

## **Background information on the proposed variations to the Retirement Villages Code of Practice 2008 complaints facility provisions**

The Retirement Commissioner consulted the public on proposed variations to the Code of Practice complaints facility, between 17 December 2015 - 14 March 2016. As a result of the submissions additional changes have been made to clauses and procedure. These are now being released for further consultation before any recommendations are made to the Minister.

Section 90(4) of the Retirement Villages Act 2003 allows the Minister to vary the Code after considering recommendations from the Retirement Commissioner and other interest groups following public consultation.

This note explains the background to the proposed variations.

### **Background**

The Retirement Commissioner carried out a monitoring project to assess the level of effectiveness of formal dispute resolution structures and processes under the Act. The Commissioner engaged with a wide range of stakeholders and also compared our current system to overseas jurisdictions.

The project did not review the substance or outcomes of disputes, or efficacy of any policies, practices or contracts that may have led to a dispute. The Commission published the report (<http://www.cffc.org.nz/retirement/retirement-villages/monitoring/>) then held a further stakeholder forum to discuss ways that solutions could be integrated into the current framework.

Some key issues that emerged from the project report included:

- The formal dispute resolution process was not considered user-friendly for all residents.
- A lack of alternative dispute resolution options, both as an alternative to using the dispute panel, and within the panel process.
- A need for greater advice and support for residents in dispute resolution, and better information about the dispute process and agencies, roles and responsibilities relating to retirement villages and dispute resolution.

Following the first consultation, further proposed variations to clauses 31 – 36 have been developed. These are intended to help protect the interests of residents and intending residents, and not disadvantage residents and operators alike.

The focus of the proposed variations is to clearly explain the informal and formal options a resident has and to resolve issues as early as possible – preferably within the village through a well-functioning complaints system.

Some changes to the numbering of clauses are made to improve the structure and make it easier for a resident to understand the range of options available.

The proposed variations are summarised as follows:

**Clause 31** promotes the resident's right to raise an issue or concern informally and distinguishes this from making a formal complaint. Nothing prevents a resident from making a formal complaint in the first instance. This provision is now located within the complaints facility section to improve awareness of the informal and formal options for dealing with issues or concerns.

**Clause 32** sets out that a resident may make a formal complaint in the first instance or if they remain dissatisfied after having raised an issue or concern informally. Clause 32 introduces the objective of a complaint facility and a minimum standard for operators to report to the Retirement Commissioner about formal complaints. Regular reporting facilitates the Retirement Commissioner's monitoring function under section 36 of the Retirement Villages Act 2003.

**Clause 33** prescribes minimum requirements for an operator's complaints policy. The policy helps alert residents to informal and formal options for dealing with issues or concerns. The operator may use a diagram, which will be provided in the Code, to help explain steps in the complaints facility to a resident.

**Clause 34** explains how a resident may make a formal complaint in writing or with assistance from a personal representative or the operator.

**Clause 35** prescribes a user-friendly, stepped procedure for resolving a formal complaint. It introduces a duty on operators to offer mediation if the operator and statutory supervisor have been unable to resolve the complaint to a resident's satisfaction. Nothing in the procedure limits a resident's right to refer a complaint to the dispute panel at any earlier time permitted under the Act.

**Clause 36** clarifies how the costs of mediation and the dispute panel are borne, and how dispute panel costs may be awarded.

This consultation process gives the public and interested parties the opportunity to comment fully on these proposals. Any responses will be used to assist the Retirement Commissioner in making recommendations to the Minister. This is not a full review of the Code or its intentions and should not be seen as such.

### **Next steps**

The Retirement Commissioner will review any further submissions arising from the consultation process and report back to the Minister. The Minister will use the information as a basis for making a decision on any variations to the Code