



**Submission to the Commission for Financial Capability's White  
Paper on the Retirement Villages' Legislative Framework:  
Assessment and Options for Change 2020**

**31 March 2021**

## **About the NZACA**

1. This submission is from the New Zealand Aged Care Association (NZACA), the peak industry body for the aged residential care (ARC) industry in New Zealand. We represent over 37,000 beds of the country's rest home industry, or about 93% of the total supply. Our members' services include four categories of care, rest home, hospital, dementia and psychogeriatric, as well as short-term care, such as respite.
2. Our members range from the very small stand-alone care homes from as little as six beds in more remote areas of the country right through to the larger care centres of more than 100 beds, some of which are co-located with retirement villages.
3. Advocating and lobbying to government to shape policies and create an environment that helps our members provide outstanding quality care for older New Zealanders is at the heart of what we do. We provide leadership on issues that impact on the success of our members, for example, the annual contract negotiation with District Health Boards (DHBs), the pay equity settlement and workforce recruitment and retention.
4. We produce valuable research, professional development opportunities, information and publications to help our members make informed business decisions, improve capability and keep them up to date with industry developments. We also run the annual industry conference, which is the showcase event for New Zealand's aged care sector.
5. Any enquiries relating to this submission should be referred to Kathryn Maloney, Principal Policy Analyst, [kathryn@nzaca.org.nz](mailto:kathryn@nzaca.org.nz) or by phone on 04 473 3159.

## **Overall comment**

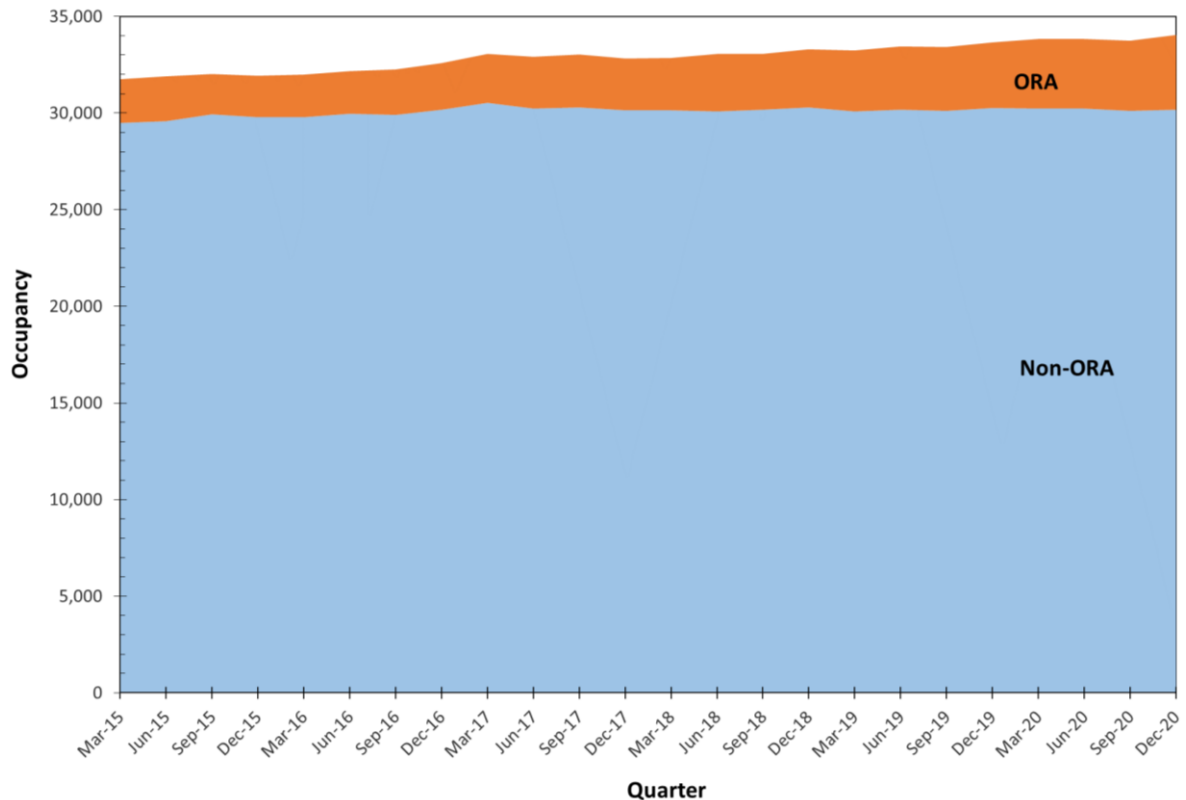
6. This submission is in response to the White Paper from the Commission for Financial Capability (CFFC) on the Retirement Villages' Legislative Framework: Assessment and Options for change 2020. The NZACA thanks the CFFC for this opportunity.
7. The assumption is made in this submission that inclusion of explanations or definitions of terms relating to retirement villages and the Retirement Villages Act 2003 are not necessary.

### *The interface of care and residence*

8. As stated in the white paper, many consumers confuse retirement villages and rest homes. Some intending and current residents do not recognize that a different framework applies to an aged residential care facility, even where that facility is co-located with a retirement village.
9. The legislative framework for aged residential care is separate from that of retirement villages. The Retirement Villages Act 2003 covers all legislation relating to the licensing and operating of retirement villages; the legislative framework for the ARC sector comes under the Health and Disability Services (Safety) Act 2001, the Residential Care and Disability Support Services Act 2018 and associated regulations, including the Health and Disability Services Standards 8134:2008 and the Code of Health and Disability Services Consumers' Rights. ARC providers also have an annually reviewed contract (the Age-Related Residential Care Services Agreements) with their local District Health Board to provide specific care to the resident.

10. Nevertheless, the Retirement Villages Act 2003 and the legislative framework around ARC do cross over where someone who is living in a retirement village under an occupational rights agreement (ORA) is also receiving care. While this is a small percentage of the total number of beds in ARC, it is also where the largest growth of bed category has occurred over the last five years. (See Figure 1 below for a comparison of ORA versus non-ORA beds in ARC.)

**Figure 1: Supply of Rest home, Hospital and Dual Service Beds**



Source: TAS ARC Quarterly Reporting Survey, December 2020

11. ORA bed numbers are broken down as follows in Figure 2.

**Figure 2: Breakdown of ORA bed numbers and facilities providing beds by service**

	ORA Beds	Facilities providing beds
ORA Rest Home Only	2,519	96
ORA Hospital Only	19	2
ORA Dual Service	1,332	53
<b>Total</b>	<b>3,870</b>	

Source: TAS ARC Quarterly Reporting Survey, December 2020

#### Funding of care

12. Where a person aged 65 or over is assessed by their DHB to require rest home, hospital, dementia or psycho-geriatric care in an ARC facility, they may be eligible for a Residential Care Subsidy – a government subsidy that pays for the cost of care. If they are not eligible, they will have to pay for care out of their own income and assets. However, the government limits how much that cost towards care will be – known as the “maximum contribution”.

13. On entering ARC, the resident signs an admission agreement with the provider, laying out the costs, level and expectations of service. The fee for any assessed level of need includes a small element to cover the accommodation requirements for delivering the contracted care i.e., bed space and bathroom facilities.
14. Earlier models of ARC stipulated a minimum space of 9m<sup>2</sup> per resident, with access to toileting and bathroom facilities (which were typically communal facilities). Generally, residents shared a room with up to five other people. While innovation has seen models change to a private bedroom for each resident, the maximum contribution now allows for very little more than a room measuring 11m<sup>2</sup> with shared facilities.
15. As funding to the sector has not met the pace of increased costs of care nor the lift in expectations from residents who now enter aged care, operators have worked hard to find ways to meet incoming residents' expectations of a private room, a private ensuite with toilet and shower, as well as a room large enough to allow personal effects and perhaps even a kitchenette. These premium suites can measure up to 60m<sup>2</sup>.

*The regime's flexibility allows the sector to cater for a widely diverse demographic*

16. Traditionally, ARC providers have charged an "accommodation supplement", above the maximum contribution, for those residents that wanted a premium room. Another way to meet the capital cost of building this type of accommodation, is by enabling access to the room through an ORA.
17. While accommodation supplements are attractive to families that have the ability to make regular co-payments from income, the ORA model works better for those who may have easier access to capital than income. Not only do offerings of this form meet the expectations and needs of many who now enter care, they have also added to the choice that is on offer across the sector to a widely diverse demographic.
18. It is important to note that without either the ability to have an accommodation supplement paid or an ORA created, this substantial lift to the quality and choice of accommodation that some in the sector can now offer would not have occurred. The regime's flexibility allows this to happen, and further regulation would seriously constrain this choice.

*Disclosure regime*

19. An ORA in the ARC sector will be issued in compliance with the Retirement Villages Act 2003 and will be subject to all the requirements that pertain to a registered operator of a retirement village.
20. Where a retirement village resident transitions into aged residential care (following a needs assessment), but remains under an ORA, they must sign a variation on their existing ORA or terminate their existing ORA and sign a new one. They must also sign an admission agreement – a contract between themselves and the care provider – that is reviewed annually.
21. As is shown in paragraph 20 above, there is considerable legal paperwork involved for the resident to transition under an ORA from retirement village living into aged residential care is large. Commonly, the transition happens as a result of a sudden medical event. Relations are

usually involved in assisting the resident to make the transition and this is generally a very stressful and somewhat bewildering time for both the resident and their relatives. There is a lot of compliance to understand at this time.

## **Conclusion**

22. The age residential care sector is comprehensively regulated through the Health and Disability Services (Safety) Act 2001, the Residential Care and Disability Support Services Act 2018 and associated regulations, including the Health and Disability Services Standards 8134:2008 and the Code of Health and Disability Services Consumers' Rights. Operators are audited regularly as part of the accreditation regime and should any issues arise regarding the care of a resident, there is a robust procedure for complaints. Added to this, the Ombudsman will begin monitoring ARC facilities from 1 July 2021 as part of New Zealand's obligations under the United Nations Optional Protocol to the Convention Against Torture (OPCAT) to prevent torture and other cruel, inhuman or degrading treatment and punishment.
23. As stated previously, transition from a retirement village into care can be a stressful time. However, residents and their families do take comfort from transferring their ORA from the village to a care facility. It is a known structure that they are familiar with and in which they have confidence.
24. The NZACA appreciates the current ORA system as being relatively straightforward and would reject any system that would make it more complex.
25. The NZACA looks forward to discussing this submission with the Retirement Commissioner.
26. Any enquiries relating to this submission should be referred to Kathryn Maloney, Principal Policy Analyst, [kathryn@nzaca.org.nz](mailto:kathryn@nzaca.org.nz) or by phone on 04 473 3159.

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