

Retirement Villages Stakeholders' Forum

Auckland - Tuesday 21st November 2017



Complaint reporting – interim results

Villages filed



Complaints under investigation



Complaints resolved



No complaint for period



Top 6 Classifications



Service levels



Health & Safety



Fees / Charges



Maintenance / Repair of buildings



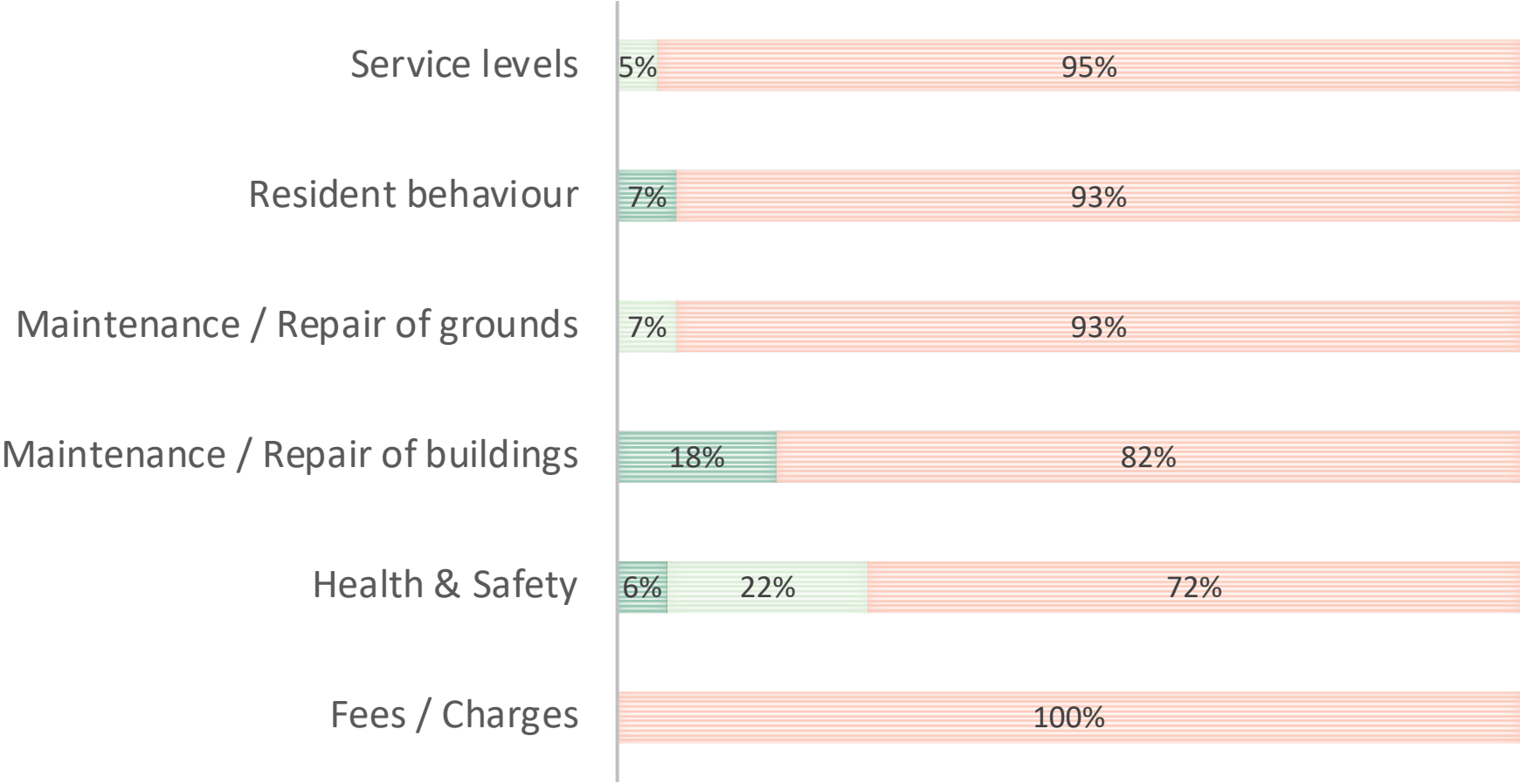
Maintenance / Repair of grounds



Resident behaviour

Status by classification

Partially resolved Under investigation Resolved



Monitoring 2016/17: Effectiveness of legal advice

- Most intending residents are satisfied with the legal advice they have received.
- Intending residents do not want to use a lawyer specialising in retirement villages, most wish to use their usual legal advisor or firm.
- There is no demand among intending residents for financial investment advice, although tools to assist them to think about budgeting under different scenarios would be welcomed.
- Lawyers recognise that the retirement village sector is dynamic and would welcome: Additional information around directions in the sector. More opportunities to network and receive training. Access to websites and resources to which they can refer clients

Effectiveness of Statutory Supervision

A research project as part of monitoring the effects of the Retirement Villages Act (2003).

Simon Peel. November, 2017.

The role of the CFFC

Financial capability

We help all New Zealanders prepare financially for their retirement through programmes and initiatives designed to improve financial capability and drive sustainable and enduring behaviour change.

Retirement income

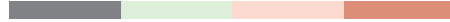
Three yearly review and raising awareness of retirement income policy issues and providing robust policy advice

Retirement villages

Monitoring the provisions of the Retirement Villages Act (2003) and administering its dispute provisions, and providing information and education to the sector.



Effectiveness of Statutory Supervision



- 🚩 Determine the **level of effectiveness of statutory supervision** and whether the regime is working well to fulfil the purposes of the Act as stated in section three.
- 🚩 Shifts and/or changes from the research conducted in 2009

**Under section 36 of the Retirement Villages Act 2003 (“the “Act”) the Retirement Commissioner has a function to monitor the effects of the Act and regulations and code of practice made under the Act.*

Terms of Reference and key questions

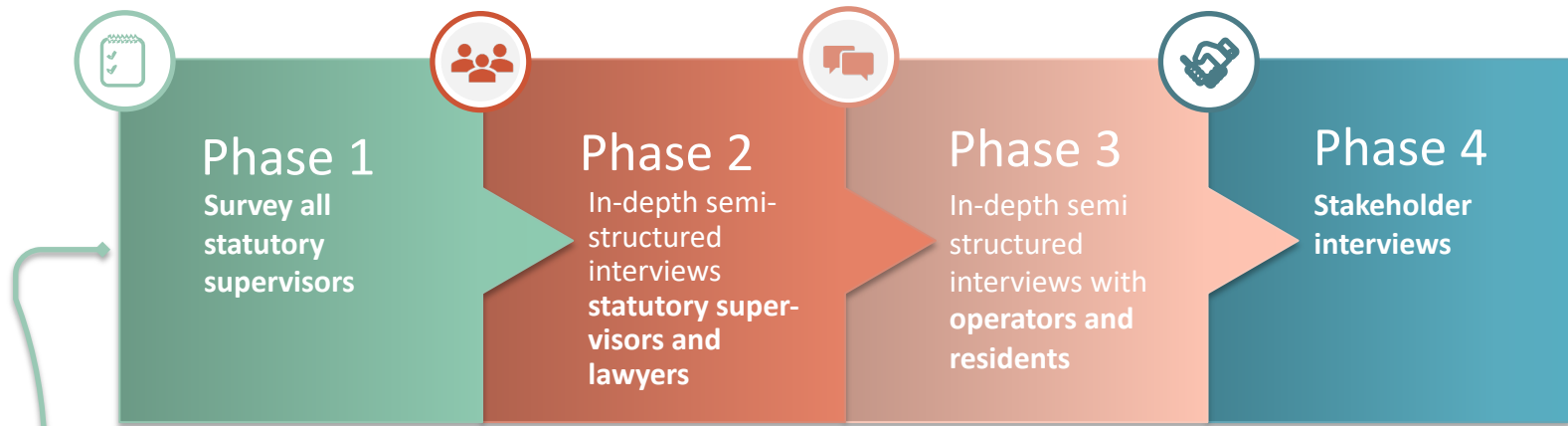
- What if any risks to the industry exist from the number of firms offering supervisory services to operators, and if there are any barriers to entry for intending supervisory service-providers.
- Whether there are actual or perceived conflict of interest issues for supervisors in meeting their duties to residents, and if so, how they are managed.
- Whether the appointment of statutory supervisors by an operator at the time of registration of a village is appropriate. Whether there are alternatives for appointment of supervisors and, if so, what the consequences of those might be.
- The extent to which statutory supervisors play any larger role in the industry, for example 'gatekeeping' feasible village operators by either accepting or rejecting appointment as supervisor at the time an operator looks to register a proposed village.

Terms of reference and key questions (continued)

- What number of villages is supervised by an individual supervisor in a firm and any challenges for supervisors meeting their obligations given different caseloads or different types of village.
- What ongoing professional development exists for supervisors, may be needed, and how that is offered.
- What degree of input supervisors have in development or review of long term maintenance plans for villages, and input on how they are funded.
- What are 'supervision' compliance costs in different types of village, and the extent they are passed on to residents through weekly fees in different villages.
- Whether all villages should be required to have a supervisor.
- Whether parties interviewed believe any other aspects of the Act, Regulations or Code parties could be improved to enable more effective supervision and fulfilment of the purposes of the Act.

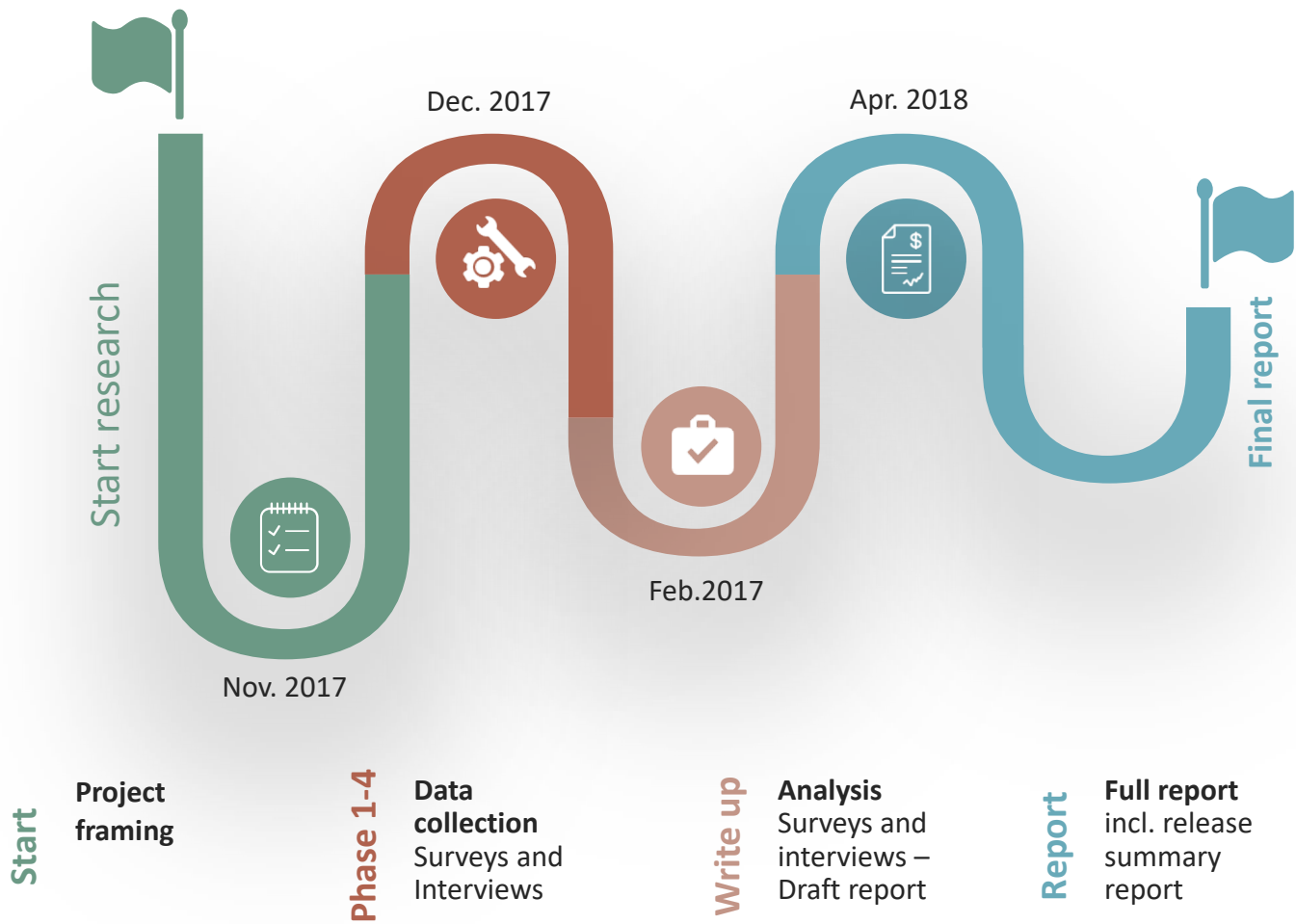
Effectiveness of Statutory Supervision

METHODOLOGY



PROJECT BEING CONDUCTED BY:
Mobius Research and Strategy Ltd
Contact: Michelle Irving

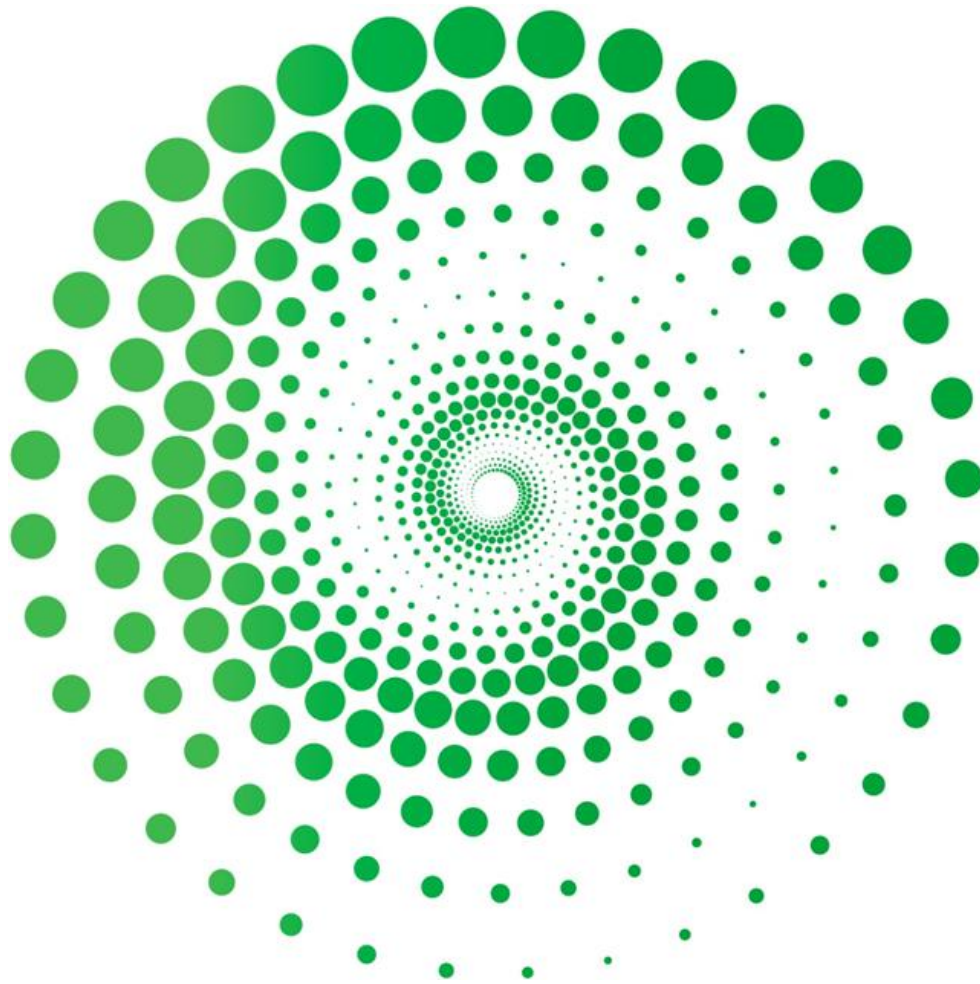
Research timeline



Past projects

- 2009 – Statutory Supervisor’s Project
- 2010 - Operator compliance project
- 2011 - Residents’ perspectives
- 2015 – Disputes Resolution
- 2016/17 - Effectiveness of Legal Advice

Reports can be found on cffc.org.nz



Thank you.....



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REGISTRAR OF RETIREMENT VILLAGES APPROACH TO COMPLIANCE



This presentation will cover the Registrar's approach to compliance and enforcement:

- General Approach to Compliance and Enforcement;
- Compliance activities for unregistered retirement villages;
- Suspension of registration;
- Compliance issues arising from building defect issues;
- Section 11 Notices under CIMA; and

We will also discuss a case study and consider what happens if a retirement village fails.



Compliance for unregistered villages:

- Identified by:
 - Complaints or referrals from the RVA, the Retirement Commissioner, retirement village residents, and members of the public
 - Contact from operators themselves and their legal advisors
 - Proactive compliance programme – note review of villages in the Auckland area.

When a village with potential registration obligation is identified:

- Desktop investigation of advertising, publicly available material that might evidence an obligation to register
- Written correspondence/telephone conversations with operator – operator asked to provide relevant documentation
- Questionnaire
- Site visits to village
- Use of the Registrar's power of inspection



- The definition of “retirement village” is not clear cut – particularly in relation to unit title “lifestyle” villages.
- The following are specifically excluded from the definition in s6(4) RVA:

(a) owner-occupied residential units registered under the Unit Titles Act 2010 or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—

(i) similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners

(emphasis added).



- Increase in mainstream unit title developments offering a range of services and facilities - it is difficult in practice to assess whether some unit title villages fall under the exception in section 6(4)(a)(i).
- Personal care services will usually be an indicator of a retirement village, but the provision of recreational facilities will often not provide clarity.
- For example, TV lounges and common rooms which might once have been unique to retirement villages are often found in mainstream apartment developments.

Power to suspend registration

- Section 18 of the RVA provides the Registrar with a discretion to suspend the registration of a village in certain circumstances.
- The discretion is exercised taking into account the overriding purpose of the RVA to protect the interests of residents.
- The legal consequence of suspension is that the operator has to go “off market”:
 - Must withdraw advertisements or offer of occupancy
 - Must not enter into new ORAs.

Grounds for suspension – s18(1) RVA:

- A registered document is likely to mislead any resident, or intending resident, or the public;
- The operator is failing to comply with the RVA or any regulations made under it; or
- Prescribed registration fees are unpaid.

The suspension notice must be given specifying:

- The reason for the suspension; and
- The steps required to have the suspension lifted.

Recent suspensions:

- Failure to file annual returns accompanied by a copy of the village's audited financial statements
 - Risk of residents or intending residents being misled as to the financial position of the operator/village
 - Risk that operator is in financial difficulty and may not be able to provide services to residents
 - Compromises the ability of the statutory supervisor or the Registrar to deal with any financial issues or solvency issues.
- 5 suspensions since 2016. All but one of these was for failure to file an annual return.
- Suspensions are lifted once compliance achieved.
- Suspensions have resulted in notable increase in compliance so that monthly compliance rates are at or near 100%.

Building Defects and Compliance

- Latent serious building defects have recently been discovered in some villages
- The Registrar takes a monitoring role of such situations to ensure:
 - any risk to the interests of affected residents is being managed;
 - that consideration is being given to the operator's overall financial position and its ability to meet its obligations to residents in a no fault termination situation; and
 - adequate and timely disclosure to residents and intending residents of the issues.



Section 11 Notices - Corporations (Investigation and Management) Act 1989

- Statutory supervisors are under a legal duty to notify the Registrar and disclose relevant information to the Registrar if they are of the opinion that:
 - The operator is unable to pay its debts as they fall due in the normal course of business;
 - The value of the operator's assets is less than the value of its liabilities;
 - the operator is likely to become cash flow or balance sheet insolvent;
 - The operator has breached or is likely to breach the terms of its deed of supervision in a material respect.



What happens if a village fails ?

- Case Study - Ropata Village
- Background
- Registers role and role other stakeholders
- Reflections



Case study discussion: (only if time permitting)

How could residents best deal with this situation?

- Long-term residents say they relied on the disclosure statement stating the village was 'complete' when purchasing.
- Seven years later the operator sold to a new owner who then amended the disclosure statement enabling development and proposed unit development on an open space petanque court area.
- The long-term residents said - the disclosure documents were misleading, the Registrar ought not to accept them, other marketing information residents received at the time they became residents made it plain the village was 'complete'.
- Long-term and newer residents want to retain the open space.

Statutory Supervisors of Retirement Villages

An overview and insights from the FMA perspective

Brandt Botha, Senior Adviser, Supervision

Barbara Pearse, Manager, Supervision

Licensing of Supervisors and Statutory Supervisors

Financial Markets Supervisors Act 2011

Purpose:

- to protect the interests of product holders and of residents of retirement villages and
- to enhance investor confidence in the financial markets and retirement villages

Who are the licensed statutory supervisors?

- Anchorage Trustee Services Limited
- Covenant Trustee Services Limited
- New Zealand Permanent Trustees Limited
- Public Trust
- Trustees Executors Limited

Note: New Zealand Guardian Trust Company Limited is a licensed supervisor of debt securities and registered schemes but not for retirement villages.

<https://fma.govt.nz/compliance/lists-and-registers/licensed-supervisors/>

Reporting requirements – to FMA

Statutory Supervisors must report to the FMA:

- Every six months on compliance with their licensing requirements and conditions (s25 Report)
- Ad hoc, when there is a breach of any licensee condition or any material change of circumstances that has or may occur (s26 FMS Act).

Reporting requirements – to the Registrar

Statutory Supervisors must report to the Registrar:

- Ad hoc, If any corporation [eg RV Operator] has breached, or is likely to breach, in a material respect, the terms of the deed of supervision relating to the retirement village.
- If the statutory supervisor reasonably believes the operator will be unable to pay its debts as they become due in the normal course of business.
- Annually to the Registrar and to residents on the performance of their duties.

Examples of breaches that may be reported

1. A fund manager has overcharged fees to members.
2. Disclosure breaches (not uploading required updates to public registers when required or incorrect information).
3. Assets of a scheme not being held by an independent custodian.
4. No annual audit of scheme registers.
5. Operators not providing residents with audited financial statements.
6. Operators failing to obtain the statutory supervisor's consent where required (eg: to overdraft limits at the bank).
7. Operators not holding an AGM within 6 months of balance date.

FMA's expectations of statutory supervisors

- Important role as front-line supervisors of retirement village operators.
- Their activities should have an investor focus – protecting the interests of residents should guide their monitoring of operators.
- They should demonstrate qualities such as professional scepticism and a pro-active approach to monitoring.
- Their decisions should not be influenced by their own commercial interests

Complaints handling

2017 variations to Retirement Villages Code of Practice 2008

- Formalised supervisor involvement in complaints
- Alternative avenue for raising complaint
- Escalation if complaint to operator not resolved (20 bus. days)
- Further escalation to mediator if supervisor cannot resolve (20 bus. days)

Frontline Supervisor Monitoring Practices

A practical view of monitoring practices

FMA – June 2013 Guidance Note:

Section A – How licensee (Supervisors) fulfils its functions

Section B – Monitoring supervised entities



FINANCIAL MARKETS AUTHORITY
TE MANA TĀTĀ HOKOHOKO - NEW ZEALAND

June 2013

Guidance Note: Monitoring by Securities Trustees and Statutory Supervisors

Purpose of this guidance note

This guidance note is for licensed securities trustees and statutory supervisors. It sets out the Financial Market Authority's (FMA) expectations of how they will carry out their monitoring functions effectively.

Licensed securities trustees and statutory supervisors (licensees) play an important role in monitoring the activities of the supervised entities on behalf of investors and residents of retirement villages. This guidance note focuses on factors licensees should consider in designing and carrying out monitoring plans for the entities they supervise, and the qualities they should demonstrate when doing this.

Issuing guidance is just one of the ways FMA is transparent and shares our intended approach with the market. Guidance helps market participants to be confident they understand our approach and how we interpret, and intend to apply, the law relating to licensees' responsibilities.

This guidance note will also be of interest to entities supervised by licensees, as it explains how their securities trustee or statutory supervisor may undertake its monitoring functions.

This guidance note is based on regulatory requirements as at June 2013.

Financial Markets Authority Level 5, Ernst & Young Building 2 Takutai Square, Britomart PO Box 106 672 AUCKLAND 1143 Website: www.fma.govt.nz	Level 2 1 Grey Street PO Box 1179 WELLINGTON 6011
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#99884
Guidance Note: Overview of Expectations under Securities Trustees and Statutory Supervisors Act 2011: June 2013

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Implications for supervised entities (including Retirement village operators)

- Supervisors actively fulfilling its role on behalf of investors likely seek ongoing interaction with supervised entities to understand its business, its risks, and its governance, controls and processes.
- In practice, this may mean:
 - Increased visits
 - More questions re regular reports, including how prepared and what they show
 - Increased or more wide ranging reporting
 - More difficult or uncomfortable conversations

Pro-activity

What would pro-activity look like to you?

Pro-activity – FMA View

- Supervisors to carry out its monitoring pro-actively
- Not acceptable simply to receive reports and react when issue occurs
- Supervisors to understand sector and business
- Pro-actively pre-empt problems in addition to responding once occurred

Healthy dose of scepticism

What would a healthy dose of scepticism look like to you?

Healthy dose of scepticism - FMA View

- All Supervisor interactions with entities to be undertaken with appropriate level of professional scepticism.
- In particular with information presented to Supervisors by entity it is expected that Supervisors:
 - Form its own view on validity of information
 - Be alert for evidence that contradicts or bring into question reliability of information
 - Regular testing of information presented

Monitoring supervised entities

- Understanding supervised business
- Identify & evaluate key risks
- Considering supervised entity's controls over risks
- Determining monitoring approach
- Dealing with issues

Exploratory Review – Frontline Supervisors’ (of MIS Managers) Monitoring Practices

2016 - IMF recommended that FMA continue to engage with frontline supervisors’ of MIS managers to ensure they use a consistent approach with their monitoring practices.

Some of outcomes tested:

- Definition of materiality – pricing errors, material change circumstances and material breaches.
- Does Supervisors adopt a risk based approach to supervision?
- Are Supervisors consistent in their approach when performing risk assessments?
- Is level of and style of monitoring undertaken for the level of risk posed appropriate and applied consistently?

Proactive vs Reactive Monitoring

What would proactive monitoring look like to you?

What would reactive monitoring look like to you?

Thank you



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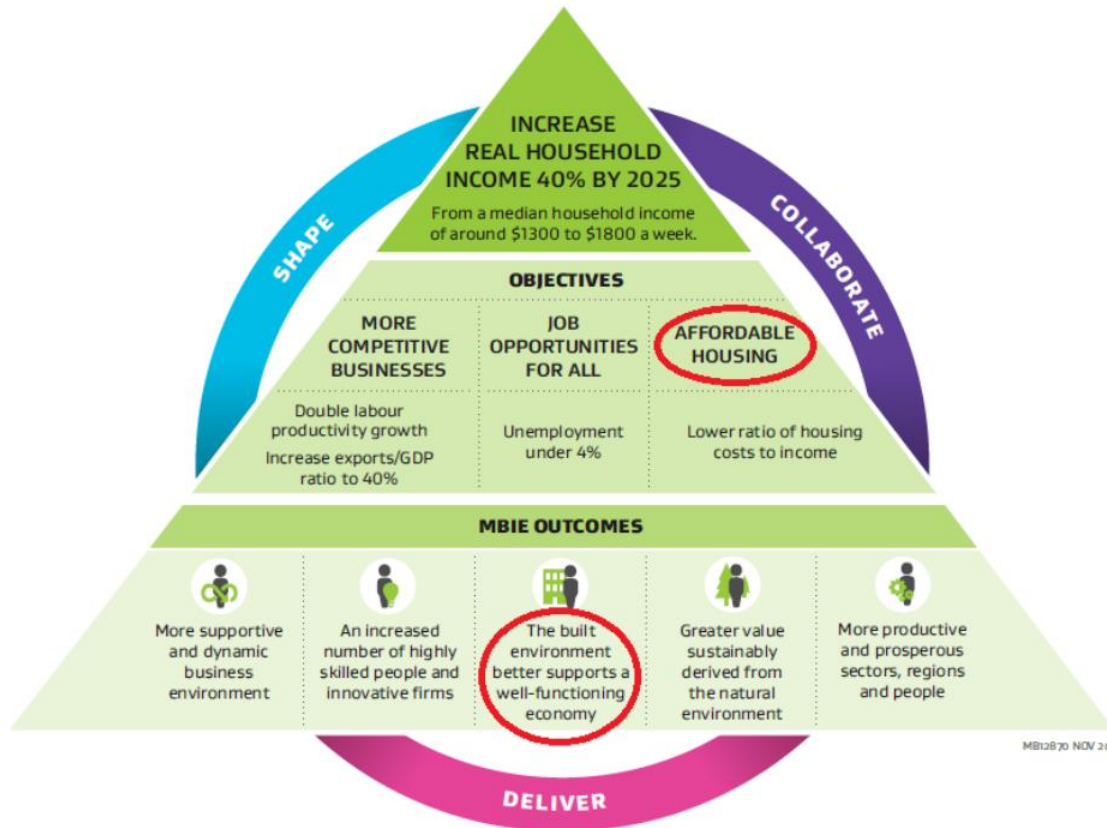
Retirement Villages Act 2003

MBIE's policy and regulatory stewardship role



MBIE's purpose

Grow NZ for all



Housing and Urban branch

Provide policy and regulatory advice to the Government on:

- Housing supply and affordability
- The quality of New Zealand's housing stock
- The provision of infrastructure to support new housing developments
- Urban development
- Sectors of the housing market such as housing for Māori, the rental market, unit titles and retirement villages.

Working together



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*Policy development,
Regulatory stewardship – including
monitoring and evaluation,
Providing advice to the Minister*



**Commission for
Financial Capability**
Building wealthy lives

*Monitoring the effects of the Act,
Promoting education on retirement
village issues,
Reporting issues to the Minister*



Retirement Villages Regulatory System

Retirement Villages Act 2003

Retirement Villages
(General)
Regulations 2006

Retirement Villages
(Disputes Panel)
Regulations 2006

Retirement Villages
(Fees) Regulations
2006

Retirement Villages
(Crossdale Courts)
Order 2008

Retirement Villages Code of Practice 2008



Regulatory stewardship

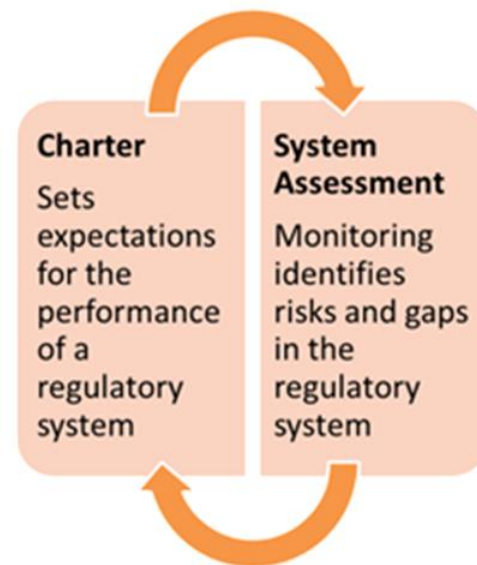
- A regulatory system includes rules, institutions and practices working together to achieve desired behaviours and outcomes.
- MBIE administers 16 distinct regulatory systems.
- Housing and tenancy is one of these and includes the retirement villages regulatory system.

Regulatory charter

What is a regulatory charter?

A regulatory charter:

- outlines the key principles underlying the design of a regulatory system
- sets clear expectations for what the regulatory system is intending to achieve
- describes the respective roles and functions of agencies that operate in the various parts of the regulatory system
- is public and accessible to all stakeholders.



Changes to dispute resolution

- Changes made to the requirements for retirement village complaints facilities came into force 1 April 2017.
- We will now be collecting complaint data from operators every six months, with the first lot due this month.
- This information will be of great value to us when undertaking policy analysis and regulatory stewardship.
- We plan to undertake a full evaluation of the complaint data every two years.



Our observations

- Framework effective although we are aware of some areas where the Act is not always delivering effective outcomes.
- Monitoring reports show resident satisfaction is generally good and the number of disputes going to dispute panels is low.
- We will have more information on issues within villages once we receive the first six months of complaint information from operators.



Our observations

- We've heard about issues with unregistered villages and village maintenance.
- Will be looking at the findings of the Commission's monitoring report on statutory supervision.
- We're interested in hearing from all of you today.



Any questions?





Panel discussion: How effective is the Retirement Village regime for dealing with property market downturns?

Open forum discussion: Items submitted by attendees *(time permitting)*

- What are some views on best practices for resident relocation during remedial work?
- What are some ways of dealing with ORAs when a single resident enters a new relationship?
- How can payment of a resident's capital less DMF be made sooner after termination?
- How can weekly fees stop being paid sooner after termination?
- How can an industry-wide end to capital loss clauses be achieved?
- How can a standard formula for establishing resident contributions to costs of refurbishment when resident be achieved?
- Other items: Commission on sale / cleaning / Financial Service Provider Act obligations

Review, evaluations and drinks

