

Retirement Villages Stakeholders Forum

Learning from the past – Thinking about now and the future

Auckland – 16th November 2016



Commission for
Financial Capability

Agenda

- Welcome
- Code Variations – Effective 1 April 2017
- Monitoring Project 2016/17
- Code of Practice – Drafting Review
- Statutory Supervisors – FMA
- Aged Care - Implications for Retirement Villages
- Topics for Open Forum (*time permitting*)
- Review & Drinks

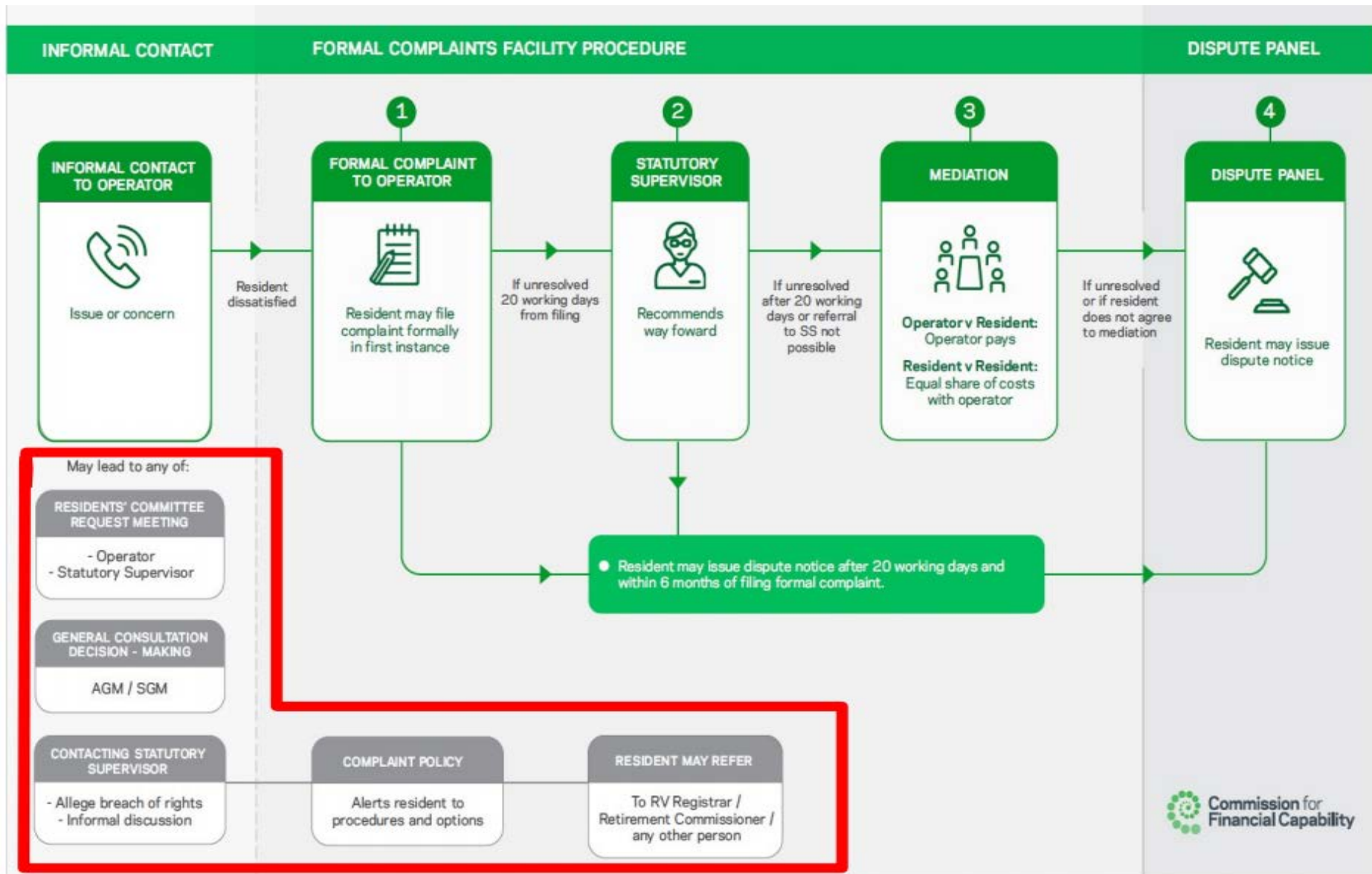


Code of Practice – Complaints Facility

Summary of Variations effective 1 April 2017

- Improved written complaint policy content:
 - Information on a range of options including Dispute Panel.
- Informally raising an issue or concern / formal complaint in writing.
- Progressive formal complaint procedure:
 - Diagram tool.
 - Unresolved formal complaints to statutory supervisor if possible then mediation.
 - Responsibility for mediator's costs.
- Six monthly reporting to Commission.

Code of Practice – Variations effective 1 April 2017





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Retirement Villages

The Retirement Commissioner works to ensure the legislative framework for retirement villages is effective in protecting residents within a well functioning market, and that retirement village operators comply with the Retirement Villages Act 2003, regulations and the Code of Practice.



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Complaint facility reporting for operators

From 1 April 2017, pursuant to Clause 32 of the Code of Practice as varied, all operators must report to the Retirement Commissioner six-monthly on complaint facility data for each retirement village using an agreed template below, and any other matter the Commissioner may determine.

Current reporting period

The Retirement Commissioner notifies all registered operators that the current six monthly report is due to be filed by 1 November 2017 for the six month period 1 April 2017 to 1 October 2017.

Complaint reporting

* Required

Your email address *

Your email

Survey period *

Choose

Name of retirement village *

Choose

Type of retirement village *

☐ Independent

☐ Not for profit

☐ Corporate

Number of complaints *

Your number

Any additional comments

Your comment

NEXT

Complaint details

Your reference

Your answer

Complainant

Your answer

Classification/s *

- | | |
|---|---|
| <input type="checkbox"/> Maintenance/Repairs of buildings | <input type="checkbox"/> Transfer/termination |
| <input type="checkbox"/> Maintenance/Repairs of grounds | <input type="checkbox"/> Resale |
| <input type="checkbox"/> Refurbishment/Fair wear tear/Damage | <input type="checkbox"/> Service levels |
| <input type="checkbox"/> Information request/Inadequate communication | <input type="checkbox"/> Service quality |
| <input type="checkbox"/> Consultation/policy change | <input type="checkbox"/> Management/ Staff personnel |
| <input type="checkbox"/> ORA and disclosure interpretation | <input type="checkbox"/> Health and safety |
| <input type="checkbox"/> ORA and disclosure breach | <input type="checkbox"/> Privacy |
| <input type="checkbox"/> Code of residents rights breach | <input type="checkbox"/> Resident behaviour |
| <input type="checkbox"/> Fees/charges | <input type="checkbox"/> Other - Resident vs resident |
| <input type="checkbox"/> Financial statements | <input type="checkbox"/> Other: _____ |

Outcome of complaint *

- ☐ Resolved
- ☐ Partly resolved
- ☐ Unresolved

Resolved within 20 working days? *

- ☐ Yes
- ☐ No

Were other parties involved?

- ☐ Statutory supervisor
- ☐ Mediator or independent third party

Complaint description *

Your answer

Code of Practice – Variations effective 1 April 2017

- Implementing changes:
 - What will help operators and residents?
 - Operator complaint policy updates - RVA
 - Training requirements - RVA
 - Notifications to registered villages
 - Website upgrade
 - Standardised reporting template
- Using the information.



Monitoring Report: Effectiveness of legal advice

What does the Commission want to achieve?

- Act states intending residents are required to receive **independent legal advice**.
- Monitoring project 2016/2017:
 - Whether requirements for independent legal advice achieves aims of Act.
 - To determine level of effectiveness & the experience of legal advice.

Protecting intending residents'
interests in the village



Example findings 2015 research

- A lot of information – but inaccessible documentation is problematic.
- Many are overwhelmed:
 - Retirement village living compared to other options.
 - Selecting a particular retirement village.
 - Understanding the contractual and financial implications of purchasing a licence in a specific retirement village.

Examples of Commission actions:

- Biennial resident forum – region by region
- Web resources more accessible & useful (in process)
 - RV booklet & checklists more user friendly

Effectiveness means:

- Understand the requirement to obtain legal advice.
- Understand the contractual documents and information.
 - For example: Estimate of the financial return you might expect on the sale or disposal of unit in 2, 5 or 10 years
- No legal or financial gaps in the advice given.
- Understand the implications of the advice given.
- That the experience is satisfying and meets needs.

Did they get the right information & did it make sense?
Did they understand the decision they were making?
Did they have regrets or not?



Effectiveness means:

- Recent experience of retirement village law and industry issues
- Expertise in ORA and key documents
- Understand the financial costs and implications of purchasing an ORA for a unit
- Ensure that intending residents have obtained and understood the four key documents
- Have rapport & empathy with older people
- Ability to communicate and explain complex concepts



- Dr Kay Saville-Smith / Dr Bev James
- www.cresa.co.nz
- Two decades social research and evaluation experience
- Extensive networks and expertise in retirement village sector
- Previous work for Commission includes disputes process (2015), advice, information and education for intending residents (2015), residents perspectives (2011)



Comprehensive research approach

- Triangulated method
 - Cost effective design from 4 separate components
- Review of existing data
 - Most basic advice is – do people understand the type of tenure?
 - Are some people confused and what is the prevalence of this?
 - 5 surveys interrogated n = (1,400)

Seminar attendee survey –online & telephone, sample to be calculated

Lawyers survey – online, self complete. Targeting 100 lawyers

Random, anonymous
confidential, voluntary
Available July 2017

Recent residents -- focus groups and interviews n = (145)

Lawyer interviews n = (25)

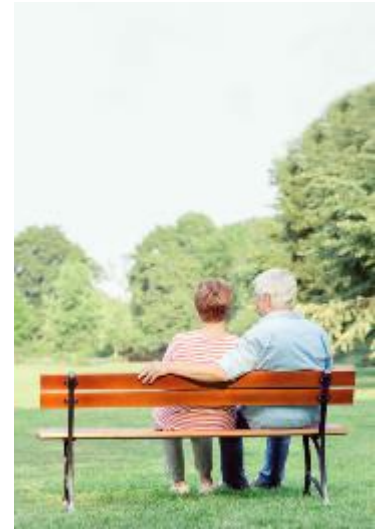
Measurement



Depth &
perspective

Our hypothesis

- People are potentially receiving inconsistent advice
- Advice received potentially may be incorrect, unclear or inadequate in scope
- There may be a fragile understanding of the type of tenure people are in
- Legal advisers may be less effective with older age groups
- Gaps in independent advice could include financial advice



What does the Commission want to achieve?

Possible outcomes:

- Resources for intending residents.
 - Training for lawyers - age-appropriate advice on retirement villages.
 - Checklist guidance for lawyers – NZLS.
 - Consideration of the treatment of financial advice by lawyers.
 - Alternative options and mechanisms for providing financial advice.
-
- Recent industry response:
 - Summary of key terms - disclosure tool.

[RETIREMENT VILLAGES ASSOCIATION]

SUMMARY OF KEY TERMS

Village: [•]

	Key term	Details for resident/unit
Fees payable by resident		
(1)	Maximum deferred management fee (or equivalent fees) payable by resident for unit	Maximum total as a percentage of capital sum: [•]%. Method of calculation: Per annum [•]%. On entry [•]%.
(2)	Weekly fees payable by resident • How much? • Can these be increased by the operator? • If yes, how often?	\$x per week/fortnight/month [Yes / No] [Annually / Any time / Other -specify]
(3)	Are there any other fees payable by the resident?	[For example, marketing fees.]
Capital gains/losses		
(4)	Does the resident share in any capital gain on the sale of the unit? • If yes, what share?	[Yes / No] [Specify]
(5)	Is the resident exposed to any capital loss on the sale of the unit? • If yes, what is the exposure?	[Yes / No] [Specify]

	Key term	Details for resident/unit
Leaving the unit		
(6)	When does the resident stop paying weekly fees once they have left their unit?	[On leaving the unit / Other - specify]
(7)	When does the resident or their estate receive the capital refund?	[When the ORA is re-sold/at the end of the cooling-off period/some other formula]
Transferring within the village		
(8)	Does the resident have priority over non-residents to transfer to another unit at the village?	[Yes / No]
(9)	For the resident's new unit, is there a credit for any DMF (or equivalent fees) paid by the resident for their earlier unit(s) at the village? • If yes, how does the credit work?	[Yes / No] [Specify]
Care options at the village		
(10)	Is rest home, hospital, dementia or other specialist care available at the village?	[Yes / No] [Rest home / Hospital / Dementia care / Other - specify]
(11)	Does the resident have priority over non-residents to transfer to the care options outlined above?	[Yes / No]

Is this “Plain English”?

The trustee company will consider the continuation of a total incapacity pension by testing whether it is more likely than not, on the balance of probabilities, that the member could only do a job for which the member would only be paid less than a small fraction of the member's pre-absence salary. If so, the member would be within the total incapacity definition.'

(An extract from a superannuation company correspondence)

Code of Practice – Plain English Review

Our Statement of Performance Expectations 2016/17 includes:

“Terms of reference for a plain English review and simplification of the Retirement Villages Code of Practice are developed and agreed.

Any proposed changes to the Retirement Villages Code of Practice are recommended to the Minister for Building and Housing

by 31 December 2017.”

Code of Practice – Plain English Review

- Why we are doing this?
- Example of consultation feedback:

“...adding provision for alternative dispute resolution processes to the Code will be of limited benefit to residents unless it is accompanied by some significant improvements to current general poor quality of the language of the Code.”

Submission: Meadowbank Villages Residents Association

- *Exercise: Clause 54(13)*
- How should a Plain English review of the Code be carried out?

Code of Practice – Plain English Review: Exercise

Handout: Clause 54 (13) - Payment due to the resident on termination or end of occupation:

(13) If a resident's occupation right agreement is terminated because the residential unit is damaged or destroyed through no fault of the resident and the operator has decided not to repair or replace the unit, the operator must pay all money owing to the former resident no later than ten working days after the date the operator or the statutory supervisor receives payment in full under any insurance policy covering the unit. This clause does not remove the operator's obligation to pay all money owing to the former resident if the operator does not receive payment in full under the insurance policy for the retirement village property.

Table discussion

- Is it plain 'when' payment is made to a resident in the case where an insurer does not pay in full?
- Does "payment in full" mean one thing in the first sentence, and another thing in the second?
 - In the first sentence does it mean the full policy amount?
 - In the second sentence does it mean payment equal to or more than the amount due to the resident?

Code of Practice – Plain English Review: Example (if time)

- Part 3 of the Code is described, both in the description of the ‘Layout of the Code’ in Clause 5, and in its own heading, as stating “*minimum requirements to be given effect in any occupation right agreement.*”
- Part 3, Clause 44 relates to Construction standards for new retirement villages of units.
- Clause 44(1) “ Building standards.....must meet the requirements of the Building Act and the Building Code.”
- **Table discussion:**
 - Are clauses 44(1) and (2) in the right place?

Supervisors – Overview and Context

Aliesia Gartrell

Retirement Village Stakeholders Forum | November 2016 |

Outline

- Pre-2011 Regime
- FMA licensing
- Monitoring

Brief History – why we are where we are today

- \$9,290 billion
- 67 failed finance companies*

* Source Interest.co.nz Deep Freeze List

Legislative concerns

- Concerns about:
 - Adequacy of deeds
 - Capability of supervisors
 - Independence
 - Accountability
- June 2007 – Cabinet decision to licence supervisors, confirmed August 2009
- Act came into force on 1 October 2011.

Pre-2011 regime

Previous Reporting Requirements

- **Corporations (Investigation and Management) Act 1989 – pre Oct 2011**
- **Disclosure of information to Registrar by trustees or statutory supervisors**
- Every person who holds, or at any time has held, office under the [Securities Act 1978](#) or the [Retirement Villages Act 2003](#) as a trustee or statutory supervisor for the holders of any securities issued by a corporation shall disclose to the Registrar information relating to the affairs of that corporation obtained in the course of holding that office if, in the opinion of that person,—
 - (a) the corporation is insolvent or is likely to become insolvent or is in serious financial difficulties; or
 - (b) the corporation has breached, or is likely to breach, in a significant respect,—
 - (i) the terms of the trust deed or deed of participation; or
 - (ii) the terms of the offer of the securities; or
 - (c) the disclosure of the information is likely to assist, or be relevant to, the exercise of powers under this Act.

Purpose of the Financial Markets Supervisors Act

Section 3

The purpose of this Act is to protect the interests of product holders, and of residents of retirement villages, and to enhance investor confidence in investor markets and retirement villages, by

- a) requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions of supervisors; and
- b) requiring supervisors to perform their functions effectively; and
- c) enabling supervisors to be held accountable for any failure to perform their functions effectively.

Effective Performance

Section 16(1) Financial Markets Supervisors Act

The FMA may issue or vary a licence only if the FMA is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of *effectively performing* (or will, after the variation, be capable of effectively performing)—

- a) the functions of a supervisor in respect of securities covered by the licence:
- b) the functions of a statutory supervisor in respect of retirement villages covered by the licence.

Licence Classes

- Original - Supervisor of only 5 licence classes:
 - Debt Securities
 - Participatory Securities
 - Unit Trusts
 - KiwiSaver schemes
 - Retirement Villages

Licence Classes

- Licence Conditions
 - Standard conditions
 - Non-standard conditions
 - Condition themes
- Change under FMCA
 - Non-restricted Superannuation schemes
 - New oversight role over licensed managers
 - New licensing requirements for independent trustees

FMA Licensing

- The applicants view of the process
- FMA view of the process
- Term

Current Participants

- 18 applicants applied for a licence.
 - 11 licenses were granted.
 - 5 applicants withdrew.
 - 2 applicants were declined.
 - 1 run down licence
- Current Status
 - 6 licensees
 - 5 hold statutory supervisor licenses and can supervises retirement villages
 - New entrants?

Monitoring

Self reporting

- Supervisors must report at least 6 monthly to FMA on compliance with licensing requirements and conditions. (section 25 STSS)
- Breaches of licensee licence conditions and material changes must be reported to FMA (section 26 STSS)

Supervised interests

- Supervisors must report supervised issuer breach, suspected breach or likely breach of issuer obligation (section 46/section 203)
- Materiality threshold for section 46/section 203.
- Day to day monitoring

Monitoring under FMCA

Section 203 – old section 46 reporting

Duty of supervisor to report contravention or possible contravention of issuer obligations to FMA

- 1) If a supervisor of a debt security or registered scheme has reasonable grounds to believe that the issuer has contravened, may have contravened, or is likely to contravene an issuer obligation in a material respect, the supervisor must, as soon as practicable,—
 - a) report the contravention or possible contravention to the FMA; and
 - b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of the contravention or possible contravention and the date by which the steps are to be taken.
- 2) [Section 214](#) (protected disclosure) applies to a report made in good faith under this section.

Monitoring under FMCA

Section 204

1. This section applies if a supervisor of a debt security or registered scheme* becomes aware, in the course of or in connection with the performance of its functions as supervisors, of information on the basis of which it could reasonably form the opinion that-
 - a) the issuer is, or is likely to become, insolvent; or (b) in the case of a registered scheme, the scheme is, or is likely to become, insolvent.
2. The supervisors must, as soon as practicable,-
 - a) disclose to the FMA all information relevant to that matter that is in the possession or under the control of the supervisor and that was obtained in the course of, or in connection with, the performance of its functions as supervisor; and
 - b) advise the FMA of the steps (if any) that the supervisor intends to take in respect of that matter and the date by which the steps are to be taken.
3. FMA retains the use of its directions powers – failure to comply with directions results in a fine of \$300,000. (s205 and 206 FMCA)

What this means for retirement villages?

- Section 25 and section 26 requirements exist
- Section 203 requirements do not – ie no statutory obligation exists.
- Practically however.....

Day to Day monitoring



Day to Day monitoring

- We query the decisions supervisors are making regarding their current supervised interests.
- We conduct on-site reviews.
- We require changes to processes in their monitoring of supervised interests.
- We are requiring them to adopt the role of “front line supervisor” and for this standard of supervision to be standard across the industry to prevent disgruntled issuers fleeing to a more “sympathetic” supervisor.
- We monitor procedures for adherence to our guidance.
- We conduct thematic reviews of sectors ie KiwiSaver.
- Resulting oversight and risk assessment.

Day to Day monitoring – retirement villages

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- We conduct thematic reviews of sectors ie Insurance.
- Resulting oversight and risk assessment.

Issues seen specific to retirement villages

- Liquidation
- Poor management

FMA Powers



Panel Discussion: Ross Judge – Ministry of Health, Bill McDonald – Arvida and Earl Gasparich – Oceania

The future of Retirement Villages and Aged Care



Panel Discussion: Retirement Villages and Aged Care

“..even if ‘aging in place’ continues to be successful in constraining demand growth – the (*aged care*) industry will face a shortage by 2022 at the latest.

...the industry needs to add a net extra 250 to 550 aged care beds p.a. on top of the 640 we forecast will be built under the current funding model, including 500 beds pa from NZX-listed integrated retirement village operators/developers (RYM,SUM,MET) and a net 140 beds from others. Instead we think higher ROIC will be achieved by introducing ORAs (refundable bonds) on care beds.

While individual DHBs appear cautious on the introduction of ORAs, the ORA model is already the norm in NZ for retirement village units, a similar bonding model (RADs) is already the norm in Australia (albeit created by legislation), and already 6% of NZ aged care patients pay an ORA.”

A fundamental change in aged care – Deutsche Bank Market Research – 2 July 2015

Stephen Ridgewell & Joshue Dale

Panel Discussion: Retirement Villages and Aged Care

- How do you think the demand for aged residential care is going to be met?
 - Where is the Health of Older People Strategy at? What impact are you expecting it to have on aged care and retirement villages?
 - The Age Related Residential Care agreement anticipates ORAs and the idea an aged care bed may be 'sold'. Are DHBs comfortable with ORAs on aged care beds? In what circumstances would they be uncomfortable?
 - To what extent can home-based care (*in a private residence or in a village*) replace rest home level care?

Panel Discussion: Retirement Villages and Aged Care

- What needs to happen for ORAs to gain acceptance as a model for the industry?
 - How long might it take for ORAs to become a common model for aged care beds?
- How future-proof is the Retirement Villages Act 2003 for protecting residents and intending residents who need aged care?
 - Might other regime(s) need review, if any? When?

Panel Discussion: Retirement Villages and Aged Care

- What are some other business issues for operators involved in care?
 - For example, how do operators create a product that appeals to a more diverse ethnic mix?
 - How do operators ensure wages for care workers are competitive while also ensuring good value for money for residents?
- Questions from the floor

Open Forum:

Topics submitted by attendees *(time permitting)*

- Loss on resale
 - What is the industry view on capital loss clauses in ORAs?
- Refurbishment in pre-2006 ORAs
 - What is the extent of older ORAs not varied since 2013 Code changes, per clause 50(3)(b) of the Code?
- Industry training
 - What is appropriate for ensuring professional village management?

Thank You

- Review
- Evaluations
- Drinks

