

DRAFT FOR CONSULTATION

Retirement Villages (Fairer Repayments) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The Bill will require that capital sums are returned (repaid) to exiting residents of retirement villages within a fair and reasonable time upon leaving the village. It codifies the rights of residents under the Fair Trading Act 1986 regarding unfair contract terms and fair compensation regarding occupation right agreements, which govern retirement accommodation arrangements.

Currently there is market failure in that the only incentive for village operators to repay capital sums is reputational, and the power imbalance between village operators and residents is significant. There are no statutory requirements limiting contractual agreements including no requirements to pay interest on delayed payment of capital sums. The average wait time for repayment is more than nine months, which makes this property market an outlier in relation to others. The uncertainty and delays cause financial and emotional stress for residents and their families.

The Bill—

- sets out prescribed periods within which capital sums must be repaid upon termination of an occupation right agreement:
- provides that interest accrues at the rate set out in the Interest on Money Claims Act 2016, from the repayment date until payment is made
- allows an operator to apply to the Registrar to vary the repayment date, or provide for repayment in instalments, where repayment would cause financial hardship or potential insolvency:
- exempts operators from the requirement to repay by the repayment date where the occupation right agreement entitles the resident to at least 50% of the capital gain on the resale of their unit and limits their share of exit costs to no more than the same percentage:

- requires operators to publicly disclose to residents and intending residents their performance in repaying capital sums and whether they have sought, or been granted, an exemption under the Act.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that this Bill comes into force 6 months after Royal assent.

Clause 3 identifies the Retirement Villages Act 2003 as the Act amended by the Bill.

Part 1

Amendments to principal Act

Clause 4 amends section 5 of the Act (which defines terms used in the Act) to amend the definition of resident in respect of *new sections 31A to 31E* to include former residents and the estate of a resident or former resident.

Clause 5 inserts *new sections 31A to 31E* which contain requirements for the repayment of capital sums upon termination of an occupation right agreement under the Act and provide for exceptions and exemptions from those requirements.

Clause 6 amends section 34 of the Act to require an operator to inform any Statutory Supervisor and the residents of a retirement village of any application for, or decision to grant, an exemption under *new section 31E*.

Clause 7 amends section 53 of the Act to provide residents with the ability to use the dispute resolution provisions of the Act in relation to repayment obligations.

Clause 8 amends section 57 of the Act to remove the requirement that residents wait 9 months before using the dispute resolution provisions.

Clause 9 amends section 79 of the Act, which provides for offences, to make it an offence to contravene, without reasonable excuse, *new section 31B or 31C*.

Clause 10 inserts *new sections 103A and 103B*, which provide for regulations to be made to support the operation of the Bill.

Clause 11 and the *Schedule* provide for transitional and savings matters. These amend Schedule 1AA of the Act to specify that the amendments made by the Bill do not apply to an occupation right agreement entered into before 17 March 2015, which is the date on which the Fair Trading Act 1986 first prohibited unfair contract terms. However, any such agreement that has been amended since that time would be subject to the Act, as amended by the Bill.

Clause 12 amends Schedule 2 of the Act, which relates to disclosure statements, to require that the disclosure made by operators includes information on average repayment times for capital sums, how often the operator has not repaid the capital sum in accordance with the requirements of the Act, and whether any exemptions have been sought under *new section 31E*.

Clause 13 amends Schedule 3 of the Act, which relates to occupation right agreements, to require that all occupation right agreements contain provisions providing for the repayment of capital sums within the timeframes specified in the Bill.

Part 2

Amendments to Retirement Villages Code of Practice 2008

Clause 14 makes amendments to the Retirement Villages Code of Practice 2008 to reflect the provisions of the Bill.

Ingrid Leary

Retirement Villages (Fairer Repayments) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Retirement Villages (Fairer Repayments) Amendment Act **2025**.

2 Commencement

This Act comes into force 6 months after Royal assent.

3 Principal Act

This Act amends the Retirement Villages Act 2003.

Part 1

Amendments to principal Act

4 Section 5 amended (Interpretation)

In section 5, definition of **resident**, after paragraph (c), insert:

(d) for the purposes of **section 31A to 31E** only, a former resident or the estate of a resident or former resident

5 New sections 31A to 31E and cross-heading inserted

After section 31, insert:

Repayment of capital sums

31A Interpretation of terms used in sections 31A to 31E

In **sections 31A to 31D**,—

capital gain, in relation to a residential unit in a retirement village, means the amount by which the resale price paid for the right to occupy a unit exceeds the capital sum paid by the former resident, minus any exit costs

exit costs, in relation to a residential unit in a retirement village, means—

- (a) any direct costs of selling the right to occupy the unit, including advertising costs and legal and agency fees; and
- (b) any direct costs of refurbishing the unit for the purpose of sale; and
- (c) any other prescribed costs

initial repayment amount means the lesser of the following amounts:

- (a) 10% of the capital sum owing;
- (b) \$50,000;
- (c) any prescribed amount

initial payment date means the date that is 5 working days after the date on which a resident's occupation right has terminated

residual payment amount means—

- (a) all capital sums due to a resident, minus any initial payment amount that has been paid; and
- (b) any other money owed by the operator to the resident on the residual payment date

residual payment date means 60 working days after the date on which an occupation right agreement is terminated by either party to the agreement

specified rate means interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

31B Repayment of capital sums after termination by resident

- (1) If an occupation right agreement has been terminated in the circumstances set out in **subsection (2)**, the operator must pay all capital sums due to the resident in accordance with **subsection (3)**.
- (2) **Subsection (1)** applies if the occupation right agreement has been terminated by—
 - (a) notice given by the resident in accordance with the occupation right agreement;
 - (b) the death of—
 - (i) the resident; or
 - (ii) if the occupation right agreement applies to more than one resident, the last surviving resident.
- (3) The payment required by **subsection (1)** must be made—
 - (a) in accordance with any reasonable instructions from the resident; and

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Part 1 cl 5

- (b) as soon as reasonably practicable; and
 - (c) in the case of the initial payment amount, not later than the initial payment date; and
 - (d) in the case of the residual payment amount, not later than the residual payment date.
- (4) However, **subsection (3)(d)** does not apply if—
- (a) an exemption under **section 31E** applies; or
 - (b) the residential unit has been damaged or destroyed, and is uninhabitable.
- (5) If the payment required by **subsection (1)** is not made by the required payment dates—
- (a) the operator must advise the resident when payment is likely to be made; and
 - (b) the operator is liable to pay interest to the resident on any unpaid amount at the prescribed rate for the period commencing with the required payment date and ending on the day on which the amount is paid in full; and
 - (c) the operator is liable to pay all actual and reasonable costs of the resident arising from the operator’s failure to make the required payment; and
 - (d) if the village has a statutory supervisor, the operator must promptly notify the statutory supervisor that payment has not been made.
- (6) This section is enforceable by a resident as if it were a term of their occupation right agreement and prevails over any provision in the agreement that is less favourable to the resident.
- (7) Nothing in this section prevents the inclusion of a term in an occupation right agreement that is more favourable to a resident and any such term prevails over this section.

31C Repayment of capital sums after termination by operator

- (1) If an occupation right agreement is terminated by an operator, the operator must, within 5 working days of the date on which the termination takes effect, pay all capital sums due to the resident.
- (2) If the payment required by **subsection (1)** is not made by the required payment date—
- (a) the operator must advise the resident when payment is likely to be made; and
 - (b) the operator is liable to pay interest to the resident on any unpaid amount at the specified rate for the period commencing with the required payment date and ending on the day on which the amount is paid in full; and
 - (c) the operator is liable to pay all actual and reasonable costs of the resident arising from the operator’s failure to make the required payment; and

- (d) if the village has a statutory supervisor, the operator must promptly notify the statutory supervisor that payment has not been made.

31D Exception where capital gains shared between operator and resident

- (1) If an occupation right agreement has been terminated, and the circumstances set out in **subsection (2)** apply, the operator must pay all capital sums and capital gains due to the resident in accordance with **subsection (3)**.
- (2) **Subsection (1)** applies if the occupation right agreement—
 - (a) provides for sharing of capital gains; and
 - (b) provides that the resident is entitled to at least 50% of any capital gain made on the resale of the license to occupy their residential unit; and
 - (c) provides that the resident’s share of exit costs is no more than their share of any capital gain; and
 - (d) complies with the requirements of any regulations made under **section 103A**.
- (3) The payment required by **subsection (1)** must be made—
 - (a) in accordance with any reasonable instructions from the resident; and
 - (b) as soon as reasonably practicable; and
 - (c) in the case of the initial payment amount, not later than the initial payment date; and
 - (d) in the case of the residual payment amount, not later than 5 working days after the settlement date of the sale of the license to occupy the residential unit.
- (4) If the payment required by **subsection (1)** is not made on or before the required payment date—
 - (a) the operator must advise the resident when payment is likely to be made; and
 - (b) the operator is liable to pay interest to the resident on any unpaid amount at the specified rate for the period commencing with the required payment date and ending on the day on which the amount is paid in full; and
 - (c) the operator is liable to pay all actual and reasonable costs of the resident arising from the operator’s failure to make the required payment; and
 - (d) if the village has a statutory supervisor, the operator must promptly notify the statutory supervisor that payment has not been made.
- (5) **Sections 31B and 31C** are subject to this section.

31E Registrar may grant exemption from requirement to comply with repayment obligation

- (1) The Registrar may exempt an operator from 1 or more of the requirements set out in **section 31B** if the Registrar is satisfied that the criteria prescribed under **section 103B** are met.
- (2) An exemption granted by the Registrar under **subsection (1)** does not effect the operation of any provision in an occupation right agreement, except to the extent the provision repeats the requirements set out in **section 31B**.
- (3) An operator may apply to the Registrar for an exemption by—
 - (a) completing the prescribed form and delivering it to the Registrar; and
 - (b) paying the prescribed fee.
- (4) The Registrar may exempt the operator on any terms and conditions, and for any period, that the Registrar thinks appropriate, including by—
 - (a) extending the initial payment date or residual repayment date; or
 - (b) allowing the residual repayment amount to be paid in instalments.
- (5) The Registrar may revoke an exemption if the Registrar is satisfied that—
 - (a) the reason for the exemption no longer applies; or
 - (b) the operator has not complied with its terms and conditions.
- (6) The Registrar must give notice that an exemption has been revoked as soon as possible to—
 - (a) the statutory supervisor (if any); and
 - (b) the operator.

6 Section 34 amended (Right to be supplied with information relevant to occupancy)

After section 34(3)(c), insert:

- (ca) any request by the operator to the Registrar for an exemption from the requirement to repay capital sums in accordance with **section 31B**;
- (cb) any decision by the Registrar, under **section 31E**, to exempt the operator from the requirement to repay capital sums in accordance with **section 31B**;

7 Section 53 amended (Types of dispute for which resident may give dispute notice)

After section 53(1)(c), insert:

- (ca) relating to money due to the resident as a result of the resident's occupation right coming to an end for any reason; or

8 Section 57 amended (Time for giving dispute notice)

Repeal section 57(3).

9 Section 79 amended (Contraventions of certain provisions an offence)

In section 79(1), after “25(1),” insert “**31B, 31C,**”.

10 New sections 103A and 103B inserted

After section 103, insert:

103A Regulations relating to occupation right agreements that provide for sharing of capital gains

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or both of the following purposes:
 - (a) prescribing additional requirements that must be met in any occupational right agreement that provides for the sharing of capital gain;
 - (b) declaring that a specified class of occupational right agreement is, or is not, an agreement that provides for the sharing of capital gains for the purposes of this Act.
- (2) The Minister must not recommend the making of any Order in Council under **subsection (1)** unless, in the opinion of the Minister, the Order in Council is necessary to—
 - (a) prevent the avoidance of obligations under this Act as a consequence of any scheme or arrangement; or
 - (b) clarify the status of any class of occupational right agreement whose status is in doubt.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

103B Regulations prescribing criteria for exemptions under section 31E

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing criteria for the grant of exemptions under **section 31E** (which relates to the grant of exemptions from the requirement to comply with certain repayment obligations).
- (2) The Minister must not recommend the making of any Order in Council under **subsection (1)** unless, in the opinion of the Minister, the regulations will enable the grant of an exemption only in circumstances where—
 - (a) the imposition of the obligation is unnecessary for the protection of residents’ interests; or
 - (b) it is necessary in order to avoid undue financial hardship or a material risk of insolvency; or
 - (c) is otherwise desirable and in the public interest.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

11 Schedule 1AA amended

In **Schedule 1AA**,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

12 Schedule 2 amended

In Schedule 2, after clause 3(c), insert:

- (ca) the average time (in working days) taken by the operator to repay all capital sums due to residents following termination, and the number of occasions where payment occurred after the residual payment date, in the 2 most recent financial years:
- (cb) whether the operator has requested an exemption from the requirement to comply with a repayment obligation under **section 31E** in the 5-year period immediately preceding the issue of the disclosure statement:

13 Schedule 3 amended

In Schedule 3, after clause 1(b), insert:

- (ba) provisions providing for the repayment of capital sums to a resident or former resident as soon as is reasonably practicable, and in any case no later than as provided by the Retirement Villages Act 2003:

Part 2

Amendments to Retirement Villages Code of Practice 2008

14 Amendments to Retirement Villages Code of Practice 2008

- (1) This section amends the Retirement Villages Code of Practice 2008.
- (2) In clause 49(4), after “pay all sums due to the resident”, insert “in accordance with **section 31C or 31D** of the Act (as applicable)”
- (3) Replace clause 51(1) with:
 - (1) This clause only applies—
 - (a) to occupation right agreements where the operator is responsible for selling the residential unit; and
 - (b) the former resident has not already been paid all sums due to them in accordance with the Act.
- (4) In clause 51(3), replace “Where the former resident has not already been paid all sums due to them, the operator” with “The operator”.
- (5) Replace clause 52(1) with:
 - (1) A complaint may be brought at any time.
- (6) Replace clause 54(6) with:

- (6) If an occupation right agreement allows the operator to sell or dispose of the former resident's unit, the operator must pay all money owing to the former resident no later than the earlier of:
- (a) five working days after the date the operator receives payment in full from the new resident; or
 - (b) if **section 31B** of the Act applies, the residual payment date.

Schedule
New Part 2 inserted into Schedule 1AA

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Part 2
Provisions relating to Retirement Villages (Fairer Repayments)
Amendment Act 2025

- 2 Savings provision for occupation rights agreements entered into before 17 March 2015**
- (1) The amendments made to this Act by the Retirement Villages (Fairer Repayments) Amendment Act **2025** do not apply to an occupation rights agreement entered into before 17 March 2015.
- (2) However, if an agreement to which **subclause (1)** applies is amended on or after 17 March 2015, then the amendments made to this Act by the Retirement Villages (Fairer Repayments) Amendment Act **2025** apply to that agreement.