator and intending resident. In practice, however, an intending resident has minimal ability to negotiate with an operator on provisions of an ORA.

A guide published by the Commerce Commission refers to the retirement village industry as an example of an industry that uses a “standard form consumer contract”.<sup>14</sup> Further, a recently published legal research paper observes that intending residents are required to understand and accept the terms in an operator’s ORA and by implication, are unable to negotiate more favourable financial terms with an operator.<sup>15</sup>

There are a number of protections established by the Act, to ensure that intending residents understand the agreement set out in an ORA. These protections cover intending residents both before they sign an ORA and in the immediate period after they sign an ORA. They include statutory requirements that:<sup>16</sup>

- the intending resident receives independent legal advice before signing the ORA and have their signature on the ORA witnessed by a lawyer.<sup>17</sup>
- the resident receives a copy of key documentation before entering into the ORA including the disclosure statement, the COP and Code of residents’ rights.<sup>18</sup>

- there is a mandatory cooling-off period of 15 days during which residents can cancel ORAs and receive full refunds of any fees paid to the operator under the ORA.<sup>19</sup>
- there is a right for a resident to avoid an ORA in certain circumstances including where the ORA does not include the provisions prescribed by the legislative framework or the resident does not receive all the documentation required to be given to a resident before they sign an ORA.<sup>20</sup>

### Prescribed provisions of an ORA

The legal provisions that are required to be included in an ORA are prescribed by the legislative framework for retirement villages that includes the:

- Retirement Villages Act 2003 and in particular, Schedules 3 and 5;
- Code of Practice 2008; and
- Part 4 Subpart 1 of the Retirement Villages (General) Regulations 2006.

An analysis of the provisions that the legislation prescribes must be included in an ORA are set out in Appendix 1.

This report has categorised the provisions of an ORA into four categories as follows:

#### Category 1

Provisions where both subject and substance of the provision are prescribed by the legislation and must be included in the ORA. Examples includes:

- Section 28 (*Cooling-off period and cancellation for delay*)
- clause 1(b)(i)-(iv) of Schedule 3 of the Act (*obligations on operator to consult*)
- Regulations 8-11 of RVGR (*obligations on operator*)

<sup>11</sup> Section 10 of the Act. ORA is lodged along with other documents that include an application for registration, disclosure statement, full legal description of retirement village, details of the statutory supervisor, prescribed fee.

<sup>12</sup> See section 17 of the Act. Further, all operators of retirement villages are required to register an ORA for every village they operate with the Registrar of Retirement Villages. This means that there is a public register containing the ORAs for every retirement village in New Zealand. This register is readily available for any member of the public (including intending residents and their lawyers) to access via the New Zealand Companies office website (<https://www.companiesoffice.govt.nz/all-registers/retirement-villages/>)

<sup>13</sup> Section 27(3).

<sup>14</sup> Commerce Commission New Zealand Te Komihana Tauhokohoko, “Unfair Contract Terms Guidelines”, February 2018, page 4. Refer also to Part 4 of this report which sets out further explanation of what is meant by a “standard form contract”.

<sup>15</sup> Julia Marshall-Mead in her legal paper analyses the retirement village regulatory framework and proposes amendments to the framework to ensure that residents thoroughly understand their contract with operators and to provide for fairer provisions around the financial terms the contract may contain see Julia Marshall-Mead, “Freedom and fairness in retirement villages: an analysis of the regulatory framework” (2019) 9 NZFLJ 149.

<sup>16</sup> Above, note 15 page 151 for a detailed legal analysis about these protections.

<sup>17</sup> Section 27(3)-(7).

<sup>18</sup> Section 30.

<sup>19</sup> Section 28.

<sup>20</sup> Section 31.

## Category 2

The subject of the provision is required to be referenced in the ORA however the substance of the provision is set out in the COP. An operator can choose to include in its ORA provisions that either repeat the substance of the provision in the COP and/or add additional terms on the subject matter and/or add more favourable terms than those set out in the COP. Examples include:

- clauses 1(a)(i) of Schedule 3 of the Act and clauses 12-15 COP (staffing of retirement village)
- clauses 1(a)(v) of Schedule 3 of the Act and clauses 26-30 COP (meetings of residents with operator)
- clause 1(c) of Schedule 3 of the Act and clauses 31-38 COP (disputes)

## Category 3

The subject of the provision along with minimum requirements for the substance of the provision is prescribed by legislation, with the operator required to draft its own bespoke provision to include in the ORA to meet these minimum requirements and/or provide a more favourable position. Examples include:

- clause 22(9) COP (*temporary accommodation*)
- clause 1(a)(iv) of Schedule 3 of the Act and clauses 24-25 COP (*the transfer of residents within the retirement village*)
- clause 45 of the COP (*alteration of residential units for residents with disabilities*)
- clause 1(a)(iii) of Schedule 3 of the Act and clause 47 of the COP (*termination if the unit is damaged or destroyed through no fault*)

## Category 4

The subject of the provision without any detailed requirements for its substance is prescribed in legislation, with the operator required to draft its own unique/bespoke

provision to include in the ORA. Examples include:

- Clause 7(a)-(f) (*name and address of retirement village through to charges relating to the village and provision of services and facilities*)
- Regulation 12 of the RVGR (*procedure if there ceases to be statutory supervisor*)

## The Licence to Occupy model (LTO)

The definition of a retirement village set out in the Act requires that a resident must pay a capital sum as consideration for being provided with residential accommodation and a village lifestyle. The Act does not prescribe the substance of the legal nature of the right to occupy a residential unit in a village. Instead, the Act leaves it up to the parties to determine the substance of their own terms on matters such as the nature of the right to occupy, the rights of the parties to deal with the residential unit, the management of the village, services and facilities at the village and the charges relating to the village and its services and facilities.<sup>21</sup>

The RV industry in New Zealand has largely adopted the LTO model for retirement village ownership and the RVA has recently described this business model as at “the heart of the system”.<sup>22</sup> The RVA reported to the Retirement Commission in 2021 that 95% of units are now occupied as a LTO with the remaining 5% mostly held as a unit title.<sup>23</sup>

The funding model for the LTO is largely the same across all operators in the industry and follows a pattern of requiring a resident on entry to a village to pay a capital sum, during occupancy to pay a fee for provision of services, and on exit receive a refund of the capital sum minus a deduction of a deferred management fee and any other outstanding service fees at the date of the refund.<sup>24</sup> There are some variations on this model of funding where some operators give residents the right to a capital gain or loss on exit in exchange for meeting costs associated with the maintenance of their unit during occupation and refurbishment and sales costs on exit.<sup>25</sup>

<sup>21</sup> RVGR, reg 7.

<sup>22</sup> RVA submission to the Social Services and Community Select Committee Petition from the RVR, 27 June 2022, page 2. [www.parliament.nz](http://www.parliament.nz).

<sup>23</sup> RVA Response to CFFC Whitepaper: RV's Legislative Framework: Assessment and Options for Change 2020 26 March 2021 page 7. The unit title structure, while much less common in the industry, also has common features across operators' offerings. The resident will pay a capital sum on entry and on exiting the resident (or their estate) will receive the sale price for the unit less 10-20% deferred management fee. During occupancy a resident will pay a village levy in the form of body corporate fees. Resident is also responsible for meeting all maintenance costs for the unit and refurbishment and sales costs on exit.

<sup>24</sup> Sara Jones “The financial implications of living in a retirement village: a comparative review of the financial terms of the occupation right agreement” (2017) 9 NZFLJ 2 at 3-4.

<sup>25</sup> Refer to villages in the group known as Freedom Lifestyle Villages <https://freedomvillages.co.nz>.

## 3. The call for a standardised ORA

### Submissions responding to White Paper

A number of submissions received by the Commission responding to the 2020 White Paper indicated that a standardised ORA would be beneficial to the RV industry. The New Zealand Law Society in their submission on the White Paper commented on how the legal workability of a number of aspects of the retirement village process could be improved and noted:<sup>26</sup>

*“a) Plain language requirements or default standardised documents for the Occupation Rights Agreement, disclosure statements etc. Other suggestions include a compulsory glossary of terms, highlighting key terms, or a contract that provides a standard form of general conditions with Word form schedules to be completed with specific details or variations.”*

### Recent statements from RVR and RVA

Following the release of the White Paper some key stakeholder groups have provided their perspectives on the standardisation of the ORA. The Retirement Villages Residents Association of New Zealand Incorporated (**RVR**) are supportive of standardisation and in a recently released report titled “Framework for Fairness” stated:<sup>27</sup>

*“All villages should have an Occupation Right Agreement and Disclosure Statement that is made up of two parts. The first part should be general standardised provisions that apply to all retirement villages and the second part consisting of special provisions applying to the individual owner’s particular offerings. Both general and specific provisions must be expressed in clear, concise and unambiguous language and comprehensively cover all contractual conditions applying throughout the terms of the agreement.”*

The RVA are more cautious in their views on the standardisation of an ORA. They expressed their reservations about standardisation in a supplementary submission to the Economic

Development Select Committee in response to the Retirement Commissioner’s appearance in front of this Committee on 9 September 2021. The RVA responded:<sup>28</sup>

*“The ORA allows operators to distinguish themselves from their competitors, offer terms that work for individual residents (e.g. include financial assistance if they don’t have quite enough money), include unique terms such as fixed weekly fees that today have become an industry standard in that 60% of villages now offer this, and allow the village to reflect the reality of their locale. A village in Auckland may have very different terms and expectations to one in Dannevirke or Levin.”*

### Early calls for standardised ORA

The question of introducing a standardised ORA is not a new one.

A legal practitioner, who advised the government on legal issues when the Act was being introduced, recalls that the RVA had initially intended to produce an ORA market template and work commenced on this prior to the release of the COP and the RVGR. In the end the RVA decided not to complete the template.<sup>29</sup> When the RVA was questioned about this more recently, they could not recall having worked on an ORA template for the RV industry.<sup>30</sup>

The Commission considered the issue of “templates” over 10 years ago. The Commission’s 2011 Monitoring Project investigated residents’ understanding of the regulatory framework and made recommendations for the review and reform of the legislation around retirement villages. The Monitoring Report recommended that in relation to the key documents, namely the ORA and the disclosure statement, attention was given to:<sup>31</sup>

*“Promulgating templates for the key documents that rationalise the content in each relative to the others.”*

<sup>26</sup> New Zealand Law Society submission to Te Ara Ahunga Ora Commission for Financial Capability, 25 March 2021, page 3.

<sup>27</sup> RVRANZ, “Framework for Fairness Guidelines for Achieving Best Practice in New Zealand Retirement Villages” October 2021, page 2.

<sup>28</sup> Retirement Commissioner’s appearance in Front of the Economic Development Select Committee, 9 September 2021, An Analysis of Statements and RVA’s comments and corrections. Refer [www.parliament.nz](http://www.parliament.nz)

<sup>29</sup> M Burke and J Greenwood, NZLS Seminar, “Retirement Villages – the full impact of the Act”, March 2007, page 26; The lawyer who recalled this was John Greenwood.

<sup>30</sup> Graham Wilkinson, President of the RVA, conversation with Sara Jones 10 June 2022.

<sup>31</sup> Resident’s Perspectives on the Effectiveness of the Retirement Villages Act: A Monitoring Report for the Retirement Commission Prepared by Public Policy & Research, May 2011, page 63..

### Recent comment on ORAs from Social Services and Community Committee

In 2022 the ORA has again come under public scrutiny. In June 2022 the Social Services and Community Committee published its report on its investigation of the Petition of Sue Brown that related to transfers within retirement villages to the next level of care.<sup>32</sup>

The Committee reported that it heard from submitters of their concerns about ORAs including that they must include a large amount of information, are exceedingly long and are often written in dense legal prose. It further reported that submitters had proposed that ORAs should be written in plain English, contain only necessary information and that intending residents did not fully consider the implications of the ORAs they signed despite receiving legal advice.<sup>33</sup>

The Committee made some suggestions about ORAs including how they should be structured to aid comprehension. The suggestions that are particularly relevant to this report include:<sup>34</sup>

*“ORAs should be written in plain English.*

*Prospective residents should receive simple summaries of their rights and obligations before signing an ORA.*

*The financial consequences of moving between levels of care should be clearly communicated prior to signing an ORA.”*



<sup>32</sup> Report of the Social Services and Community Committee Petition of Sue Brown: Retirement villages must have capacity when residents move to next level of care, June 2022. Petition presented to Parliament on 3 July 2020 that requested the passing of legislation so that it is a legal requirement for retirement village operators to ensure that they have the capacity to accommodate residents when they move from one level of care to the next (that is, serviced apartment to rest-home to hospital level of care).

<sup>33</sup> Above, note 32, page 8-9.

<sup>34</sup> Above, note 32, page 9.

## 4. Meaning of “plain English” and “standard form contract”

This Part of the report investigates what is meant by the terms “plain English” or “plain-language” and the term “standard form contract”. It also investigates some examples of the use of standard form contracts in New Zealand.

### What do we mean by plain-English or plain-language?<sup>35</sup>

There is no single recognised definition of what is meant by plain English or plain language. However two definitions that are helpful include:<sup>36</sup>

*“Plain language is a technique of organising information in ways that make sense to the reader and thinking about your reader first and foremost and using language that is appropriate for your audience’s reading skills.”*

*“Plain English is a flexible, efficient writing style that you can understand in one reading...Plain English is a must for people who want to communicate clearly, fairly and ethically.”*

In the context of drafting an ORA, the main benefit in using plain language is that it will be easier for a resident to read and understand. This in turn will build trust between the resident and operator and could bring about a decrease in complaints and disputes with the resident having a clearer understanding of their rights and obligations under an ORA.

### What do we mean by a standard-form contract?

A standard-form contract is generally understood to mean a contract where the terms are not negotiated between the parties i.e., it is offered on “a take it or leave it” basis, where one party has all or most of the bargaining power relating to the transaction and has prepared the contract. Generally, a stand-form contract is a consumer contract for the sale of goods and services. Examples of

where these types of contracts are commonly used are in the telecommunications industry and for electricity and gas supply.<sup>37</sup>

A standard-form contract can also refer to other contract forms where some, but not all, of the terms of the agreement are prescribed in a form. These “prescribed” or “general” terms are those that will apply to all contracts on the subject matter. The form will also allow for the parties to include their own unique terms that are relevant to their commercial arrangement including terms that may amend the “general” terms (assuming these “general” terms are not mandatory terms prescribed by legislation).

### New Zealand examples of “standard form” contracts

#### ADLS/REINZ Agreement for Sale and Purchase of Real Estate

A standard form contract that is used widely in transactions for the sale and purchase of real estate in New Zealand, is the ADLS-REINZ Agreement for the Sale and Purchase of Real Estate.<sup>38</sup> The standard form contains a front section where the parties insert a description of themselves, the property and purchase price and then includes the general terms of sale and some further schedules where again the parties can insert details that specifically relate to their transaction. The intention is that the standard form is entered into without amendment however there is a section of the form titled “Further Terms of Sale” where parties can insert additional negotiated terms where amendments to the general terms of sale are necessary for a particular transaction.<sup>39</sup>

The form is not drafted in a plain English style and uses traditional legal terms and phrases throughout. While the terms may be understood by a lawyer or real estate agent who recommends it use, its terms may not be readily understood by the parties.

<sup>35</sup> The term plain English is about the English language only and often tends to focus on the text – the words, sentence structure, grammar and style of writing. Plain language has a wider scope and extends to all visual aspects of writing in a way that is clear and readily understandable to the intended reader. For example, it extends to the way the text is physically arranged on the page, the use of headings, emphasis, different fonts etc. Refer Lexis Nexis NZ Forms and Precedents, Chapter 1 What is plain language?, paragraph 4.

<sup>36</sup> Lexis Nexis, NZ Forms and Precedents, Chapter 1 “What is plain language?”, paragraph 2.1.

<sup>37</sup> See section 46J of the Fair Trading Act 1968 which sets out the matters a court must take into consideration when determining whether a contract is a standard form contract. It is interesting to note that the Commerce Commission has listed industries where standard form consumer contracts are common and have included retirement villages in this list (refer Commerce Commission, “Unfair Contract Terms Guidelines”, February 2018, page 4.)

<sup>38</sup> The form is available to purchase from ADLS.

<sup>39</sup> Refer Thomas Reuters Westlaw, Property, 48.R.13.13 ADLS/REINZ Agreement for Sale and Purchase of Real Estate.

Feedback from stakeholders cited this form and another ADLS form known as Sale & Purchase of a Business 4th Edition 2008, as examples of standard form contracts used by the legal profession that work well and can accommodate additional terms that are particular to a transaction and also allow the parties to amend general terms where necessary.<sup>40</sup>

### Construction contracts

Contracts in the construction industry are generally written around a standard form of conditions of contract that are of general application. The contract will usually consist of the actual contract agreement, a standard form of conditions of general application, specific conditions, drawings and specifications.<sup>41</sup>

Examples of standard forms contracts used by the construction industry that are in regular use are those published by Standards New Zealand<sup>42</sup> and those published by industry bodies in the construction sector for their

members to use. The industry bodies who have published standard contracts include New Zealand Institute of Architects, Civil Contractors New Zealand, Registered Master Builders Association and International Federation of Consulting Engineers.<sup>43</sup>

The key advantage to using a standard form of conditions is that as these conditions become familiar to the industry it helps to simplify what is otherwise a complex contracting process. While these standard conditions are not mandated by legislation they are often drafted and endorsed by industry bodies for use by their members to assist with the contracting process.

### Consumer documents

Legislation in New Zealand has prescribed the form and contents of some types of consumer documents. One such document in wide use in New Zealand where the form and content is prescribed by legislation is the “product disclosure statement”.<sup>44</sup>



<sup>40</sup> Refer feedback detailed at Table 1 in Appendix 3 to this report from a group of lawyers from NZ Law Society Property Law Section.

<sup>41</sup> Refer Green & Hunt on Arbitration Law and Practice, CA1.6 Standard general conditions of contract.

<sup>42</sup> [www.standards.govt.nz](http://www.standards.govt.nz) and refer NZS 3910:2013 – Conditions of contract for building and civil engineering - Construction; NZS 3916:2013 – Conditions of contract for building and civil engineering – Design and construct; NZS 3917:2013 – Conditions of contract for building and civil engineering – Fixed term; NZS 3902: 2004 Housing, alteration and small buildings contract.

<sup>43</sup> NZ Institute of Architects [www.nzia.co.nz](http://www.nzia.co.nz); Civil Contractors NZ [www.nzcontractors.co.nz](http://www.nzcontractors.co.nz); Registered Master Builders Association [www.masterbuilder.org.nz](http://www.masterbuilder.org.nz); The International Federation of Consulting Engineers [www.fidic.org](http://www.fidic.org).

<sup>44</sup> A Product Disclosure Statement provides investors with essential information to assist them in deciding whether to invest in a financial product. It is a statement that must be prepared and lodged for all regulated offers pursuant to section 48 of the Financial Markets Conducts Act 2013. The Financial Markets Conduct Regulations 2014 prescribe what information must be included in a PDS including details of a Key Information Summary and how the document must be presented.

## 5. Use of standard form contracts by Australia's retirement village industry

This Part of the report has reviewed the use of standard form contracts by the Australian retirement village industry in the states of New South Wales and Victoria.

### The Australian approach to standard form contracts

Similar concerns about the complexity of retirement village contracts have been raised and considered by regulators and the retirement village industry in Australia. In response, regulators in Australia have introduced, by regulation, standard contract forms that standardise, to varying degrees, the retirement village contracts that are used by the industry.

There are differences between the respective RV industries and legislative frameworks in New Zealand compared to New South Wales and Victoria that are relevant when considering the introduction of a standard form contract to the New Zealand RV industry. There are two factors that may have influenced the introduction of standard form contracts in New South Wales and Victoria that do not apply to the New Zealand context. These include:

- multiple forms of property tenure available when choosing to live in a retirement village in Australia compared to the New Zealand industry which is dominated by the LTO model.<sup>45</sup>
- legislation in New South Wales and Victoria does not require intending residents to receive independent legal advice before signing a contract to enter a village.

### New South Wales

In New South Wales a standard contract form of the village contract is prescribed by regulation for all village contracts (except for

certain specified situations).<sup>46</sup> All operators are required to use the prescribed standard form.<sup>47</sup> The first standard form contract was introduced in 2013 with the purpose of enhancing transparency of terms and so that the contract was written in a style that was easier to read and understand.<sup>48</sup>

The standard form contract is written in a plain language style with multiple headings in bold type to separate the different sections of the contract. The contract prescribes all the terms and gives the parties some flexibility as to which terms apply to their village contract by the use of tick boxes with different options for a specific term. Additional terms are allowed to be added to the standard terms with the acknowledgement that they are not required by law and are negotiable. There is a further requirement that any additional term cannot contravene retirement village laws or be inconsistent with standard terms prescribed under the retirement village laws.

Feedback on this standard form contract was sought as part of the Inquiry into the New South Wales Retirement Village Sector carried out in 2017.<sup>49</sup> The Report from this Inquiry noted the feedback from residents that indicated that the introduction of a standard contract has “improved the clarify of entry costs, ongoing fees, exit costs and resident rights and responsibilities”.<sup>50</sup>

There was also a recognition in the Inquiry's Report that there were practices in the use of the standard form contract that were undermining its efficacy and caused confusion for residents and their lawyers including:<sup>51</sup>

- cross referencing between standard terms to terms in the “additional terms” section of the standard form;

<sup>45</sup> Property interests in Australia include strata or community schemes, company title schemes, registered long-term lease, loan-licence agreement, rental agreement and other leasehold type arrangements.

<sup>46</sup> Section 43 Retirement Villages Act 1999 and Schedule 2 of Retirement Villages Regulation 2017 sets out the “Standard form of village contract”. The standard form village contract was first introduced in New South Wales on 1 October 2013 by the Retirement Villages Amendment (Standard Contract) Regulation 2013.

<sup>47</sup> Clause 17(3) Retirement Village Regulations 2017 [NSW]. A standard contract form does not have to be used for a sale of land contract where a resident buys a strata or community scheme unit, or an agreement to buy company title shares – however these residents must sign a service contract in standard form.

<sup>48</sup> Refer <https://www.villages.com.au/video-library/need-to-know/nsw-standard-contract-in-three-minutes-with-david-mcelhone>.

<sup>49</sup> One of the aims of the Inquiry was to examine the fairness and transparency of business practices in the retirement village sector. The Inquiry was conducted in 2017 and included extensive consultation with the public and key stakeholders in the sector. The Report from this Inquiry is published at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

<sup>50</sup> Inquiry into the NSW Retirement Village Sector Report, 15 December 2017, page 38.

<sup>51</sup> Above, note 50, page 39. MERW/RVA submission notes at page 6 that their understanding of the NSW approach is that “having a strict standard contract has inadvertently resulted in the contract becoming complex and lengthy with the rights and responsibilities of residents and operators being difficult to ascertain”.

- the crossing out of inapplicable elements in the standard form; and
- any variation to the standard terms is consolidated in additional terms to the standard contract, and the same topic can be dealt with in up to three different locations within the same contract.

Following the feedback from stakeholders the Inquiry's Report concluded that the presentation of standard and non-standard information in the contract could be improved.

### Victoria

In the state of Victoria, regulations set out the form of the residence and management contracts and prescribe:<sup>52</sup>

- the matters that must be included in contracts, that may be included in contracts and that must not be included in contracts;
- a basic set of mandatory rights and obligations of operators and residents; and
- the layout of residence and management contracts include the order of matters.

The partially prescribed standard form contract was introduced to better ensure incoming residents understood their financial commitments and contractual rights and obligations and also to ensure residents could choose the village that meets their personal and social needs.<sup>53</sup>

A sample residence contract of a village in Victoria that was drafted in accordance with the regulations was reviewed for this report.<sup>54</sup> The contract follows the form set out in the regulations and includes the standard

prescribed terms and the operator's bespoke terms for the other matters that were prescribed by the regulations. The terms for these other matters were included under headings and in the order prescribed in the regulated form. At the end of the contract is a further section headed "*Other Terms*" and under this section the operator has included other terms that are not prohibited by the legislation. The contract is written in plain language with headings with a length of 26 pages.

The Victoria state government is currently reviewing its retirement village legislative framework and has received submissions from stakeholders on proposed changes. As to the contracts, the latest report on the review has concluded that, in general, there was support for further simplifying residence and management contracts including introducing plain language requirements. However, there were varying perspectives on standardising terms and the form of contracts.<sup>55</sup>

### Conclusion

The experience of the retirement village industry in the Australian states of New South Wales and Victoria in using standard form contracts could be analysed further by New Zealand regulators and the RV industry in determining what would be the most appropriate form of a standardised contract for the New Zealand RV industry.

In particular, further analysis of the practical experiences of the actual use of these standard form contracts, particularly in New South Wales, would be beneficial when the work of drafting a standard form contract is considered further for the New Zealand RV industry.

<sup>52</sup> Prescribed terms and the form of residence and management contracts are set out in schedules 5 and 6 of the Retirement Villages (Contractual Arrangements) Regulations 2017 (made under the Retirement Villages Act 1986 (VIC))

<sup>53</sup> Consumer Affairs Victoria, Retirement Villages (Contractual Arrangements) Regulations Regulatory Impact Statement, Final Submission 8 March 2017, page 20 at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

<sup>54</sup> Clause 17(3) Retirement Village Regulations 2017 [NSW]. A standard contract form does not have to be used for a sale of land contract where a resident buys a strata or community scheme unit, or an agreement to buy company title shares – however these residents must sign a service contract in standard form.

<sup>55</sup> Refer <https://engage.vic.gov.au/retirementvillagesact> Victoria Statement Government Justice and Community Safety, "Thematic Summary Public consultation on options to reform the Retirement Villages Act 1986, page 6-7.



## 6. A review of selected provisions from a sample of seven ORAs

This Part of the report reviews and analyses the selected and categorised provisions from seven sample ORAs and then concludes whether those provisions could be standardised in a standard form ORA.

### Sample ORAs

The registered ORAs of seven different retirement villages were selected to ensure that there were at least two examples from each different type of operator in the RV industry. The sample ORAs included:

#### Large corporate operators

- Ryman Healthcare Village, Rita Angus Retirement Village Ltd, Rita Angus, Wellington
- Bupa Retirement Village, Winara Retirement Village, Waikanae

#### Not -for-profit operators

- Presbyterian Support Central, Huntleigh Apartments, Wellington
- Masonic Villages Ltd, Masonic Court, Palmerston North

#### Smaller independent commercial operators

- The Palms Lifestyle Village Ltd, The Palms Lifestyle Village, Whangarei
- Palm Grove Partnership, The Grove Orewa, Auckland
- Eileen Mary Age Care Property Ltd, Eileen Mary Lifestyle Complex, Dannevirke

### Selected provisions reviewed in sample ORAs

Eight different provisions that are prescribed by the legislation must be included in an ORA were selected, categorised<sup>56</sup> and then analysed to understand the similarities and differences between these provisions across the sample set of seven ORAs.

#### Category 1<sup>57</sup>

- Cooling-off provision (s 28 of the Act)
- Obligation on operator to consult with residents before appointing new manager (cl 1(b)(iii)(iv) of sch 3 of the Act)

#### Category 2<sup>58</sup>

- Staffing of retirement villages (cl 1(a)(i) sch 3 of the Act and COP cls 12-15)
- Complaints and Disputes (cl 1(c) of sch 3 of the Act and COP cls 31-36)

#### Category 3<sup>59</sup>

- Transfer of residents within the retirement village (clause 1(a)(iv) of sch 3 of the Act and cls 24-25 COP)
- Termination if the unit is damaged or destroyed through no fault (cl 1(a)(viii) of sch 3 of the Act and cl 47 of the COP); Payment after damage or destruction of residential unit (cl 54 COP) and Temporary Accommodation (cl 22(9) and (10) COP)

#### Category 4<sup>60</sup>

- Nature of the right to occupy a unit in retirement village (reg 7(b) of RVGR)
- Charges relating to the village (reg 7(f) of RVGR)

The seven sample ORAs were also reviewed for the language used and their form.

### Review and Detailed Analysis

The detailed analysis of the above eight provisions in each of the seven ORAs is set out in Appendix 2.

The language, form and layout used in each of the seven sample ORAs was also reviewed and analysed and is set out in Appendix 2.

A sample ORA from a village operated by each of the six large corporate operators was also

<sup>56</sup> Refer Part 2 of this report that explains the categorisation of the prescribed provisions of an ORA into four separate categories.

<sup>57</sup> Provisions where both subject and substance are prescribed by the legislation and must be included in the ORA.

<sup>58</sup> The subject of this provision is required to be referenced in the ORA however the actual content of the provision is set out in the COP. An operator can choose to include in its ORA a repetition of the substance in the COP, additional terms on the subject and/or more favourable terms than those set out in the COP.

<sup>59</sup> The subject of the provision along with minimum requirements for the provision's substance is prescribed by legislation, with the operator required to draft its own bespoke provision to include in the ORA to meet these minimum requirements or provide a more favourable position.

<sup>60</sup> The subject of the provision without any detailed requirements for its substance is prescribed in legislation, with the operator required to draft its own bespoke provision to include in the ORA.

selected, reviewed and analysed for the language, form and layout used. The detailed analysis is set out in Appendix 2.

## Summary of analysis and conclusion

### Category 1 provisions

The category 1 provisions were included in all ORAs reviewed. The main difference between the sample ORAs was where the provisions were situated within the ORA.

The cooling-off provision is an important right and some operators gave this clause a prominent position at the start of the ORA or under the execution section of the ORA (BUPA and Palm Grove) while other operators positioned this right in the body of the ORA with no sub-heading to give it prominence (Masonic Village).

The consultation provision was included in all sample ORAs as required by the Act. Again, the difference across the sample ORAs was where it was situated within the document. Some operators placed the provision under a heading "Management of the Village" (BUPA, Presbyterian Support, Eileen Mary), others under a "Consultation" heading (Palms Lifestyle and Palm Grove) and some under a section or separate schedule that set out general obligations of the operator (Ryman and Masonic).

**Conclusion** for category 1 provisions is that they could be easily standardised and included in a standard form ORA.

### Category 2 provisions

The examples of the category 2 provisions that were reviewed all included a general statement in the ORA about the right or obligation and then referred to more detail about the right or obligation that was in an operator's own policy document and/or the COP. Interestingly in the Palms Lifestyle ORA, the operator instead of referring to the COP, set out its own complaints policy that did not follow the terms of the COP.

**Conclusion** for category 2 provisions:

- these provisions could be standardised across all operators. The review of the seven sample ORAs showed that the operator's provisions were in substance all the same, namely while words used by each operator to express the term were different, the essence of the substance of the right or obligation was the same.
- where an operator wanted to offer a term

that deviated from the substance prescribed by the legislation, that term could be included in the standard ORA as a unique term that alters the standard term. This deviation would then be highlighted to the intending resident as not following the standard requirements prescribed by the legislation. In the example of the Palms Lifestyle ORA, the deviation from the complaints and disputes requirements would be made obvious if a standard form contract had been used.

### Category 3 provisions

The example category 3 provisions that were reviewed across the sample ORAs contained a mix of a repeat of the substance of the minimum requirements in the COP and unique terms that the COP required an operator to include in their ORA.

Comparing the transfer provisions of operators, these were clearly provisions that differed between operators and so without an agreed industry standard for these terms and set out in the COP, it would be difficult to include transfer terms in a standard form ORA that all operators must comply with.

As for the provisions relating to termination and repairs if unit damaged or destroyed through no fault of the resident, in general the operator's clauses contained a repetition of the terms in the COP and some additional unique terms. In general, the unique terms of the operators were all the same. For example, the ORA needs to set out the circumstances when an operator may decide not to repair or replace a unit. All operators referred more or less to the same circumstances and so the "unique" terms of the operators on this requirement were very similar across all seven ORAs reviewed.

**Conclusion** for category 3 provisions:

- while not all the substance of these provisions could be standardised, most of the substance that is prescribed by the legislation as the minimum requirements as to the substance of the provision could be easily standardised.
- where the legislation requires an operator to set out their unique position on a particular aspect of a provision (generally where the substance affects an operator's financial model), this could be included in a standard contract form as an operator's special term. For example, transfer provisions would be unique provisions in an operator's ORA.

### Category 4 provisions

While the legislation did not prescribe the substance of these category 4 provisions, there were aspects of the sample category 4 provisions that were similar across all seven ORAs. For example, all operators offered a LTO and the categories of payment types/categories were similar. The confusion is that the operators use differing terminology for the same payment type e.g., the fee paid by resident on entry to a village was referred to by different operators as Occupancy Advance (Ryman), Entry Payment (BUPA, Presbyterian Support, The Grove Orewa) Capital Sum (Palms Lifestyle, Eileen Mary), or Capital Sum Advance (Masonic).

**Conclusion** for category 4 provisions:

- not all the content of these provisions could be standardised e.g., any content that is unique to the operator's financial offering.
- there are aspects of these provisions that could be standardised e.g., the wording for the nature of a legal right could be standardised, the terminology and definitions of the payment types under the LTO model that was similar across all seven sample ORAs.

### Language, form and layout of seven sample ORAs

As to general observations the following is noted:

- four out of the seven were written in plain English with headings and sub-headings to guide the reader making them easy to review and understand (Ryman, BUPA, Palm Grove and Presbyterian Support). The remaining three ORAs used more legalistic language (Palms Lifestyle, Masonic and Eileen Mary) with the most difficult to read and review containing no sub-headings (Masonic and Eileen Mary).
- the length varied from 25 pages (Ryman) to 52 pages (Palm Grove).
- all included a section either at the start or in a schedule at end of the ORA, that set out details of key terms, had a definitions section and had main headings.
- all ORAs offered LTO but used differing terminology for what are standard payment types for this LTO model. Only two out of the seven operators have further payments

terms that were additional to these standard terms e.g., additional administration type fees (Masonic and Eileen Mary)

### Language, form and layout of sample ORAs of six larger corporate operators

A review of a sample ORAs from each of the six larger corporate operators found:

- that they are all written in plain language and were set out in a logical format with clear headings and sub-headings to highlight the different topics of the provisions contained in the ORA.<sup>61</sup>
- included either at the start of the ORA or in a schedule at the end, a summary of the key terms.
- the length of the ORAs were generally between 25 to 35 pages long;
- all were based on the LTO model but used differing terminology for the similar payment types.

### Conclusion

It is feasible to draft a standardised ORA to be used by all operators in the industry. The legislative framework effectively prescribes the substance of most of the terms of an ORA and a standard form would simply turn this prescription into an easily accessible contract form for industry wide use. Ideally a form would be introduced by regulation and done in conjunction with a review of the legislation so that the level of prescription is reviewed and reduced.

The standardised ORA must leave a section or schedule for an operator's unique terms including terms that offer a more favourable position than that set out in the standard form (and prescribed by legislation).<sup>62</sup> Unique terms would include, by way of example, transfer terms and additional payment terms e.g., formula for calculating deferred management fee and date for calculating exit payment etc. As the LTO model is currently the standard business model used by operators, the definitions of the payment types/categories for this model could be easily standardised across the industry.

A standard form contract for an ORA could also standardise the font, layout and headings and sub-headings. This would also include a standard layout and framework for the insertion of an operator's unique terms.

<sup>61</sup> Refer MERW/RVA submission at page 4, the RVA submitted that these ORAs generally use plain English terms and are well presented, clear and precise. The conclusion of this report concurs with the RVA's submission on the ORAs of these six large corporate operators.

<sup>62</sup> This would include a more favourable cooling off provision which a number of the larger corporate operators offer residents.

## 7. Stakeholder feedback on a standardised ORA

### Who provided feedback?

For this report, the Commission was interested in understanding the views of key stakeholders as to whether a standardised ORA is feasible.

Feedback was invited from a range of stakeholders including:<sup>63</sup>

- Legal professionals that included practitioners and legal executives that act for operators, statutory supervisors and residents
- Operators via the Retirement Villages Association of New Zealand
- Residents via the Retirement Villages Residents Association of New Zealand
- Statutory supervisors via the Trustees Corporation of New Zealand
- Consumer NZ
- Commerce Commission

### Questions

The questions forwarded to the various stakeholders for their feedback included:

- What are the benefits of introducing a standardised ORA?
- What are the drawbacks of introducing a standardised ORA?
- What terms in an ORA could be easily standardised?
- What terms in an ORA should be standardised across the industry and why?
- What terms in an ORA should not be standardised across the industry and why?

With the exception of the RVA, all the stakeholders provided their feedback to the Commission during scheduled online meetings or via an email containing a more informal written response. The RVA provided written feedback in the form of a Memorandum prepared by MinterEllisonRuddWatts that was endorsed by the RVA. The stakeholders' feedback is summarised in detail in Appendix 3.

Set out below is a summary and then comment on the feedback received.

### Summary of the feedback

#### *What are the benefits of introducing a standardised ORA?*

All stakeholders commented that a standardised ORA (in whatever form that might take) would make the ORA easier to read and understand and this would benefit both residents and their lawyers. The RVA also noted that statutory supervisors, funding banks and their legal advisors would also benefit from an ORA that was easier to read and understand.

Lawyers who act for residents, Consumer NZ and the Commerce Commission considered that the commercial terms of an operator would be more visible to residents and their lawyers in a standardised ORA. This would increase the understanding of the commercial terms and potentially enhance the negotiating power of residents.

Lawyers who act for residents also noted that a standardised ORA would assist them with their legal work in advising intending residents. The contractual review process would be simplified that may mean lower overall legal costs for intending residents. The RVA noted that a lawyer who regularly advises residents is already likely to be familiar with the different operators' ORAs and points to the Retirement Commission's 2016/2017 Report on the effectiveness of independent legal advice which found high satisfaction with the current requirements for legal advice among intending residents.

A further benefit noted by the RVA was that the costs for new operators entering the sector would be reduced as they would not be required to prepare a bespoke ORA for their village. The RVA further noted that a standardised ORA will make it easier to compare terms across villages.

#### *What are the drawbacks of introducing a standardised ORA?*

Lawyers acting for operators, the RVA and TCA all identified a number of drawbacks in

<sup>63</sup> Further details of the stakeholders who provided feedback are set out in Appendix 3.

introducing a standardised ORA. Most of these drawbacks were linked to a standardised ORA being a fully prescribed form which has the terms set out in full and which an operator would be required to delete or amend to the extent that the standard terms were inconsistent with their offering.

The drawbacks of a fully prescribed form included:

- potential to stifle or create complexities around the creation of innovative offerings and tailored offerings for particular residents. Flexibility of contract is key to allowing operators to easily offer new and individualised terms.
- operators may lose the ability to amend contract terms at pace to adapt to issues that have arisen in their village.
- operators lose ability to have their own documents that are in their language and reflect their position in the NZ market.
- potential to create “a disjointed contract” as would have to allow for and be amended for a large number of different and bespoke offering structures and non-standard terms e.g. care suites and the deferred management fee.
- cite example of full contract of prescribed terms used in New South Wales with comment that it has had the inadvertent result of contracts becoming complex and lengthy.

The drawbacks ascribed to any form of standardised ORA included:

- any standardised ORA must include unique terms of each operator and as such it will be difficult to draft a plain language ORA as cross-referencing between standard and unique terms will be required for any form.
- imposition of a standard form contract would result in significant costs to industry, statutory supervisors and Registrar of Retirement Villages. An analysis of these costs should be undertaken in considering the feasibility of introducing a standardised ORA.
- potential for intending residents to call for the removal of requirement to obtain independent legal advice before entering an ORA. This is an important safeguard for residents that could be put at risk.

Lawyers for residents and one lawyer that advises operators also noted a drawback that a standardised ORA may mean that lawyers for residents will get too familiar with the standard terms in the ORA and fail to explain these terms and their implications carefully enough to their clients.

### *What terms in an ORA could be easily standardised?*

As a general observation most stakeholders considered that the following could be easily standardised:

- provisions that are prescribed by the legislation to be included in an ORA and impose a discrete requirement on an operator or resident. These include:<sup>64</sup>
  - obligations on operators required to be included in ORAs by Schedule 3 of the Act, Part 4 Subpart 1 of the RVGR and various provisions of the COP
  - cooling-off provision
  - certification requirements
- the overall framework and layout plus look and feel of an ORA. In practice this means that all ORAs would follow the same numbering pattern, general order of terms, headings, font size and type. All drafting would be in plain English.

The RVR considered that the following clauses could also be easily standardised:

- grant of occupation right
- date and time for payments under the ORA
- termination rights
- repair and maintenance obligations of each party
- insurance cover
- calculation of repayment amounts
- dispute resolution clauses

The lawyers from the NZLS - Property Law Section considered that these further clauses could be easily standardised:

- termination rights
- maintenance clauses
- explanation of the ORA

<sup>64</sup> Only the RVA gave a detailed analysis of specific clauses that could be easily standardised. The majority of stakeholders gave general feedback.

- definitions section so that terminology used by operators for the LTO model and payment provisions

The TCA considered that these further clauses could be easily standardised:

- define and list chattels, fixtures and fittings and have a standard clause that sets out an operator’s responsibility for their replacement and repair
- disputes clause
- headings for resident payment obligations i.e., “Charges payable prior to occupation”, “Charges payable during the term” and “Charges payable following termination”.

### ***What terms in an ORA should be standardised across the industry and why?***

In response to this question, two lawyers who act for residents suggested that as the LTO model is now the standard model used in the RV industry it should be standardised in an ORA. A lawyer for an operator suggested that the “Summary of Key Terms” that has been developed by the RVA and is currently in use by their operator-members could be included as a schedule to an ORA.

### ***What terms in an ORA should not be standardised across the industry and why?***

In general, stakeholder feedback was that any provision that is specific or unique to a village offering should not be standardised. The main provisions cited were the commercial or financial terms offered by an operator and provisions that related to specific services and facilities offered by an operator.

The Commerce Commission noted that any provision that allows operators to compete with one another should not be standardised. As examples the Commission cited pricing terms and terms that relate to costs for altering residential units for residents with disabilities and refurbishment costs.

The RVA gave the most detailed feedback on this question and considered the requirements of the legislative framework in detail. In summary, the RVA consider that most of the terms of an ORA are unable to be standardised. The primary reason given for this position is because a significant number of the provisions required by the legislation to be included in ORAs require operators to state their unique position on the subject of the provision. Such terms include:

- transfer terms;
- accounts;

- maintenance and upgrading of units;
- complaints;
- details of parties;
- payment terms;
- obligations on residents; and
- specific terms that relate to an operator or village.

The RVA also noted that while there are some provisions that could be standardised, in practice this would be difficult to do as these terms are often heavily interwoven with other key provisions in an ORA that are unique terms to an operator. Examples given included:

- termination provisions;
- operator’s obligations to find new resident for unit vacated.

### **Comment on feedback**

#### ***Stakeholder feedback on benefits***

In general, the feedback considers that a standardised ORA would make the ORA an easier document to read and understand for all those who are required to review this document. A key benefit for intending residents and their lawyers is that a standardised ORA would help to increase the understanding of the financial terms in an ORA and potentially enhance the power of residents to negotiate more favourable terms with operators.

#### ***Stakeholder feedback on drawbacks***

The feedback questioned whether it was practically possible to draft a standardised ORA that achieved the objective of providing a clear and comprehensible document.

This is a valid concern and is an issue that was raised with the standard form contract used in New South Wales during the 2017 Inquiry into the retirement village industry. It is suggested that the RV industry in New Zealand is not as complex in terms of the combination of property rights and services offered as compared to the RV industry of New South Wales. This may mean that it will be easier to draft a standard contract form for the New Zealand RV industry.

The examples of the REINZ/ADLS forms used in New Zealand show that it is possible for a standard form contract to successfully include standard and unique terms. If a decision was made to introduce a standard form contract for the ORA, the experience in New South Wales should be carefully considered so that problems that have occurred in that jurisdiction

are not repeated for any form introduced here. The choice as to who will draft a standard ORA form will also be important for the success of the form. It is suggested that regulators work with lawyers who are experts in the drafting of ORAs when creating a standard form ORA.

A further drawback that was identified in the feedback is the potential significant costs that will result for both operators, statutory supervisors and the Registrar of Retirement Villages. Again, this is a valid concern and careful analysis of the actual costs to the industry (especially the operators who will be required to redraft their ORA in line with new regulations) and to government would need to take place in considering the decision to introduce a standard form contract and indeed what type of form should be introduced.<sup>65</sup>

The feedback also raised the concern that the introduction of standard form contract may mean that residents will call for the removal of the statutory requirement to receive independent legal advice before signing an ORA.<sup>66</sup> This is a risk that needs to be considered carefully by regulators and those stakeholders who are calling for the introduction of a standardised ORA. Given the obvious power imbalance between a resident and operator and the fact that entering into an ORA has serious financial implications for residents, it is unlikely that this statutory requirement would be removed without serious consideration. It is another important protection for residents that could easily sit alongside a standard contract form.

A further drawback identified is that a standard form contract will mean operators lose their ability to have their own documents that are drafted in a style that reflects their position in the market. Stakeholder feedback from lawyers who act for residents highlighted that by the time that residents are presented with an ORA they have made the decision to enter a village. As such there is an argument that the sole focus of the ORA should be on ensuring that the intending resident is presented with the legal terms in a format that can be easily read and understood and should not form part of the documentation that an operator produces to market their village.

Concern was also expressed in the feedback that a fully prescribed form would have the

potential to “*stifle or create complexities around the creation of innovative offerings and tailored offerings for particular residents*”<sup>67</sup>

This concern could be met by ensuring that any standard form ORA that was introduced did not prescribe all the terms of the agreement, so that an operator would have the ability to include their own unique terms within a separate section of the standard form.

As noted previously in this report, the current RV industry in New Zealand is dominated by the LTO model. While a standard form contract would cater for this model, the form could be drafted in such a way that allows operators to offer different property rights to residents. Different property rights are catered for in the standard form contract used in New South Wales and so it is certainly possible for a standard form contract to allow for innovative offerings of operators as and when they arise in the New Zealand RV industry.

### **Stakeholder feedback on standardising the provisions of an ORA**

In relation to standardising the provisions of an ORA, stakeholders agree:

- provisions prescribed by legislation and that impose an absolute requirement on an operator and/or resident could be easily standardised;
- provisions that cannot be standardised are those that include the commercial terms of an operator and any other terms that are unique to a village, such as service and facility offerings and rights and obligations relating to any transfer to other unit in a village that offer higher levels of service or care.

Stakeholders whose interests are more aligned with the rights of residents, such as the RVR and lawyers who primarily advise residents, as well as the TCA, considered that provisions setting out the rights and obligations around maintenance and repair of units and disputes provisions could also be standardised.

In addition, the RVR and lawyers from the NZLS Property Law Section also considered that termination provisions could also easily standardised in an ORA. The main reason given by the RVA as to why termination provisions cannot be standardised is because these terms

<sup>65</sup> This analysis was undertaken in Victoria before the introduction of regulations that prescribed a standard form contract for use in the Victoria RV industry. Refer to the Regulatory Impact Statement published by Consumer Affairs Victoria for Retirement Villages Amendment (Records and Notices) Regulations 2013 Retirement Villages Amendment (Contractual Arrangements) Regulations 2013.

<sup>66</sup> In the states of New South Wales and Victoria there is no requirement for intending residents to consult a lawyer before signing terms with an operator to enter a village and this may be a factor as to why there has been a greater push to standardised contracts in those jurisdictions. That said, intending residents in those jurisdictions are still encouraged to seek legal advice, it is not however a mandatory requirement.

<sup>67</sup> MERW/RVA submission, page 9.

are heavily interwoven with other key provisions relating to termination that are not easily standardised.

The RVA and another lawyer who primarily advises operators, also considered that any terms required by the legislation where the operator is required to state their unique position in the ORA should not be standardised.

***Stakeholder feedback on the “look and feel” of the ORA***

There was general agreement among all stakeholders that there would be value in all ORAs following the same overall framework and general order of terms. Some stakeholders also saw value in all ORAs using the same font size and type.

Two very experienced legal practitioners also considered that as the LTO model is now standard across the RV industry, the framework and payment types under this model “should” be standardised. Any terms that are additional to the standard offering could be recorded as special terms in a standard form.

The TCA and another very experienced legal practitioner, also considered that the RVA’s Summary of Key Terms could be included as a schedule to the ORA.





## 8. Consideration of other options as an alternative to a standardised ORA

This Part of the report has investigated other options that could be considered as an alternative to a standardised ORA that may also meet the concerns that have called for the introduction of a standardised ORA.

Feedback received from stakeholders has identified some other options that may also address the concern that residents should be able to easily understand their rights and obligations of living in a retirement village and in particular, the financial implications of entering into an ORA. These other options include:

- the introduction of a standardised “Summary of Key Terms” that is already used by the operator-members of the RVA.
- focus on continuing education of resident’s lawyers on how to review ORAs and provide the “best practice” advice to intending residents; and
- as the legislative framework in large part has contributed to the complexity of the ORA, a review of the legislative framework with the aim of streamlining the level of prescription and focusing on legislative measures that will ensure the operator’s financial terms are more readily understood by intending residents and their lawyers.

### Summary of Key Terms

The Summary of Key Terms is an initiative of the RVA and is a two-page document that sets out a template of key terms of a resident’s interest in a unit in a retirement village. Membership of the RVA requires member-operators to complete the form and hand it out to each intending resident. The form and subject matter of the Summary of Key Terms was determined by the RVA Executive and the purpose is to set out the key terms of a resident’s interest in a unit in a Retirement Village. It is a standalone document and it must not be incorporated into a member-operator’s ORA or disclosure statement.<sup>68</sup>

The Commission also includes this document on its website. It advises that RVA member-operators have this summary available to help people understand the main financial terms of the ORA and disclosure statement.<sup>69</sup>

The feedback from the RVA has suggested this document, is already used by the majority of operators in New Zealand, could be used as either an alternative to introducing a standardised ORA or used in conjunction with the introduction of a high-level framework and prescription of the order of terms in an ORA combined with the standardisation of certain limited terms that are already largely prescribed and described consistently across the sector.<sup>70</sup>

Another experienced legal practitioner has also suggested that this document could be attached as a schedule to an operator’s ORA.<sup>71</sup>

If this option is considered further, as an alternative to introducing a standardised ORA, then the document would need to be revised so that it would apply to all operators in the industry. Further there would also be value in standardising the payment types/categories under the LTO model so that all operators are using and referring to the same terminology for the payment terms. This would allow intending residents to easily compare offerings across villages and to have this document link directly with the wording used in the ORA. For this to occur, new legislation would be required.

Like a standardised ORA, this option would provide residents with clear and succinct information about an operator’s key financial terms and other key terms relating to a resident’s rights. A form of this type would be much simpler to draft and introduce by regulation compared to a standard form contract for an ORA and may also be more cost effective for both government and the RV industry.

<sup>68</sup> RVA Newsletter 19 February 2020.

<sup>69</sup> Refer <https://retirement.govt.nz/retirement-villages/resources-for-retirement-village-residents/>.

<sup>70</sup> MERW/RVA submission, page 9.

<sup>71</sup> Refer stakeholder feedback from legal practitioner, Peter Orpin, see Table 4 at Appendix 3.

## Review of legislative framework

Feedback from an experienced legal practitioner noted that the complexity of current documentation plays into the hands of operators and the current legislative regime prescribes information overload when intending residents want the complete opposite.<sup>72</sup>

The concerns of residents and consumer advocates about the ORA and other documentation could also be addressed by a full review of the legislative framework and in particular the terms that are prescribed to be included in an ORA. One of the purposes of this review could aim to decrease the level of prescription but at the same time increase the safeguards given to residents around their knowledge and understanding of the key financial terms and their rights as residents of a retirement village.

One obvious way of clarifying the financial implications of entering into an ORA would be to standardise the terminology and definitions around the key payment types/categories under the LTO model. Another part of the review could look at bringing together in one regulation all the prescription for the terms (both subject and substance) that are required in an ORA. The regulation could also include a standardised framework for what the ORA should look like and the general layout of terms.

## Guide for drafting good ORAs

Another option that the Commission, other government agencies and/or the RVA could consider more closely is the preparation of a guide for operators on how to create a simple and effective ORA. The Property Council of Australia (Retirement Living Council) has published a guide for operators in Australia

with the aim of setting out the key elements of a good contract between an operator and resident.<sup>73</sup> Initial feedback from the RVA on preparing a similar guide for operators in New Zealand was this was not necessary as:<sup>74</sup>

- Australia does not have the same level of regulation as New Zealand to guide operators on the contents of their contracts; and
- New Zealand residents have the protection of independent legal advice that is not a requirement in Australia.

Despite this initial feedback from the RVA, regulators working with the RVA could look at publishing a similar guide for New Zealand operators. This may go some way to ensure that all operators have the benefit of guidance on drafting clear and succinct ORAs that will better serve residents and their lawyers.<sup>75</sup>

## Continuing education of lawyers who advise residents

An intending resident is required to receive independent legal advice before signing their ORA.<sup>76</sup> This is an important protection that residents have. The quality of that legal advice is therefore very important to ensure that residents clearly understand the key terms of an ORA before they enter into the ORA, and in particular the financial implications of entering into an ORA.

Another way to ensure that residents are well advised is for lawyers to receive high-quality continuing education on the legislative framework, the LTO model, updates on what is happening in the RV industry, and the most effective way to explain the financial implications of entering into an ORA to their clients.

<sup>72</sup> from John Greenwood on his general observations regarding a standardised ORA, see Table 1 at Appendix 3.

<sup>73</sup> Property Council of Australia, Retirement Living, National Guide to Creating Simple and Effective Retirement Village Contract found at [propertycouncil.com.au](http://propertycouncil.com.au)

<sup>74</sup> Meeting Sara Jones with representatives of the RVA 10 June 2022, comments of G Wilkinson.

<sup>75</sup> Noted in stakeholder feedback that resident's lawyers consider that some ORAs now coming through are well drafted with clear terms (C Ranson); NZLS - PLS - ORAs of main operators now follow a fairly standard format. Submission of RVA is that there has been a focus by the RVA and statutory supervisors in recent times to raise the standard of documentation generally.

<sup>76</sup> Section 27(3).

# 9. Conclusions on the feasibility of introducing a standardised ORA

## Introduction

In coming to a conclusion on the question of whether it is feasible to introduce a standardised ORA, the following matters were addressed in this report:

1. From a legal perspective, is it feasible to introduce a standardised ORA for the RV industry?
2. Will the concerns expressed about the current ORA be met by the introduction of a standardised ORA?
3. What are the drawbacks of proceeding with a standardised ORA?
4. What other options could address the concerns as an alternative to introducing a standardised ORA?

In addressing these matters the following considerations have been taken into account:

- The call for a standardised ORA;
- The feedback from stakeholders on questions relating to a standardised ORA;
- The review of selected provisions from a sample of seven ORAs across a range of different types of operators; and
- The Australian experience and the use of standard form contracts in the states of New South Wales and Victoria.

### From a legal perspective, is it feasible to draft a standardised ORA for the RV industry?

From a legal perspective, it is not feasible to have a fully prescribed standard ORA. This is because the legislative framework requires ORAs to include provisions that set out the financial terms of an operator's offering and other terms that are unique to a village such as the services and facilities and the parties' rights and obligations on termination and re-sale of units.

However, it is feasible to have a standardised ORA that includes:

- standardised provisions where the legislative framework prescribes both the subject and substance of those provisions. As categorised in Part 2 of this report, this will include all provisions that fall within

categories 1 and 2 and the minimum requirements for the substance of the provisions that fall within category 3.

- as for provisions that fall within category 4, aspects of these provisions could be standardised including the nature of the legal right to occupy a unit in a retirement village and in particular, the LTO model. The operator could then insert their own unique monetary figures into the standardised payment types/categories for the LTO model. Service offerings could also be standardised with operators selecting options for services that apply to their village.
- a separate section of the form where an operator can set out their own unique terms on prescribed subject matters. An example of what would be a unique term are the rights of a resident to transfer into a unit offering a higher level of care or service within a village and the financial implications of such a transfer. This section could however, have a standardised layout and subject headings.
- standardised terms and definitions for those terms that are used across the RV industry and in particular, the terms used for the LTO model. For example, the terms and definition for each of the payment types/categories that residents are required to pay under the LTO model could be standardised in a form.
- a standardised layout of the form including order of provisions, headings and sub-headings and the font to be used and size of that font for provisions and headings.

### Will concerns expressed about the current ORA be met by the introduction of a standardised ORA?

The feedback from stakeholders concludes that a standardised ORA would make the ORA an easier document to read and understand, with financial terms made more visible to intending residents and their lawyers. This in turn would increase the understanding of the financial terms and potentially enhance the power of residents to negotiate different terms with operators.

A standardised form would also assist lawyers advising intending residents as the standard

terms will become familiar and the unique terms of operators would be more visible and easier to review.

A standardised ORA that includes standard terminology and definitions for the LTO model (as suggested by stakeholders in the feedback) would also increase the visibility and understanding of an operator's financial terms and aid the comparison of these terms across operators. Knowledge and visibility would be further enhanced by the introduction of a mandatory summary of key terms which is attached as a schedule to the standard form contract for the ORA.

A standard form contract for an ORA would also ensure that the "look and feel" of the ORA was standardised across the RV industry. A review of the sample ORAs by this report demonstrates that a significant number of operators from all sectors of the industry already have ORAs that are drafted in plain language that clearly set out the rights and obligations of the parties. That said, the review also demonstrates that there are some operators in the RV industry whose ORAs are written in an overly legalistic style and are not easy to review and understand. A standardised ORA would answer this issue.

### What are the drawbacks of proceeding with a standardised ORA?

The drawbacks of introducing a standardised ORA are analysed in detail by this report. The key drawbacks are:

- will be difficult in practice to draft a standardised ORA given that a form will have to include both standardised terms and unique terms of the operator. This can be addressed by considering further the experience of New South Wales and their use of a standard form contract and ensuring lawyers who are experts in this area of the law are involved in the process of drafting a standard form contract;
- significant costs involved in introducing a standard form contract for the industry. An analysis of the costs was beyond the remit of this report but is an important factor that regulators and the RV industry need to consider further before a decision is made to introduce by regulation a standardised ORA;
- residents may call for the removal of the statutory requirement to obtain independent legal advice before signing an ORA. Further feedback needs to be obtained from stakeholders and regulators as to whether there is a real risk of this occurring.

- operators will lose their ability to have their own ORA that reflects their position in the market. This concern needs to be balanced against the need for all residents in New Zealand regardless of what village they are in to have the benefit of an ORA that is clear and understandable.

After considering these drawbacks against the benefits of introducing a standard form contract for an ORA, it is concluded that, with the exception of the drawback that relates to the costs to the industry and government of introducing a standard form contract for an ORA, the benefits outweigh these drawbacks.

The drawback that has been raised by stakeholders regarding the significant costs associated with introducing a standardised ORA requires further consideration and analysis by regulators and the industry before a final decision is made to introduce a standard form contract.

### What other options could address the concerns as an alternative to introducing a standardised ORA?

This report has identified some alternative options to introducing a standardised ORA, these include:

- the introduction, by regulation, of a standardised "Summary of Key Terms";
- a review of the legislative framework with the aim of streamlining the level of prescription and focusing on legislative measures that will ensure the financial terms of the operator are more readily understood by intending residents and their lawyers and that key terms that the industry uses in the LTO model are defined in the legislation.
- regulators working with the RVA publish a guide for drafting good ORAs.
- focus on the continuing education of lawyers who advise residents.

### Conclusions

From a legal perspective it is feasible to draft and introduce, by regulation, a standard form contract for an ORA that includes:

- standardised provisions where the legislative framework prescribes both the subject and substance of those provisions;
- a standardised LTO model including the terminology and definitions that relate to this model. Operators insert their unique financial figures into a standard framework for this model set out in the ORA. Any

additional payment terms that are unique to that operator can be included in a separate section of the ORA for unique operator terms;

- a separate section where an operator can set out their own unique terms on prescribed subject matters that are unique to the village generally and that may be separately negotiated and unique to a particular resident;
- standardised terms and definitions for those terms that are used across the RV industry and are applicable to offerings of all operators; and
- a standardised layout for the form including order of provisions, headings and sub-headings and the font to be used and size of that font for provisions and headings. The separate section for unique operator terms could also have a standardised layout and subject headings determining what an operator may include in this section.

The ORAs of a significant number of operators in New Zealand are now written in plain language. Despite the use of plain language, ORAs remain complex given the length and breadth of subject matter that is required by the legislation to be included in an ORA. The main adverse consequence for residents of this complexity is that the important terms that relate to the financial implications of entering into an ORA are obscured by the mass of other less important prescribed terms.

Except for the drawback that relates to the costs of introducing a standardised ORA (that was not investigated by this report), the drawbacks of introducing a standardised ORA are outweighed by the benefits of residents having an ORA that is written in plain language and highlights the important financial terms of

the operator and other important rights and obligations of the resident.

There are other options open to regulators and the industry that could also address the concerns that have given rise to the call for a standardised ORA. These options include:

- the introduction, by regulation, of a schedule to the current ORA that sets out a summary of the important financial terms and rights and obligation of residents;
- review of the legislative framework with the aim of simplifying the regulation of prescribed terms and introducing standard definitions for the licence to occupy model;
- regulators and RVA to consider preparing a guide to assist operators in the drafting of a good ORA;
- continuing education of lawyers who advise intending residents on the legal and financial implications of entering into an ORA.

Regulators and the industry could consider these options and the associated costs of implementing each of them so they can be considered against the costs associated with introducing a standard form contract for an ORA.

Standardising the ORA that all operators must use will be a significant piece of legislative work. It should be done in conjunction with a full review of the legislation and in particular the prescribed terms of an ORA. While a standardised ORA will certainly assist residents and their lawyers in understanding the terms of an ORA more easily, there will be costs associated with this standardisation which will need to be assessed before a decision is made to proceed with introducing by regulation a standardised ORA for the RV industry.



# 10. Duplication of information between the disclosure statement and the ORA

## What is the issue?

The Commission in its White Paper recommended a policy review that should include a review of the disclosure statements with a view to producing simplified and accessible documentation.<sup>77</sup> In submissions that the Commission received on the White Paper regarding disclosure statements, concerns were raised about the large amount of duplication between the information in disclosure statements and the provisions in an ORA and the fact that disclosure statements were not legally enforceable.<sup>78</sup>

The Commission has asked for an investigation into two discrete matters that relate to disclosure statements as follows:

1. What is the degree of duplication between disclosure statements and ORAs;
2. The legal enforceability of disclosure statements and what remedies exist if promised facilities set out in disclosure statements do not materialise.

## What is the disclosure statement?

The Act provides that a disclosure statement must be provided to an intending resident before the ORA can be signed by the resident.<sup>79</sup> The Act introduced disclosure statements to replace the need for operators to provide prospectuses and investment statements under the Securities Act 1978. The main purpose of the disclosure statement is to set out the main terms of the offer made to intending residents.<sup>80</sup>

Disclosure statements are prepared by the operator and, like ORAs, must be registered with the Registrar of Retirement Villages. In general, they are written and presented in a user-friendly format and style that are easier to read than the ORA.<sup>81</sup> The disclosure statement is not a contractual document. Despite this, it

seeks to explain the majority of the important financial terms on offer to the intending resident.

## Information in a disclosure statement

The information that an operator must include in their disclosure statement for a retirement village is prescribed in the Act, regulations, and COP.<sup>82</sup> The disclosure statement can only contain information that is required by the legislative framework.<sup>83</sup>

Schedule 2 of the Act sets out the required information for the disclosure statement. The regulations prescribe further detail as to what this information must be included. The main information headings set out in the regulations include:

- Ownership structure and occupancy rights
- Resident's interest in residential units
- Management arrangements for retirement village
- Statutory Supervisor
- Services and facilities at the retirement village –both current and planned
- Charges
- Maintenance and refurbishment
- Financial accounts for retirement village
- Cooling-off period and cancellation of ORA
- Varying ORA
- Termination of ORA
- Deductions from payments by and to residents
- Estimate financial return on disposal of residential unit

<sup>77</sup> Te Ara Ahunga Ora Commission for Financial Capability, "White Paper Retirement Villages Legislative Framework: Assessment and Options for Change 2020", at page 6.

<sup>78</sup> Other commentators have also raised this as an issue see article by Diane Clement "How to fix the retirement village industry", 12 February 2021 at [www.adls.org.nz](http://www.adls.org.nz), where it is noted that "one area that could benefit from being changed in the Act and regulations is the duplication between the disclosure statement and the ORA, but attempts to work with residents ground to a halt previously. 'There was no consensus as to what was important'."

<sup>79</sup> Section 30(1)(a).

<sup>80</sup> Kate Diesfeld and Ian McIntosh (General Editors), *Elder Law in New Zealand*, 2014 at page 350.

<sup>81</sup> RVGR, reg 38 (Presentation of disclosure statements and documents) prescribes the form for disclosure statements. A lawyer who acts for residents noted in her feedback for this report that she often refers her clients to the disclosure statement as it is generally easier to read compared to the ORA.

<sup>82</sup> Schedule 2 of the Act, Part 4 Subpart 2 of the RVGR and COP.

<sup>83</sup> RVGR, reg 38(2).

- Exemption from requirements to comply with COP
- Other matters including insurance, transfer arrangements etc

### Background information about disclosure statements

At the time that the retirement village legislation was being considered, the question of what information was required in a disclosure statement was the subject of significant debate among stakeholders. While some legal commentators at the time considered that a minimalist approach to the disclosure statement could have been adopted, that approach was rejected by the Government and the Bill promoters because misinformation in the past had resulted in many complaints made to the Securities Commission and to Ministers and MPs.<sup>84</sup>

In 2009 the then Department for Building and Housing published a Retirement Village Disclosure Statements Discussion Paper and called for submissions on the paper from various stakeholders, including practicing lawyers. The paper sought feedback on what information was needed/not needed in the disclosure statement. No change to the legislative regime relating to disclosure statements was made following this review.<sup>85</sup>

In 2014 the Government published a template for the disclosure statement.<sup>86</sup> This template is intended as a guide only and its use by operators is voluntary. This report has not investigated how widely this template is used by operators. However, the RVA in their feedback for this report noted that they are aware that many operators and prospective residents find this template document “lengthy and somewhat difficult to follow”.<sup>87</sup>

### Summary of main areas of duplication between ORA and disclosure statement

A detailed review of the legislative framework for this report identified the information that was required to be included in the disclosure statement and noted where the legislation also required a term to be included in an ORA that was related to this information. A spreadsheet setting out this analysis is set out in Appendix 4. This analysis was provided to stakeholders to consider in providing their feedback on the questions relating to duplication.

This analysis shows that the main areas of information where there was a duplication of

the same type of information (although as noted below may not be an exact duplication in terms of the detail required) in both the disclosure statement and ORA include:

- Type of interest a resident of a retirement village has in their unit
- Rights and conditions on the rights a resident has in their unit
- Rights of operators in unit on sale of the unit
- Management arrangement of the retirement village\*
- Services and facilities\*
- Charges
- Maintenance and refurbishment\*
- Some termination provisions\*
- Cooling-off rights and cancellation rights
- Provision of audited financial statements
- Insurance obligations
- Transfer rights of residents and terms

*\* Note the legislative framework requires much more detail of these subject areas to be included in a disclosure statement compared to the substance of the term that is prescribed by the legislation for the ORA.*

### Observations from this analysis

***High level appearance of duplication but when reviewing the detail of the legislation there is no requirement on an operator to translate all the information required in the disclosure statement into a contractual obligation in the ORA***

Often the legislation prescribes much more detail on a subject matter for inclusion in a disclosure statement as compared to what must be included as a term on the same subject matter in the ORA. This means that there is the potential for the disclosure statement to include more information on a particular subject than what is ultimately contracted for under the ORA. Examples of this type of duplicated information include:

- *Services and facilities at the RV:* the regulations require the disclosure statement to include details relating to new services and facilities planned, however the corresponding prescription for the ORA

<sup>84</sup> J Greenwood and S Marks, NZLS Seminar, Retirement Villages, February-March 2004, page 19-20.

<sup>85</sup> Stakeholder feedback for this report noted that resident interest groups at the time did not want any change to the information required to be included in disclosure statements by the legislation.

<sup>86</sup> Refer <https://www.hud.govt.nz/residential-housing/retirement-villages/rights-and-obligations-of-retirement-village-residents-and-operators/disclosure-statement/>

<sup>87</sup> MERW/RVA submission, page 21.

does not specify that obligations relating to future new services and facilities must be included. The decision as to the content of the contractual term for services and facilities is left to the operator's discretion.

- *Management arrangements for the village:* the regulations require the disclosure statement to include specific details about the management and staff at the village, however the corresponding regulations for the ORA again does not specify what detail must be translated across to the ORA as a contractual term.
- *Maintenance and refurbishment:* the regulations require the disclosure statement to include details about a maintenance or sinking fund for repairs, maintenance, refurbishments and capital replacements work, however again the regulation that prescribes this term for the ORA gives no detail as to the terms that need to be included as to the rights and obligations of the parties around a sinking fund.<sup>88</sup>
- *Termination of the ORA:* The legislative framework prescribes the requirements for termination of an ORA. In relation to the ORA the COP provides specific details on the rights of the parties to terminate an ORA.<sup>89</sup> The information for the disclosure statement is more concerned with providing information about the arrangements that happen following a termination of an ORA. For example, the disclosure statement must include the extent to which the former resident is exposed to a capital gain or capital loss arising as a result of a termination.<sup>90</sup> There is not a specific requirement in the legislation for this same information to be included in the ORA.

### **Exact duplication of information between disclosure statement and ORA**

Some of the information that is required by the legislation to be included in both the disclosure statement and ORA when reviewed in detail is the exact same information. The risk here is that information may be inconsistently presented across the disclosure statement and ORA giving rise to confusion as to what rights and obligations the respective parties have under the ORA. Examples include:

- Residents' interests/rights in their unit and conditions and limits on that right;

- Operator's rights to deal with the residential unit;
- Charges
- Responsibilities of the respective parties around maintenance
- Cooling-off period and cancellation of ORA
- Insurance
- Transfer terms
- Requirement to provide audited financial documents

### **No duplication but information recorded in the disclosure statement is important**

While there is no duplication issue involved here, it is noted from this review that there is also some important information that is required in the disclosure statement that is not required by the legislation to also be included as a term in the ORA (although in theory an operator could include as a term). The risk here is that the resident, in reading this information in the disclosure statement, might have misguided expectations as to their legal position under the ORA.<sup>91</sup> Examples include:

- Detailed information on the state of the village that includes information about current and future development plans for the village and information about the sale of units in the village in the last 12 months
- Requirements about the ownership structure and occupancy rights in the retirement village
- Details regarding the statutory supervisor and their role and exemption from requirement to appoint
- Role of operator and resident in setting charges
- Varying an ORA
- Information about the estimated financial return on the disposal of a residential unit
- Statement about a resident's right to avoid an ORA

### **Stakeholder Feedback on Duplication**

This report requested feedback from stakeholders on the disclosure statement and asked two questions as follows:

<sup>88</sup> Refer Retirement Villages (General) Regulations 2006, reg 21(2)(c) and COP clauses 43.

<sup>89</sup> COP clauses 46-54.

<sup>90</sup> RVGR, reg 25(2)(d).

<sup>91</sup> This is something that a lawyer advising a resident should be aware of when advised an intending resident before they enter into an ORA.



1. What are the implications for intending residents and residents of the duplication of information between the ORA and the disclosure statement?
2. If you view duplication as a problem, how is this problem best addressed?

A summary of the feedback from stakeholders is set out in Appendix 5.

### Summary of feedback

In summary the implications for intending residents and residents of the duplication of information was noted by stakeholders as follows:

- a number of stakeholders did not view the duplication of information as a problem as there was a recognition that the two documents served different purposes.
- recognition that duplication (that is caused by the legislative framework and operators who want to ensure that their ORAs include all the key terms for residents) means that it is not possible to draft a short and concise disclosure statement. On a practical level this means that intending residents have to review a long and detailed document that can be overwhelming and confusing for some. One risk with duplication was that it may give rise to information being inconsistently presented across the disclosure statement and ORA. This again leads to confusion for the resident and may not be picked up by their lawyer.
- lawyers who advise residents noted that the duplication does not help or serve a useful purpose. However, there is information in disclosure statements, such as time taken to sell units and planned future village development, which is not duplicated in an ORA and is important information to aid a resident's decision to go into a particular village.
- one positive implication noted was that a repetition of key terms and information could be helpful in residents understanding their rights.

As to how the problem of duplication could be best addressed a summary of responses include:

- the TCA recommended that the Managed Investment Scheme could be adapted for the retirement village context. This would allow for more succinct, plain English, logically organised and standardised formal disclosure.

- recommended that the disclosure statement could be replaced with a document that summarises the key terms and be attached as a schedule to the ORA.
- recommended a review of the legislative framework to decrease the duplication and/or promulgate new regulations that introduce a standard disclosure statement.
- the view of the RVA was that the vast majority of duplicated information should not be taken out of either the disclosure statement or the ORA. The view is that if the duplicated information was taken out of the disclosure statement it would potentially oversimplify the document and it would not provide a full picture of village life and of the legal terms that will be in the ORA. Further, if duplication was taken out, the ORA would have to be read much more closely alongside the disclosure statement.
- to address the duplication, the RVA suggests that regulators and the RVA work with individual operators to improve their disclosure documents. Also suggest a “general review” of the content required for disclosure statements could be considered. The RVA does not see any value in a mandatory standard form disclosure statement.

### Conclusion

The duplication of information between the disclosure statement and the ORA is created by the highly prescriptive legislative framework. Because of this legislative framework it is not possible for operators to draft a shorter and more concise disclosure statement.

There is significant duplication of the same information between the disclosure statement and the ORA over many of the subject areas that relate to living in a retirement village. That said, for many of these subject areas the regulations require the disclosure statement to contain much more detail on the subject area compared to what is required on the subject matter for the provision in the ORA.

The two main implications of this duplication are first, the risk that information is being inconsistently presented across the disclosure statement and ORA and second, that the amount of information that is duplicated across the ORA and disclosure statement can contribute to residents feeling overwhelmed and confused by the amount of information they are required to read and understand.



# 11. The legal enforceability of disclosure statements and what remedies exist if promised facilities set out in a disclosure statement do not materialise?

## Legal enforceability of disclosure statements<sup>92</sup>

### *Disclosure statement not a contract*

As the disclosure statement is not a contract between the operator and resident, a resident has no legal right to bring a breach of contract claim against an operator where statements in a disclosure statement are misleading or where statements of future intention for the village do not eventuate.

### *Contravention of duties at section 16 and 26 of the Act*

Under the Act a “registered document” and “advertisement” are both defined to include a disclosure statement.<sup>93</sup> These classifications of the disclosure statement impose the following statutory duties:

- as a “registered document” an operator is required to certify that the disclosure statement is correct and current and in the opinion of the person signing the certificate, not likely to mislead or deceive any resident, intending resident or the public (**section 16 duty**).<sup>94</sup>
- as an “advertisement” an operator and promoter of a village must, before publishing the disclosure statement, take all practicable steps to ensure that the disclosure statement is not misleading or deceptive (**section 26 duty**).<sup>95</sup>

The Act makes it an offence for an operator to contravene the section 16 duty and an operator and promoter to contravene the section 26 duty. The penalty for a conviction is the requirement to pay a fine as ordered by the court and in an amount not exceeding the amounts prescribed in the Act.<sup>96</sup>

Section 9 of the Act gives the court the power to grant relief in any civil proceeding against an operator or promoter for breach of duty, where it appears to the court that the operator or promoter has acted honestly and reasonably and having regard to all the circumstances of the case, they ought fairly to be excused for the breach of duty.

### *Section 82 of the Act - court orders*

A court also has powers to make “other orders” in situations where a person, such as a resident, has suffered or is likely to suffer loss due to the conduct of an operator or promoter that constitutes or may constitute a contravention of the section 26 duty.<sup>97</sup> The “other orders” a court can make are wide ranging and include orders:<sup>98</sup>

- declaring the whole or any part of an ORA to be void;
- varying an ORA or arrangement;
- directing the person engaged in the contravening conduct to refund money or return property to the person who suffered the loss or damage
- directing the person engaged in the contravening conduct to pay to the person who suffered the loss the amount of the damage or to supply specified services to that person.

### *Section 31(1) of the Act*

In addition to the above remedies, a resident also has a right under the Act to receive a disclosure statement that complies with Schedule 2 of the Act before signing the ORA.<sup>99</sup> If this right is contravened in any substantial respect then the ORA is voidable by notice in writing by the resident to the operator and

<sup>92</sup> In providing this analysis, this report has only considered redress that is available under the Act and not more widely under other legislation, such as the Fair Trading Act 1986 or actions under the common law.

<sup>93</sup> Section 5.

<sup>94</sup> Section 16.

<sup>95</sup> Section 26.

<sup>96</sup> Section 79.

<sup>97</sup> Section 82. The Court can make other orders where there are proceedings afoot under section 79 or on the application of a resident, or the statutory supervisor or the Registrar and there is conduct by the operator or promoter that constitutes or may constitute a contravention of the section 26 duty or as otherwise provided in section 82

<sup>98</sup> Section 82. The Act further prescribes monetary limits on how much a court can award

<sup>99</sup> Section 30(1)(a).

statutory supervisor given at any time within the prescribed period.<sup>100</sup>

### **What remedies exist if promised facilities set out in disclosure statement do not materialise?**

In a disclosure statement an operator is required to provide information on any new facilities planned.<sup>101</sup> It is therefore not unusual for an operator to provide this information in their disclosure statement. It is assumed, for this example, that the statement regarding new facilities was not translated into an obligation in the ORA on the operator to provide the new facilities. On this assumption, the resident does not have a claim in law against the operator for breach of contract.

The question then is whether the resident can seek any remedies under the Act?

#### **Void ORA by notice**

One remedy for a resident is to serve, pursuant to section 31(1) of the Act, a statement of information on the operator and statutory supervisor to avoid the ORA.<sup>102</sup> To do this successfully the resident will have to:

- serve the notice within 1 year after they entered the ORA or within 6 months of knowing that the statement in the disclosure statement was incorrect, whichever ends first; and
- show that the statement in the disclosure statement did not comply with the Act in any substantial respect. This will include an analysis of whether the contravention involved a significant detriment to the resident or contravention is material or the contravention involves the deliberate misconduct on the part of the operator.

This latter requirement may be difficult to prove if the operator genuinely intended to provide the new facilities when the disclosure statement was published but did not go ahead for legitimate commercial or other reasons.

#### **Issue proceedings against an operator for breach of statutory duty**

A second remedy provided by the Act is for proceedings to be issued against the operator for breach of the section 16 duty or against the operator and promoter for breach of the

section 26 duty. A successful conviction will see the operator face a fine and they may have to comply with other orders of the court that are sanctioned under the Act to disclose information or publish an advertisement.<sup>103</sup>

Again, if an operator can show that they genuinely intended to proceed with the future facilities at the time the disclosure statement was published and had legitimate commercial or other reasons for not proceeding with the facilities, the courts can take this into account and relieve an operator and promoter of liability for breach of the section 16 duty or section 26 duty.

#### **Make application to the court to seek orders under section 82 of the Act**

A third remedy under the Act would be for the resident to make an application to the court to seek an order under section 82 of the Act (as set out above). To be successful in pursuing this remedy a resident would have to prove a number of claims including:

- that it has suffered loss or damage or is likely to suffer loss or damage as a result of the operator's actions in not providing the facilities as set out in a disclosure statement; and
- that the conduct of the operator in not providing the facilities constitutes or would constitute a breach of the section 26 duty or as other provided for in section 82(1) (b)-(e).

#### **Redress through operator's complaints facility**

A resident who has an issue that promised facilities set out in a disclosure statement have not materialised, could also seek to raise a complaint directly with the operator in accordance with the operator's Complaint Facility and agree to a resolution of the issue with the operator.<sup>104</sup>

As part of this complaints process, the resident could also raise the issue directly with the statutory supervisor of their village and/or the Registrar of Retirement Villages. The Registrar has a statutory power under the Act that it can use to suspend the registration of a retirement village where a disclosure statement is likely to mislead or deceive any resident, any intending

<sup>100</sup> Section 31(1). Prescribed period is defined in section 31(4)(b) and is the lesser of 1 year after the date of the ORA was entered into or a period of 6 months after the resident knows or ought to have known of the contravention. The term substantial respect is also defined in the Act at section 31(5)

<sup>101</sup> Schedule 2 clause 2(b) of the Act and reg 19 of RVGR.

<sup>102</sup> Section 31 of the Act and Schedule 5 of the RVGR sets out the form of the statement of information.

<sup>103</sup> Section 81.

<sup>104</sup> Section 51 of the Act provides that an operator must provide a complaint's facility for their village. The COP sets out the requirements for an operator's complaint's facility (COP 31-36) and the resident would also need to consult the terms of their Occupation Right Agreement.

resident or the public.<sup>105</sup> The Registrar would be interested in receiving information from a resident that a disclosure statement for a village did not accurately reflect what an operator ultimately provided to residents.

The statutory supervisor for a village also has a power under the Act where they can take certain action where a disclosure statement is inconsistent with the Act or regulations. A statutory supervisor on being alerted to the fact that an operator is not acting in accordance with statements in the disclosure statement about future facilities, could consider whether this action means that a disclosure statement is inconsistent with the Act, and if it is, direct that the disclosure statement is not published or distributed to the public.<sup>106</sup>

### Conclusion

As the disclosure statement is not a contractual document a resident cannot bring a breach of contract claim against an operator where an operator does not provide future promised facilities that were set out in a disclosure statement.

However, where promised facilities set out in a disclosure statement do not materialise, a resident could choose to make a complaint to the operator in accordance with the operator's complaints facility and agree a resolution of the concern with the operator directly.

A resident could also highlight the concern directly with the village's statutory supervisor and/or Registrar of Retirement Villages. The statutory supervisor or Register could then investigate further and choose to exercise their powers under the Act to ensure that the offending disclosure statement does not mislead or deceive any further intending residents, residents or the public generally about future facilities planned at the village in question.

A resident also has some legal remedies established under the Act that they could consider further with their lawyer including:

- the prosecution of an operator for contravention of the operator's (and promotor's) statutory duties under the Act in relation to disclosure statements;
- seek to avoid the ORA under section 31(1) of the Act for contravention of section 30(1) of the Act; and/or
- where there is evidence of a contravention of the statutory duty relating to the publishing of a disclosure statement and a resident can show they have suffered loss or damage arising from that act of publishing, consider seeking orders for a remedy as prescribed under section 82(3) of the Act.

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<sup>105</sup> Section 18(1)(a).

<sup>106</sup> Section 43(2).

# Appendix 1: Occupation right agreement - provisions required by legislative framework for retirement villages

TERMS	REFERENCE IN LEGISLATION
Terms as required by Retirement Villages Act 2003 (the Act)	s 27(1)(a) and Schedules 3 & 5; Schedule 3 (clause 1(a)(i) to (ix) states that ORA must contain provisions in relation to nine topics. Part 3 of the COP specifies minimum requirements to be given effect to in any ORA on those nine topics plus further topics including terms relating to a complaints facility and insurance.
Terms as required by Act or Retirement Villages (General) Regulations 2006 (RVGR)	s 27(1)(b); Section 101(1)(d) provides that Regulations can be made specifying matters to be included in ORA. The RVGR at Part 4 set out specific provisions that must be included in ORAs
Code of Practice 2008 (the COP) These requirements MUST BE GIVEN EFFECT TO IN AN ORA.	s 92(2)(b) and Schedule 5 of Act and COP; Section 92(2)(b) gives the COP legal status of a contract that is enforceable by a resident and the terms of which prevail over any less favourable position in an actual ORA and section 92(2)(b) states the COP must be given effect to in any ORA offered to a resident.
<b>Terms required by Schedule 3 of the Act, with link to Schedule 5 &amp; COP (as applicable)</b>	
<b>Terms Schedule 3 cl 1(a)</b>	
<b><i>Staffing of RV</i></b>	Sch 3 (1)(a)(i); Sch 5 (1)(a)-(b); COP12-15
Operator must have, maintain and implement written policies processes and procedures for staff selection, training and supervision	COP 12
All staff to carry ID while on duty and give residents details about staff	COP 13
Operator's obligations re staff recruitment process and reference checks	COP 14
Staff supervision and ongoing training	COP 15
<b><i>Safety and personal security of residents</i></b>	Sch 3 (1)(a)(ii); Sch 5 (2)(a)-(b) ; COP 16-18
Operator to have written policy on health and safety, lighting and heating for RV	COP 16
Operator to have safety and security processes and procedures for RV	COP 17
Terms around personal security and advertising material	COP 18
<b><i>Fire protection and emergency management</i></b>	Sch 3 (1)(a)(iii); Sch 5 (3); COP 19-23
Operator must have, maintain and implement written policy for fire protection and emergency management	COP 19
Operator must have measures and systems in place to protect RV from fire include smoke alarms	COP 20

Operator must have fire-fighting equipment in place and have evacuation procedure in place; must have written policy as to how emergencies in RV are dealt with	COP 21
<b><i>Insurance</i></b>	COP 22-23 (no ref in Sch 3 or Sch 5) (see RVGR Part 4 reg 8(d) for reference to insurance term in ORA)
Operator duty to insure village for its full replacement value, agree with Statutory Supervisor	RVGR reg 8(d)
Terms relating to insurance policy and temporary accommodation	COP 22
Resident responsible for insuring any contents that they own in the unit	COP 22(8)
<b><i>Transfer of residents with RV</i></b>	Sch 3 (1)(a)(iv); Sch 5 (4)(a)-(b); COP 24-25
ORA to set out terms of transfer from unit to unit with higher level of care - COP includes details of what terms may be included in ORA	COP 24 provides SPECIFIC CLAUSES ARE REQUIRED IN ORA
ORA must set out financial arrangements of transfer	COP 25 provides SPECIFIC CLAUSES ARE REQUIRED IN ORA
<b><i>Meetings of residents with the Operator</i></b>	Sch 3 (1)(a)(v); Sch 5(5)(a)-(b); COP 26-30; see also RVGR Part 4 reg 10 that set out further terms that must be included re operator's obligations relating to residents' meetings
Requirement for Annual General Meeting	COP 26(1)
Requirement for Special General Meeting	COP 26(2)
Operator can call informal meetings	COP 26(4)
Procedures for AGMs and SGMs	COP 27
Residents right to be consulted by operator - as required by ORA and content of any proposed rules or amendment to rules	COP 28/see also Code of Resident's Rights 3 (CORR Sch 4)
Resident and intending resident right to be given information on any matter affecting, or likely to affect, the terms and conditions of occupancy	COP 29/s 34 the Act/see also CORR Right 2
Residents' Committee - right of residents to form a residents' committee and agree own rules and invite operator and/or statutory supervisor to meetings on notice; no committee then residents can still request meeting with operator or statutory supervisor	COP 30
<b><i>Accounts</i></b>	Sch 3 (1)(a)(vii); Sch 5(7); COP 37-39
Operator obligations regarding invoicing of resident	COP 37-39
<b><i>Maintenance and upgrading</i></b>	Sch 3 (1)(a)(vii); Sch 5(8)(a)-(d); COP 40-45
Operator's obligation in relation to maintenance and repair of RV property	COP 40-42
Operator duty to consult with residents about proposed changes to maintenance agreements and change in charges	COP 42
Operator to report to residents at AGM re payment for maintenance and upgrades and consult if proposal may have material impact	COP 43
New RVs or units - operator's obligation re disclosure statements and information to residents	COP 44

ORA to include rights/obligations of residents with disabilities to alter their residential units/costs involved and requirements on termination and rights/responsibilities of operators	COP 45
<b><i>Termination of ORA by resident or operator</i></b>	Sch 3 (1)(a)(viii); Sch 5 (9)(a)-(c); COP 46-54
Resident right to terminate ORA and period of notice to be specified in ORA	COP 46
ORA to include terms re termination if unit is damaged or destroyed through no fault	COP 47
ORA can give operator certain rights to terminate ORA	COP 48 - terms set out in COP - ORA to specify what terms apply
Process for operator exercising right to terminate the ORA	COP 49
Refurbishment costs and process - process must be clearly set out in ORA. Resident right not to pay for fair wear and tear (depends on date of ORA)	COP 50; SPECIFIC TERMS IN ORA FOR PROCESS
Operators duties re sale of unit following termination (as above); ORA must give residents right to introduce a new resident and terms for doing so	COP 51-52
Operator right to buy residential unit	COP 53
Terms that relate to payments on termination (NB no specific terms required for capital loss/gain)	COP 54
<b><i>Communication with residents</i></b>	Sch 3 (1)(a)(ix); Sch 5 (10); COP 55-57
Operator to have policies and procedures for communicating	COP 55
Terms for communicating with resident for whom English is second language	COP 56
Terms for communicating with resident with limited ability to communicate	COP 57
<b><i>Terms Schedule 3 cl 1(b)</i></b>	
Operator duty to consult with residents before operator's interest sold	Sch 3 (1)(b)(i) & (ii)
Operator duty to consult with residents before appointing a new manager	Sch 3 (1)(b)(iii)
Operator duty to consult with resident before any proposed changes in services and benefits provided or charges that will or might have a material impact on occupancy or ability to pay	Sch 3 (1)(b)(iv)
Operator and operator's staff and service providers to treat residents with courtesy and respect	Sch 3 (1)(b)(v); Sch 4 CORR right 7
Operator and operator's staff and services providers not to exploit residents	Sch 3 (1)(b)(vi); Sch 4 CORR right 8
<b><i>Terms Schedule 3 cl 1(c)</i></b>	
Complaints facility and disputes procedure that complies with the Act.	Sch 3 (1)(c); Sch 5(6); COP 31-36; CORR rights 4 & 5; ss 50-52
<b><i>Terms Schedule 3 cl 1(d) (see also RVGR below)</i></b>	
If unit to be built or completed at a later date, term setting out proposed date for completion	s 27(1)(c)



Term relating to decisions of a majority of residents	s 27(2)(a)
Cooling-off period and right to cancellation for delay	s 28
<b>Terms Schedule 3 cl 1(f)</b>	
Information on CORR and COP	Sch 3 (1)(f)/ see also s 30(1)
<b>Terms required by RVGR Part 4 - MUST BE INCLUDED IN AN ORA</b>	s 27(1)(b); Schedule 3 cl 1(d)
Name and address of retirement village (RV)	reg 7(a)
Type of occupancy right offered	reg 7(b)
Rights of resident and the operator to deal with the residential unit (including selling, marketing, granting a security interest in, borrowing against legal interest, granting a security interest in termination proceeds, letting and permitting others to stay in unit)	reg 7(c)
Terms relating to arrangements for management of RV	reg 7(d); cross over here with the COP and Staffing of RV (COP 12-15)
Services and facilities offered at RV	reg 7(e)
Charges relating to services and facilities offered at RV	reg 7(f)
Operator duty to use reasonable skill and care in ensuring that the affairs of RV are conducted properly and efficiently	reg 8(a)
Operator duty to keep RV in good condition and order	reg 8(b)
Operator duty to make and adhere to long term plan for maintaining and refurbishing the RV and its facilities	reg 8(c)
Operator duty to insure RV for its full replacement value, agree with statutory supervisor	reg 8(d) cross over here with COP 22-23
Operator to use reasonable skill and care in exercise and performance of operator's power, functions and duties	reg 8(e)
Operator duty to give resident (on request) copy of more recent audited financial statements prepared under Act	reg 9(1) & (2)
Operator duty to prepare forecasting statement of expenditure and income and give copy to each resident	reg 9(3)
Operator duty to call certain meetings of residents in certain circumstances	reg 10(1)-(3) cross over here with COP 26-30
If ORA gives Operator the right to find a new resident for vacated unit then Operator duty to make all reasonable efforts to find a new resident and not to give preference to finding residents for new units not previously occupied.	reg 11(a) and (b)
Procedure to be followed if there ceases to be a statutory supervisor for the RV	reg 12
<b>Other key statutory rights/duties in Act (not specifically required to be a term of ORA)</b>	
ORA is voidable if contravention of s18(3), s 25(1), s 27 or s30(1)(a) in any substantial respect	s 31(1)
Right of resident (or intending resident) to be informed about any matter that has a material impact on occupation right/charges/services and right to certain other notification of matters if no statutory supervisor for village	s 34(a); also Sch 3 (1)(b)(iv) above that places duty on operator to consult with resident before any proposed changes in services and benefits provided or charges that will or might have a material impact on occupancy or ability to pay



<p>Before entering any ORA right of resident to receive a disclosure statement that complies with Sch 2, copy of ORA for RV, CORR and COP; corresponding duty on operator to provide CORR to each intending resident and resident on request a copy of CORR. Include term in ORA that include acknowledgement that intending resident received these documents</p>	<p>s 30(1)</p>
<p>Duty of operator to operate and make known to resident the facility for dealing with complaints</p>	<p>s 51 cross over with COP 31-36</p>
<p>Right of resident or operator to require a dispute be resolved by a disputes panel in accordance with the Act.</p>	<p>s 52</p>



# Appendix 2: Review of sample occupation right agreements

**Table 1: Details of seven sample ORAs and drafting and form of ORA**

Operator and Village and ORA	Observations on drafting and form
<p><b>Rita Angus Retirement Village Ltd (Ryman Village)</b></p> <p><b>Rita Angus, Wellington</b></p> <p>ORA Registered 25 November 2021</p> <p>ORA for standard units in village</p> <p>Is a separate ORA for Care Suite offerings</p>	<ul style="list-style-type: none"> <li>• Length 25 pages</li> <li>• Table with key terms set out page 1 of ORA</li> <li>• Clear section setting out cancellation rights</li> <li>• Definition section</li> <li>• Schedules at end setting out standard provisions required by the Act (that not incorporated into main terms)</li> <li>• Table with key terms, including details of unit and payment terms, set out start of ORA</li> <li>• Only repeats very key financial terms in COP in the ORA, otherwise assume COP terms part of ORA unless more favourable terms set out in ORA.</li> <li>• Clear headings and terms introduced with bold words that indicate what term about</li> <li>• Plain English drafting reference to resident as “you” and operator as “us” and conversational /informal style</li> <li>• Font and size of type clear and easy to read</li> </ul>
<p><b>Bupa Retirement Villages Ltd</b></p> <p><b>Winara Retirement Village, Waikanae</b></p> <p>ORA registered 5 July 2021</p>	<ul style="list-style-type: none"> <li>• Length 31 pages</li> <li>• Table with essential information set out page 1 of ORA</li> <li>• Definitions at Schedule 1</li> <li>• Section 28 cancellation clearly set out under execution section. More favourable cancellation right set out elsewhere in ORA</li> <li>• Clear headings and subheadings make easy to read and locate terms</li> <li>• Plain English drafting reference to resident at “you” and operator as “us”</li> <li>• Font and size clear and easy to read</li> <li>• Slightly more formal style cf Ryman drafting but still very concise and clear</li> </ul>
<p><b>The Palms Lifestyle Village Ltd</b></p> <p><b>The Palms Lifestyle Village, Whangarei</b></p> <p>ORA registered 30 May 2022</p>	<ul style="list-style-type: none"> <li>• Length 37 pages</li> <li>• Set out in 5 parts A to E</li> <li>• Part A set out Schedule of Information on page 5 of ORA</li> <li>• Language and form more legalistic and use of terms Operator, Licencee, Resident, set out “conditions”</li> <li>• Definitions set out at clause 6</li> <li>• Use of bolded headings and sub-headings, no contents page</li> <li>• Font and size clear but numbering and layout legalistic</li> <li>• Cancellation right set out in main terms but referenced with heading at clause 18</li> </ul>
<p><b>Presbyterian Support Central</b></p> <p><b>Huntleigh Apartments, Wellington</b></p> <p>ORA registered 5 January 2022</p> <p>Standard ORA used for 7 villages owned by this operator that include Huntleigh</p>	<ul style="list-style-type: none"> <li>• Length 35 pages</li> <li>• Schedule 1 at pages 24 contains Essential Information</li> <li>• Section 28 cancellation right set out under execution section</li> <li>• Clear contents section, headings and sub-headings introducing each term</li> <li>• Definitions section at Schedule 2</li> <li>• Plain English drafting “you and we or us”</li> <li>• Font and size clear and easy to read</li> <li>• Slightly more formal style cf Ryman’s ORA but still very clear and concise</li> </ul>

<p><b>Masonic Villages Ltd Masonic Court, Palmerston North</b></p> <p>ORA registered 6 January 2022</p>	<ul style="list-style-type: none"> <li>• Length 33 pages</li> <li>• Schedule 1 details of ORA</li> <li>• Contents and main headings but no sub-headings</li> <li>• Definitions section at start of ORA</li> <li>• Language more legalistic and not plain English style, reference to “operator and resident”, use of legal terminology such as “covenant” clauses can be long and lack of sub-headings makes clauses difficult to read and review cf to other ORAs in the sample</li> <li>• Font and size clear but numbering legalistic</li> </ul>
<p><b>Palm Grove Partnership</b></p> <p><b>The Grove Orewa, Auckland</b></p> <p>ORA registered 31 August 2021</p> <p>Copyright to Anthony Harper</p>	<ul style="list-style-type: none"> <li>• Length 52 pages</li> <li>• Content page and use of multiple headings throughout ORA</li> <li>• Important Information is set out page 5</li> <li>• Definition section set out commencement of ORA</li> <li>• Plain English drafting with reference to operator as operators as “we” and resident as “you”</li> <li>• Font and size clear but numbering and layout quite legalistic cf with Ryman ORA form</li> <li>• Cancellation right set out under Important information section</li> </ul>
<p><b>Eileen Mary Age Care Property Ltd</b></p> <p><b>Eileen Mary Lifestyle Complex, Dannevirke</b></p> <p>ORA registered 21 September 2020</p>	<ul style="list-style-type: none"> <li>• Length 34 pages</li> <li>• Schedule of details at end of ORA</li> <li>• Cancellation right set out in main body of ORA</li> <li>• Contents page with headings for each clause, schedule etc</li> <li>• Drafting legalistic with reference to “the operator” and “the resident”, terms such as “whereas” in the recital, “covenant and undertake” instead and of word “obligation”</li> <li>• Definition section</li> <li>• No use of sub-headings to differentiate topics under main headings</li> <li>• Small font size</li> </ul>

**Table 2: Review of seven sample ORAs - Category I Provisions**

*Provisions where both subject and substance of the provision are prescribed by the legislation and must be included in the ORA.*

Operator	Cooling-off provision (s28 of the Act)	Obligation on operator to consult with residents before appointing new manager (cl 1(b)(iii)(iv) of sch 3 of the Act)
Ryman	<p>Set out as a separate clause under clear heading “Your Right to Cancel this Agreement”</p> <p>Clause 8.1 - set out clearly right to cancel agreement within 15 working days after signing agreement without reason. Clause written in plain English and is in accordance with s28 of the Act.</p> <p>More favourable unique clause of 90-day money back gtee.</p>	<p>Clause 4.3 in main agreement refers out to an Appendix A: Our Further Responsibilities Schedule 3 of the Act.</p> <p>This obligation is at paragraph (e) of Appendix A of the Agreement. Sets out within a list of obligations imposed on operator at Sch 3 of the Act.</p>
BUPA	<p>Clause set out under execution provision of the agreement.</p> <p>Clause written in clear language and set out the requirements of the s28 of the Act.</p> <p>A more favourable 90 Day Money Back Guarantee set out as a separate provision at clause 8.3 of the Agreement.</p>	<p>Clause 6.2 of the Agreement under a provision “How We Will Run the Village” and subheading “Management of the Village”. Additional clause that we will not consult with you if we employ any other new staff members.</p>

Presbyterian Support	Clause set out under execution provision of the agreement. Clause written in clear language and follows requirements of s28 of the Act.	Clause 5.2 of the Agreement under a provision "How we will run the Village" and subheading "Management of the Village". Additional clause that we will not consult with you if we employ any other new staff members in managerial roles.
Masonic Village	Clause set out under heading 5 of the Agreement "Rights of Resident". As clauses 5.1-5.3 sit with other provisions that set out rights of residents this important clause does not stand out a clearly as it does in agreements of other operators.	Clause 6.20 under heading Obligations of Operator. Clause complies with legislation however sits within 27 provisions that set out the obligations of the operator.
The Palms Lifestyle	Clause 18 of the agreement under heading "Cooling-off period and cancellation of Agreement".	Clause 10.1.2 under heading "Consultation with Residents".
Palm Grove	Clause 4 of the agreement under heading "Rights of Cancellation - Cooling Off". Set out clearly at beginning of the agreement under separate clause.	Clause 22.3 under heading "Clause 22 We Will Consult with You". Separate from another section 38 of the agreement which is headed "Management of the Village".
Eileen Mary	Clause 24 of the agreement under heading "Cooling-off period and cancellation for delay"  Clause is long and detailed and repeats all the requirements set out in the Act.	Clause 26.2 under heading "Management of the Village".

**Table 3: Review of seven sample ORAs - Category 2 Provisions**

*The subject of the provision is required to be referenced in the ORA however the substance of the provision is set out in the COP. An operator can choose to include in its ORA provisions that either repeat the substance of the provision in the COP and/or add additional terms on the subject matter and/or add more favourable terms than those set out in the COP.*

Operator	Clause 1(a)(i) Sch 3 of the Act -Staffing of RVs	Clause 1(c) of Sch 3 (Complaints and Disputes)
Ryman	Clause 4.2(d) for staffing states that will provide all staff needed for the management and operation of the Village.  Clause 10.9 refers to rights under the COP generally.	Clause 10.10 Disputes under "General Terms". States that disputes will be referred to RVA to be resolved under Part 4 of the RVA.  Also, a reference in Appendix A of the agreement that operator will provide a complaints facility and disputes procedure that complies with the RVA.
BUPA	Clause 16.11 - reference to written policies and procedures for staffing of village.	Clause 13 Under heading "How to Solve Problems" - refers to complaints facility that complies with Act and COP. Also refers to rights to have matter resolved by disputes panel.
Presbyterian Support	Clause 15.13 - reference to written policies and procedures for staffing of the village.	Clause 12 Under heading "How to Solve Problems" - refers to complaints facility and that complies with Act and COP. Also refers to rights to have matter resolved by disputes panel.
Masonic Village	Clauses 6.12 and 6.13 - clause that states operator will make proper and adequate staffing at the Village and to implement and maintain written policies and procedures. Some repetition of terms in COP regarding information about staff and ongoing training.	Clause 12 Complaints and Disputes - a long complaints and disputes clause that effectively repeats what is in the COP. Omits a reference to any complaint's policy or right of resident to take the complaint to a disputes panel at any earlier time permitted under the Act.
The Palms Lifestyle	Clause 19.6 under heading "Operator's obligations to run village properly" states operator will provide adequate staff to maintain the operation of the village.  Clause 31.1 under heading "Arrangement for Management of the Village" states the operator will employ suitably qualified and trained staff...	Clause 26 Dispute Resolution Clause - no reference to COP or operator's complaint policy that is required by the COP. Instead sets up a Complaints Committee to determine disputes. This disputes policy does not follow what is set out in the COP and no reference of formal complaint to statutory supervisor or to mediation.

Palm Grove	Clause 40.1(a) - reference to written policies and procedures in respect of staffing	Clause 70 - a resident's complaint it refers to the operator's complaints policies and procedures and refer to disputes panel. Has a separate clause to deal with dispute resolution for disputes regarding disposal of unit.
Eileen Mary	<p>Clause 5.15 under main heading "Operator's Covenants" - simple clause stating that the operator will employ staff who are appropriate qualified and experienced for the role and the responsibilities to be carried out.</p> <p>Clause 5.19 standard clause that operator will give effect to the COP as required by s92 of the Act</p>	Clause 22 headed "Access, Complaints Facility and Disputes Resolution" and set out basic obligations of operator in relation to complaints and disputes under the Act. Also reference to Statutory Supervisor.

**Table 4: Review of seven sample ORAs - Category 3 Provisions**

*The subject of the provision along with minimum requirements for the substance of the provision is prescribed by legislation, with the operator required to draft its own bespoke provision to include in the ORA to meet these minimum requirements and/or provide a more favourable position.*

<b>Operator</b>	<p><b>clause 1(a)(iv) of sch 3 of the Act and cls 24-25 COP (the transfer of residents within the retirement village)</b></p> <p>COP terms: if transfer allowed then ORA must include:</p> <ul style="list-style-type: none"> <li>• Circumstances the transfer is initiated and by whom</li> <li>• Resident priority over outside applicants?</li> <li>• Whether transfer depends on 3 factors including suitable unit being available, suitable care available, resident being assessed suitable for care</li> <li>• Residents affected have the right to be given information on all options, have an independent assessment, be consulted</li> <li>• Resident made aware of needs assessment.</li> <li>• Financial and other arrangements that apply if resident transfers from an independent self-care unit to unit with higher level of care</li> </ul>	<p><b>clause 1(a)(viii) of sch 3 of the Act and cl 47 of the COP (termination if the unit is damaged or destroyed through no fault) and clause 54 COP (payment after damage or destruction of residential unit) and clause 22(9) and (10) (Temporary Accommodation)</b></p> <p>COP terms: ORA must:</p> <ul style="list-style-type: none"> <li>• Provide that except in certain specified circumstances, if unit damaged or destroyed the operator must fully repair or replace</li> <li>• State the circumstances where unit may not be fully repaired or replaced</li> <li>• State procedure if unit not fully repair or replaced. Minimum procedure set out in COP.</li> <li>• Costs of transferring to another unit</li> <li>• Timeframe for decision on whether unit will be repaired or replaced</li> <li>• May offer a transfer</li> <li>• Whether temporary accommodation will be offered and costs and when will be available</li> </ul>
Ryman	<p>Under heading "Our Rights" - Clause 3.1 Transfer to a healthcare facility - operator initiates and appoint independent medical professional to undertake an assessment as to whether can continue to live safely at the village. Agreement will end at time of transfer. No detail as to financial or other arrangements.</p> <p>Under heading "Our Obligations" - Clause 4.1(c) - if either party thinks necessary then can transfer to rehome, hospital or dementia unit in a Ryman village. Resident responsible for costs. If Ryman make decision then resident has priority over non-residents so long as there is a vacancy. Terms of transfer will be given at time of transfer. Fixed Base Weekly Fee will continue until permanently vacate the Unit.</p> <p>Clause 4.1(d) Transfer from independent unit to serviced unit: Either party initiate and priority over non-residents as long a vacancy. New ORA and resident responsible for costs of transfer. Cap on deferred management fee to not exceed 20% overall.</p>	<p>Clause 5.3 - drafting under Heading "Ending this Agreement"</p> <ul style="list-style-type: none"> <li>• Timeframe for decision "within a reasonable timeframe"</li> <li>• If destructive event, operator will consider whether practical to rebuild. Will consider insurance position and payout and whether regulatory authority allows rebuild.</li> <li>• Will use reasonable endeavours to provide temporary accommodation and cost will be no more than the Weekly Fee.</li> <li>• If don't rebuild, agreement ends.</li> <li>• Additional term if unit is part of a larger building that is damaged (bespoke term).</li> <li>• If unit damaged but can continue living in it, then Weekly Fee will be reduced in proportion to damage (bespoke term)</li> <li>• May offer transfer on same terms.</li> </ul>

BUPA	<p>Clause 7.1 Transferring to another independent living home within the Village. Set out terms for this. Operator will accommodation subject to availability, suitability and new resident agreement to purchase vacated home. Payment terms include difference in "Entry Payment" and transfer fee of 3% of Entry Payment of new home and one "amenities fee". Fixed Village Fee may change.</p> <p>Transfer terms do not apply if you transfer to a care suite in a Bupa care home if they become available. New ORA and charge a second amenities fee.</p>	<p>Clause 12 Damage or destruction</p> <ul style="list-style-type: none"> <li>• Timeframe "as soon as reasonably practicable"</li> <li>• Replaced to a standard at least equal to that of your home prior to damage event</li> <li>• Use reasonable endeavours to provide alternative temporary accommodation. Operator responsible for the costs and subject to insurance.</li> <li>• Not repair if not practicable, can't obtain building consents, insurance money not adequate or receive no insurance money.</li> <li>• If don't rebuild agreement terminates.</li> <li>• May offer transfer. Amenities fee will apply and Exit payment date provisions will apply.</li> <li>• Bespoke term if substantial part of village destroyed and home not damaged.</li> </ul>
Presbyterian Support	<p>Clause 15.3 (d) policies and procedures for transfer of residents within the Village will apply</p> <p>Clause 2.14-2.18 Care Service. At Commencement Date do not provide care services to residents.</p> <p>If we consider health needs changed assist with needs assessment. If require long term residential care then use best endeavours to give priority to residents to transfer to a Care Facility at Village over non residents. Subject to availability. Resident responsible for costs. We will provide you with information on all available options.</p> <p>Clause 6 Transferring to another home.</p> <p>If resident wishes to move to another home then operator will facilitate subject to availability and home suitable. Right to transfer subject to new resident for vacated home and resident terminating ORA and sign new ORA. Terms and conditions of transfer will be at sole discretion of operator.</p>	<p>Clause 11 Damage or Destruction</p> <ul style="list-style-type: none"> <li>• Timeframe "as soon as reasonably practicable"</li> <li>• Replace to standard comparable to your Home prior to the damage</li> <li>• Use reasonable endeavours to provide alternative temporary accommodation. If we provide at a facility operators by us we will pay the costs. Otherwise resident responsible for cost.</li> <li>• Not repair if not practicable, unable to obtain consents, insurance not adequate or receive no insurance money</li> <li>• If not repair then ORA terminates</li> <li>• May offer transfer.</li> <li>• Term if substantial part of the village is damaged and Home not damaged.</li> </ul>
Masonic Village	<p>Clause 2.3 no automatic right of transfer within Village nor access to or usage of any rest home or hospital near or adjacent to village.</p> <p>However subject to availability operator will use reasonable endeavours to provide suitable accommodation at any rest home or hospital. Resident will have priority over outside applicants.</p>	<p>Clause 8.5 operator will not repair if impracticable or insurance insufficient.</p> <p>Clause 8.6 - timeframe for decision "15 working days" of consultation with resident.</p> <p>Clause 8.7 - may offer transfer instead of termination if don't repair.</p> <p>Clause 8.8 operator use best endeavours to provide temporary accommodation and meet costs to extent of its insurance.</p> <p>Clause 11.7 Termination unit damaged or destroyed.</p>
The Palms Lifestyle	<p>Clause 11.1.9 Transfer to another unit – if resident wishes to transfer then operator will permit if:</p> <ul style="list-style-type: none"> <li>• Resident priority over applicants not existing residents</li> <li>• Resident pay operator's reasonable legal costs</li> <li>• Resident pay capital sum and other charges determined by operator</li> <li>• Terms regarding amenities fee</li> </ul>	<p>Clause 12 Damage or destruction of unit</p> <ul style="list-style-type: none"> <li>• Temporary accommodation</li> <li>• Timeframe for within 3 months of Material Event</li> <li>• In considering repair, extent of damage, necessary building consents and insurance position.</li> <li>• May offer transfer.</li> </ul>

Palm Grove	<p>Clause 40.1 Reference to policies and procedures for transfer of residents within the Village.</p> <p>Clause 57 Heading “We Will Endeavour to Effect Transfer” transfer at operator’s discretion. Conditions of transfer include termination of this ORA and signing new ORA and at operator’s option, a resident entering an occupation licence in respect of unit that is being vacated. No term that “Village Contribution” will be transfer to new unit. All other terms of transfer will be at operator’s sole discretion.</p> <p>Note this clause does. not envisage a transfer to higher level of care so terms of COP are not relevant.</p>	<p>Clause 65 rights includes those in COP plus additional as follows</p> <ul style="list-style-type: none"> <li>• Timeframe “as soon as reasonably practicable”</li> <li>• replaced to standard at least equal to unit prior to damage</li> <li>• Will provide temporary accommodation as “soon as reasonably practicable” and operator will endeavour to meet the costs from insurance proceeds received.</li> <li>• Circumstance won’t repair/replace include not practicable, unable to obtain necessary building consents, insurance money not sufficient, no insurance money</li> <li>• If offer transfer resident responsible for costs and legal costs of entering into new ORA for alternative unit</li> </ul>
Eileen Mary	<p>Clause 27 does not provide for transfer between units in a village. If resident wishes to move then subject to availability, suitability and operator not disadvantaged by the transfer. Resident to terminate existing ORA and enter into a new one.</p>	<p>Clause 6 Damage or destruction of unit</p> <ul style="list-style-type: none"> <li>• Use best endeavours to provide temporary accommodation. No guarantee.</li> </ul> <p>Clause 16.8 termination</p> <ul style="list-style-type: none"> <li>• Not repaired if not practicable, can’t obtain building consents, insurance inadequate or not obtained.</li> <li>• Timeframe for decision on repair or not, “best endeavours to complete without delay”</li> <li>• May offer transfer and payment clause 3.2(k)</li> </ul>

**Table 5: Review of seven sample ORAs - Category 4 Provisions**

*The subject of the provision without any detailed requirements for its substance is prescribed in legislation, with the operator required to draft its own unique/bespoke provision to include in the ORA.*

Operator	Reg 7(b) of RVGR – nature of the right to occupy a unit in RV	Reg 7(f) RVGR – charges relating to the village
Ryman	<p>Clause 2.6 and Clause 1.1 of Sch 1 - grant a right to occupy your unit for life.</p>	<p>Terms clause 1 sets out:</p> <ul style="list-style-type: none"> <li>• Occupancy Advance for Unit and Car Park (Capital Advance)</li> <li>• Deferred Management Fee (Fee paid on termination)</li> <li>• Fixed Base Weekly Fee (Outgoings fee)</li> <li>• Additional Service Fee (Service fees)</li> </ul> <p>See also clause 2.1, clause 7 (DMF calculation formula), clause 6 (repayment of occupancy advance)</p>
BUPA	<p>Clause 2.3 - grant a licence to occupy the Home on terms of ORA.</p>	<p>Schedule 1 Essential Information (at end of ORA)</p> <ul style="list-style-type: none"> <li>• Entry Payment</li> <li>• Deferred Management Fee</li> <li>• Weekly Fee (also see clauses 3.1-3.4)</li> </ul> <p>Clause 3 Costs Payable during your stay</p> <ul style="list-style-type: none"> <li>• Additional services (clause 3.5-3.7)</li> </ul> <p>Clause 10 Payment following termination including calculation of Deferred Management Fee, Exit Payment and terms relating to Exit Payment date.</p>

Presbyterian Support	Clause 1.2 to 1.5 - grant of licence to occupy the Home on terms of ORA.	<p>Schedule 1 Essential Information (at end of ORA)</p> <ul style="list-style-type: none"> <li>• Entry Payment</li> <li>• Deferred Management Fee</li> <li>• Weekly Fee (also see clauses 3.1-3.4)</li> </ul> <p>Clause 3 Costs Payable during your stay</p> <ul style="list-style-type: none"> <li>• Additional services (clause 3.5-3.7)</li> </ul> <p>Clause 10 Payment following termination including calculation of Deferred Management Fee, Exit Payment and terms relating to Exit Payment date.</p>
Masonic Village	Clause 2 - set out under heading "Occupancy" right to occupy the Unit on terms and conditions set out in ORA	<p>First Schedule (at end of ORA)</p> <ul style="list-style-type: none"> <li>• Service Charge - fixed per week</li> <li>• Site Payment Fee</li> <li>• Capital Sum Advance</li> <li>• Capital Repayment Sum</li> <li>• Deferred Management Fee (includes formula for repayment)</li> <li>• Occupation Right Agreement Fee</li> <li>• Termination Administration Fee</li> </ul> <p>See also clause 3 financial obligations of resident; clause 11.8 fees on termination, clause 11.10 calculation of deferred management fee</p>
The Palms Lifestyle	<p>Part A (Schedule of Information): clause 5.3 nature of occupation right is a licence to occupy the Unit</p> <p>Part B Clause 7 Grant of Occupation Right - grant of occupation right to Licensee for benefit of resident</p>	<p>Part A (Schedule of Information) clause 5.5 payments:</p> <ul style="list-style-type: none"> <li>• Capital Sum</li> <li>• Village Outgoings Charge</li> <li>• Amenities Contribution (calculated in terms of clause 8.3)</li> <li>• Administration Charge</li> </ul> <p>Part C clause 8.1 to 8.12 - further detailed terms for payments</p>
Palm Grove	Part A clause 2.1 grant occupation right as set out in more detail at clauses 6-10	<p>Part B Important Information</p> <ul style="list-style-type: none"> <li>• Entry Payment (and Car Park Payment)</li> <li>• Exit Payment and calculation and date of payment</li> <li>• Village Contribution and Car Park Contribution</li> <li>• Village Outgoings - periodic payment</li> <li>• Additional Services</li> </ul> <p>Other clauses set out more detail regarding payments including clauses 11-21 and clauses 63-64 for Exit payment and date</p>
Eileen Mary	Clause 2 - licence to occupy	<p>Clause 3 Payments</p> <ul style="list-style-type: none"> <li>• Capital Sum</li> <li>• Residential Care Fee/Village Fee (under heading Periodic Charges)</li> <li>• Capital Deduction and calculation at clause 3.3</li> <li>• Repair Charges</li> <li>• Health Service Charges</li> <li>• Additional Service Costs</li> </ul> <p>Also terms at clause 17 termination and clause 18 payment terms for capital repayment entitlement</p> <p>Schedules of Details (end of ORA) contains summary of key financial terms - further includes</p> <ul style="list-style-type: none"> <li>• Termination Fee less Weekly Rebate</li> <li>• Administration Fee</li> <li>• Operators legal costs termination</li> <li>• Capital Repayment Entitlement</li> </ul>



**Table 6: Review of sample ORA from each of the six large corporate operators in NZ – hold 60% of national unit numbers in NZ**

<b>Operator, Village, ORA key details</b>	<b>Observations on drafting and form</b>
<p>Rita Angus Retirement Village Ltd (Ryman Village)</p> <p>Rita Angus, Wellington</p> <p>ORA Registered 25 November 2021</p> <p>ORA for standard units in Village</p> <p>Is a separate ORA for Care Suite offerings</p>	<ul style="list-style-type: none"> <li>• Length 25 pages</li> <li>• Table with key terms set out page 1 of ORA</li> <li>• Clear section setting out cancellation rights</li> <li>• Definition section</li> <li>• Schedules at end setting out standard provisions required by the Act (that not incorporated into main terms)</li> <li>• Table with key terms, including details of unit and payment terms, set out start of ORA</li> <li>• Only repeats very key financial terms in COP in the ORA, otherwise assume COP terms part of ORA unless more favourable terms set out in ORA.</li> <li>• Clear headings and terms introduced with bold words that indicate what term about</li> <li>• Plain English drafting reference to resident as “you” and operator as “us” and conversational /informal style</li> <li>• Font and size of type pleasant and easy to read</li> </ul>
<p>Bupa Retirement Villages Ltd</p> <p>Winara Retirement Village, Waikanae</p> <p>ORA registered 5 July 2021</p>	<ul style="list-style-type: none"> <li>• Length 31 pages</li> <li>• Table with essential information set out page 1 of ORA</li> <li>• Definitions at Schedule 1</li> <li>• Section 28 cancellation clearly set out under execution section. More favourable cancellation right set out elsewhere in ORA</li> <li>• Clear headings and subheadings make easy to read and locate terms</li> <li>• Plain English drafting reference to resident at “you” and operator as “us”</li> <li>• Font and size clear and easy to read</li> <li>• Slightly more formal style cf Ryman drafting but still very concise and clear</li> </ul>
<p>Summerset Villages (Aotea) Ltd</p> <p>Summerset at Aotea, Porirua</p> <p>ORA registered 24 November 2021</p>	<ul style="list-style-type: none"> <li>• Length 29 pages</li> <li>• Terms Specific to You on page 2</li> <li>• Table of contents with headings for main terms with beginning of each term sub-heading bolded</li> <li>• Defined terms in easy to read table, less legalistic looking</li> <li>• Plain English drafting – use of “we, us and you”, good clear headings for main clauses</li> <li>• Sch 3 of Act and General Reg 10 standard provisions set out in Appendix A and B to ORA</li> <li>• Clear modern font and good size</li> </ul>
<p>Metlifecare Retirement Villages Ltd</p> <p>Parkside Village, Auckland</p> <p>ORA registered 2 June 2022</p> <p>Referenced May 2022</p>	<ul style="list-style-type: none"> <li>• Length 35 pages</li> <li>• Table of contents with heading for main clauses and sub-clauses with heading throughout the ORA</li> <li>• Main terms under “Agreement Clause” page 3-5</li> <li>• Definitions section end of ORA</li> <li>• Drafting include reference to “Operator, Licensee and Resident” and “shall” and payment clauses cross-refencing to other clauses in the ORA.</li> <li>• Clear font and size</li> <li>• Cancellation term set within main terms of the ORA</li> </ul>

<p>Aria Bay Retirement Village Ltd (Arvida Ltd)</p> <p>Aria Bay Retirement Village, Auckland</p> <p>ORA registered 6 December 2021</p>	<ul style="list-style-type: none"> <li>• Length 29 pages</li> <li>• Contents page with reference to main clauses and schedules, sub-heading in the body of ORA to differentiate clauses</li> <li>• Schedules contain Definitions, Complaints Facility, Meetings, Cooling-off right</li> <li>• Plain English drafting use “we and you”</li> <li>• Essential information set out at start of ORA page 1 &amp; 2</li> <li>• Clear font and size of type</li> </ul>
<p>Oceania Village Company Ltd (Oceania Healthcare)</p> <p>Everil Orr Village</p> <p>ORA registered 1 September 2021</p> <p>ORA for Apartments</p>	<ul style="list-style-type: none"> <li>• Length 30 pages</li> <li>• Contents with main terms and sub-headings under main clauses in body of ORA</li> <li>• Definition of key terms on page 3 of ORA</li> <li>• Drafting refers to “Oceania and Resident”, plain English and easy to read and understand</li> <li>• Important term regarding transfer to Care Suite is bolded for emphasis</li> <li>• Clear font and size of type</li> </ul>

# Appendix 3: Stakeholder feedback on questions relating to standardising occupation right agreement

## Questions

Part 3 of this paper involved obtaining feedback from stakeholders on the feasibility of standardising ORAs.

The following questions were addressed to the stakeholders:

1. What are the benefits of introducing a standardised ORA?
2. What are the drawbacks of introducing a standardised ORA?
3. What terms in an ORA could be easily standardised?
4. What terms in an ORA should be standardised across the industry and why?
5. What terms in an ORA should not be standardised across the industry and why?

The following groups of stakeholders provided feedback on these questions and their responses are summarized in the table above. With the exception of the Retirement Villages Association who provided a formal written response, all stakeholders provided their feedback during scheduled informal online meetings or via email with an informal written response.

## Stakeholders

### Legal profession

*Group of lawyers from New Zealand Law Society | Te Kāhui Ture o Aotearoa's Property Law Section who primarily act for residents* including **John Greenwood**, Consultant, Greenwood Roche, **Linda Fox**, Lawyer/Director Carson Fox Legal, **Kristine King**, Director DK Law, **Phillippa Shaw**, Senior Associate Harmans Lawyers. Group facilitated by **Kim Bull**, Property Law Section Manager, NZLS.

*Lawyers invited by Retirement Commission to be on panel at postponed Retirement Villages Stakeholder Forum 2021 to discuss "What does a standardised ORA look like"* including **John Greenwood**, Consultant, Greenwood Roche, **Jenny Baldwin**, Partner Anthony Harper, **Peter Orpin**, Special Counsel, Lane Neave, **Carolyn Ranson**, Partner, Smith and Partners.

*New Zealand Institute of Legal Executives* – questions were discussed by members of the Council who have retirement village experience and have a cross section of experience acting for residents, independent operators, a big corporate operator and not for profit/charitable operators. The response was forwarded by email dated 10 June 2022 response by **Pam Harliwich**, Senior Registered Legal Executive, Ryman Healthcare.

### Operators

*Retirement Villages Association of New Zealand Incorporated (RVA)* provided an RVA endorsed written paper drafted by MinterEllisonRuddWatts dated 6 May 2022 and had a meeting to discuss the paper that included **John Collins**, Executive Director RVA, **Graham Wilkinson** President RVA and Managing Director Generus Living Group Inc, **Liz Rowe**, Senior Associate – Corporate and Commercial, MinterEllisonRuddWatts.

### Residents

*Retirement Village Residents Association of New Zealand (RVR)* provided a written response dated 24 April 2022 drafted by **Anton Coetzee** Legal Advisor to the RVR and endorsed by RVR

### Statutory Supervisors

*Trustee Corporations Association of New Zealand (TCA)* provided collective comments from statutory supervisors by email dated 4 May 2022. These comments were facilitated by **Garreth Heyns**, Senior Relationship Manager and **Richard Spong**, General Manager both of Covenant Trustee

### Other organisations

*Consumer NZ* feedback provided by **Aneleise Gawn**, Consumer Advocate, 10 May 2022 discussion

*Commerce Commission* feedback provided by **Grant Chamberlain**, Cartels Investigations Manager and **Richie Hutton**, Competitions Investigations Manager, 18 May 2022 discussion

**Table 1: General observations regarding a standardised ORA**

Stakeholder	Summary of Feedback
RVR	<ul style="list-style-type: none"> <li>Standardised ORA include 2 parts. Part 1 include majority of generic clauses required in an ORA and Part 2 contain clauses that are unique to that operator</li> </ul>
TCA	<ul style="list-style-type: none"> <li>Supportive of changes that would simplify the ORA and make them easier for residents to understand. Not supportive of any standardisation of commercial terms or the offerings that are unique to each village</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>There is a benefit in standardising parts of the ORA but does not advocate for a fully standardised ORA. If there was a fully standardised ORA complete with standardised commercial terms then NZ would be looking at a very different retirement village industry where commercial terms are prescribed by regulation.</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>From a resident's perspective the bespoke terms in an ORA are more important than the standard terms that are prescribed by legislation. It is the bespoke terms in an ORA that need to be given more weight. Under current legislative regime any standardised ORA is always going to have bespoke terms. If had a fully standardised ORA, including commercial terms, then operators will be stifled in their ability to offer a diversity of offerings and innovations.</li> </ul>
Carolyn Ranson	<ul style="list-style-type: none"> <li>Over her years of practice, she has reviewed many different ORAs. It is good to see some ORAs coming through now that are well drafted with clear terms. That said other operators "hide" terms within their contracts and this is easy to do when there is not a standard contract form.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>The complexity of the current documentation plays into the operator's hands. We are currently dealing with an information overload and intending residents want the complete opposite.</li> <li>Codification of commercial agreements is not unusual in other legal jurisdictions such as the UK, Australia, states of Canada and the US.</li> <li>This question of introducing a standardised ORA was considered in 2003 when he was involved in advising government on the new legislation. Government has previously considered introducing a standard template for the disclosure statement.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>Recognition by a senior practitioner that the ORAs of main operators now follow a fairly standard format.</li> <li>Legal profession already uses standardised agreement in other areas e.g. ADLS Agreement for Sale and Purchase and ADLS Agreement for Sale and Purchase of a Business. These templates accommodate many different businesses and models and allow alteration of standard terms.</li> <li>Another analogy is the Body Corporate Rules in the Unit Titles Act or the standard constitution in the Companies Act. Start with a template and what is required by the legislation/regulations and enhance with special terms.</li> <li>Recommend core template set out in Regulations.</li> <li>Look and feel of a contract is irrelevant to a resident's decision in choosing a village. Decision already made by the time resident sees that contract.</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>The focus of Consumer NZ is highlighting terms in ORAs that are unfair to residents. See recent research report dated 2 February 2010 "Retirement village contracts: unfair terms in the fine print". A standardised ORA will make the contract easier for consumers to understand and unfair terms will not "buried" in the contract wording."</li> </ul>
RVA	<ul style="list-style-type: none"> <li>"A fully prescribed "one-size-fits all" set of terms is unlikely to produce a helpful or simple resulting document." This is because there are a number of terms that should not be standardised (para 9.1 of written submission)</li> <li>"In the event that standardisation of ORAs is considered feasible then level of prescription should seek to balance the benefits for residents of having a clear, comparable and digestible document and the benefits to operators (and residents) of flexibility of contract and terms" (para 7.7 of written submission)</li> <li>"Standardisation could potentially include: (a) a high level framework and prescription of the order of terms in the ORA, which provides for logical ordering of information and terms but otherwise maintains flexibility regarding the actual terms and content; and/or (b) prescription of certain limited terms, which are already largely prescribed and described consistently across the sector; and/or introduction of a prescribed standard form document which operators can choose to use if they wish (i.e. as per the ADLS standard forms). This form would then thrive or not based on its merits and operator and resident demand for it." (para 7.7 of written submission)</li> <li>"An alternative to standardisation of the ORA would be to standardise the Key Terms Summary which is already used by the majority of operators. This would assist in addressing the key concerns regarding complexity and comparability." (para 7.8 of written submission)</li> <li>Operators have invested tens of millions of dollars in ORAs and disclosure statement over the years and ought not to be wasted without demonstrably good reason</li> </ul>

**Table 2: What are the benefits of introducing a standardised ORA?**

Stakeholder	Summary of Feedback
RVR	<ul style="list-style-type: none"> <li>• ORA would be simpler to read and understand</li> </ul>
TCA	<ul style="list-style-type: none"> <li>• Easier for residents to understand</li> <li>• Cheaper legal fees for residents as lawyers become familiar with a standardised ORA</li> <li>• Assist intending residents in comparing the offerings of different villages</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>• Easier to provide legal advice to residents if have a standardised ORA.</li> </ul>
Carolyn Ranson	<ul style="list-style-type: none"> <li>• More onerous commercial terms of operators will stand out to residents and their lawyers if have a standard contract. Will stop operators “hiding” more onerous provisions in their agreements. Will potentially mean residents’ lawyers negotiate terms with operators.</li> <li>• Easier for lawyers to advise with one standard format and plain English drafting.</li> <li>• Provide opportunity for ORA to be presented in plain English drafting</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>• Greater transparency and less confusion around legal position for intending residents.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>• Keep legal costs down for clients. This is a service industry first and foremost. Need to serve the residents.</li> <li>• Would be useful for less experienced lawyers advising in this area.</li> <li>• A standard ORA that standardised the key terms used by the industry across all operators and set terms out in the same sequence would mean lawyers could review ORAs more quickly and this would decrease legal costs</li> <li>• In practice have about 1 hour to explain ORA to clients so need to make ORA simple and easy to read and explain. Code of Practice further complicates the process of explaining the ORA.</li> <li>• A standard contract will simplify process for lawyers who advise in this area and in turn make it less time consuming and more cost effective for lawyers to advice in this area</li> <li>• Terms more transparent in a template. Commercial advantage in what they are offering would be more visible in a template</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>• Standard terminology – definitions and interpretation; standard summary of key terms e.g. standardised wording for payments</li> <li>• Make document more easily understood – written in plain English and layman’s terms</li> <li>• Reduction of legal costs to residents</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>• Easier for consumers to read and understand legal terms, more important terms at front of form and not buried within contract terms</li> <li>• Standardisation of ORA potentially decreases the risks of having “unfair terms”</li> <li>• Standardisation would put a focus on terms that are more unfavourable to residents and allow residents to clearly see these terms and start pushing back on operators</li> <li>• Assist in streamlining the documentation for more vulnerable consumers</li> <li>• Standard contracts introduced in New South Wales in Australia so NZ could have as well.</li> </ul>
RVA	<ul style="list-style-type: none"> <li>• Benefits would depend on whether standardised ORA is fully prescribed “one size fits all” or a form that contains partially standardised terms. Benefits also depend on whether, for each operator, their existing form is complex and legalistic</li> <li>• Standardised ORA could make the ORA easier to read and understand that will benefit residents and lawyers advising residents and other stakeholders who review terms of ORAs such as statutory supervisors and funding banks. However, lawyers who regularly advise on ORAs are already likely to be familiar with forms of ORA used and Retirement Commission’s 2016-2017 Report on the effectiveness of independent legal advice found that high satisfaction with the current requirements for legal advice among intending residents.</li> <li>• Standardised ORA will make it easier to compare terms across villages.</li> <li>• Given large number of terms which are required by the Act, Regulations and Code to be included, partial standardisation of certain of those terms could be of benefit.</li> <li>• Standardisation by way of prescribing the order of terms to be covered.</li> <li>• Reduction in set-up costs for new operators entering the sector to prepare a bespoke ORA for their village offering.</li> <li>• Lower costs of independent legal advice.</li> <li>• Ease of review by other stakeholders such as statutory supervisors or lending banks.</li> </ul>



Commerce Commission	<ul style="list-style-type: none"> <li>Residents better informed with a template</li> <li>Standardisation does not give operators the right to come together to reach agreement with other operators as to price and services etc</li> <li>A standard form contract will provide a better outcome for consumers as will make it clear what terms operators can compete on.</li> </ul>
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**Table 3: What are the drawbacks of introducing a standardised ORA?**

Stakeholder	Summary of Feedback
TCA	<ul style="list-style-type: none"> <li>May be impossible to standardise the entire ORA. As a result a number of terms would have to be included as a fairly lengthy addendum. As a result, no real benefit in trying to standardise the ORA.</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>While easier to provide legal advice to residents with a standardised ORA, it may mean that standard terms are overlooked and not explained carefully to intending residents by their lawyers before they sign the ORA.</li> <li>Larger operators prefer to have their own documents that are in their language and reflect their position in the NZ market. Standardised ORA will undermine this.</li> <li>As a principle of plain English drafting all terms in a contract should be able to be read together without having to cross-refer throughout the contract. Under the current legislative regime, a standardised ORA is always going to have bespoke terms and so it will be difficult to draft a plain English ORA in these circumstances as form will require cross-referencing between standard terms and then bespoke terms particular to each operator.</li> <li>A standardised ORA may stifle a diversity of offerings and innovations by operators. Standard wording in an ORA will mean that it will be more difficult for operators to offer residents alternate financial terms e.g., Freedom Lifestyle Villages capital gains model is quite different from other operators' offerings. How would you offer these different terms within a standard template?</li> <li>With standardised ORA operators may lose the ability to amend and change contract terms to adapt to issues that have arisen within the context of their own village(s).</li> <li>Standardised ORA will restrict the ability of the market to drive change in commercial terms.</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>Fully standardised ORA would take away innovation in the industry where operators are currently able to offer residents different commercial terms e.g., a fully standardised ORA would prohibit operators from offering different commercial terms in relation to the payment of the deferred management fee.</li> </ul>
NZLS – PLC	<ul style="list-style-type: none"> <li>Important that in having a standard contract advising lawyers don't "gloss over" the contract and their responsibilities to clients to explain the ORA and its implications carefully to clients.</li> <li>A template may mean that lawyers get too familiar with it and don't advise residents carefully enough on key terms</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>Too many variables in relation to commercial terms</li> <li>Too many different types of operators</li> <li>Smaller operators are unlikely to be amenable to a requirement for whole new documents</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>Challenge of drafting a "one size fits all" contract.</li> </ul>
RVA	<ul style="list-style-type: none"> <li>For a large number of operators the introduction of a standardised form could mean their ORAs are less clear and comprehensible than the current form used. It would depend on what type of form is introduced e.g., ADLS Sale and Purchase of a Business contract were used for transaction that does not fit the standard terms, can become fragmented with the large majority of terms deleted and replaced with schedules further terms; In New South Wales, Australia, has introduced a full contract of prescribed terms with inadvertent result of contracts becoming complex and lengthy.</li> <li>Fully prescribed form potential to result in "a disjointed contract" as would have to allow for and be amended for a large number of different and bespoke offering structures and non-standard terms e.g., Care Suites and deferred management fee.</li> <li>Fully prescribed form potential to stifle or create complexities around the creation of innovative offerings and tailored offerings for particular residents. Operators use ORAs to (1) distinguish their villages from their competitors and (2) vary ORA terms to allow for individual resident's circumstances. Flexibility of contract is key to allowing operators to easily offer new and individualised terms and prescribed form contracts can hamper that.</li> <li>Imposition of a standard form contract would result in significant cost to the industry and require significant attendance by the Registrar of Retirement Villages and statutory supervisors. An analysis of the cost to industry should be undertaken as part of the question of feasibility of introduction of a standardised ORA</li> <li>Potential for intending residents to call for the removal of the requirement to obtain independent legal advice before entering an ORA. Do not want to remove this important safeguard.</li> </ul>

**Table 4: What terms could be easily standardised across the industry and why?**

Stakeholder	Summary of Feedback
RVR	<ul style="list-style-type: none"> <li>Grant of occupation right, common areas, date and time for payment, cooling-off period, repairs and maintenance obligations of each party, insurance cover, termination provisions, calculation of repayment amount, dispute resolution clauses.</li> <li>Why? Standardisation of above terms will facilitate easy understanding of most important financial consequences for the resident</li> </ul>
TCA	<ul style="list-style-type: none"> <li>All ORAs to follow same numbering and order of sections with the same headings, font size and type.</li> <li>Sections required by legislation incorporated in plain English</li> <li>Definitions standardised so that all operators use the same terms in their ORAs e.g., term Deferred Management Fee</li> <li>Define and list chattels, fixtures and fittings and have a standardised clause that requires operators to clearly set out responsibility for their replacement and repair.</li> <li>Dispute clause – as set out in COP</li> <li>Key Terms Summary with standardised layout of financial calculations, including regular payments.</li> <li>Standardise layout and headings for resident payment obligations e.g. “Charges payable prior to occupation”, “Charges payable during the term of this Agreement” and “Charges payable following the termination of this Agreement”.</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>Clauses required by legislation where impose an absolute requirement on operator and/or resident.</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>Some definitions and some boilerplate clauses</li> <li>Key Terms Summary developed by RVA. Could include as schedule to the ORA.</li> </ul>
Carolyn Ranson	<ul style="list-style-type: none"> <li>Terms that are currently in every operator’s ORA could be standardised.</li> <li>Also consider including standard terms on issues that apply to all residents e.g. include a standard term that settlement is conditional on resident selling their existing property. Standard clauses of this type would assist residents in that if an operator deviated from this standard term this would be obvious to intending resident and their lawyer.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>Provisions required to be included in ORA as set out in RVA and regulations.</li> <li>Standardise layout and font size.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>Terminology used by all operators</li> <li>Cooling off periods</li> <li>Standard duties of operator</li> <li>Termination rights of both parties</li> <li>Maintenance clauses</li> <li>Explanation of what an ORA is</li> <li>Headings – same format and terminology</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>General obligations</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>Majority of terms could be standardised</li> </ul>



RVA	<ul style="list-style-type: none"> <li>• Consider this question on basis that standardised means a fully prescribed contract.</li> <li>• Potentially could standardise terms which are both prescribed by legislation and are largely discrete. Not to include provisions which are generally interwoven with other terms and provision which are not standardised.</li> <li>• Standardised terms grouped to appear as a discrete set of terms which could be included in a separate section, schedule or appendix to the ORA.</li> <li>• Overall framework of an ORA and the general order of terms. Allow for logical and consistent presentation of terms</li> <li>• Cooling-off provisions but note many operators combine the statutory cooling-off rights with additional, more resident friendly provision.</li> <li>• Certification requirements</li> <li>• Matters required to be included in ORA by Schedule 3 of the Act, Part 4 Subpart 1 of the Regulations and various provisions of the Code of Practice including paragraph 1(a)(i), the staffing of a retirement village, 1(a)(ii) the safety and personal security of residents, 1(a)(iii) fire protection and emergency management and 1(a)(ix) communication to those for whom English is a second language or whose ability to communicate is limited.</li> <li>• Schedule 3 of the Act Paragraph 1(a)(v) and RV (General) Regulations, Reg 10 meetings of residents with the operator</li> <li>• Paragraph 1(b)(i) to (iv) of Schedule 3 of the Act – provisions relating to operator’s consultation requirements</li> <li>• RV (General) Regulations, Reg 8 – operator’s obligation to run village properly</li> <li>• RV (General) Regulations, Reg 9 – operator’s obligation to provide financial statements</li> <li>• RV (General) Regulations, Reg 12 – procedure if there ceases to be statutory supervisor</li> <li>• Paragraph 1(f) of Schedule 3 of the Act – information on the Code of residents’ rights and the Code of Practice</li> </ul>
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**Table 5: What terms should be standardised?**

Stakeholder	Feedback
Peter Orpin	<ul style="list-style-type: none"> <li>• RVA has developed a Key Terms Summary. This could be included as a schedule to the ORA.</li> </ul>
Carolyn Ranson	<ul style="list-style-type: none"> <li>• Should have a standard framework/template for the licence to occupy model under which operators can insert their own financial formulas for deferred management fee or sum received by resident on termination of licence to occupy.</li> <li>• Maintenance obligations of operators including long term maintenance plans.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>• Licence to occupy ownership model is standard model used by industry with very few unit titles and cross leases now. As such could standardise the ORA for this model. Any points of difference could be placed in the special conditions section of the ORA.</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>• General obligations and terms prescribed by the Act</li> </ul>
RVA	<ul style="list-style-type: none"> <li>• Other than terms identified as being able to be easily standardised do not believe any further terms should be standardised.</li> </ul>



**Table 6: What terms should not be standardised across the industry and why?**

Stakeholder	Feedback
RVR	<ul style="list-style-type: none"> <li>Provisions that are specific or unique to a village</li> </ul>
TCA	<ul style="list-style-type: none"> <li>Commercial terms and offering unique to each village</li> <li>Legislative disclosures required in relation to the description of the operator or the village</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>Clauses required by legislation where operators have to state their position e.g., damage and destruction where operators are required to state whether they provide alternative accommodation and facilities.</li> <li>Transfer provisions</li> <li>Financial terms</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>Operator’s own terms that included in a schedule to the ORA.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>Special commercial terms not be included and standardised. These could be referenced in a schedule with special conditions.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>Terms such as prices/costs that operators compete</li> <li>Operator’s commercial terms</li> <li>Deferred Management fees and terms relating to transfer between levels of care</li> <li>Village services and facilities, management terms.</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>Deferred maintenance fee, weekly fees, repayment terms. These are commercial terms specific to the operators.</li> </ul>
RVA	<ul style="list-style-type: none"> <li>Schedule 3(1)(a) of the Act paragraph 1(a)(iv) transfer of residents within the retirement village. Could not be standardised given large variation of practices and terms and this is an area where operators are driving innovation. Flexibility benefits residents and should be maintained.</li> <li>Schedule 3(1)(a) of the Act paragraph 1(a)(vi) accounts.</li> <li>Schedule 3(1)(a) of the Act paragraph 1(a)(vii) maintenance and upgrading except obligations set out at Regulation 8(b) and 8(c).</li> <li>Schedule 3(1)(a) of the Act paragraph 1(a)(viii) - termination of the ORA by a resident or the operator. These terms are heavily interwoven with other key provisions of ORAs relating to termination proceeds, damage and destruction processes and post termination matters which are not easily standardised.</li> <li>Paragraph 1(c) of Schedule 3 – provisions for a complaints facility and disputes procedure. Not easily standardised unless the standard prescribed terms were very general and operators could amend them to reflect their practices.</li> <li>RV (General) Regulations, Reg 7 – General provisions</li> <li>RV (General) Regulations, Reg 11 – operator’s obligations to find new resident for unit vacated. These provisions are often similar across operators though heavily interwoven with other key provisions of ORAs relating to termination and post termination matter so not easily standardised.</li> <li>Operators introductory statement in their ORA</li> <li>Details of parties</li> <li>Conditions</li> <li>Nature and grant of the occupation right – this is generally a contractual right to occupy. However, there is likely to be continued innovation in the ORA model so flexibility of contractual terms is a benefit.</li> <li>Payment and return of deposits</li> <li>Terms around the deferred management fee</li> <li>Terms around weekly and other fees</li> <li>Repair and maintenance terms</li> <li>Obligations on residents</li> <li>Specific terms that relate to operator and their village</li> <li>Other terms such as requirement to execute valid will and provision of medical reports.</li> </ul>
Commerce Commission	<ul style="list-style-type: none"> <li>Financial terms</li> <li>Any term which allow operators in the industry to compete with one another eg pricing, costs for altering residential units for residents with disabilities, refurbishment costs</li> </ul>

# Appendix 4: Information/provision required in Disclosure Statement (DS), Occupation Right Agreement (ORA) & Code of Practice (COP)

INFORMATION OR PROVISION REQUIRED A3:C78	DS	ORA/COP
KEY: Yellow - DS and ORA/COP (duplication); Green- DS only; Blue- ORA/COP only		
Ownership structure of RV	Sch 2 1a / RVGR reg 14(1)-(3)	
Name and address of Retirement Village	RVGR reg 29(d) & reg 29(e)	RVGR reg 7a
Type of occupancy right offered	Sch 2 1a / RVGR reg 14(4)	RVGR reg 7b
Resident interest/rights in their unit and conditions/limits on that right	Sch 2 1b / RVGR reg 15	RVGR reg 7c
Operators rights to deal with residential unit	RVGR reg 15	RVGR reg 7c
Management arrangements for Retirement Village	Sch 2 1c / RVGR reg 16	RVGR reg 7d
Identity and role of Statutory Supervisor and if exemption	Sch 2 1d and e	
Procedure to be followed if there ceases to be a Statutory Supervisor for the Retirement Village		RVGR reg 12
Information on state of Retirement Village	Sch 2 cl 2a / RVGR reg 18	
Services and facilities offered at Retirement Village	Sch 2 cl 2b / RVGR reg 19	RVGR reg 7e
Charges - entry, transfer, periodic charges, maintenance, rates, insurance	Sch 2 cl 2ci / RVGR reg 20	RVGR reg 7f
Frequency of billing	Sch 2 cl 2cii / RVGR reg 20	Sch 3 cl 1avi / Sch 5(7); COP 37 (Frequency of accts)
Roles of operator and residents in setting charges	Sch 2 cl 2ciii /RVGR reg 20	
Provision for maintenance and upgrading/ refurbishment at retirement village	Sch 2 cl 2d / RVGR reg 21 / COP 44(2)	Sch 3 cl 1avii / Sch 5(8); COP 40-45
Preparation, audit and disclosure of financial accounts (detailed provisions for DS re financial accounts for RV)	Sch 2 cl 2e / RVGR reg 22	
Cooling-off period and right to cancel for delay	Sch 2 cl 3a / RVGR reg 23	s 28 of the Act
Right of operator or resident to vary ORA and circumstances	Sch 2 cl 3b / RVGR reg 24	
Termination arrangements - effect on other persons living in unit vacated by resident	Sch 2 cl 3ci / RVGR reg 25(2)a	
Termination arrangements - nature of continuing charges of former resident and exposure to capital gain/loss	Sch 2 cl 3cii / RVGR reg 25(2) (a),(b) and (d)	Sch 3 cl 1aviii / Sch 5 cl 9ci, cl 9cii (no specific reference to details re capital loss/gain) /COP 46-49
Termination arrangements - process for finding new resident	Sch 2 cl 3ciii / RVGR reg 25(2)e	Sch 3 cl 1aviii / Sch 5 cl 9ciii-iv; COP 51-53
Termination arrangements - process for determining sum to be paid by new resident & entitlement of resident/former resident/estate to that sum	Sch 2 cl 3civ /RVGR reg 25(2)f	
Deductions from payments made by or due to residents - entry and exit and periodical payments	Sch 2 cl 3di /RVGR reg 26/COP 54(5) -DS to give details of fixed deductions	Sch 3 cl 1aviii / COP 54 (personal services, outgoings and fixed deductions only)

Deductions from payments made by or due to residents -maintenance, refurb and development	Sch 2 cl 3dii/RVGR reg 26	Sch 3 cl 1aviii / COP 50 (refurbishment costs and process included in ORA)
Deductions from payments made by or due to residents - rates, maintenance and other outgoings	Sch 2 cl 3diii/RVGR reg 26	
Estimate financial return on disposal of unit at intervals of 2, 5 and 10 years after entry into ORA	Sch 2 cl 3ei /RVGR reg 27	
How financial return will be effected by termination of ORA by resident -by breach or voluntary	Sch 2 cl 3eii /RVGR reg 27	
Whether holder of security interest has refused to give consent to registration of village and effect of refusal	Sch 2 cl 4a / RVGR reg 35	
Details of any exemption from requirement to comply with COP	Sch 2 cl 4b /RVGR reg 28	
Effect of marriage on ORA	RVGR reg 32	
Public Advertisement of financial assistance in connection with being resident of RV	RVGR reg 33	
Prospective financial information in DS personal to intending resident	RVGR reg 34	
Resident to receive most recent audited financial statements (or complying doc); copy of village rules; copy of agt between operator/manager of vilage; deed of supervision operator/Statutory Supervisor	RVGR reg 37 - attached to DS	RVGR reg cl 9(1) & (2) - audited financial statements only
Staffing of retirement village		Sch 3 cl 1ai / Sch 5(1); COP 12-15
Safety and personal security of residents		Sch 3 cl 1aia /Sch 5(2); COP 16-18
Fire protection and emergency management		Sch 3 cl 1aiii / Sch 5(3); COP 19-23
Insurance cover	RVGR reg 30 / COP 22(5)	Sch 5 cl 3(c); COP 22-23
Temporary accommodation		COP 22
Access to residential units and retirement village facilities for people with disabilities		Sch 5 cl 3(d); COP 23
Transfer of residents within Retirement Village - to rest home or hospial level care	RVGR reg 31	Sch 3 cl 1aiv /Sch 5(4); COP 24-25
Financial arrangements of transfer	RVGR reg 31	Sch 5(4); COP 25c
Meetings -AGMs and SGMs and informal		Sch 3 cl 1av /RVGR reg 10 / Sch 5(5); COP 26-27
Complaints facility		Sch 3 cl 1c/s 51 /Sch 5(6); COP 31-36
Accounts		Sch 3 cl 1aviii /Sch 5(7); COP 37-39
New Retirement Villages or units - operators obligation re disclosure statements and information to residents	COP 44	Sch 5 cl 8(d) / COP 44
Statements adressing rights of residents with disabilities to alter their residential units/costs involved and requirements on termination		COP 45
Termination of ORA by resident or operator		Sch 3 cl 1aviii /Sch 5(9); COP 46-54
Operators duties re sale of unit following termination (as above); Residents right to introduce a new resident and terms for doing so.		COP 51-52
Operator right to buy residential unit		Sch 5 cl 9iii /COP 53
Communication with residents where English second language		Sch 3 cl 1aix /Sch 5(10); COP 56

Operator to have, maintain and implement written policies and procedures for communicating with residents		COP 55-57
Operators duties:		
to consult with residents before operator's interest sold		Sch 3 cls 1bi and bii
to consult residents before appointment new manager		Sch 3 cl 1biii
to consult resident about proposed changes to services/benefits/charges		Sch 3 cl 1biv
to treat residents with courtesy and respect rights of residents (plus employees and services providers)		Sch 3 cl 1bv
not to exploit residents (plus employees and services providers)		Sch 3 cl 1bvi
to provide complaints facility and disputes procedure		Sch 3 cl 1c /Sch 5(6); COP 31-36
to provide information on COP and CORR/statutory duty to provide CORR to person before enters ORA plus RVA requires receipt of ORA and DS		Sch 3 cl 1bf/s30(1)
to use reasonable skill and care in ensuring that the affairs of village are conducted properly and efficiently		RVGR reg 8a
to keep village in good condition and order		RVGR reg 8b
to make and adhere to long term plan for maintaining and refurbishing the villages and its facilities		RVGR reg 8c
to insure village for its full replacement value, aRVGRee with Statutory Supervisor		RVGR reg 8d
to use reasonable skill and care in exercise and performance of operator's power, functions and duties		RVGR reg 8e
to give resident (on request) copy of more recent audited financial statements prepared under RVA		RVGR reg 9(1) & (2)
to prepare forecasting statement of expenditure and income and give copy to each resident		RVGR reg 9(3)
to call certain meetings of residents in certain circumstances - one meeting for review annual financial statements.		RVGR reg 10
If ORA gives operator the right to find a new resident for vacated unit then operator duties:		
to make all reasonable efforts to find a new resident		RVGR reg 11a
not to give preference to finding residents for new units in village not previously occupied		RVGR reg 11b
If unit to be built or completed at later date, date for completion		s 27(1)(c) of the Act
ORA is voidable if contravention of s18(3), s 25(1), s 27 or s30(1)(a) in any substantial respect - limitation period imposed (1 year or 6 months from knowledge of contravention); DS requires a statement attached to DS that give resident notice about avoiding an ORA; no requirement that this right is included in the ORA. Is an important terms and arguable lost in the detail. Check ORAs in use to see if this section is referred to??	RVGR reg 29(1)(g); s 31 RVA; RVGR Sch 5	
Right of resident to be informed about any matter that has a material impact on occupation right/charges/ services and right to certain other notification of matter if no Statutory Supervisor for village (s34(1))		s 34 - no specific requirement to include as term of ORA /COP 29

# Appendix 5: Stakeholder feedback on duplication of information in disclosure statement and ORA

**Table 1: What are the implications for intending residents and residents of duplication of information between ORA and Disclosure Statement?**

Stakeholder	Feedback
RVR	<ul style="list-style-type: none"> <li>Intending resident is bombarded with a myriad of documentation that becomes very confusing.</li> </ul>
TCA	<ul style="list-style-type: none"> <li>Does not see duplication as a real problem that needs addressing. A disclosure statement is a public document that sets out the offer and allows intending residents to compare the various village offerings. ORA is the subsequent contract based on the offer. These two documents will inevitably result in some overlap.</li> <li>May give rise to inconsistent or conflicting terms where disclosure statement and ORA may have conflicting terms in relation to the same subject matter.</li> </ul>
Jenny Baldwin	<ul style="list-style-type: none"> <li>The Department of Building and Housing called for submissions on disclosure statements in 2009 and the information that was required to be included in disclosure statements was considered in detail. In 2009 there was no call to amend the legislation and resident interest groups did not want any change to the information that was included in disclosure statements.</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>Notes different purposes of each document. ORA a legal document and the disclosure statement primarily a marketing document that provides information to an incoming resident about the retirement village and the financial aspects of entering a village.</li> </ul>
Carolyn Ranson	<ul style="list-style-type: none"> <li>Often refers her clients to the disclosure statement as generally easier to read compared to the ORA. If ORA was written in plain English and more user-friendly language then need for disclosure statement is decreased. Considers that some of the information in the disclosure statement should be included in a schedule to the ORA e.g., state of buildings and status of care facility or future care facility.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>Regulations are “over the top and need to be streamlined”. Lawyers who advised on the Act were not involved in the drafting of the regulation that were promulgated after the Act was passed.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>Duplication does not help and not serving any useful purpose. Ideally client would read disclosure statement before they consult a lawyer but they generally don't.</li> <li>There is some important information for residents in the disclosure statement including time taken to sell units, services on offer, time to receive payments on termination of contract, village development that is planned, whether buildings earthquake strengthened. This information does aid the decision to go into a village.</li> </ul>
NZ Institute of Legal Executives	<ul style="list-style-type: none"> <li>Duplication is not a problem. The ORA and disclosure statements have different purposes. However the information still needs to be in the ORA as this is the contract that client signs.</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>Disclosure statement has some value to resident but if too long and too much information then becomes unhelpful</li> <li>If provided to resident at same time as ORA then confusing for resident and legal costs increased if lawyer reviewing for resident as well</li> </ul>
RVA	<ul style="list-style-type: none"> <li>Duplication arises as a result of the requirements of the Act, regulations and COP and often arises as a result of operators wishing to include a full set of terms in their ORAs (rather than leaving matters to be addressed in the disclosure statement only) as it is the ORA which is the contract between operator and resident.</li> <li>In many areas of duplication as identified in the spreadsheet prepared by Sara Jones, the Regulations require different and greater detail to be provided in a disclosure statement than in an ORA e.g., Regulation 16 and management arrangements for the village. By comparison it is left to the operator's discretion what contractual terms are included in the ORA regarding managing the village.</li> <li>Two key areas of duplication of information relate to fees and charges and the nature of, and restrictions on, the residents' rights of occupancy (including dealing with the occupation right and unit).</li> <li>Key implication is contribution to the amount and length of documentation. Given the legislative requirements, it is not possible to produce a short and concise document and disclosure statements are often a similar length to or longer than the ORA.</li> <li>Increased risk that the information may be inconsistently presented. Any inconsistency adds to complexity and will create confusion as to what correct terms are.</li> <li>Positive implications in that repetition of key information and terms could be useful to residents in understanding their rights. In practice, residents should read the disclosure statement first (explains terms in less formal or legalistic way) and then read ORA and discuss with lawyer.</li> </ul>

**Table 2: If you view duplication as a problem, how is this problem best addressed?**

Stakeholder	Feedback
RVR	<ul style="list-style-type: none"> <li>Duplication can be avoided if the disclosure statement instead of repeating all the matters covered in the ORA, merely quoted the clause in the ORA that covers a disclosure statement as per the regulations.</li> </ul>
TCA	<ul style="list-style-type: none"> <li>Disclosure statements and ORAs could follow the Managed Investment Scheme (MIS) Product Disclosure Statement pattern which has prescribed headings and contents. Allow for more succinct, plain English, logically organised, standardised formal disclosure. MIS system could be adapted to the RV context.</li> </ul>
Peter Orpin	<ul style="list-style-type: none"> <li>Peter would replace the disclosure statement and replace with the Key Terms Summary document and attach as schedule to the ORA. This would address the issue of duplication. Most of larger villages have excellent marketing information and additional disclosure statement not required.</li> </ul>
John Greenwood	<ul style="list-style-type: none"> <li>Suggest re-doing both the ORA and disclosure statement to align and avoid duplication. Pass regulations to introduce both a standard ORA and disclosure statement.</li> </ul>
NZLS - PLC	<ul style="list-style-type: none"> <li>Amend the regulations and decrease the duplication and ensure consistency.</li> </ul>
Consumer NZ	<ul style="list-style-type: none"> <li>Review the disclosure statement and take out information that is contained in the ORA.</li> </ul>
RVA	<ul style="list-style-type: none"> <li>In the vast majority of cases information should remain in both documents due to the nature of the relevant information and (in some cases) the differing content required to be included in each document.</li> <li>Duplicated information should remain in the disclosure statement as information is either (a) material information for residents as relates to their occupancy rights; (b) material information to residents as relates to their financial interest; or formal matters to be included such as name and address of village and type of occupancy right.</li> <li>If duplicated information was removed from disclosure statement it would potentially oversimplify that document and would not provide a full picture of village life and ORA to intending resident. Would need to be read more closely with the ORA.</li> <li>If duplicated information was removed from ORA, the information would not have the force of contract. We have not identified any material areas of duplication that should be removed from the ORA.</li> <li>Could remove full text of section 28 from disclosure statement. Sufficient to have a high-level summary of the cooling-off right in the disclosure statement.</li> <li>Retirement village regulators and RVA could work with individual operators to assist them to improve their disclosure documents. Clear, well presented and plain English disclosure statement will always assist in digesting the lengthy documents.</li> <li>A review of the required content of disclosure statements generally (including the intended purpose of that document) could be considered. Focus on this issue rather than on duplication.</li> <li>See little benefit in having a mandatory standard form disclosure statement. Existing template disclosure statement on Ministry of Housing and Urban Development website. Aware that many operators and prospective residents find this document lengthy and somewhat difficult to follow.</li> </ul>

## Te Ara Ahunga Ora Retirement Commission

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