

**Association of Residents of Retirement Villages – Auckland Area
C/- 11/788 Beach Road, Browns Bay Auckland 0630**

27 July 2011

Ms D Crossan
Retirement Commissioner
PO Box 12 148
WELLINGTON

URGENT:

Dear Diana

The ARRV-AR effectively represents the residents of some 60+ Retirement Villages (RV) in the Greater Auckland area.

We respectfully but **urgently** request your full support for the proposed amendment and ask that you take action as stated in clause 91(1) & (2) of the Act. We then ask that clause 90(4) of the Act be applied by recommending to the Minister our proposal to immediately change the wording of clause 22.7(c) of the RVC Code of Practice 2008 to that shown in bold on page 2 of the enclosed letter.

It is therefore proposed “that clause 22.7(c) of the Code of Practice 2008 is deleted and replaced with:

“ c state that if the residential unit cannot be replaced following an insurable event, that upon termination of the Occupation Right Agreement, the resident will receive:

i the full insurance proceeds paid to the operator for that residential unit - OR -

ii the original capital sum paid by the resident for the right to occupy

whichever is the greater, without any capital or other deductions normally made on termination of the Occupation Right Agreement.”

Your immediate consideration is respectfully requested and enacted upon strictly and correctly by yourself as Retirement Commissioner, as clarified under the conditions laid down by the RV Act 2003, clauses 90(4) and 91(1) & (2), and not passed over to the Department of Building and Housing (DBH) for action.

The logic for this variation is as follows:

1. The reason given for the removal of Clause 21.5 with the introduction of the Code of Practice 2006 was one of ambiguity. We do not believe that the alleged ambiguity in clause 21.5 was correctly addressed.
2. The recommendation of the Retirement Commissioner regarding clause 21.5 was **mysteriously** ignored by the DBH. If your sensible recommendation had not been ignored but acted upon then clause 21.5 would have had **no ambiguity** and would therefore have been in place in the Code of Practice 2008.
3. The dropping of this clause from the Code of practice 2008 is, in our opinion, the basic reason for the distress caused to, and so severely disadvantaged, many RV residents in the Christchurch earthquake 'red zone' area. Further, in no way is it compliant with or supportive of the protection of residents or RV's, as is purported to be the first purpose of the Act.
4. There appears to be no reason for DBH claiming a situation of ultra vires because it ties the insurance company as a third party? The insurance of a Village is a contract between the insurance company and the Village operator/owner, whereas the clause is a statement in the Occupation right Agreement between the operator/owner and the resident.

We therefore respectfully request that if the text of clause 22.7(c) could be **urgently installed**, then any other urgency is diluted so that dialogue between all involved and interested parties should then be further promoted to take place in a timely manner, in a total overdue review of the RV Act 2003 and it's attending paperwork, with particular reference to the subject of future insurance cover and indemnity payouts.

We await with great interest, your consideration and reply to this request.

Yours sincerely

Bill Atkinson
Secretary; ARR-AR