Regulatory Impact Statement

Title of Proposal: Review of the Retirement Villages (Fees) Regulations 2006

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Building and Housing. It provides an analysis of options to amend the Retirement Villages (Fees) Regulations 2006 in two areas:

- registration fees
- annual return fees.

The preferred option for the registration fees is to introduce a flat rate registration fee.

The preferred option for the annual return fees is to reduce the fees while retaining the three tier fee structure.

Under this option, all retirement village operators' fees will decrease. However, the Registrars' Office will under recover its costs. The under recovery will be met from the current surplus in the memorandum account.

The analysis has been informed from discussions with key stakeholders: residents associations, Grey Power, Age Concern New Zealand, and the Retirement Villages Association (representing operators). The stakeholders raised few concerns regarding the preferred option for the registration fees. Some resident representatives asked the Department to consider setting the annual return fee on a per unit basis, to minimise the costs to residents.

This statement does not cover the Land Transfer Regulations 2002 fee rise, as this is covered by the Regulatory Impact Statement prepared by Land Information New Zealand, and was agreed by Cabinet Domestic Policy Committee on 13 April 2011.

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Status quo

1. The legislative vehicle to allow the setting and collecting of fees is set out in section 101 (1)(h) and section 102 of the Retirement Villages Act 2003 (the Act).

2. The Retirement Villages (Fees) Regulations 2006 set out two fees:

    - an one-off registration fee
    - an annual return fee.

3. The registration and annual return fees are set at a tiered level. The policy assumption was smaller retirement villages' documentation is less complex and therefore easier to process. The number of residential units within the retirement village determines the fees set, as shown below.

Number of units	Registration fee	Annual Return fee
No more than 34 residential units	$540	$460
At least 35 and no more than 84 residential units	$1,738	$1,543
At least 85 residential units	$4,508	$3,936

4. The setting of fees have two purposes:

    a. To enable the Registrar-General of Land to place a memorial on the [land] title giving residents in registered retirement villages first security of interest in the residential unit

    b. To recover administration and other related costs incurred by the Registrar of Retirement Villages (the Registrar) to develop, register and maintain the register of retirement villages.

5. Registration is now in its fourth year and annual return in its third year. Over this period of time, the policy assumption regarding the complexity of documentation has not been proven. Indeed, the Registrar has found no time difference (and therefore no cost difference) between processing either registration or annual returns to be dependent on the retirement villages' size.

6. Fees revenue is collected by the Registrar and held in a Crown memorandum account. The Registrar uses the money to fulfil its functions and duties under the Act.

Problem definition

7. As of February 2011, there is a surplus in the Crown's memorandum account of $112,097. This surplus results from:

    a. recovering the start up costs associated with the Act within four years rather than the estimated five

    b. efficiencies gained by the Registrar's office from carrying out its functions

    c. the annual return fees are higher than required.

Objectives

8. The review's objectives are to ensure the retirement villages fees:

   a. are not greater than the Crown's costs

   b. reduce the amount of cross-subsidisation by different size retirement villages over time to increase the transparency in fees setting.

Regulatory Impact Analysis

Options: Part one: Registration Fees

9. Retirement Villages need only register once. The total cost[1] to the Crown to register retirement villages is $30,120 (excluding GST) a year. Assuming an average of five new villages registering a year, the cost to the Crown per registration[2] is $6,927 including GST.

10. The following options were considered:

    a. Option 1: do nothing

    b. Option 2: charge fees based on full cost recovery

    c. Option 3: charge fees on partial cost recovery retaining three fee tier

    d. Option 4: introduce a flat rate (preferred)

11. These options have been analysed against the objectives of the review with the results shown in the following table.

Objective met	Option 1	Option 2	Option 3	Option 4
Crown income is to be as close to expenditure as possible	The Crown's income is much lower than the Crown's expenditure (under recovery).	The Crown's income will be aligned with its full expenditure.	The Crown under recovers its costs. The Crown uses its surplus to meet the shortfall.	The Crown under recovers its costs. The Crown uses its surplus to meet the shortfall.
Reduce cross-subsidy where possible	The cross subsidy will vary dependent on where the retirement village sits on the three fee tier structure.	Full cost recovery will not require cross-subsidy, but neither will it reduce the existing surplus.	The Crown will receive some of its costs from the fees (partial cost recovery) but will have to subsidise the shortfall from its surplus or appropriation.	The Crown will under recover its costs and will require a subsidy from either the surplus or appropriation.

[1] Figure from Deloitte costing model on behalf of the Companies Office in the Ministry of Economic Development. The model allocates costs on the basis of time worked by staff as well as allocating accommodation and other indirect costs needed for the staff to do their jobs.

[2] This figure is reached by dividing the total Crown cost by the number of villages registering.

Discussion of options

12. Options one and three are discounted because they are not sustainable in the long-term, given the current three tier fee structure under-recovers fees for all sizes of retirement village. Retaining the current three tier fee structure, even using the surplus from the memorandum account, could provide an incentive for larger villages to register a maximum of 34 residential units at initial registration to pay the lowest amount. The Crown would not be able to recover its loss from the annual return fee or charge a second registration fee.

13. Option two would recover the Crown's full cost. This option, however, does not reduce the surplus in the Crown's account. The full cost figure is based on the average number of registrations, which in the Registrar's experience is low in comparison to other industries. This is not the Registrar's preferred option.

14. The preferred option is option four a flat rate registration fee of $900 including GST. We consider there is enough surplus in the memorandum account to subsidise a further 18 retirement villages registering. We predict the surplus will take us through to the next fees review in 2013.

15. The risks and mitigations to the Crown of adopting option four are

Risks	Mitigation
A flat rate fee acts as a disincentive to develop small retirement villages.	The fee to register a new retirement village is low in comparison to building levies and the consents process. A flat rate fee will enable developers to build to what they can afford or afford to borrow and set the sales price accordingly.
Surplus runs out earlier than expected due to a faster than anticipated increase in new registrations	Monitor the rate of new registrations every six months to reforecast the surplus in the memorandum account.
Vote Commerce loses it authority to under-recover fees when the surplus runs out.	Monitoring the rate of registrations every six months.

Options: Part two: Annual Return Fees

16. There are 330 registered retirement villages. Each pays an annual return fee, based on size. The total cost[3] to the Crown to administer the annual return fee is $187,264 (excluding GST) a year.

17. At the current level of registered retirement villages, the Crown will process 330 annual returns each year. Therefore, the cost to the Crown per annual return is $650[4] including GST.

18. The following options were considered:

    a. Option 1: do nothing (status quo)

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[3] Figure from Deloitte costing model on behalf of the Companies Office in the Ministry of Economic Development. The model allocates costs on the basis of time worked by staff as well as allocating accommodation and other indirect costs needed for the staff to do their jobs.

[4] This figure is reached by dividing the total Crown cost by the number of villages submitting annual returns.

b. Option 2: Introduce a flat fee

c. Option 3: Amended three tiered fee structure (preferred)

d. Option 4: Set fees based on number of residential units (floating rate)

19. These options have been analysed against the objectives of the review with the results shown in the following table.

Objective met	Option 1	Option 2	Option 3	Option 4
Crown income is to be as close to expenditure as possible	The Crown's income is greater than its expenditure (over recovery).	The Crown's income will be aligned with its full expenditure, fees for small retirement villages would rise, and the Crown's surplus would remain at its current level.	The Crown's income will be aligned with its full expenditure, whilst reducing the fees level for all sizes of retirement villages.	The Crown's income will be aligned with its full expenditure. But the administrative cost to the Crown may require further work and potential amendments to the Act.
Reduce cross-subsidy where possible	The cross subsidy is greater than required and the Crown's surplus would continue to grow.	Full cost recovery will not require cross-subsidy, but small retirement villages would lose the cross-subsidy paid by larger retirement villages.	The cross-subsidy paid by larger retirement villages to support small retirement villages would reduce without affecting the Crown's income against expenditure.	There would be no cross-subsidy by industry or the Crown.

Discussion of options

20. Option one is not preferred because the Crown would continue to receive more income than its expenditure warrants. $495,051 in income as against expenditure of $187, 264 excluding GST.

Size of village	Number	Fee ($)	Income ($)
No more than 34 residential units	178	460	81,880
At least 35 and no more than 84 residential units	79	1,543.55	121,940
At least 85 residential units	74	3,935.55	291,231
Total income			**495,051**

21. Option two does not fully meet the Government's commitment to reduce business compliance costs. Under this option fees would reduce for all retirement villages with at least 35 residential units. Retirement villages with no more than 34 residential units would face an increase in costs. Fifty-four per cent of registered retirement villages have no more than 34 residential units.

22. Option four is not an option in the short-term as the Registrar would have to restructure its collection model. The option would be unique in comparison to other

fees collected by the Companies Office and others, such as the Inland Revenue Department and calculation of tax.

23. The Department considered whether it is possible to assign a residential unit cost to the annual return fee. Under this option, theoretically, all residents would pay a similar rate irrespective of the retirement village size.

24. Option three is the preferred option. This is because all retirement villages would benefit from a fee reduction and the Crown's income would be aligned with the Crown's expenditure.

25. Further the structure of the three tier fee has larger retirement villages' cross-subsiding smaller villages (those with no more than 34 residential units) with no demands on the Crown to make up a deficit. The current fee structure and income earned is shown below.

26. The Registrar is proposing a transitional three tier fee structure based on its costs of processing 330 annual returns before moving to a single annual return fee (option two) after the next review in 2013.

27. The proposed fee structure for option three is:

Size of village	Number	Percentage reduction (%)	Fee ($)	Income ($)
No more than 34 residential units	178	15	400	71,200
At least 35 and no more than 84 residential units	79	58	650	51,350
At least 85 residential units	74	66	1,300	96,200
Total income				**215,750**

28. The risks and mitigation to the Crown under option three are:

Risks	Mitigation
The Retirement Villages Association, residents or other interested parties challenge the validity of the cross-subsidy proposed by the amended three fee tier structure under the Retirement Villages Act 2003	The Department has consulted extensively with the stakeholders most affected by the proposed changes. As the proposed changes will reduce compliance costs, we feel the risk of challenge is low.
The number of registered retirement villages rises faster than anticipated leading to increased Registrar's costs and under-recovery of fees	The Registrar's costs will only rise if additional staff are required to process retirement village annual returns. At this time, we believe the Registrar will be able to move staff into this area from other parts of the Companies Office to cover a short-term increase in annual returns.
The operators' avoid expanding existing villages as this will mean they move into the next fee level.	This is unlikely to occur as if a retirement village expands, the number of residents will expand, creating the potential to reduce costs against each residential unit.

Consultation

29. The Department consulted with the Retirement Villages Association and the New Zealand Law Society about the proposed amendments.

30. Feedback from the residents' associations, Grey Power and Age Concern New Zealand has been favourable. The resident associations' representatives welcome the reduction of the annual return fees regime. The Bay of Plenty residents would prefer to see a greater reduction in fees. They will seek to ensure these cost savings are passed onto residents once the reduced fees come into effect. Age Concern New Zealand notes that residents in small villages will be disproportionately affected by the change. It does acknowledge that setting a fee based on the number of residents is not feasible at this stage.

31. Residents also noted that it was important this review is concluded before the end of the first quarter of the new financial year, as many retirement village operators will be planning the following year's budget.

32. The Association compared the other costs of building a new retirement village to the proposed registration fee and note it is not unreasonable, even though small retirement villages will have a fee increase. The Association supports a reduction of annual return fees for all sizes of retirement villages.

33. The Department invited comment from Land Information New Zealand, Ministry of Justice, Ministry of Health, Treasury, Ministry of Social Development including the Office for Senior Citizens, Ministry of Economic Development, Office of the Auditor-General, Officials Economic Growth and Infrastructure Committee and the Retirement Commission. The Department of Prime Minister and Cabinet was informed.

34. The comments from other Government departments broadly support the policy intent to reduce compliance costs. However there are concerns that moving to a flat rate fee will reduce the numbers of new small retirement villages coming into the market. Given the other costs associated with developing a new retirement village, we disagree that a $900 registration fee will limit new entrants of any size.

35. Concerns were also expressed about using the surplus from the memorandum account to off set under recovery of costs.

36. This has been addressed in the body of the paper. The next fees review is scheduled for 2013. We anticipate if three new retirement villages register in 2011 and 2012, the memorandum account will still be in surplus when the next review starts. For every new retirement village registering, the memorandum account will reduce by $6,000.

Conclusions and recommendations

37. Retaining the fee levels as set for registration and annual returns is not an option because the:

    a. cost to the Crown for registering a retirement village is the same irrespective of the size of the retirement village

    b. current registration fees under recover costs

    c. annual return fees are over-recovering costs.

38. The Department’s recommendation for registration fees is to move to a flat rate fee of $900 including GST for new retirement villages.

39. The under-recovery from the flat-rate fee will be subsidised from the Crown’s memorandum account.

40. The Department’s recommendation for annual fees is to retain the three tier fee structure and reduce annual fees for all tiers. The under-recovery of costs from the revenue from small retirement villages will be met from the over-recovery of costs from the largest retirement villages.

Implementation

41. The Registrar of Retirement Villages has the staffing and technical capacity to make changes to its collection, accounting and other technical services.

42. The new registration and annual return rates will be advised on the Registrar’s website and Department website. The Department will also write to all retirement village operators informing them of the changes.

43. We will seek the Minister for Building and Construction’s agreement to issue a media statement, and publicise the changes in the Department’s e-newsletter *The Villager* that has a circulation list of over 200 recipients.

Monitoring, evaluation and review

44. The Registrar of Retirement Villages has committed to another fees review in two year’s time (2013).

45. The Department will review its memorandum of understanding with the Registrar to develop joint monitoring commitments regarding the fees level focusing on revenue and expenditure.

46. The Department will continue to engage with the retirement villages sector (industry, residents and other key stakeholders) through the Retirement Villages Sector Group meetings.

47. The fees will be reviewed when the responsible Minister directs the Department to review the Retirement Villages Act 2003. There is no time frame for a review at this time.