

**Submission of the  
New Zealand Council of Trade Unions  
To the Justice and Electoral Select Committee  
on the Retirement Villages Bill  
29 April 2002**

**Executive Summary**

The New Zealand Council of Trade Unions (CTU):

1. supports the Retirement Villages Bill and welcomes the opportunity to make this submission
2. supports the Bill's requirement that all retirement village operators comply with an industry code of practice that will set minimum operational and management standards
3. supports the Bill's stated public policy objective which includes ensuring "that retirement villages recognise residents' rights and conform to good management practices and principles and quality standards"
4. supports the Bill's assessment that non-regulatory measures such as self-regulation and public education will not, on their own, achieve the desired public policy objectives focused on improving the level of protection for current and intending residents of retirement villages
5. supports the Bill's intention to have an inclusive definition of retirement villages and seeks clarification that clause 6 (3) (b) is broad enough to include retirement subdivisions or settlements, as long as they provide some common services or facilities
6. supports the codification of residents' basic rights and the breadth of areas covered in the proposed code outlined in Schedule 3 of the Bill

7. supports the fourth statement within that code of residents' rights which guarantees "the right to promised services and facilities of an appropriate standard", and notes concerns that many current and intending residents within retirement villages may not be given adequate information to access those rights
8. notes the Bill's acknowledgement that staffing issues should be a fundamental part of any code of practice
9. notes that the delivery of quality aged care is dependent upon quality labour standards for those providing this care
10. notes this Bill would be more effective in meeting retirement village residents' right to quality care if the minimum staffing requirements in clause 1 of the code of practice were more clearly defined
11. recommends that:
  - ? clause 1 (a) of Schedule 5 includes the staffing levels and skill mix of those staff
  - ? clause 1 (b) of Schedule 5 stipulates that training should be industry-recognised and
  - ? clause 1 (c) of Schedule 5 includes the rates of pay as a specific condition of employment
12. recommends that clause 1 of Schedule 5 also specifies minimum requirements that ensure:
  - ? staff individually and collectively have safe conditions of work
  - ? security of employment including minimum levels of permanent (rather than casual or temporary) staff

- ? a transfer of undertakings arrangement so that wages, terms, conditions and employment are continued where there is a successor contract, or sale or transfer of business
13. notes clauses 65 (2) and 65 (4) play an important role in defining those groups with an acknowledged interest or stake in a retirement village's codes of practice
14. notes that workers in retirement villages play a crucial role in assessing the adequacy of minimum staffing requirements stated in such code of practices
15. recommends that the Retirement Commissioner and Minister should also be specifically required to consider recommendations representing the interests of workers in retirement villages and their unions
16. recommends amending clauses 65 (2) and 65 (4) as outlined below:
- Clause 65 (2)
- ? *insert a new subclause (d) to read “workers in retirement villages and their unions”*
- ? *rename current subclause (d) as subclause (e)*
- Clause 65 (4) (b)
- ? *insert the phrase “workers in retirement villages and their unions” after “statutory supervisors” and before “or other persons”*

## **1. Introduction**

- 1.1 The New Zealand Council of Trade Unions (CTU) is the internationally recognised central trade union centre in New Zealand. It represents 33 affiliated unions with a membership of approximately 250,000.
- 1.2 Aged care sector workers are represented by two unions affiliated to the CTU, namely the New Zealand Nurses Organisation (NZNO) and the Service and Food Workers Union (SFWU). Both unions cover workers within the retirement villages, including nurses, caregivers, cleaners and kitchen workers. The CTU's submission has been developed in consultation with those unions.
- 1.3 This submission has a two-fold focus. Firstly it articulates union members' concerns about minimum labour standards that are required within aged care to ensure quality services are provided to some of the most vulnerable members of society. The staffing standards outlined in the Bill's code of practice (Schedule 5) provide a very useful mechanism for approving and then publishing minimum staffing standards within retirement villages. Secondly, this submission highlights the active role that aged care unions and their workers would like to play in the consultation processes set down within the Bill.
- 1.4 The CTU welcomes an opportunity to make a submission on this Bill. We wish to appear before the Select Committee to speak to this submission.
- 1.5 The remainder of this submission includes specific comments on the proposed Bill.

## **2. Provisions of the Bill**

### *SCOPE OF THE BILL*

2.01 The CTU strongly supports the Bill's requirement that all retirement village operators comply with an industry code of practice that will set minimum operational and management standards. We also support the Bill's stated public policy objective which includes ensuring "that retirement villages recognise residents' rights and conform to good management practices and principles and quality standards".

2.02 The CTU agrees with the Bill's assessment that non-regulatory measures such as self-regulation and public education will not on their own achieve the desired public policy objectives focused on improving the level of protection for current and intending residents of retirement villages. This Bill provides the regulatory measures required to lift the threshold of quality standards across all retirement villages.

2.03 The CTU would like clarification that the definition of retirement villages as set down in clause 6 (3) (b) is broad enough to include retirement subdivisions or settlements, as long as they provide some common services or facilities. As the Bill's intention is to have "an inclusive definition of a retirement village", it would be unfortunate if these emerging types of facilities were excluded from its scope. This is particularly important given that the building of villas is often the first stage in the development of a more comprehensive retirement village.

### *CODE OF RESIDENTS' RIGHTS*

2.04 The CTU welcomes the introduction of residents' rights and a code of practice for retirement village operators. The code of residents' rights is set out in Schedule 3 of the Bill, while Schedule 5 outlines matters to be included in the code of practice.

- 2.05 The CTU supports the codification of residents' basic rights and the breadth of areas they cover. We welcome the focus on fundamental issues of human dignity, independence, privacy, and freedom from discrimination and exploitation.
- 2.06 The CTU supports the statement within the code of residents' rights which guarantees "the right to promised services and facilities of an appropriate standard". We have concerns that many residents within retirement villages are not given adequate information clearly conveying the level of services that are provided.
- 2.07 For example, typically brochures advertise that "24 hour nursing is available at the press of a button". Yet nursing staff will only be employed within the hospital wing of a retirement village. Usually that hospital will be operating at minimum staffing levels and therefore not able to send a nurse off the premises to stand-alone apartments or residences. Therefore 24 hour nursing care is, in effect, likely to mean access to a caregiver who will then dial for an ambulance. There is also no guarantee that ongoing nursing care required would be available within the retirement village, even if it does have a hospital facility.

*CODE OF PRACTICE*

- 2.08 The example above highlights the key links between residents' rights and staffing issues which are covered in the code of practice. The CTU welcomes the Bill's acknowledgement that staffing issues should be a fundamental part of any code of practice. In doing so, the Bill reinforces the CTU's assessment that the delivery of quality aged care is dependent upon quality labour standards for those providing this care.
- 2.09 The Bill states that a code of practice must specify minimum requirements to be included in any occupation right agreement in relation to certain

topics, the first of which is staffing within the retirement village. Clause 1 of Schedule 5 in the Bill lists the following staffing matters which must be addressed in the code of practice:

- a) the qualifications and experience of staff at each retirement village
- b) arrangements for the training and ongoing supervision of those staff
- c) the conditions of employment or other engagement of those staff

2.10 The CTU recommends that this Bill would be more effective in meeting retirement village residents' right to quality care if those three areas are more clearly defined, specifically if:

- ? clause 1 (a) of Schedule 5 also includes the staffing levels and skill mix of those staff
- ? clause 1 (b) of Schedule 5 stipulates that training should be industry-recognised. The provision of paid, NZQA recognised training would go some way towards encouraging workers to make a career in aged care.
- ? clause 1 (c) of Schedule 5 specifies the rates of pay

2.11 The CTU suggests that clause 1 of Schedule 5 is extended to cover three further critical staffing issues, namely by specifying minimum requirements that ensure:

- ? staff individually and collectively have safe conditions of work. This would mirror the protection given to residents in clause 2(c) of Schedule 5
- ? security of employment including minimum levels of permanent (rather than casual or temporary) staff. This would enhance the continuity of care provided to residents.
- ? a transfer of undertakings arrangement so that wages, terms, conditions and employment are continued where there is a successor contract or sale or transfer of business

- 2.12 Part 5 of the Bill (clauses 65 to 77) outlines provisions relating to the code of practice. The Minister responsible for the administration of the Bill may approve codes of practice after considering any recommendations of the Retirement Commissioner. The Retirement Commissioner must in turn have considered any recommendations by any groups, bodies or persons specified in clause 65(2).
- 2.13 The Minister is not obliged to approve a code of practice if s/he considers it is incomplete, inappropriate or inconsistent with the code of residents' rights. In those instances the Minister then must prepare the code of practice, once again after considering the recommendations of the Retirement Commissioner and other persons or bodies recognised in clause 65 (4).
- 2.14 As a result, both clauses 65 (2) and 65 (4) play an important role in defining those groups with an acknowledged interest or stake in a retirement village's codes of practice. Those clauses rightly specify the importance of recommendations made by operators of retirement villages, residents or intending residents, and statutory supervisors whose role is defined elsewhere in the Bill.
- 2.15 The CTU recommends that the Retirement Commissioner and Minister respectively should also be required to consider recommendations representing the interests of "workers in retirement villages and their unions". This additional wording would specifically acknowledge that staff themselves are best placed to comment on the adequacy of minimum staffing requirements stated in such codes of practice.
- 2.16 Whilst the Minister and Retirement Commissioner are both required to consider recommendations representing the interests of "other persons", that broad provision does not adequately recognise the important role

retirement village workers play in this regard. Therefore the CTU recommends amending clauses 65 (2) and 65 (4) as outlined below.

*Clause 65 (2)*

- ? *insert a new subclause (d) to read “workers in retirement villages and their unions”*
- ? *rename current subclause (d) as subclause (e)*

*Clause 65 (4) (b)*

- ? *insert the phrase ““workers in retirement villages and their unions” after “statutory supervisors” and before “or other persons”*