



Cabinet Legislation Committee

LEG Min (03) 25/6

Minute of Decision

Copy No: 26

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Retirement Villages Bill: Supplementary Order Paper

On 9 October 2003 the Cabinet Legislation Committee:

- 1 noted that on 17 September 2003 the Cabinet Social Development Committee:
 - 1.1 noted that in October 2001, Cabinet agreed to the drafting of a Retirement Villages Bill (the Bill) to provide protection for residents and intending residents of retirement villages [SEQ Min (01) 24/4];
 - 1.2 noted that in December 2001 the Bill was introduced and referred to the Justice and Electoral Select Committee;
 - 1.3 noted that the Bill as introduced specifically excluded stand-alone rest homes or hospital care institutions and rest homes or hospital care institutions operating within or on the site of a retirement village;
 - 1.4 noted that on 6 May 2003 the Justice Select Committee recommended, inter alia, that where residents pay capital sums for occupation of residential units in rest homes or hospital care institutions operating within or on the site of a retirement village, those facilities should be caught within the ambit of the Bill;
 - 1.5 noted that there is an increasing trend among stand-alone residential care facilities and hospital care institutions providing care for older people, for residents to be offered occupation in a particular room or unit in consideration of a capital sum payment;
 - 1.6 agreed that in circumstances where stand-alone residential care facilities and hospital care institutions providing care for older people have two or more residential units that are offered for occupancy in return for capital sums, those stand-alone residential care facilities and hospital care institutions should be treated as retirement villages under the Bill;
 - 1.7 agreed, as a consequence of the decision in paragraph 1.6, that the Bill should be amended to clarify that coverage of the Bill does not extend to the health and disability services provided to people in a retirement village;

[SDC Min (03) 23/4]

- 2 approved for release the Supplementary Order Paper to the Retirement Villages Bill [PCO 4386a/5];

- 3 noted that Hon Lianne Dalziel indicates that the government caucuses and other parties represented in Parliament will be consulted.

s9(2)(a) OIA

Secretary

Reference: LEG (03) 146

Present:

Hon Dr Michael Cullen (Chair)
Hon Jim Anderton
Hon Phil Goff
Hon Pete Hodgson
Hon George Hawkins
Hon Mark Burton (Deputy Chair)

s9(2)(a) OIA

Copies to:

Cabinet Legislation Committee
Chief Executive, DPMC
Secretary to the Treasury
Chief Executive, Ministry of Economic Development
Minister for Social Development and Employment
Chief Executive, Ministry of Social Development
Secretary for Justice
Minister of Health
Director-General of Health
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Minister for Senior Citizens
Chief Executive, Ministry of Social Development (Senior Citizens)
Minister of Consumer Affairs
Head, Ministry of Consumer Affairs
Chief Parliamentary Counsel
Clerk of the House of Representatives
Secretary, SDC



s9(2)(a) OIA

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Cabinet Legislation Committee

In Confidence

LEG (03) 146

7 October 2003

Copy No: 3

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Retirement Villages Bill: Supplementary Order Paper

On 17 September 2003, the Cabinet Social Development Committee made policy decisions on the content of a Supplementary Order Paper to the Retirement Villages Bill, and noted that the SOP would be considered by the Cabinet Legislation Committee on 9 October 2003 [SDC Min (03) 23/4].

The SOP is attached to the paper under LEG (03) 146.

The Hon Lianne Dalziel recommends that the Committee:

- 1 note that on 17 September 2003 the Cabinet Social Development Committee:
 - 1.1 noted that in October 2001, Cabinet agreed to the drafting of a Retirement Villages Bill (the Bill) to provide protection for residents and intending residents of retirement villages [SEQ Min (01) 24/4];
 - 1.2 noted that in December 2001 the Bill was introduced and referred to the Justice and Electoral Select Committee;
 - 1.3 noted that the Bill as introduced specifically excluded stand-alone rest homes or hospital care institutions and rest homes or hospital care institutions operating within or on the site of a retirement village;
 - 1.4 noted that on 6 May 2003 the Justice Select Committee recommended, inter alia, that where residents pay capital sums for occupation of residential units in rest homes or hospital care institutions operating within or on the site of a retirement village, those facilities should be caught within the ambit of the Bill;
 - 1.5 noted that there is an increasing trend among stand-alone residential care facilities and hospital care institutions providing care for older people, for residents to be offered occupation in a particular room or unit in consideration of a capital sum payment;
 - 1.6 agreed that in circumstances where stand-alone residential care facilities and hospital care institutions providing care for older people have two or more residential units that are offered for occupancy in return for capital sums, those

stand-alone residential care facilities and hospital care institutions should be treated as retirement villages under the Bill;

- 1.7 agreed, as a consequence of the decision in paragraph 1.6, that the Bill should be amended to clarify that coverage of the Bill does not extend to the health and disability services provided to people in a retirement village;

[SDC Min (03) 23/4]

- 2 approve for release the Supplementary Order Paper to the Retirement Villages Bill [PCO 4386a/5];
- 3 note that Hon Lianne Dalziel indicates that the government caucuses and other parties represented in Parliament will be consulted.

s9(2)(a) OIA

for Secretary of the Cabinet

Copies to:

Cabinet Legislation Committee
Chief Executive, DPMC
Secretary to the Treasury
Chief Executive, Ministry of Economic Development
Minister for Social Development and Employment
Chief Executive, Ministry of Social Development
Secretary for Justice
Minister of Health
Director-General of Health
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Minister for Senior Citizens
Chief Executive, Ministry of Social Development (Senior Citizens)
Minister of Consumer Affairs
Head, Ministry of Consumer Affairs
Chief Parliamentary Counsel
Clerk of the House of Representatives



Cabinet Social Development Committee

SDC (03) 138

11 September 2003

Copy No:

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Title **Retirement Villages Bill: Proposal to Extend Coverage**

Purpose The paper seeks agreement to extend the coverage of the Retirement Villages Bill to include some additional entities, and to recommend to the Cabinet Legislation Committee that it approve a Supplementary Order Paper for this purpose.

Previous Consideration In October 2001, Cabinet agreed to the drafting of a Retirement Villages Bill to provide protection for residents and intending residents of retirement villages [SEQ Min (01) 24/4]. The purpose of the Bill is to protect the financial and occupancy interests of residents and intending residents of retirement villages, and to provide a regulatory and monitoring regime for retirement village providers.

Summary The Retirement Villages Bill was introduced in December 2001 and referred to the Justice and Electoral Select Committee. Following the Bill's report back to the House, it became apparent that stand-alone residential care facilities and hospital care institutions, which are currently not covered by the Bill, frequently offer occupation of a suite or superior room in return for payment of a capital sum.

The new financial protections the Bill will provide to retirement village residents do not currently cover older people residing under identical or similar financial arrangements in stand-alone rest homes or hospital care facilities. Agreement is accordingly sought to extend the Bill's coverage to include rest homes and residential care institutions that are not part of a retirement village, if the rest home or institution has two or more residential units which are occupied or intended to be occupied by predominantly retired persons or patients in return for payment of a capital sum.

The Committee is asked to recommend that the Cabinet Legislation Committee, at its meeting on 18 September 2003, approve the circulation of a Supplementary Order Paper that will give effect to the proposal.

**Baseline
Implications**

None.

**Legislative
Implications**

A Supplementary Order Paper to the Retirement Villages Bill will be drafted and circulated. The business compliance costs imposed on the entities brought within the ambit of the Bill are the same as those contained in the Business Compliance Cost Statement attached to the submission on the original Bill under SEQ (01) 108.

Timing Issues

Amendments need to be incorporated before the Bill receives its third reading.

Announcement

None indicated.

Consultation

The Office for Senior Citizens prepared the paper. Tsy, MED, Health, Consumer Affairs and the Registrar of Companies were consulted.

The government caucuses and United Future will be consulted.

The Hon Lianne Dalziel recommends that the Committee:

- 1 note that in October 2001, Cabinet agreed to the drafting of a Retirement Villages Bill (the Bill) to provide protection for residents and intending residents of retirement villages [SEQ Min (01) 24/4];
- 2 note that in December 2001 the Bill was introduced and referred to the Justice and Electoral Select Committee;
- 3 note that the Bill as introduced specifically excluded stand-alone rest homes or hospital care institutions and rest homes or hospital care institutions operating within or on the site of a retirement village;
- 4 note that on 6 May 2003 the Justice Select Committee recommended, inter alia, that where residents pay capital sums for occupation of residential units in rest homes or hospital care institutions operating within or on the site of a retirement village, those facilities should be caught within the ambit of the Bill;
- 5 note that there is an increasing trend among stand-alone residential care facilities and hospital care institutions providing care for older people, for residents to be offered occupation in a particular room or unit in consideration of a capital sum payment;
- 6 agree that in circumstances where stand-alone residential care facilities and hospital care institutions providing care for older people have two or more residential units that are offered for occupancy in return for capital sums, those stand-alone residential care facilities and hospital care institutions should be treated as retirement villages under the Bill;
- 7 agree consequentially on the decision in recommendation 6 that the Bill should be amended to clarify that coverage of the Bill does not extend to the health and disability services provided to people in a retirement village;

- 8 agree to recommend that the Cabinet Legislation Committee, at its meeting on 18 September 2003, approve the circulation of a Supplementary Order Paper giving effect to the decisions in paragraphs 6 and 7;
- 9 note that the Hon Lianne Dalziel indicates that the government caucuses and United Future will be consulted.

s9(2)(a) OIA

for Secretary of the Cabinet

Copies to:

Cabinet Social Development Committee

Chief Executive, DPMC

Heather McCauley, DPMC

Secretary to the Treasury

Chief Executive, Ministry of Economic Development

Chief Executive, Ministry of Social Development

Director-General of Health

Chief Executive, Te Puni Kokiri

Chief Executive, Ministry of Women's Affairs

Chief Executive, Ministry of Social Development (Senior Citizens)

Minister of Consumer Affairs

Head, Ministry of Consumer Affairs

Chief Parliamentary Counsel

Secretary, LEG

Chair
Cabinet Social Development Committee

RETIREMENT VILLAGES BILL: PROPOSAL TO EXTEND COVERAGE

Proposal

- 1 This paper seeks Cabinet agreement to extend the coverage of the Retirement Villages Bill to entities that have previously been specifically excluded. The proposal represents a shift in the policy agreed to by Cabinet during the preparatory stages of the Bill, in October 2001. Subject to the Committee approving the proposed extension to the Bill's coverage, I seek the Committee's agreement to refer this paper to the Cabinet Legislative Committee and authorise that Committee to make recommendations to Cabinet on behalf of the Social Development Committee.

Executive Summary

- 2 On 17 December 2001 the Retirement Villages Bill was introduced and was subsequently referred to the Justice and Electoral Select Committee. The policy purpose of the Bill is to individually and collectively protect the financial and occupancy interests of residents and intending residents of retirement villages. The Bill also introduces an industry-focused regulatory and monitoring regime for retirement village operators.
- 3 On 6 May 2003 the Select Committee submitted their report on the Bill to the House. The Bill received its Second Reading on 3 July 2003. I intend to make a number of amendments to the Bill before it receives its Third Reading. Most of the amendments make minor technical improvements and do not alter the basic purpose, scope or intent of the Bill.
- 4 The proposed amendment for which I seek specific Cabinet approval involves extending the coverage of the Bill to rest homes and residential care institutions that are not part of a retirement village, if the rest home or institution has two or more residential units which are occupied or intended to be occupied by predominantly retired persons or patients in return for payment of a capital sum.
- 5 Subject to Cabinet's specific agreement to the substantive amendment, I will seek Cabinet approval to circulate the Supplementary Order Paper.

Background

- 6 The decision to introduce legislation to specifically protect the rights and interests of residents and intending residents of retirement villages was made in response to the views of a 1993 Task Force and a recommendation in a 1999 Law Commission report, both of which suggested a specific statutory framework for retirement villages. One of the key issues driving those conclusions is the complex financial arrangements under which people enter

retirement villages. These arrangements vary between freehold and leasehold title, unit title, residential tenancy, and most commonly, licence to occupy. In many instances residents also pay a weekly or monthly services and facilities levy, and often have a proportion of their initial payment deducted on exit to cover refurbishment or delayed utilities fees.

- 7 While a 'licence to occupy' arrangement predominates, the definition of a retirement village within the Retirement Villages Bill includes any premises containing two or more residential units where, inter alia, a resident's right of occupation is provided by way of leasehold or freehold title, cross lease title, lease, licence to occupy, residential tenancy or other form of assurance. This inclusive coverage was in part designed to reflect the range of tenure arrangements, but also to prevent avoidance behaviour.
- 8 The inclusive definition of a retirement village was designed to capture the range of entities that in form, content and purpose, are a retirement village. The broadness also required specific reference to entities that could by definition be included, but in effect are not retirement villages; for instance, boarding houses, guest houses or hostels, and rest homes and hospital care institutions within the meaning of the Health and Disability Services Act 2001. Also excluded from the Bill's initial coverage were rest homes or hospital care institutions operating within or on the site of a retirement village.
- 9 During deliberations on the Bill, the Select Committee became aware that some retirement villages offer a 'licence to occupy' for suites in rest homes and hospital care institutions which operate on the village site. In some instances residents begin their residency in an independent unit in the village, and as their care and support needs increase, transfer into a rest home or hospital type unit within the village.
- 10 While the Bill originally only covered the parts of village where residential or hospital care is *not* provided, the Select Committee decided that because of the situation outlined above, all parts of the village where residents pay capital sums for occupation of residential units within rest homes or hospital care facilities within retirement villages, should be caught within the ambit of the Bill.
- 11 Subsequent to the Bill being reported back by the Select Committee, it came to my attention that there is an increasing trend among stand-alone residential care facilities and hospital care institutions for residents to be offered occupation of a suite or superior room, rather than of a bed in a single room, in consideration of the resident paying a capital sum. Such an arrangement is becoming an increasingly popular choice for residents. In residential care and hospital care situations, a resident's right to appropriate care and support needs is protected by the Health and Disability Services (Safety) Act 2001. However, in instances where they have paid a capital sum for their occupation, their financial interests are not specifically protected. In effect this means that the new financial protections that the Retirement Villages Bill will provide to retirement village residents will not cover older people residing under identical or similar financial arrangements in stand-alone rest homes and hospital care facilities.
- 12 It is my view that this creates an inequity that can be remedied through an amendment to the definition of a retirement village in the Retirement Villages Bill. Rest homes or hospital care institutions that have two or more residential units that are offered for occupancy in return for capital sums would be treated as retirement villages. In situations where a rest home or hospital care institution does not offer residency of a unit in return for a capital sum, they will not come under the ambit of the legislation. Consequential on this proposed amendment, the Bill should also be amended to clarify that the Bill does not extend to the health and disability services provided to people in a retirement village, as other legislation (including the Health and Disability Services (Safety) Act 2001 and the Code of Health and Disability

Services Consumers Rights under the Health and Disability Commissioner Act 1994) applies to such services and dual coverage is not desirable.

Consultation

- 13 The following government departments were consulted in the preparation of this paper: the Treasury; the Ministry of Economic Development, including the Registrar of Companies and the Ministry of Consumer Affairs; and the Ministry of Health.

Financial implications

- 14 The proposed amendment to coverage of the Bill does not generate any financial implications for the Crown. The registration process, to be administered by the Registrar of Retirement Villages, will be on a cost recovery basis.

Human rights implications

- 15 There are no human rights implications arising from the proposed coverage amendment to the provisions of the Retirement Villages Bill. The Bill itself does not create human rights implications.

Legislative implications

- 16 If enacted, the provisions of the Retirement Villages Bill will require consequential amendments to the Financial Reporting Act 1993, and an amendment to the Securities Act 1978 and the Corporations (Investigation and Management) Act 1989. The proposed coverage amendment to the Bill does not create the need for any further consequential amendments. The proposal to extend the Bill's coverage to stand-alone residential care facilities, rest homes and hospitals offering residency by way of lump sum payment, means that those facilities will continue to operate under the Health and Disability Services (Safety) Act, but will also be required to comply with, among other requirements, the financial and information disclosure requirements of the Retirement Villages legislation.

Regulatory impact and compliance cost statement

- 17 At the time Cabinet agreement was being sought on the provisions of the then proposed Retirement Villages Bill, a Business Compliance Cost and Regulatory Impact Statement was submitted to Cabinet [CAB Min (01) 33/6 refers]. The amendments I propose to introduce through a Supplementary Order Paper do not materially change the information provided at that time. The extension of the Bill's coverage to include residential care and hospital type facilities offering residency by way of a licence to occupy, will impose new costs on those entities. The costs will be equivalent to those already identified for retirement villages in the previous Business Compliance Cost and Regulatory Impact Statement.

Gender implications

- 18 The proposed amendments to the Retirement Villages Bill do not have any gender implications, nor do they alter the policy purpose of the legislation. Due to women's longer life expectancy, they are more likely to live to an age where residential, rest home or hospital

care is required. In situations where they enter such care through a capital sum arrangement, the Retirement Villages Bill will provide new financial and consumer protections.

Disability perspective

- 19 The policy purpose of the Retirement Villages Bill, which is reflected in the proposed amendments, is to protect the interests and intending residents of retirement villages. This specific protection is required in part because some older people, and a greater number of very old people, have a reduced capacity to sufficiently protect their own rights and interests. The Retirement Villages Bill is not designed to protect people with disabilities, however, the people it does intend to protect are more likely than the general population to have some form of disability or incapacity.

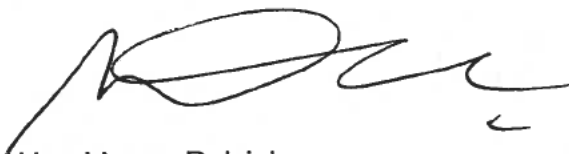
Publicity

- 20 The Retirement Villages legislation has generated considerable public interest, particularly among retirement village residents, older people's advocacy organisations, and stakeholder commercial interests. The submissions received on the Bill during the Select Committee's deliberations, indicates that an extension to the Bill's coverage as proposed will be generally well received.

Recommendations

- 21 It is recommended that the Committee:
1. **note** that in December 2001 the Retirement Villages Bill was introduced and referred to the Justice and Electoral Select Committee
 2. **note** that the Bill as introduced specifically excluded stand-alone rest homes or hospital care institutions and rest homes or hospital care institutions operating within or on the site of a retirement village
 3. **note** that on 6 May 2003 the Justice Select Committee recommended, inter alia, that where residents pay capital sums for occupation of residential units in rest homes or hospital care institutions operating within or on the site of a retirement village, those facilities should be caught within the ambit of the Bill
 4. **note** that there is an increasing trend among stand-alone residential care facilities and hospital care institutions providing care for older people, for residents to be offered occupation in a particular room or unit in consideration of a capital sum payment
 5. **agree** that in circumstances where stand-alone residential care facilities and hospital care institutions providing care for older people have two or more residential units that are offered for occupancy in return for capital sums, those stand-alone residential care facilities and hospital care institutions should be treated as retirement villages under the Bill
 6. **agree** consequentially on the decision in recommendation 5 that the Bill should be amended to clarify that coverage of the Bill does not extend to the health and disability services provided to people in a retirement village

7. **agree** to refer this paper to the Cabinet Legislative Committee and authorise the Committee to make recommendations to Cabinet on behalf of the Social Development Committee



Hon Lianne Dalziel
Minister Responsible for the Retirement Villages Bill

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Consultation on Cabinet and Cabinet Committee Submissions

Certification by Department

Departments consulted: The attached submission has implications for the following departments whose views have been sought and are accurately reflected in the submission:

*The Treasury, The Ministry of Health, The Ministry of
Economic Development, The Ministry of Consumer Affairs,
Registrar of Companies.*

Departments informed: In addition, the following departments have an interest in the submission and have been informed:

Others consulted: Other interested groups have been consulted as follows:

Signature

s9(2)(a) OIA

Name, Title, Department


s9(2)(a) OIA

Date

4/9/03

Certification by Minister

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee. The attached submission:

Consultation at Ministerial level	<input checked="" type="checkbox"/> did not need consultation with other Ministers <input type="checkbox"/> has been the subject of consultation with the Minister of Finance <i>[required for all submissions seeking new funding]</i> <input type="checkbox"/> has been the subject of consultation with the following Minister(s)	
Consultation with government MPs	<input type="checkbox"/> does not need consultation with the government caucuses <input checked="" type="checkbox"/> has been or will be <i>[specify which]</i> the subject of consultation with the following government caucuses: <input checked="" type="checkbox"/> Labour caucus <input checked="" type="checkbox"/> Progressive Coalition caucus	
Consultation at Parliamentary level	<input type="checkbox"/> does not need consultation at parliamentary level <input checked="" type="checkbox"/> has been or will be <i>[specify which]</i> the subject of consultation with the following other parties represented in Parliament: <i>until future</i>	
Signature	Portfolio	Date
	Assoc Justice	5/9/03

No

PCO 4386a/5

Drafted by Bill Moore and Andrew Borrowdale

IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Tuesday, 14 October 2003

Retirement Villages Bill

Proposed amendments

Hon Lianne Dalziel, in Committee, to move the following amendments:

Clause 2

To omit from *subclause (1)* the words “**Sections 10 to 34,**” (line 6 on page 3), and substitute the words “**Part 2, sections**”.

Clause 3

To omit from *paragraph (c)(vi)* the words “Registrar of Companies” (line 12 on page 4), and substitute the words “Registrar of Retirement Villages”.

Clause 5

To insert after the definition of **former resident** (after line 21 on page 6), the following definition:

hospital care institution has the meaning specified in section 58(4) of the Health and Disability Services (Safety) Act 2001

To insert in *paragraph (a)(i)* of the definition of **intending resident**, after the word “village” (line 1 on page 7), the words “or the operator’s agent”.

To insert in *paragraph (a)(ii)* of the definition of **intending resident**, after the word “operator” (line 4 on page 7), the words “or the operator’s agent”.

To insert in *paragraph (b)* of the definition of **intending resident**, after the word “operator” in the first place where it appears (line 6 on page 7), the words “or the operator’s agent”.

To insert, before the definition of **Minister** (before line 9 on page 7), the following definition:

lawyer means a person for the time being holding a practising certificate as a solicitor, or as a barrister or solicitor, under the Law Practitioners Act 1982

SOP No

**Proposed amendments to
Retirement Villages Bill**

To omit from the definition of **Registrar** the words “of Companies appointed under the Companies Act 1993” (lines 29 and 30 on page 8), and substitute the words “of Retirement Villages appointed under **section 64A**”.

To insert, after the definition of **residential unit** (after line 18 on page 9), the following definition:

rest home has the meaning specified in section 58(4) of the Health and Disability Services (Safety) Act 2001

To insert in the definition of **security interest**, after the word “village” in the second place where it appears (line 26 on page 9), the words “or a person whose occupation right agreement has terminated”.

To insert, after the definition of **services** (after line 8 on page 10), the following definition:

statutory manager means a statutory manager of the operator of a retirement village appointed under the Corporations (Investigation and Management) Act 1989

Clause 6

To omit from *subclause (1)* the words “**subsections (2) to (4)**” (line 12 on page 10), and substitute the words “**subsections (2) to (6)**”.

To omit from *subclause (1)* the word “any” (line 13 on page 10), and substitute the words “the part of any”.

To omit the word “contain” (line 14 on page 10), and substitute the word “contains”.

To insert in *subclause (1)(b)*, after the word “deduction,” (line 28 on page 10), the words “or a contribution or a payment in kind of any form,”.

To insert in *subclause (1)*, after *paragraph (b)* (after line 30 on page 10), the following paragraph:

- (ba) the consideration is actually paid or agreed to be paid by a particular resident or particular residents or on behalf of that resident or those residents, or by another person for the benefit of that resident or those residents; or

To omit from *subclause (1)(c)* the words “for any services or facilities” (lines 31 and 32 on page 10), and substitute the words “or periodical payment (for example, a service fee) for any services or facilities or access to such services or facilities”.

To omit *subclause (2)* (lines 1 to 17 on page 11), and substitute the following subclauses:

- (2) A retirement village includes any common areas and facilities to which residents of the retirement village have access under their occupation right agreements.
- (2A) Despite **subsections (1) and (2)**, if 1 or more of the residential units referred to in **subsection (1)** are located in a rest home or hospital care institution, the only parts of that rest home or hospital care institution that comprise, or are included in, the retirement village are—
- (a) the residential unit or units themselves; and

Proposed amendments to
Retirement Villages Bill

SOP No

- (b) the common areas and facilities within the rest home or hospital care institution (if any) to which the resident or residents of the unit or units have access only by reason of their occupation right agreement.

To insert in *subclause (3)(b)*, before the words "residential units" (line 1 on page 12), the words "owner-occupied".

To insert in *subclause (3)(b)(i)*, after the word "units" (line 5 on page 12), the words "that are not intended to provide accommodation predominantly for retired people and their spouses or partners".

To omit *subclause (3)(e)* (lines 12 to 15 on page 12).

Clause 10(2)

To add to paragraph (a)(ii) (line 14 on page 15) the words "and the effect of that refusal".

To insert in *paragraph (b)*, before the word "property" (line 15 on page 15), the words "part of the".

To insert in *paragraph (b)(i)*, after the word "description" (line 20 on page 15), the words ", and identifying any computer registers on which the certificates of title are recorded".

To omit from *paragraph (d)* the word "rights" (line 29 on page 15), and substitute the word "right".

Clause 12

To omit *subclause (1A)* (lines 22 to 26 on page 17), and substitute the following subclause:

(1A) If the holder of a security interest to whom **subsection (1)(ab)** applies fails or refuses to consent to the registration of a retirement village,—

- (a) the operator of the village must promptly notify the statutory supervisor of the village (if there is one), and every resident and intending resident, of that failure or refusal and its effect:
- (b) that failure or refusal does not prevent the registration of the village as a retirement village, or affect the obligation of the operator to apply for registration of the village.

Clause 13

To insert in *subclause (2)(c)(i)*, after the words "statements that" (line 11 on page 19), the words "in the supervisor's opinion".

To insert in *subclause (2)(c)(ii)*, after the words "return is" (line 14 on page 19), the words ", to the best of the supervisor's knowledge and belief,".

Clause 16

To insert, after *subclause (1)* (after line 13 on page 21), the following subclause:

- (1A) Nothing in **subsection (1)** prevents an operator of a retirement village from—

Proposed amendments to
Retirement Villages Bill

SOP No

To omit from *subclause (1)(b)* the expression "12 months" (line 28 on page 27), and substitute the expression "6 months".

To omit from *subclause (3)* the words "a person who is developing a retirement village (a **developer**)" (lines 11 and 12 on page 28), and substitute the words "the promoter of a retirement village".

To omit from *subclause (3)* the words "the developer" in each place where they appear (lines 12, 16, and 27 on page 28), and substitute in each case the words "the promoter".

Clause 26

To insert in *subclause (5)*, after the word "certify" (line 4 on page 31), the words "on the prescribed form (if any)".

To add (after line 9 on page 31) the following subclause:

- (7) If an occupation right agreement is to be signed by an attorney of an intending resident, or a welfare guardian or manager of the property of an intending resident appointed under the Protection of Personal and Property Rights Act 1988, that person must be treated as the intending resident for the purposes of **subsections (3) to (6)**.

Clause 29

To omit *subclause (1)(c)* (line 16 on page 34), and substitute the following paragraph:

- (c) the code of practice (if any), and, if the code is not yet in force, a statement in writing that the code is not yet in force and the date on which it comes into force; and

Clause 29A

To omit *subclause (1)* (lines 2 to 7 on page 35), and substitute the following subclause:

- (1) If an occupation right agreement is entered in contravention of **section 17(3) or section 24(1) or section 26 or section 29(1)** in any substantial respect, the agreement is, unless it has been terminated, voidable by the resident by notice in writing to the operator and to the statutory supervisor of the village (if there is one) given at any time within the prescribed period.

To omit *subclause (2)(a)* (lines 10 to 13 on page 35), and substitute the following paragraph:

- (a) a refund, without deduction, of—
 - (i) all capital sums paid before or during the resident's occupancy as consideration for right of occupation in the residential unit and all other payments for which services or facilities were not provided;
 - (ii) interest at the prescribed rate;
 - (iii) actual and reasonable costs associated with the voiding of the agreement;

SOP No **Proposed amendments to
Retirement Villages Bill**

To omit *subclauses (3) to (5)* (lines 18 to 31 on page 35), and substitute the following subclauses:

- (3) Despite **subsections (1) and (2)**,—
 - (a) if the resident and the operator cannot agree when the refund required by **subsection (2)** is to be made, either party may give a dispute notice under **section 41A**:
 - (b) if an operator receives from a resident a notice purporting to avoid an occupation right agreement for a contravention of **section 17(3) or section 24(1) or section 26 or section 29(1)** that the operator considers not to involve a contravention of any of those provisions in any substantial respect, the operator—
 - (i) may give a dispute notice under **section 41A** concerning the operation of **subclauses (1) and (2)**; and
 - (ii) must take all reasonable steps to remedy the contravention; and
 - (iii) if a dispute notice is given by the operator, is not required to make the refund referred to in **subsection (2)** while the dispute is unresolved.
- (4) In **subsection (1)**, the **prescribed period**,—
 - (a) in relation to a contravention of **section 17(3) or section 24(1)** is the lesser of—
 - (i) a period of 3 years after the date on which the agreement was entered into; or
 - (ii) a period of 6 months after the resident knows, or ought to know, of the contravention:
 - (b) in relation to a contravention of **section 26(1) or section 29(1)** is the lesser of—
 - (i) a period of 1 year after the date on which the agreement was entered into; or
 - (ii) a period of 6 months after the resident knows, or ought to know, of the contravention.
- (5) For the purposes of this section, a contravention of a particular provision is a contravention of that provision in a substantial respect if—
 - (a) the contravention involves a significant detriment to the resident; or
 - (b) the contravention is otherwise material, and is not solely technical or minor in character; or
 - (c) the contravention involves deliberate misconduct on the part of the operator.

Clause 30

To add, as *subclause (2)* (after line 25 on page 36), the following subclause:

- (2) Nothing in the code of residents' rights applies to any health services or disability services or any facilities to which the Code of Health and Disability Services Consumers' Rights

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under the Health and Disability Commissioner Act 1994 applies.

Clause 32

To insert in *subclause (3)*, after the words “breach of” (line 16 on page 37), the words “a right referred to in”.

Clause 35

To add (after line 27 on page 40) the following subclauses:

- (3) Every operator of a retirement village must answer any questions and supply any information relating to the retirement village reasonably requested by the Retirement Commissioner for the performance of the Retirement Commissioner's functions.
- (4) The operator must supply the information within 20 working days of receiving the request or within any further period that the Retirement Commissioner allows.

Clause 36

To omit *subclause (2)* (lines 4 to 6 on page 41), and substitute the following subclause:

- (2) Every person who was, immediately before the commencement of this section, approved under section 48 of the Securities Act 1978 to act as the statutory supervisor of retirement village schemes is, subject to **subsection (4)**, approved as a statutory supervisor for the purposes of this Act.

Clause 37

To insert, after *clause (1A)* (after line 3 on page 42), the following subclause:

- (1B) A deed of supervision must contain all information and other matters or provisions that are required to be included in it by regulations made under this Act.

Clause 38

To omit *paragraph (a)* (lines 10 to 13 on page 44), and substitute the following paragraph:

- (a) provide a stakeholder facility (for example, under **section 28(1)**) for intending residents and residents who pay deposits or progress payments in respect of occupation right agreements or uncompleted residential units or facilities at the retirement village; and

Clause 39

To add to *subclause (2)* (line 10 on page 46) the words “or within the further period that the person making the request allows”.

Clause 40

To insert in this clause (on page 46), in their appropriate alphabetical order, the following definitions:

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applicant means a person who gives a dispute notice under **section 40D**

respondent means a person who is given a dispute notice under **section 40D**.

Clause 41

To omit from *subclause (1)(c)* the words “disposal of the unit” (line 13 on page 48), and substitute the words “termination or avoidance under **section 29A** of the resident’s occupation right agreement”.

To insert in *subclause (1)(d)*, after the words “rights or” (line 15 on page 48), the words “of the”.

To insert, after *subclause (1)* (after line 15 on page 48), the following subclause:

- (1AA) Nothing in **subsection (1)** enables a resident to give a dispute notice concerning any health services or disability services, or any facilities to which the Code of Health and Disability Services Consumers’ Rights under the Health and Disability Commissioner Act 1994 applies.

To omit *subclause (3)* (lines 29 to 35 on page 48).

Clause 41A

To add as *subclause (2)* (after line 4 on page 49), the following subclause:

- (2) An operator may give a dispute notice concerning the operation of **section 29A(1) and (2)** on the grounds of alleged contravention of **section 26 or section 29(1)**.

Clause 42A

To add, to *subclause (3)* (line 17 on page 50), the words “in accordance with the resident’s occupation right agreement or the code of practice”.

Clause 48A

To insert, after *subclause (1)* (after line 5 on page 55), the following subclause:

- (1A) When the panel consults the parties on a proposal to exercise any of its powers under **subsection (1)**, the panel must advise the parties of the effect and implications of the proposal.

To omit *subclause (2)* (lines 6 to 9 on page 55), and substitute the following subclauses:

- (2) If the panel refuses to hear, or to continue to hear, a dispute under **subsection (1)(b)**, the panel must refer the dispute to the nearest District Court for hearing.
- (2A) A District Court to which a dispute is referred under **subsection (2)**—
- (a) must hear and determine the dispute as if it were a disputes panel, and has all the powers and duties of a disputes panel under this Act;
- (b) in respect of any matter not otherwise provide for, may hear and determine the dispute in accordance with the

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District Courts Act 1948 and the District Courts Rules
1992.

Clause 50

To insert in *paragraph (c)*, before the word “stability” (line 17 on page 56), the word “financial”.

Clause 51

To omit from *paragraph (a)* the word “rights” (line 20 on page 56), and substitute the word “right”.

To insert in *paragraph (a)*, after the word “practice” (line 21 on page 56), the words “or **section 26(1)**”.

To add, as *subclause (2)* (after line 6 on page 57), the following subclause:

- (2) For the avoidance of doubt, a disputes panel may amend an occupation right agreement to comply with a provision of the code of practice from which the operator of the retirement village is exempted from complying, but the disputes panel must make the amendment subject to that exemption while it is in force.

Clause 51AB

To insert in *subclause (2)*, after the word “party” (line 5 on page 58), the words “, and the operator (if the operator is not a party to the dispute),”.

Clause 53

To omit from *subclause (1)* the words “allocates a dispute to” (line 2 on page 59), and substitute the word “appoints”.

Clause 53A

To insert in the heading to this clause, after the word “**District**” (line 1 on page 60), the words “or **High**”.

To insert in *subclause (1)*, after the word “panel” (line 3 on page 60), the words “or District Court”.

To insert in *subclause (2)*, after paragraph (a) (after line 6 on page 60), the following paragraph:

- (ab) in the case of a dispute referred to a District Court under **section 48A(2)**, the High Court; or

Clause 57

To omit from the heading to this clause the word “**and**” (line 4 on page 61), and substitute the word “**an**”.

To omit from *subclause (2)* the expression “**26**” (line 16 on page 61), and substitute the expression “**26(1)**”.

To insert in *subclause (2)*, after the expression “**28**,” (line 16 on page 61), the expression “**29(1)**,”.

To omit *subclause (5)* (lines 36 to 38 on page 61), and substitute the following subclause:

- (5) Every operator of a retirement village commits an offence who fails to comply with any reasonable request made under **section 38D** and is liable on summary conviction to a fine not exceeding \$10,000.

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Clause 62

To omit from *subclause* (2) the words “**section 29(3A)** or under” (lines 24 and 25 on page 66).

Heading to Part 5

To omit the words “**Code of practice**” (line 9 on page 68), and substitute the words “**Registrar of Retirement Villages, code of practice**”.

New clauses 64A and 64B

To insert (after line 9 on page 68) the following heading and clauses:

Registrar of Retirement Villages

64A Appointment of Registrar

- (1) There must be a Registrar of Retirement Villages who must be appointed under the State Sector Act 1988 by the chief executive of the department that, with the authority of the Prime Minister, is for the time being responsible for the employment of that Registrar.
- (2) The person holding office as Registrar of Companies under the Companies Act 1993 immediately before the commencement of this section is deemed to have been appointed as Registrar of Retirement Villages in accordance with this section.

64B Power of Registrar to delegate

- (1) The Registrar may from time to time, in writing, delegate to any person all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) Subject to any general or special directions given or conditions attached at any time by the Registrar, the person to whom any functions, duties, or powers are delegated under this section must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.
- (3) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified classes of offices.
- (5) Every delegation under this section is revocable in writing at will, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.
- (6) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

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Clause 66

To omit *subclause (1)* (lines 9 to 13 on page 70), and substitute the following subclauses:

- (1) The code of practice—
 - (a) comes into force,—
 - (i) in the case of the first code of practice, 1 year after it is approved under **section 65(1) or (4)**;
 - (ii) in the case of any subsequent code of practice approved under **section 65(1)**, on the date stated by the Minister in the document approving the code; and
 - (b) continues in force until a subsequent code of practice approved under **section 65(1)** comes into force.
- (1A) An operator of a retirement village may elect to be bound by a code of practice that is not yet in force, by giving notice of that election to—
 - (a) the Registrar; and
 - (b) the statutory supervisor of the village (if there is one); and
 - (c) every resident and intending resident of the retirement village.
- (1B) If an operator elects, under **subsection (1A)**, to be bound by a code of practice that is not yet in force.—
 - (a) that code must for all purposes be treated as if it is in force in respect of that operator and the retirement village to which the election relates; and
 - (b) any earlier code of practice ceases to apply to that operator and the retirement village to which the election relates.

To add (after line 21 on page 70) the following subclause:

- (3) Any variation by the Minister comes into force on the date stated by the Minister in the document making the variation.

Clause 67

To insert in *subclause (2)(a)(ii)*, after the word “liquidator” (line 12 on page 71), the words “or statutory manager”.

To insert, after *subclause 2* (after line 19 on page 71), the following subclause:

- (2A) Nothing in a code of practice applies to any health services or disability services or facilities to which the Code of Health and Disability Services Consumers’ Rights under the Health and Disability Commissioner Act 1994 applies.

Clause 72

To omit from *subclause (3)* the words “, a Deputy Registrar, a District Registrar, or an Assistant Registrar” (lines 24 and 25 on page 75).

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Clause 73

To omit *subclause (1)* (lines 9 to 14 on page 76).

Clause 74(1)

To insert, immediately after *paragraph (e)* (after line 15 on page 77), the following paragraph:

- (ea) specifying information, provisions, and matters to be included in a deed of supervision:

Clause 77

To omit *subclause (2)* (lines 19 to 31 on page 81), and substitute the following subclause:

- (2) Section 9A of the Financial Reporting Act 1993 is amended by adding the following subsections:

“(4) **Subsection (5)** applies if—

“(a) the financial statements of an operator of a retirement village (as those terms are defined in **sections 5 and 6** of the Retirement Villages Act 2001) include the activities of—

“(i) more than 1 retirement village; or

“(ii) another trading activity that operates independently of the retirement village; and

“(b) either the statutory supervisor of the retirement village, or (if the operator is exempted under **section 37C** of that Act from appointing a statutory supervisor) the Registrar, as a condition of that exemption, requires the operator to comply with **subsection (5)**.

“(5) If this subsection applies, any requirement for an operator of a retirement village to prepare financial statements includes—

“(a) a requirement to prepare financial statements in respect of the retirement village as well as in respect of the operator; and

“(b) a requirement to lodge a copy of both statements, within 20 working days after the financial statements are required to be signed,—

“(i) with the statutory supervisor of the retirement village (if there is one); or

“(ii) if the operator is exempted from appointing a statutory supervisor, with the Registrar or with any person the Registrar appoints under a condition of that exemption.”

Schedule 1A

To insert in *clause 2(a)(iii)*, after the word “planned” (line 31 on page 87), the words “and the location, size, and effect on residents of those new units”.

To add to *clause 2(b)* (line 36 on page 87) the words “and the location, size, and effect on residents of those new services or facilities”.

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To insert in *clause 3(e)*, after the word “unit” (line 11 on page 89), the words “at intervals of 2 years, 5 years, and 10 years after the resident enters into an occupation right agreement”.

To insert in *clause 4(a)*, after the word “village” (line 23 on page 89), the words “and the effect of that refusal”.

Schedule 2

To omit *clause 1(b)(i)* (lines 25 to 28 on page 90), and substitute the following subparagraphs:

- (i) the operator and the purchaser to consult with residents before the operator’s interest in the village is sold or disposed of:
- (ia) the consultation referred to in **subparagraph (i)** to take place—
 - (A) at a time directed by the statutory supervisor of the retirement village (if there is one); or
 - (B) in any other case, at an appropriate time that is a reasonable time before settlement of the transaction:
- (ib) the operator to consult with residents before appointing a new manager:

Schedule 3

To omit from *clause 1* the word “rights” (line 8 on page 94), and substitute the word “right”.

To omit the word “Companies” (line 25 on page 95), and substitute the words “Retirement Villages”.

Explanatory note

This Supplementary Order Paper amends the Retirement Villages Bill by including a number of changes to the Bill that are substantive and a number that are technical in character.

The main substantive changes are as follows:

- amendments are made to *clause 6* to provide that where residential care units and hospital care institutions providing care for older people have 2 or more residential units that are offered for residency in return for capital sums, those units and any common areas for the residents of those units are to be treated as retirement villages:
- *clause 10* is amended to require the operator of a retirement village to disclose not only the fact of refusal when certain holders of security interests refuse to consent to the registration of the village, but also the effect of that refusal:
- *clause 13* is amended to remove the requirement that any statutory supervisor of a retirement village certify that the financial statements of the operator comply with the Financial Reporting Act 1993 and that the

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information supplied in the annual return is accurate, and substitute a requirement that the statutory supervisor certify those matters to the best of the supervisor's knowledge and belief:

- *clause 16* is amended to give the operator of a retirement village more flexibility in the way in which the operator notifies the Registrar of Retirement Villages of changes of circumstances and documentation, by allowing the notification of information that is not required to be notified, and by allowing operators to notify changes by using a replacement document in place of an existing registered document:
- *clause 21* of the Bill is amended to extend the restrictions imposed by that clause (which relate to the disposal of a retirement village otherwise than as a going concern, disclaiming occupation right agreements, and the eviction or exclusion of residents) to statutory managers as well as receivers, liquidators, and the holders of security interests. A similar amendment is made to *clause 23*:
- *clause 24* of the Bill is amended to prohibit a false representation that any property is a retirement village when it is not in fact registered as a retirement village:
- *clause 26* of the Bill is amended to allow an occupation right agreement to be signed by an attorney of an intending resident, or a welfare guardian or manager of the property of an intending resident appointed under the Protection of Personal and Property Rights Act 1988:
- *clause 29* is amended to require details to be provided to an intending resident about whether there is a code of practice, and, if it is not yet in force, when it comes into force:
- *clause 29A* is amended to limit the ability of a resident to avoid an agreement entered into in contravention of *clauses 17(3), 24(1), 26, or 29(1)*. Under *new clause 29A*, as reported back by the Select Committee, an agreement entered into in contravention of any of these provisions is voidable at any time within 3 years of the date the agreement was entered into. The amendment made by this Supplementary Order Paper confines the ability of a resident to avoid an agreement to circumstances where there has been a contravention of those provisions in a substantial respect. The meaning of that expression is defined in proposed *new section 29A(5)*. The amendments to *clause 29A* also alter the period of time during which a notice avoiding an agreement can be given and provide a mechanism for an operator to bring a dispute under *clause 41A* to a dispute committee if the operator disagrees with the resident that there are grounds for avoiding the agreement:
- *clause 30* is amended by including a provision excluding the application of the code of residents rights to health services or disability services and certain other facilities (facilities to which the Code of Health and Disability Services Consumers' Rights applies):
- *clause 41* is amended to prevent residents from bringing a dispute in respect of health services or disability services or any facilities to which the Code of Health and Disability Services Consumers' Rights applies:

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- *new clauses 64A and 64B* create a separate position of Registrar of Retirement Villages, instead of adding that position to the list of duties of the Registrar of Companies, as the Bill presently provides. The position of Registrar of Retirement Villages will initially be held by the Registrar of Companies but the location of that office will be able to be changed to a different department of State, if that is considered desirable:
- *clause 77* is amended to limit the circumstances in which an operator of a retirement village will be required, under the Financial Reporting Act 1993, to prepare financial statements in respect of both the retirement village and the operator, in order to avoid unnecessary compliance costs. Financial statements will be required to be prepared in respect of both the retirement village and the operator only if the statutory supervisor or, in certain circumstances, the Registrar of Retirement Villages so directs:
- *Schedule 2* is amended to remove the requirement for an occupation right agreement to contain a provision requiring the operator to consult with residents before putting the retirement village on the market. The requirement to consult before sale or other disposal of the retirement village is retained.

The other amendments made by this Supplementary Order Paper—

- make changes to other clauses of the Bill that are consequential to the changes outlined above:
- insert necessary definitions:
- make fine tuning and other technical changes:
- correct wrong cross-references and other errors in the Bill as reported back from the Select Committee.

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