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**A commentary from the Retirement Policy and Research Centre**

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## **Finding the best solution for an Aged Care Commissioner**

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The RPRC is pleased to publish this PensionCommentary questioning the merits of the Government's proposal to locate the soon-to-be-appointed Aged Care Commissioner within the Health and Disability Commission, rather than Te Ara Ahunga Ora Retirement Commission.

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### **Introduction**

In 2017 Labour pledged to introduce an Aged Care Commissioner to protect older Kiwis from breaches in standards of care. Concerns aired at public meetings over that year included substandard housing provision, falling standards of residential and community-based care, inadequate access to surgery and elder abuse. The then Health Minister, David Clark, said independent oversight of the sector was needed from someone with statutory powers and the ability to investigate and make recommendations to Parliament. He said an Aged Care Commissioner would hear complaints about elder abuse and investigate a star-rating system for care in people's homes and aged care facilities.<sup>2</sup>

In response, New Zealand Aged Care Association (NZACA) chief executive Simon Wallace said the sector was already heavily regulated. Providers are accountable to District Health Boards, are regularly audited, and the Health and Disability Commission (HDC) provides an avenue for complaints. However the HDC is slow and cumbersome, and although the role of Minister for Seniors is already established, the NZACA wanted a Minister for Aged Care to be created, particularly to ensure the health and wellbeing of the aged in care.<sup>3</sup>

Following on the 2017 promise, \$8.1 million was allocated over four years for the office of an Aged Care Commission in the 2021 Budget. A spokeswoman for the Minister for

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<sup>1</sup> PensionCommentaries are opinion pieces published as contributions to public debate, and do not necessarily reflect the view of the RPRC.

<sup>2</sup> See <https://www.stuff.co.nz/national/politics/96812188/elderly-need-aged-care-commissioner-labour>.

<sup>3</sup> Ibid.

Seniors and Associate Minister of Health, Dr Ayesha Verrall, said the Aged Care Commissioner “will give older people and their whānau greater confidence in the quality and safety of aged care, in the investigation of their complaints, and will provide leadership on much-needed systemic change.”<sup>4</sup> On 31 July 2021, the Government issued a press release announcing that recruitment for an Aged Care Commissioner would start in August, with the role of ensuring greater oversight of New Zealand’s aged care sector.<sup>5</sup>

The new role will sit, with its own funding, within the Health and Disability Commissioner’s (HDC) office. This appears to be an appropriate location for the role as almost a fifth of complaints to the HDC in the past year have come from consumers over 65, and there were 26 formal investigations relating to aged residential care facilities, particularly inadequate care and treatment issues. In 24 of these cases a breach of the Code of Health and Disability Services Consumers’ Rights was found. HDC Commissioner Morag McDowell said: “An Aged Care Commissioner is an excellent opportunity to elevate our work to promote and protect the rights of people receiving aged care services”.<sup>6</sup> In support Minister Verrall said:

*It is vital to improve the aged care system as New Zealand’s population ages. We need to make sure older New Zealanders experience consistent, quality care that’s culturally appropriate for everyone, particularly our Māori and Pacific communities.*<sup>7</sup>

The HDC’s advertisement for the position describes the role of Aged Care Commissioner as:

*... a statutory decision-maker on complaints and formal investigations about health and disability services, [providing] a focal point for monitoring and addressing quality and safety issues in the aged care sector.*<sup>8</sup>

However, a problem emerges from locating the role of Aged Care Commissioner within the HDC’s office: the majority of Aged Residential Care (ARC) beds are currently located in retirement villages. And under the Retirement Villages Act 2003, the Retirement Commissioner is required to monitor the effects of the retirement villages legal framework, including the Act, associated [Regulations](#), and the [Code of Practice](#). Locating the Aged Care Commissioner within the HDC office could create a potential confusion in jurisdiction with the Retirement Commission, a problem that could increase over time as Retirement Villages provide an ever-growing proportion of ARC beds.

### **Aged care services**

New Zealand’s aged care sector is funded through general taxation and user charges. The public funding body is the local District Health Board (DHB), which provides general hospital care as well as supporting primary and community-based services including residents in Aged Residential Care (ARC). At December 2019, New Zealand had 667

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<sup>4</sup> See <https://www.stuff.co.nz/national/health/125198785/budget-2021-8m-for-aged-care-commissioner-absolutely-unnecessary>.

<sup>5</sup> See <https://www.scoop.co.nz/stories/PA2107/S00235/progress-in-establishment-of-aged-care-commissioner.htm>.

<sup>6</sup> See <https://www.tvnz.co.nz/one-news/new-zealand/aged-care-commissioner-recruitment-begin-18-health-complaints-services>.

<sup>7</sup> Ibid.

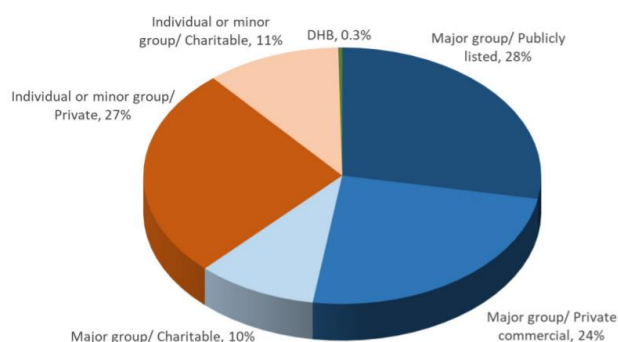
<sup>8</sup> Applications for an Aged Care Commissioner closed 8am, Monday 6 September 2021. See <https://mailchi.mp/5300536e3af6/the-health-and-disability-commissioner-is-recruiting-for-an-aged-care-commissioner-5180933?e=3ad84d29a7>; plus POSITION DESCRIPTION; Terms of Reference; Click here > for more information.

registered ARC facilities (up from 647 in 2018)<sup>9</sup> with a total of 39,747 available beds at rest home, geriatric medical and dementia levels of care.<sup>10</sup>

Currently, 49% of all New Zealand's ARC facilities are operated as part of a major group of care facilities providing 62% of ARC beds; 50% are smaller, privately owned facilities,<sup>11</sup> and 1% are owned by DHBs. Around 77% of facilities are in the commercial for-profit sector, providing 79% of beds; 22% are in the charitable sector (for example, Selwyn Foundation, Masonic village trusts, church and welfare organisations) and provide 21% of beds; and the remaining balance of around 1% of beds are in DHB owned ARC facilities. The average size of a publicly listed provider is 88 beds, while the average individual, privately owned care facility has 42 beds.<sup>12</sup>

Importantly, almost all new ARC facilities are being developed by major groups (publicly-listed companies including Ryman Healthcare, Oceania, Arvida, Bupa, Metlifecare and Summerset Group) alongside their retirement villages.

**Figure 1. Percentage of bed supply in each ownership segment<sup>13</sup>**



In 2018, there were 31,600 people in ARC in New Zealand,<sup>14</sup> and by March 2020 that had increased to 34,646 residents, 55% of whom were at one of the higher care levels. There are 4 types of residential care:<sup>15</sup>

- Rest homes offer care for older people who can manage some daily tasks, but need help with personal care and who would find it difficult to live safely in their own homes.
- Long-stay hospitals offer care for people who have significant medical problems or disability. This group needs healthcare from registered nurses and support from others to move about.
- Dementia units offer care for people suffering from dementia or other mental illnesses, and who could be a risk to themselves or others.
- Psycho-geriatric units are secure, and care for people who have difficult behavioural problems, including severe dementia or addictions, and need a high level of specialist nursing care.

<sup>9</sup> See Ministry of Health, New Zealand. Registered Aged Care Facilities in New Zealand, 2020, <https://www.health.govt.nz/your-health/certified-providers/aged-care> and <https://www.nursinghomeresearch.com/2284-new-zealand-nursing-homes-aged-residential-care-facilities-and-covid-19-pandemic.html>.

<sup>10</sup> See <https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf>.

<sup>11</sup> Not-for-profit aged residential care providers have decreased since 2010, from 32% to 20% of the sector.

<sup>12</sup> See <https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf>.

<sup>13</sup> See <https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf>.

<sup>14</sup> See <https://www.interrai.co.nz/assets/Aged-Residential-Care-FINAL.pdf>.

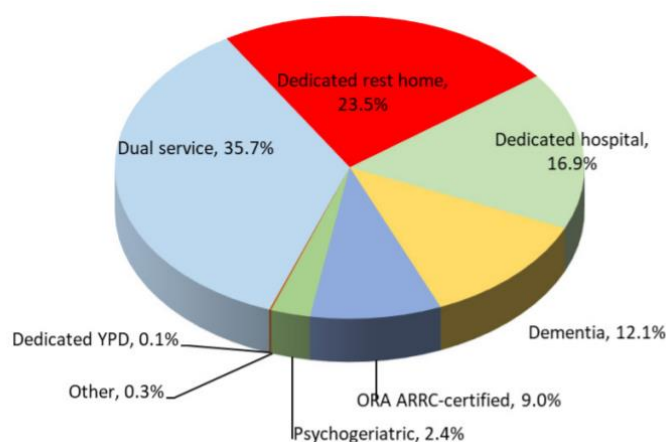
<sup>15</sup> See <https://www.govt.nz/browse/health/rest-homes-and-residential-care/types-of-residential-care/>.

In March 2020, 45% of residents were receiving rest home level care, 40% hospital level, 12% dementia care and 3% psychogeriatric care.<sup>16</sup>

Most ARC beds are paid for on a daily or weekly basis by DHBs or the resident themselves,<sup>17</sup> but a minority of beds are occupied under an Occupational Rights Agreement (referred to as ORA beds): 64% of long-term ARC residents receive a Residential Care Subsidy (RCS) for their care, a decrease from the 66% receiving a subsidy at the time of the 2018 ARC Industry Profile report. A person who chooses to enter ARC without an assessment is responsible for the full cost of their care.<sup>18</sup> The non-subsidised (maximum contributor) percentage of long-term ARC residents across the care levels ranges from 37.5% of hospital residents (up from 33.1% in March 2018), to only 15% of psychogeriatric residents, while 36.9% of those in dementia care are non-subsidised as are 36.4% of those in rest home level care.<sup>19</sup>

Dual service beds (certified to provide both rest home and hospital level care, dependent on the type of care required by the resident) are the largest bed category in New Zealand, at 36% (Figure 2). Dedicated rest home beds constitute 24% of the supply, and dedicated hospital beds make up 17%. ORA ARRC-certified beds account for 9% of all beds.

**Figure 2. Breakdown of ARC beds in New Zealand<sup>20</sup>**



As well as residential care, aged care services include needs assessment, rehabilitation, and home and community support services. The Ministry of Health (MoH) funds home-based support for people aged 65+ (as well as for people who have disabilities). Eligibility conditions do apply, and a needs assessment is carried out prior to funding

<sup>16</sup> See <https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf>

<sup>17</sup> A Residential Care Subsidy is available for those aged 65 or older (and for those aged 50-64, single, with no dependent children) who are assessed as needing long-term residential care in a hospital or rest home for an indefinite length of time, and are receiving contracted care services. Access to the Subsidy also depends on the money or other assets the person and their partner (if they have one) have, and their income/earnings. For those aged 65+ the combined total assets must be \$239,930 or less. If they have a partner not in long-term residential care, they can choose whether the total value of their combined assets is either \$131,391 or less, if they don't want to include the value of their house and car (provided the partner or dependent child is resident in the house), or \$239,930 or less, if the value of the house and car is included. Income must be below the required limits, with different limits for different types of income. See <https://www.workandincome.govt.nz/products/a-z-benefits/residential-care-subsidy.html>.

<sup>18</sup> See <https://www.health.govt.nz/our-work/life-stages/health-older-people/long-term-residential-care/residential-care-questions-and-answers>.

<sup>19</sup> See <https://tas.health.nz/dhb-programmes-and-contracts/health-of-older-people-programme/aged-residential-care/>.

<sup>20</sup> See <https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf>.

being provided.<sup>21</sup> In 2013/2014 DHBs spent approximately \$217 million on home support services: over 10 million hours of support to about 75,000 older people. Further in-home assistance is available on a user-pays basis.

Other support services for older people at home include Accident Compensation Corporation (ACC) rehabilitation services for those suffering injury, and Age Concern's home visiting services for isolated older people. In addition, family members, friends, community organisations and other volunteers provide support and social networks for older people ageing in place.<sup>22</sup>

Ageing in place is the preferred option for Governments because of its lower cost to the state than residential care, and it is the preferred option for many individuals for multiple reasons including independence, community, and familiarity. However, to realise this option, in addition to support services as outlined above, consideration needs to be given to housing types and features, transport, social, cultural, educational and recreational opportunities, neighbourhoods and amenities that facilitate physical activity.<sup>23</sup>

Home-based support is primarily provided by private for-profit companies, for example Healthcare NZ, that receive Government contracts to provide in-home and community support services. The HDC noted "a concerning rise in complaints" in 2020.<sup>24</sup> In future, such complaints would be dealt with by the Aged Care Commissioner. However, home-based support can also be provided to retirement village residents.<sup>25</sup>

## Retirement Villages

As noted above, the [Retirement Villages Act 2003](#) requires the Retirement Commissioner to monitor the effects of the retirement villages legal framework. This includes the Act, associated [Regulations](#), and the [Code of Practice](#). The CFFC website (was Commission for Financial Capability, now Retirement Commission Te Ara Ahunga Ora) states:

*We aim to help the government provide and manage a legal framework that is fair and balanced for both consumers and the industry. Our office is also required to advise on issues relating to retirement villages when requested to do so by the Minister, and to help educate the public about retirement village issues, including the financial implications of moving into one. We do this by publishing information on this website and our Sorted website, and by running seminars and webinars.*<sup>26</sup>

The Retirement Village Association (RVA) was established in 1989 after a rapid expansion of the sector. The industry Code of Practice, revised and updated over the years, formed the basis for the first legislated Code, which, with modifications as a result of the CFFC's monitoring programme, remains in place today. In 1993, the RVA submitted a report to the Securities Commission supporting the concept of separate

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<sup>21</sup> See <https://www.health.govt.nz/your-health/services-and-support/health-care-services/services-older-people/support-services-older-people>.

<sup>22</sup> See <https://www.productivity.govt.nz/assets/Documents/f9c0f69460/Appendix-E-Home-based-support-for-older-people.pdf>.

<sup>23</sup> See <https://cdn.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/RPRC/WorkingPaper/WP%202018-1%20Some%20equity%20issues%20in%20health%20and%20care%20policy%20and%20provision%20FINAL.pdf>.

<sup>24</sup> See <https://www.stuff.co.nz/national/health/300360334/health-and-disability-commission-is-keeping-close-eye-on-inhome-health-provider>.

<sup>25</sup> See <https://oag.parliament.nz/2014/home-based-support-services>.

<sup>26</sup> See <https://retirement.govt.nz/retirement-villages/our-role/>.

legislation for retirement villages (RVs), and the Retirement Villages Act was formalised on 30 October 2003.

At the beginning of 2021, there were 417 retirement villages registered with the Registrar of Retirement Villages. In addition to their ARC beds, members of the RVA provide around 36,000 villas and apartments which house around 46,800 older New Zealanders who comprised 14% of the 75+ year old population at March 2021 (increasing from 9.4% in 2012).<sup>27</sup>

Given that between 2020 and 2043 the number of people aged 75+ is projected to increase by almost 460,000, or 142%, even if demand remains at 14% of that age group, by 2028 an additional 17,800 RV units will be required, an almost 50% increase on the current number of units.<sup>28</sup> It is expected that their provision of ARC beds will accelerate as the numbers aged over 85 rise rapidly 2030-2050, and the 'continuum of care' provided by RVs adds greatly to their attractiveness. As already noted, currently, 49% of all ARC facilities are operated as part of a major group of for-profit care facilities that together provide 62% of ARC beds.

### Confusing jurisdictions

Clearly, given the predominant location of aged residential care beds within retirement villages, and access to DHB-funded home-based care services for village residents, it is likely that confusion will ensue between the roles and responsibilities of the Retirement Commissioner and the Aged Care Commissioner. This risk suggests the decision to locate the Aged Care Commissioner as a Deputy Commissioner within the office of the Health and Disability Commission needs to be urgently revisited. The allocated funding of \$8 million over 4 years seems excessive for a Deputy Commissioner.

The terms of reference (ToR) for the Aged Care Commissioner<sup>29</sup> state the purposes of the role:

*... to provide a higher profile and focal point for monitoring and addressing quality and safety issues in the aged care sector. It will also provide greater influence and leadership to the aged care sector in prioritising and driving systemic quality improvement... one individual with strategic oversight providing the leadership to oversee, champion and monitor the needed improvements.*

The ToR redefine 'aged care services' as including needs assessment, rehabilitation, home and community support services, aged residential care, and support for carers via provision of respite care. The role also includes complaints resolution. Outside of the scope of the Aged Care Commissioner's role, but complementing it, are various agencies, including the Ministry of Health, new entities established through the health and disability system reform, the Office for Seniors, the Human Rights Commission, the Ombudsman, and on-the-ground initiatives such as Age Concern's existing Accredited Visitors Service and other community-based services.<sup>30</sup>

Adding to the potential for confusion, on 1 July 2021, the Cabinet Legislation Committee reviewed the Social Services and Community Committee report presented to the House of Representatives on 31 July 2020 entitled "Petition of Mark Sainsbury: Our elderly

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<sup>27</sup> See

<file:///C:/Users/mdal001/Downloads/RVA%20response%20to%20CFFC's%20White%20Paper%2026%20March%202021%20final.pdf>.

<sup>28</sup> Ibid.

<sup>29</sup> See <https://www.hdc.org.nz/media/5886/terms-of-reference-aged-care-commissioner.pdf>.

<sup>30</sup> Ibid.

deserve a champion”, requesting “*the implementation of a Commissioner for the Elderly to advocate for the elderly and to ensure that seniors’ rights are protected*”. The Social Services and Community Committee recommended that the Government investigate the establishment of a Commissioner for the Elderly, undertake a Regulatory Impact Analysis to identify overlaps with the health sector and other bodies to ensure that the role of the proposed Commissioner for the Elderly has a clear purpose, function and fit within the sector.<sup>31</sup>

The Social Services and Community Committee also recommended that the Government determine whether this role of Commissioner for the Elderly be established as a stand-alone Commissioner; or established under the umbrella of an existing agency; or established by broadening the role of the Retirement Commissioner, the Health and Disability Commissioner, or the Ombudsman.<sup>32</sup> It is also relevant and surely important that a Minister for Seniors, and an Office for Seniors, already exist.

There is no question that the ageing of the population requires an appropriate response from Government. The establishment of multiple Commissions or Commissioners with possibly overlapping jurisdictions cannot even pretend to be a solution. The terms of reference for the proposed Commissioner for the Elderly will make interesting reading.

**For comments or further information on this *Pension Commentary* please contact:**

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<sup>31</sup> See <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/government-response-to-report-of-the-social-services-committee-on-the-petition-of-mark-sainsbury---our-elderly-deserve-a-champion/leg-21-min-0102-cabinet-legislation-committee-minute.pdf>.

<sup>32</sup> Ibid.