

20 November 2023

Submission on the Review of the Retirement Villages Act 2003: Options for Change

Introduction

Utilities Disputes Limited | Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development’s review of the Retirement Villages Act 2003 and its associated regulations and codes.

Summary of submission

Our submission focuses on the dispute resolution proposal in questions 22, 23, 24, 25, and 27. We include additional comments in response to question 86.

We support the implementation of a new dispute resolution scheme (DRS) and believe retirement village operators and village residents will be best served by an independent scheme that aligns with best practice principles. We highlight the reasons why such a scheme is the best option and suggests procedural and jurisdictional considerations that would assist the scheme to deliver an effective service.

UDL

UDL is an independent, not-for-profit company that provides fair and independent resolution of complaints and disputes between utilities companies and their customers when they are unable to be resolved between the parties. We also resolve indemnity disputes between scheme members.

We currently operate three dispute resolution schemes: The Government approved Electricity and Gas Complaints Scheme, Broadband Shared Property Access Disputes Scheme, and a voluntary Water Complaints Scheme.

We facilitate a strong relationship of trust between consumers and utilities organisations and focus on three aspects - Prevent, Educate and Resolve.

Q. 22: Do you agree with the proposal to establish a new dispute resolution scheme that is independent of retirement village operators?

UDL's response: Yes

We agree that establishing a new dispute resolution scheme (DRS) independent of retirement village operators will help to address the issues identified with the current scheme.

To achieve the best results, UDL recommends the DRS is required to operate in line with the best practice principles identified by the Government Centre for Dispute Resolution (GCDR). The GCDR's principles and benchmarks produce accessible, consistent, and equitable processes, which can improve the current dispute resolution model used by retirement village operators.

Schemes that work independently of their parties promote outcomes that are fair for all sides of a dispute, as it is accountable to all parties. This will help address any power imbalance between residents and village operators and help preserve relationships between residents and staff.

The success of independent dispute resolution schemes can be seen in a number of different sectors for example, in financial, energy and water sectors across Australia, New Zealand and the United Kingdom, where consumers and members report high levels of satisfaction and trust in scheme providers.

Q23: Who Should the new scheme be delivered by?

UDL's response: A dispute resolution scheme provider.

UDL recommends any new scheme is delivered by an existing and trusted DRS provider. It is recommended the provider aligns its processes with the five best practice principles of the GCDR, as outlined on page 52 of the discussion document. When assessing a DRS provider, the Ministry could have regard to the nine standards of best practice that supplement the GCDR's five principles, which include the ability to deliver a culturally responsive dispute resolution service for Māori users.

Providers that emphasise dispute resolution expertise will be well placed to establish a scheme for retirement villages given their skills are transferable across industries. This will reduce time taken to establish an effective service for the retirement village sector.

DRS providers are well positioned to add value to the industries they operate in by identifying and reporting on systemic issues and trends and sharing this data with relevant agencies such as the Retirement Commissioner. This creates a pro-active approach to dispute resolution, which can lift industry standards over time by identifying and eliminating root causes.

We support the proposed process outlined on page 55 of the decision paper. For example, at UDL, when complaints are not able to be resolved through mediation and investigation, they are referred to our Commissioner, who has the power to issue a preliminary decision, followed by a binding decision if it is required. This works well and we support following a similar structure.

Some other improvements to the scheme's process that the Ministry should consider are:

- Giving the operators a short period of time to work with the complainant directly to try and resolve the complaints before they can refer their complaint to the DRS.
- Better defining the jurisdiction limits of the scheme by considering whether to exclude:
 - Complaints involving claims over a certain monetary value – this could eliminate claims that are more appropriately dealt with by other forums, such as the courts.
 - Complaints that are currently before or have already been dealt with by a court, tribunal, or arbitrator to avoid any potential prejudice to those proceedings.
 - Complaints that exceed a prescribed time frame (i.e., if more than six years have passed from the date the complainant first became aware or should reasonably have become aware of the circumstances giving rise to the complaint).
 - Complaints that are purely related to the price an operator charges for its services (this would not exclude complaints about whether a charge or fee has been correctly applied).
- The scheme should also provide the DRS with the discretion to take no further action on a complaint at any stage for defined reasons such as:
 - The complainant lacks sufficient personal interest in the subject matter of the complaint (this would not preclude an agent making the complaint on behalf of the person affected).
 - A reasonable resolution has been proposed by the operator.
 - The complainant knew about the circumstances giving rise to the complaint for more than 12 months before making the complaint.
 - The complaint was trivial, frivolous, or vexatious – we note that these complaints would already be excluded under the proposed process for a DRS.
 - The subject matter of the complaint had been previously considered and dealt with.
 - In the circumstances of the complaint, it was appropriate to exercise the discretion to take no further action.

Q24: Should residents be required to contribute to the costs of resolving disputes between residents (where the operator is not a party to the dispute)?

Best practice dispute resolution would see all major financial barriers removed. If it was considered appropriate to require residents to contribute to costs of resolving disputes it would be suitable to cap the cost at an affordable amount.

It may also be appropriate to provide that the DRS operator can award costs against any resident in appropriate circumstances, such as where their conduct in pursuing the dispute has generated avoidable costs on the part of the DRS or another resident party to the dispute. This would act as means of ensuring the DRS is used appropriately and would dissuade meritless claims.

Q25: Should legal representation be limited in a new scheme? If yes, how should it be limited?

UDL's response: Not sure

The courts have previously confirmed UDL's role is to provide an efficient, inexpensive, and effective dispute resolution mechanism for resolving consumer complaints and its mechanisms are intended to provide a somewhat informal process for the efficient resolution of complaints.

We expect this will be the intention for any DRS provider that may be appointed, and complainants should not need to be represented to resolve a complaint.

That being said, we do not believe it is necessary to limit a complainant's right to legal representation and a DRS provider should be able to accommodate this aspect of a complaint. However, we note the Ministry may consider one of the key objectives is to reduce the burden on our courts and for the DRS to operate as a more efficient and informal alternative. If this is the case and the Ministry believes, it is necessary to exclude legal representation to achieve this aim, we do not consider it would detract from the key purpose of the DRS.

Q27: Would independent advocacy support that is free for residents to access be needed under a new dispute resolution scheme? (See paragraphs 158-159 of the discussion paper)

UDL's response: Not sure

Our response to this question relies on many of the same observations raised in response to Question 25.

Ideally, a well-designed DRS should be accessible enough that advocacy support is not required. This can be achieved for example by ensuring materials are provided in a variety of forms considering any access or health needs and creating a culture of accessibility.

A DRS should also actively seek feedback from its users and have channels of communication with interested groups and representative Community organisations and support groups.

UDL's own scheme rules place obligations on member companies to inform their customers about their dispute resolution process and their right to refer a complaint to UDL. Imposing a similar requirement on Village Operators coupled with a scheme that is culturally accessible and pro-active to the needs of complainants may reduce the need for an advocacy support service.

UDL also appreciates, however, that residents of retirement villages will have various degrees of vulnerability, and a particular set of needs. This vulnerability may take various forms, and include financial stress, social isolation, and health issues. Some of these consumers may benefit from an advocacy service, to assist in making their complaint and exercising their autonomy.

If an advocacy support service was to be implemented, it would be appropriate for this service to be delivered separately from the appointed DRS provider. This is because offering advocacy services to residents could undermine its independence when later dealing with a dispute from or complaint from that resident. The DRS provider should certainly assist in resolving disputes by clarifying issues, identifying options, and facilitating outcomes, but it should not provide financial or legal advice or advocate for individual residents.

Q 86: If you have anything else on the review of the Retirement Villages Act you want to share with us, please let us know.

As retailers and distributors of energy, the vast majority of retirement villages are already required to be members of UDL's Energy Complaints Resolution Scheme as they will typically have some involvement in the retailing of electricity to residents. The Scheme gives consumers access to free and independent dispute resolution services for complaints relating to electricity and gas, including charges they may receive and any related aspects of the retirement villages electricity and gas services.

As such, UDL's information and the retirement village's system for managing electricity consumption should likely be included in the Retirement Village Information Statement proposed in Appendix 2 of the discussion paper, as well as on any relevant customer communication.

Regardless of the Ministry's decision on the proposed DRS, we believe it is important to recognise residents do have the right to complain against village operators if it falls under UDL's existing scheme.

Follow up

We welcome the opportunity to engage on this submission further with the Ministry and in relation to any aspect of the above comments if it was thought to be helpful.

If you require any further information about anything raised above, please contact Roy McKee, Business & Research Analyst at roy@udl.co.nz

Ngā mihi nui

A handwritten signature in black ink, appearing to read 'Neil Mallon', with a stylized flourish at the end.

Neil Mallon

Deputy Commissioner: Toihau Tuarua

Utilities Disputes Limited: Tautohetohe Whaipainga