

Retirement Villages Complaints and Dispute Resolution Proposal Scheme Summary Report

Introduction

The *Retirement Villages Complaints and Dispute Resolution Proposed Scheme Investigation* report, prepared by the New Zealand Dispute Resolution Centre, outlines a comprehensive framework for a new scheme aimed at improving the handling of complaints and disputes in retirement villages (the **Scheme**).

The full report builds on previous studies, including Te Ara Ahunga Ora Retirement Commission's (the **Retirement Commission**) report from 2022 and the MartinJenkins cost-benefit analysis from 2023, and incorporates insights from various stakeholders.

The goal is to create a fair, efficient, and easy-to-use scheme for both residents and operators.

The existing complaints and disputes system does not meet best practice standards, and both the Retirement Commission and the Ministry of Housing and Urban Development (the **Ministry**) want to address these issues as part of broader sector reforms.

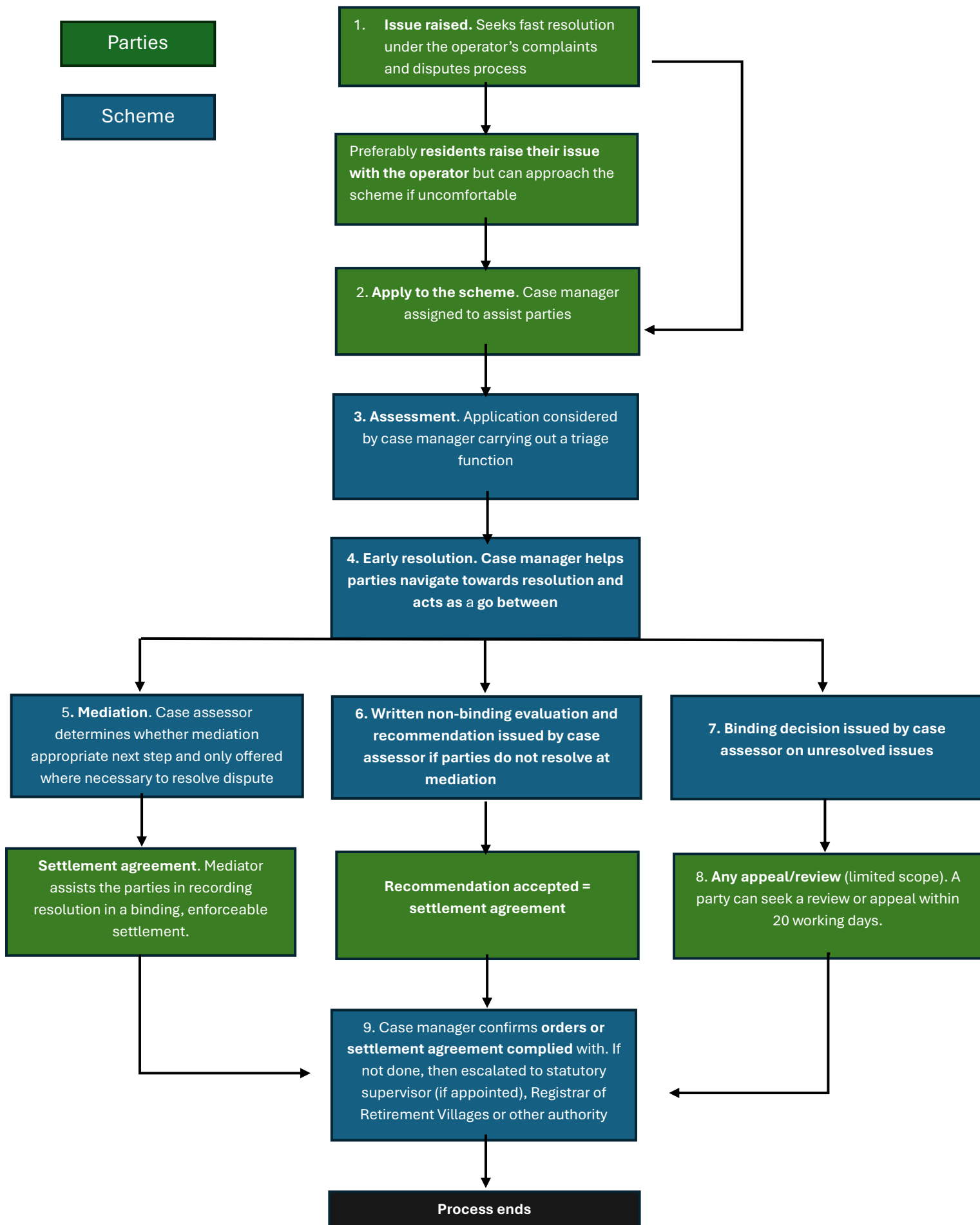
Changes to the current complaints and disputes process are being considered as part of the broader review of the Retirement Villages legislation. The review is being led by the Minister of Housing and Urban Development and further information can be found on the Ministry's website at [Retirement Villages Act, regulations and codes - Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development](#). The recommendations in this report will help to inform the Ministry's advice to the Minister.

[The full technical report](#) outlines in detail all possible functions and design choices for the proposed Scheme, discusses where the Scheme could be located, evaluates the pros and cons of different options, recommends the preferred option based on principled criteria, and identifies high-level key legislative changes needed.

The following provides a summary of that report and includes an overview of the proposed scheme and how it could work for retirement village operators and residents.

Scheme process diagram

The flow chart in diagram 1 below represents the key process steps that we recommend.



Overview of the new scheme

There are multifaceted requirements for providing a fit-for-purpose Scheme. This encompasses understanding the sector's dynamics and challenges and the need for prompt, fair, accessible, and efficient complaint and dispute resolution. The recommendations aim to meet the sector's requirements by offering a tailored, efficient, and independent approach to managing and resolving complaints and disputes.

Resolve issues quickly

It is recommended that operators deal with complaints as part of village management and the service they provide to residents. The aim is to resolve issues as early and amicably as possible. Each operator will have better knowledge of the residents, their issues, and the available options or solutions that might best meet the residents' and operators' needs and interests, and that of the village and all its residents and other stakeholders.

Operators should have the opportunity to manage issues before escalation to a scheme. This is the expectation or 'default' setting. However, residents should be able to apply directly to the Scheme if they feel unable or unwilling to engage with the operator for any reason, or after a period (10 working days or longer by agreement) if the issue is unresolved.

Prioritise preserving relationships

We recognise the unique dynamics and challenges of the retirement sector, where residents often cannot easily move out of their villages. Therefore, the Scheme must prioritise restoring and preserving relationships, be accessible, and provide efficient and effective dispute resolution as early and as close to the source of the issue as possible. We expect most issues to be resolved between the operator and resident (and between residents) first before engaging the Scheme.

Resident support

The Scheme will be resident-centric and support the resident through the process with empathy. The Scheme will not provide an advocacy service to residents. However, a case manager will be assigned to see the issue through to completion. The case manager will discuss the issue with the resident, identify if there is an issue within the Scheme's scope, assist the resident in navigating the process and framing the issue, and act as a go-between to help the parties find a resolution. We expect most issues escalated to the Scheme to be resolved at this early resolution stage.

Mediation/evaluation/decision

When the other avenues have been exhausted, a case assessor or senior-decision maker may issue a non-binding evaluation and recommendation, refer the parties to mediation, or make a binding decision.

The Scheme should be accessible and serve the needs of the users and other stakeholders, providing efficient and effective dispute resolution or determination, striking the appropriate balance between cost, speed, privacy, confidentiality, and transparency.

Other key features

Mandatory

- The Scheme is the mandatory complaint and dispute resolution forum for all issues within its scope.
- The processes are confidential to the parties, although outcomes, case summaries and guidance notes may be issued, with residents' details anonymised.

Complaint handling

- The operator remains the first point of contact for resolving issues and is engaged first before approaching the Scheme. However, the resident can choose to contact the Scheme directly, if they prefer, for whatever reason, not to approach the operator.
- Residents and operators can apply to an independent complaints body (the Scheme) for assistance in resolving their issues. The Scheme offers evaluation, facilitated resolution, mediation, or a binding decision. The Scheme's emphasis is on resolution as early in the process as possible.
- Case managers from the Scheme are assigned to help residents with issue handling, carrying out a triage function and helping the residents through the process. They act as the primary point of contact throughout the process.
- No hearings (except in exceptional circumstances), as residents report these as being intimidating – decisions would be made based on the information and documents gathered by the case manager and submitted by the parties

Roles and responsibilities - overview

- Case manager: Oversees triage, facilitates early resolution, and manages the complaints process end-to-end.
- Case assessor: Makes early-stage decisions and supervises case managers. Handles resolution processes and decisions within specified thresholds.

- Senior decision-maker: Deals with complex or serious cases and reviews decisions made by case assessors.

Accessibility

- Multiple intake methods, including phone, email, online forms, postal submissions, and accessibility and language options.
- The Scheme accommodates residents who may feel uncomfortable engaging directly with operators.
- The complaint or dispute may be withdrawn at any time.

Process flow

- Issue raised with the operator.
- Application to the Scheme if unresolved within 10 working days or a longer agreed period.
- Triage and assessment by the case manager. Request further information or, if out of scope, refer the parties elsewhere and assist them in engaging.
- Early resolution/facilitation/conciliation/non-binding evaluation and recommendations, including the case manager acting as a 'go-between' to assist the parties in resolving the issue.
- Mediation, if appropriate, as directed by the case assessor. The resident may decline mediation. The case assessor approves mediated settlement agreements. We expect mediations to be relatively infrequent.
- A verbal or written non-binding evaluation and recommendation by the case assessor. These give the parties a 'reality check'. They indicate how the dispute is likely to be resolved by a binding decision based on the information available at that time. We expect evaluations to prompt settlement in most cases where they are used.
- Binding decisions made by the case assessor or senior decision-maker. These have the weight of a District Court judgment.
- Internal Scheme review for corrections of manifest error or review of a decision if new information becomes available after the decision.
- Confirmation by the Scheme that the parties have complied with orders/directions or agreed settlements, or escalation to the statutory supervisor and Registrar of Retirement Villages and other appropriate authorities.

Shortened timeframes

- Shortened timeframes to minimise delays. The operator has a 10-working-day period to resolve the issue with the resident, after which either party may refer the issue to the Scheme for resolution within 25 to 35 working days.
- The parties may continue engaging beyond the 10-working-day timeframe until they reach an impasse and one party then applies to the Scheme, or they may agree to extend that deadline.

Jurisdiction and remedies

- Jurisdiction covers all disputes involving ORA, all rights and obligations under ORA and issues under the Code of Residents' Rights and Code of Practice. As this is a mandatory Scheme and a specialist dispute resolution body, there should be no monetary limits.
- Broad range of remedies, including apologies, declarations of rights and obligations, declarations of a breach of an ORA, refunds, damages, and orders for retirement village policy changes.
- Appeal rights are limited to questions of law only, in the interests of finality.
- The right to seek a judicial review by the courts for serious procedural issues or breaches of the rules of natural justice.
- Operators, residents or their representatives or associations may bring test cases, with all parties' costs funded by the applicant.
- Decisions and orders are enforceable as if they were orders of the District Court.

Funding model

- Base Scheme funding is provided through operator levies based on the number of residential units.
- The operator pays directly for specific process steps the case assessor directs: mediation, non-binding evaluation, decision-making, and mediations or meetings.

Impacts and statistics

- Approximately 80-90% of complaints are expected to be resolved at the early stages.
- Mediations likely will remain uncommon and may mainly be used for issues between residents.
- Binding written decisions are expected to be required in only 2%-3% of cases.
- Non-binding evaluations and recommendations are expected to resolve many cases effectively by prompting settlement.

Disputes between residents included

- A resident with an issue with another resident must address that issue through the operator's complaints process first.
- Issues escalated to the Scheme must relate to the village context or breaches of rights under occupation agreements or the Code of Residents' Rights.

Legal representation and advocacy

- Legal representation is limited; non-legally trained representatives or associations may assist with applications.

- An advocacy service for residents is not recommended. If, after experience of the new Scheme, it becomes clear that it is required, it should be established independently of the Scheme and funded by the operators. The Scheme will support residents through the process.
- A reduced role for the statutory supervisors (where appointed). The Scheme would perform many dispute resolution functions they have performed.

Operator obligations

- Operators must maintain internal complaints processes to resolve issues promptly.
- Operators must engage constructively with residents before escalating issues to the Scheme.
- Transparent reporting, including in the operator's annual report and disclosure statements.

Legislative and structural recommendations

- Amendments to the Act, Code of Residents' Rights, Regulations, and Code of Practice are necessary to implement the recommended Scheme.
- We recommend that mutual obligations of good faith be added to the Code of Residents' Rights and that these bind residents and operators.
- Existing dispute resolution providers, both public sector and private sector, may bid for the Scheme. A regulated Scheme could be established if no satisfactory bids are received.
- Information on trends across the sector and operators' behaviour patterns is collected and provided to the Retirement Commission and relevant authorities.

Comparison between the current scheme and the recommended scheme

ASPECT	CURRENT SCHEME	RECOMMENDED SCHEME
Complaint Handling	Operator is the first point of contact for resolving issues. Escalation to statutory supervisor, mediation, or disputes panel. Resident needs to apply for the complaint to be escalated to each stage.	Operator is the first point of contact for resolving issues. Issues can be escalated to an independent complaints body for evaluation, facilitated resolution, mediation, or a binding decision. Case manager assists residents.

ASPECT	CURRENT SCHEME	RECOMMENDED SCHEME
		Case assessor controls the process.
Statutory Supervisor	Assists in resolution of a broad range of disputes.	Minimised role, with case assessor and senior decision-maker taking on more responsibilities.
Mediation and Disputes Panel	Mediation used in some cases. Disputes Panel (three people) hearing the issue, used infrequently	Facilitated resolution at an early stage encouraged. Case assessor provides early evaluation and recommendations. Case assessor determines whether mediation, evaluation and recommendation or a binding decision is most likely to resolve the issue. Complex cases may be escalated to senior decision-maker.
Timeframes	Structured timeframes, but they are longer, with potential delays.	Structured timeframes: 10-working-day period for operator to resolve issue, total resolution timeframe of 25 to 35 working days. Parties may extend by agreement or extensions may be agreed or granted.
Accessibility	Perceived as not user-friendly or accessible, residents often feel intimidated.	Designed to be user-friendly and accessible, with multiple means of access. Navigator and support functions performed by case manager.

ASPECT	CURRENT SCHEME	RECOMMENDED SCHEME
Legal Representation	Operators often have legal representation, leading to power imbalance.	Legal representation minimised, parties encouraged to resolve issues directly or via the Scheme based on facilitated discussion, or on the documentation and information provided. Hearings are only held in exceptional circumstances.
Funding	Funded directly by operators, creating a perception of bias because the operator selects and pays the statutory supervisor, mediator and dispute panel.	Funded by operator levies for Scheme costs and direct payment by the operator for specific process steps. The Scheme chooses, engages and pays the dispute resolvers.
Privacy	Dispute panel hearings held in public	Private processes, confidential outcomes, although outcomes, case summaries and guidance notes may be issued, with residents' details anonymised
Transparency and accountability	Anonymised summaries of complaints and resolution are not publicly available except decisions from Dispute Panel hearings – which are sometimes redacted. Complaints and disputes are not analysed in detail except for high-level trends about formal complaints that are published six-monthly on the Retirement Commission website.	Publish anonymised summaries of complaints and their resolution and redacted decisions. Collect and analyse data to improve the scheme, provide feedback to operators, identify systemic issues, and improve the retirement village regulatory system.

Recommendations

- The Act be amended to allow the Minister to appoint one or two scheme providers (**approved scheme**) or to establish a government or public sector-based scheme (**regulated scheme**). The operator levies fund the Scheme, and operators pay for specific process steps.
- To access scale benefits, one provider is appointed, with the Minister retaining flexibility to add a second provider later. We do not recommend more than two providers.
- Existing dispute resolution providers in the public and private sectors may bid for the Scheme. A regulated Scheme could be established if no satisfactory bids are received.
- The Act, Code of Residents' Rights, Regulations, and Code of Practice should be amended per the Scheme framework recommended in this document.
- Policy decisions are required on two related matters: the Scheme's jurisdiction and the appeal rights. More modelling is required on the costs of the Scheme.
- There is no independent advocacy service and no separate independent investigation service (although the decision-maker can appoint an investigator to assist them in exceptional cases). The proposed Scheme should be given time to 'bed-in' before revisiting if these are needed. Operator levies should fund any advocacy services.
- The Scheme should be subject to a formal external review every three to five years.

Conclusion

It's recommended that a dispute resolution scheme emphasises quick resolution and removes access to barriers for retirement village residents. The Scheme is intended to be resident-centric without being resident-biased and assist and encourage the parties to resolve their dispute as early and close to the source of the issue as possible. The emphasis is on seeking finality as early as possible in the process. The focus is on preserving and repairing relationships as far as possible for the long-term benefits of the retirement village residents and operators.

It's recommended that the Scheme provider be given inquisitorial powers and the ability to control the process and timelines in the interests of the parties and efficient resolution of the issues.