

28 November 2011

Department of Building and Housing
PO Box 10-729
WELLINGTON 6143

Attn: Retirement Villages Code of Practice Review Team

SUBMISSION ON THE “PROPOSED VARIATIONS TO THE RETIREMENT VILLAGES CODE OF PRACTICE 2008: CONSULTATION DOCUMENT”

This submission outlines the response of the Insurance Council of New Zealand (“the Insurance Council”) to insurance aspects of the “Proposed Variations to the Retirement Villages Code of Practice 2008: Consultation Document” (released 10 October 2011).

The Insurance Council would like to make a submission on how current insurance industry practices might impact on proposals made in the Consultation Document. We are particularly concerned to ensure that residents of retirement villages are given effective protection and certainty going forward.

1. The Insurance Council

The Insurance Council is the industry representation body for fire and general insurance in New Zealand. The Insurance Council has 25 members which write the substantial majority of New Zealand’s insurance business.

The Insurance Council is active in self-regulating the insurance industry. We promote the Fair Insurance Code that requires insurers to act ethically. We fund the Insurance & Savings Ombudsman Scheme that offers independent review of decisions and we apply an Insurance Council solvency test that confirms the financial stability of our members. We also require members to be independently rated and to publish these ratings. We perform an important role in informing and educating consumers about key insurance issues and risks.

Members currently protect approximately \$0.5 trillion of New Zealanders’ assets and last year paid \$2.1 billion in claims, not including the estimated \$15 billion currently being contributed towards the recovery of Canterbury following recent earthquakes. Approximately \$1 billion has already been paid into Christchurch over the past year.

2. Insurance Council Comments On The Proposed Variations

The Insurance Council’s submission gives an overview of how current insurance industry practices might impact on the operation of proposals within the Consultation Document. Our submission looks primarily at those proposals relating to insurance.

As a foreword, the Canterbury earthquakes have created significant changes to the way in which insurance is being and will be undertaken in New Zealand going forward. Any regulatory review relating to insurance should have careful consideration of these changes and their implications. The Canterbury earthquakes have altered the availability of cover for some insurance risks going forward. Cover that was readily available at relatively low rates may no longer be available in the same manner and stakeholders need to appreciate the implications of this.

3. Questions Posed In The Consultation Document

3.1. Variation 1: Proposal of the Association of Residents of Retirement Villages ("ARRV")

Issue: Repayment of the capital sum if a village is destroyed and not rebuilt

ARRV proposal: Add new clause 22 to the Code to state:

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 the termination of the occupation right agreement.

ICNZ comment: If a unit cannot be "replaced following an insurable event", then the insurer may only pay indemnity value (i.e. the current value of the unit, taking into account its age and condition at the time of loss or damage). Accordingly, if an indemnity payment is made, there is no guarantee that there will be sufficient insurance proceeds available, following an insured event, to fully refund the original capital sum paid by the resident.

DBH/the Retirement Commissioner needs to be aware of this, as this clause possibly implies that the operator should be retaining sufficient monies to cover any difference between the indemnity value and the original capital sum paid by the resident.

3.2. Variation 2: Proposals of the Retirement Villages Association ("RVA")

RVA Issue 1: Repayment of the capital sum if a village is destroyed and not rebuilt

RVA proposal: Add new clause 47(3) to state:

If the residential unit is not to be replaced following an insured event within a time that is reasonable in the circumstances, upon termination of the occupation right agreement, the resident will receive back the full capital sum that they paid to the operator for their occupation rights to that residential unit, without any deduction for deferred management or exit fees (the 'fixed deduction' as defined in this Code of Practice) normally made under the occupation right agreement upon termination and repayment...

ICNZ comment: As above, DBH and the Retirement Commissioner need to be aware that insurers may only pay indemnity value if they are unable to reinstate a property

and so, accordingly, there may be insufficient insurance funds available for the operator to repay the resident their full capital sum paid.

RVA Issue 2: Insurance cover disclosure

RVA proposal: Amend clause 22(3) to state (changes are in **bold**):

Where operators are responsible for the insurance, they:

*(a) may include business interruption insurance, temporary accommodation insurance, and adequate liability insurances **and the operator must disclose to the resident whether or not it has any such insurances.***

ICNZ comment: There may be some concern around having to disclose whether insurances are “adequate”. What is adequate may vary in each situation, depending primarily upon professional advice received from registered valuers and insurance brokers/advisors.

RVA Issue 3: Continued payments of village outgoings

RVA Issue 4: The amortisation of the deferred management fee (DMF)

ICNZ comment: The Insurance Council has no comment on these proposals.

3.3. Variation 3: Proposals of the Department of Building and Housing (“DBH”)

DBH Issue 1: Insurance arrangements

DBH proposals: Include the following changes to clause 22 (changes are in **bold**):

*22(1) The operator must take out and keep in force **insurance policies which provide adequate coverage for the retirement village, or must ensure that the insurance policies are taken out and kept in force, to the satisfaction of the statutory supervisor (if there is one). Where the retirement village is a unit title development, one or more of the policies may be taken out and kept in force by the body corporate.***

22(2) The insurance policies must:

- a) cover fire and accidental physical loss or damage to retirement village property (including all amenities and utilities within the retirement village boundary and units subject to occupation right agreements) and any residential units that are owned by residents, for full replacement;*
- b) provide business interruption insurance to the operator to cover loss of income from the retirement village for a minimum of 18 months;*
- c) provide adequate liability insurances; and*
- d) meet any other insurance required by law.*

22(3) The operator must ensure that the insurance valuation of the retirement village property is updated at least every two years. Indemnity insurance is permitted if full replacement insurance is not available. The operator must inform the residents what

cover is provided in circumstances where the operator is unable to obtain full replacement insurance.

22(5) *The operator's insurance policies must:*

- a) reflect what is written in the occupation right agreement and include any capital improvements or additional **fixtures** and fittings provided by the resident*
- b) be available for residents to view at **the annual general meeting of residents**, and on request.*

22(6) *Operators must inform the residents whether or not they pass on any **insurance policy excess amount** to the resident.*

22(7) The resident is responsible for insuring the contents of the residential unit, and may (but is not required to) take out any contents insurance policy they consider appropriate.

Previous clause 22(7) "Repair or reinstatement of property" [deleted]

Temporary accommodation

22(8) *The operator must inform residents in the occupation right agreement:*

- a) whether the operator will provide temporary accommodation or facilities while a residential unit or facility is being repaired or replaced after an insured event;*
- b) how the cost of the temporary accommodation or facilities will be met;*
- c) how soon after the insured event the temporary accommodation or facilities will become available.*

22(9) Regardless of whether or not the operator will provide temporary accommodation or facilities, the resident may (but is not required to) take out their own insurance policy providing for temporary accommodation or facilities.

Questions regarding the above proposals (from Part 2 of the Consultation Document):

1. Should the Code ensure operators have sufficient funds available to terminate occupation right agreements in no-fault exit situations? If yes, how could this be achieved?

ICNZ comment: The Insurance Council has no comment on this question.

2. Should statutory supervisors ensure that a village is insured 'satisfactorily'? If no, who should? How should 'satisfaction' be determined?

ICNZ comment: Replacement policies, supported by a proper valuation, will provide the best protection for all parties. However, the widespread availability of full replacement cover for earthquake loss/damage cannot be guaranteed going forward. Accordingly, DBH and/or any relevant supervisor needs to be aware that whether the insurance is "satisfactory" may depend upon what cover is available/affordable in the current

market. Further, because of possible future limitations, the requirement to maintain a replacement policy under clause 22(2)(a) may not be achievable for all operators.

3. How often should valuations be updated? We have suggested every two years. What do you think?

ICNZ comment: The Insurance Council recommends that valuations should be updated every 12 months, by a registered valuer. This aligns with the wording of the Fire Services Act 1975 which suggests valuations should be current with each period of insurance. Inflation alone can make a two-year-old valuation outdated.

4. Do you agree that the insurance policies should include all amenities and utilities within the retirement village boundary, units subject to occupation right agreements and any residential units that are owned by residents? If no, please state why not.

ICNZ comment: Insurance should not just cover “building assets” but rather all assets within the boundary of the retirement home. It should include things such as lawns, gardens, drainage, paths, roads or tracks (for example, there may be a number of paths around the village which have been purpose-built for mobility scooters).

5. What other types of insurance beyond replacement or indemnity insurance policy do you consider operators should be required to take out, if any? We have suggested business interruption insurance for a minimum of 18 months and adequate liability insurances – do you agree?

ICNZ comment: What is appropriate will depend on each village’s unique circumstances. Individual operators need to discuss what is “appropriate” with their own insurance broker/advisor.

However, DBH/the Retirement Commissioner should be aware that there may be less appetite in the current market to underwrite business interruption (“b.i.”) cover for a period beyond 12 months. This will likely depend on where the retirement village is located. Accordingly, operators may find it difficult to comply with a requirement to obtain b.i. cover for a minimum period of 18 months.

[**Note:** Also, as regards excesses mentioned under clause 22(6), the Insurance Council thinks it prudent to pass this information on to the resident. However, operators and residents should be aware that excesses will almost certainly increase for earthquake cover going forward.]

6. Who should be responsible for holding temporary accommodation insurance?

ICNZ comment: The Insurance Council has no preference as to who should be responsible for this cover. However it would be useful for all interested parties to have a common standard going forward.

7. Do you think the proposed wording will achieve the outcomes we are seeking?

ICNZ comment: See comments above and below.

8. Do you have any wording suggestions?

ICNZ comment: Could possibly include the word “natural disaster loss/damage” in clause 22(2)(a), together with the words “fire and accidental physical loss or damage...”, to clarify that policies should similarly include this type of cover.

DBH Issue 2: Termination of occupation right agreements, including transfer to a new unit

DBH Issue 3: Payments and Charges

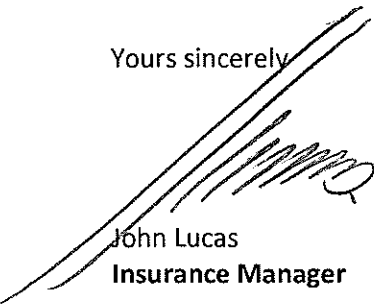
ICNZ comment: The Insurance Council has no comment on these proposals.

4. Summary

DBH/the Retirement Commissioner need to be aware that insurance practice has notably changed following the Canterbury earthquakes. Cover that was readily available at relatively low rates may no longer be available in the same manner. As indicated above, many risks may no longer be insurable on the same terms. The implications of this, as noted in our comments above, need to be considered carefully during the drafting of any variations to the Code.

We would be happy to discuss any issues raised in our submission with DBH/the Retirement Commissioner. The Insurance Council would also be happy to organise a meeting between the Retirement Commissioner/DBH and our commercial committee to further discuss the implications of current insurance practices and how to best achieve certainty and protection for residents of retirement villages through insurance. Please phone John Lucas on (04) 495 8008 or john@icnz.org.nz.

Yours sincerely



John Lucas
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