chapman tripp

Nick Letham

"A Precedent That Reaches Too Far: The Risk of Rewriting Contracts Across the Board"

A Chapman Tripp | Special Report | April 2025

Looking backwards doesn't take us forward – proposed retrospective changes to retirement villages law

One of the most contentious aspects of proposed changes to the Retirement Villages Act is the suggestion that some amendments could have retrospective effect, impacting existing agreements and relationships between operators and residents.

This article by Nick Letham and Matt Lake of leading law firm Chapman Tripp explores the potential consequences of such retrospective changes, examining the dangers they pose to both the legal landscape and the wider retirement village sector.

Introduction

In August 2023, the Ministry for Housing and Urban Development released a paper called Review of the Retirement Villages Act 2003: Options for Change.

This paper identified perceived issues with the current retirement village laws and suggested possible changes. The public was invited to share their opinions, and the submission process ended in November 2024. If any changes to the law are made, it could take several years to put them into effect.

Proposed law changes with retrospective effect

The Discussion Paper contemplates certain proposed changes to the Retirement Villages Act (the RV Act) having retrospective effect.

This means the changes would apply not only to new occupation right agreements (ORAs) but also to those already in place before the new laws come into effect. Many of the proposed changes being considered would directly affect key arrangements between operators and residents. This includes responsibilities for maintaining village facilities, timelines for repaying residents' capital, and whether interest is paid on those repayments.

The dangers of retrospectivity

Retrospective law is widely considered to be dangerous lawmaking. Both statute and common law positively discourage retrospective legislation as it offends the foundational principle of the rule of law, that *all persons are subject to the law and all persons must comply with the law*. This fundamental principle is frustrated if legislation should deem unlawful today that which yesterday was lawful.

Any changes to the RV Act having retrospective effect would alter and override existing commercial arrangements between operators and residents concluded under the existing law.

The retirement village laws applying, and contemplated by operators and residents, at the relevant time influence the bundle of rights and obligations of the resident and the operator and are factored into the 'commercial bargain' struck between the parties, including in respect of the fees and the deferred management fee payable by residents for the rights they receive from the operator.

Enacting legislative changes to the RV Act with retrospective effect would be damaging to retirement village operators, the retirement village sector and New Zealand generally, as it would:

- compromise the legitimate commercial interests of industry operators who are party to existing arrangements with residents; and
- disincentivise the investment of both domestic and foreign capital in the retirement village sector and in the national economy.

Retrospective legislation is disruptive of the national economic interest and gives rise to 'sovereign risk', being *the risk that the government may unexpectedly change significant aspects of its policy and investment regime and the legal rights applying to investors to the detriment of investors*.

Sovereign risk disincentivises domestic and overseas investment in the national economy, warns off new entrants to local markets and undermines the legal rights of incumbent operators.

Investors need stable and coherent regulatory regimes to make rational investment choices, based on enduring market and regulatory conditions. Investment streams naturally follow coherent regulatory regimes in countries with strong adherence to the rule of law and high regard to private property rights, where laws are stable, predictable and certain.

The impact of reputational damage and loss of investor confidence in the national economy caused by any retrospective regulatory intervention, such as the proposed changes to the RV Act, would be significant. Change of this type is more typically associated with undemocratic states where the rule of law is often disregarded.

Impact on the retirement villages sector

The development and operation of retirement villages requires significant capital investment to remain viable. With the popularity of retirement village living resulting in demand far outstripping the supply of retirement villages, the need for capital investment in the sector is now as important as ever.

Any retrospective law changes would increase sovereign risk, as the New Zealand Parliament and Government would be seen as unpredictable in their lawmaking and policy decisions. In turn this would weaken investor confidence and have a chilling effect on investment in the sector and the development of villages.

This sovereign risk could have materially negative consequences for the country and national economy, given the positive impact that retirement villages provide to New Zealand. For instance, retirement villages:

- Make a large number of residential homes available for more New Zealanders when their former owners move into retirement villages.
- Provide essential housing and healthcare, especially in villages with aged care facilities, for a growing number of vulnerable people which reduces the need for Government-funded housing and hospital care.

Conclusion

Changing retirement village laws retrospectively would hurt the retirement village sector and the New Zealand economy by damaging New Zealand's reputation and discouraging investment. Such changes would slow down growth and development in the sector at a time when further growth and development is needed, given retirement village living is an increasingly popular option for older New Zealanders. More importantly, it would be poor lawmaking and set a dangerous precedent for other law changes in future.

retirementlife.co.nz