

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Retirement Villages Act 1999 (the principal Act) as follows:

- (a) to require the operators of retirement villages to hold annual management meetings and to provide certain information at those annual management meetings,
- (b) to make provision for capital maintenance and replacement in respect of property within retirement villages,
- (c) to specify the circumstances in which the operator of a retirement village may vary the recurrent charges that are payable under a village contract without the consent of the residents of the village,
- (d) to specify the circumstances in which the residents of retirement villages may elect not to have an annual budget prepared and to elect not to have the annual accounts of the village audited or to receive copies of the quarterly accounts,
- (e) to require the operator of a retirement village to make good any deficit in the accounts of the retirement village and provide that the operator is not permitted to carry forward any such deficit, or to seek a special levy from the

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residents of the retirement village to make good any such deficit except as provided by the regulations,

- (f) to require the operator of a retirement village to ensure that the retirement village is generally safe and that emergency and home care services have vehicular access to residential premises within the village,
- (g) to provide for the keeping of records relating to land that is used as a retirement village,
- (h) to limit the period during which a former occupant is required to pay recurrent charges after permanently vacating premises within a retirement village,
- (i) to provide for a settling-in period during which a resident may terminate a village contract,
- (j) to provide that an occupant of residential premises within a retirement village may add or remove fixtures, or make alterations to the premises, with the consent of the operator and that the operator must not unreasonably refuse to give such consent,
- (k) to revise the investigation, compliance and enforcement powers under the principal Act and to bring those powers into line with the Property, Stock and Business Agents Act 2002,
- (l) to create a process by which the right to receive a refund of an ingoing contribution paid under a village contract may be enforced,
- (m) to create offences for failing to comply with certain provisions of the principal Act,
- (n) to make other amendments of a minor or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Clause 4 makes a consequential amendment to the Law Enforcement (Powers and Responsibilities) Act 2002.

Clause 5 provides for the repeal of the proposed Act after all the amendments made

by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

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Schedule 1 Amendments

Amendments relating to definitions

Schedule 1 [2], [3], [7], [9] and [10] make amendments to the definitions of certain terms that are used in the principal Act. Schedule 1 [8], [13], [14] and [121] make consequential amendments.

Schedule 1 [4] updates a reference to the Director-General of the Department of Fair Trading.

Schedule 1 [11] omits section 7 and inserts proposed sections 7 and 7A.

Currently, section 7 of the principal Act provides a definition of the term owner.

Proposed section 7 replaces that term with registered interest holder. The proposed definition includes residents of a retirement village whose residence right arises from a long term lease (that is a lease of at least 50 years including any option to renew) with a provision that entitles the resident to at least 50% of any capital gain with respect to the premises. Schedule 1 [6], [12], [35], [50], [60], [75], [109], [110], [113], [114], [117], [119], [120], [122], [124], [128], [131]–[135], [137], [138], [140], [143]–[145] and [147] make consequential amendments.

Proposed section 7A provides a definition of capital gain.

Amendments relating to meetings of residents and the Residents Committee

Schedule 1 [52] inserts proposed section 70A. The proposed section provides that a resident of a retirement village must not hold the same office, or hold an office performing the same (or substantially the same) functions, on the Residents Committee for the retirement village for more than 3 consecutive years except as provided by the regulations. The election of a person to office in contravention of the proposed section is void.

Schedule 1 [53] inserts proposed sections 72A and 72B.

Proposed section 72A provides that the operator of a retirement village is to hold an annual management meeting within 4 months of the end of a financial year for the retirement village.

Proposed section 72B provides that the operator, or operator's representative, is to respond to requests for information at that meeting or as soon as practicable afterwards.

Schedule 1 [54] makes a consequential amendment.

Schedule 1 [55] amends section 75 of the principal Act to provide that the operator of a retirement village, or representative of the operator of a retirement village, may be present at the annual management meeting for the retirement village, but must not be present during the casting of any vote at that meeting.

Schedule 1 [56] and [57] amend section 77 of the principal Act to provide that only certain persons may be appointed as a proxy for a resident of a retirement village. The amendments make it clear that neither the operator of a retirement village or a close

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associate of the operator of a retirement village may be appointed as the proxy of a resident of the retirement village. Schedule 1 [48] and [58] make consequential amendments.

Schedule 1 [59] amends section 78 of the principal Act to provide that a person may hold no more than 2 proxies of residents of a retirement village at any one time unless a higher number is prescribed by the regulations.

Schedule 1 [164] substitutes Part 3 (proposed clauses 5 and 6) of Schedule 1 to the principal Act.

Proposed clause 5 of Schedule 1 to the principal Act provides that if a measure or action requires a special resolution, a ballot is to be conducted in accordance with the regulations.

Proposed clause 6 of Schedule 1 to the principal Act provides that a special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot.

Amendment relating to the recording of land within a retirement village
Schedule 1 [32] inserts proposed section 24A into the principal Act. The proposed section provides that the operator of a retirement village is to notify the Registrar-General of all land comprising the retirement village. An operator who fails to notify the Registrar-General is guilty of an offence with a maximum penalty of 100 penalty units (currently \$11,000). The proposed section also makes provision for the recording of any such notice on the Register kept under the Real Property Act 1900 or in the General Register of Deeds kept under the Conveyancing Act 1919 and for the removal of any such recording.

Amendments relating to capital maintenance and replacement

Currently Divisions 2 and 3 of Part 7 of the principal Act make provision for capital replacement and capital maintenance, respectively. Schedule 1 [63] removes those provisions and inserts proposed Division 2 of Part 7 (proposed sections 92–102) which makes provision for both capital maintenance and replacement. Schedule 1 [23], [24] and [103] make consequential amendments.

Proposed section 92 defines certain terms and phrases that are used in the proposed Division including item of capital for which the operator of a retirement village is responsible.

Proposed section 93 sets out the obligations of the operator of a retirement village with respect to certain capital maintenance and replacement.

Proposed section 94 sets out the obligations of a resident of a retirement village with respect to capital maintenance and replacement including an obligation for a resident of a retirement village to reimburse the operator of the village in respect of any damage (other than fair wear and tear) caused by the resident to an item of capital for which the operator of the retirement village is responsible.

Proposed section 95 provides that a resident of a retirement village may carry out urgent capital maintenance or replacement after giving the operator a reasonable opportunity to carry out the work. The proposed section also provides that the Explanatory note page 5

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operator is to reimburse the resident for any reasonable costs incurred in carrying out any such work.

Proposed section 96 provides that the Tribunal may make orders for capital maintenance and replacement in certain circumstances.

Proposed section 97 provides for the funding of capital maintenance and replacement generally.

Proposed section 98 provides special arrangements for the funding of capital maintenance and replacement of certain items of capital that are located within the residential premises of a resident who is a registered interest holder in respect of those premises.

Proposed section 99 requires the operator of a retirement village to supply residents with a proposal for capital maintenance and replacement in each financial year.

Proposed section 100 provides for the establishment of a capital works fund. A capital works fund is to be established if recurrent charges are to be used for funding capital maintenance or replacement that will extend beyond the end of a financial

year.

Proposed section 101 provides that the operator of a retirement village is required to insure the retirement village.

Proposed section 102 provides that the operator of a retirement village must not sell an item of capital for which the operator of the retirement village is responsible to a resident or prospective resident or enter into any other contract, arrangement or scheme to pass responsibility (whether directly or indirectly) for the capital maintenance or replacement of any such item to the resident.

Amendments relating to recurrent charges and budgets

Schedule 1 [2] and [3] replace the terms statement of proposed expenditure and statement of approved expenditure with the terms proposed annual budget and approved annual budget, respectively. Schedule 1 [20], [21], [40]–[42], [45], [47], [51], [74], [76], [78]–[80], [82]–[86], [88], [89], [91]–[94], [97]–[99], [104], [160] and [161] make consequential amendments.

Schedule 1 [65] amends section 104 of the principal Act to provide that recurrent charges under a village contract that may be varied otherwise than in accordance with a fixed formula may only be varied once in any 12 month period and that any second or subsequent variation within that period is of no effect. Schedule 1 [64] makes a consequential amendment.

Schedule 1 [66] inserts proposed section 105A into the principal Act. The proposed section provides that the operator of a retirement village is required to give at least 14 days written notice to the residents of a retirement village if the operator proposes to vary the recurrent charges payable by the residents and the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the variation does not exceed the variation in the Consumer Price Index for the period since the recurrent charges were last varied. Schedule 1 [73] makes consequential amendments.

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Schedule 1 [67] amends section 106 of the principal Act to provide that the requirement to give at least 60 days' written notice to the residents of a retirement village in respect of a proposed variation in recurrent charges, as well as the other requirements set out in that section with respect to giving such a notice, only apply if the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the variation exceeds the variation in the Consumer Price Index for the period since the recurrent charges were last varied. Schedule 1 [69] makes a consequential amendment.

Schedule 1 [68] amends section 106 of the principal Act to provide that a notice given under that section must contain a brief explanation of the reasons for the proposed variation exceeding the variation in the Consumer Price Index and give details of any action that has been taken to minimise the proposed variation.

Schedule 1 [71] inserts proposed section 106A into the principal Act. The proposed section provides that the operator of a retirement village must not increase recurrent charges that are to be varied otherwise than in accordance with a fixed formula, except as provided by proposed section 105A or section 106 of the principal Act. The proposed section also provides that any such variation must not exceed the upper limit (if any) specified in the village contract. Schedule 1 [70] makes a consequential amendment.

Schedule 1 [72] amends section 107 of the principal Act to provide that the Tribunal may make an order requiring the operator of a retirement village to provide information requested by the residents for the purpose of deciding whether to consent to a proposed variation of recurrent charges.

Section 112 of the principal Act provides that the operator of a retirement village

must supply the residents of the retirement village with a proposed annual budget at least 60 days before the commencement of the financial year to which the budget relates. Schedule 1 [77] amends that section to provide that the regulations may prescribe another time within which the proposed annual budget is to be provided. Schedule 1 [81] amends section 112 of the principal Act to provide circumstances in which the residents of a retirement village may consent to not receive the proposed annual budget.

Schedule 1 [87] amends section 114 of the principal Act to provide that the residents of a retirement village are taken to have consented to a proposed annual budget if the recurrent charges payable by the residents of the retirement village have not been varied, have been varied in accordance with a fixed formula or, in the case of charges that are varied otherwise than by fixed formula, the variation does not exceed the variation in the Consumer Price Index since the recurrent charges were last varied.

Schedule 1 [73] makes a consequential amendment.

Schedule 1 [90] inserts proposed section 115A into the principal Act. The proposed section enables the regulations to limit the amount that a proposed annual budget may allocate for any contingencies that may arise.

Section 116 of the principal Act currently provides that the operator of a retirement village that spends recurrent charges otherwise than in accordance with the approved annual budget is guilty of an offence. Schedule 1 [95] amends that section to provide

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that an operator is not guilty of such an offence if the contravention was a variation between items in the approved annual budget and does not cause a reduction in the level of services provided by the village or cause the total expenditure to exceed the amount provided for by the approved annual budget.

Section 117 of the principal Act provides that the operator of a retirement village may seek the consent of the residents to amend an approved annual budget. Schedule 1 [96] amends that section to provide exceptions to the circumstances in which an operator may seek the consent of the residents to make such amendments.

Section 118 of the principal Act provides that the residents of a retirement village are to consent to the appointment of an auditor for the accounts of the retirement village if the audit fees are to be paid by the residents. Schedule 1 [100] amends that section to provide that the residents are not required to consent to the appointment of an auditor if the proposed auditor audited the accounts for the previous financial year.

Section 118 of the principal Act provides that the operator of a retirement village must give a copy of the quarterly accounts of the retirement village to the Residents Committee for the village or, if there is no Residents Committee for the retirement village, to any resident who requests one. Schedule 1 [101] amends that section to provide that the accounts must be provided to the Residents Committee within 28 days after the end of the quarter to which they relate. The amendment also provides that, if a resident requests a copy of the quarterly accounts from the operator after a certain period, the operator is to provide the resident with a copy within 7 days of receiving the request.

Schedule 1 [102] amends section 119 of the principal Act to enable the regulations to vary the period within which the operator of a retirement village is required to provide the residents of the retirement village with copies of the audited annual accounts of the retirement village.

Schedule 1 [105] amends section 119 of the principal Act to provide that, if there is no Residents Committee for a retirement village, the operator is to display a copy of the audited accounts on the common property of the village in accordance with the regulations and provide a copy to any resident of the retirement village who requests a copy. Currently, copies of the accounts are to be provided to each resident.

Schedule 1 [106] inserts proposed sections 119A and 119B into the principal Act. Proposed section 119A provides that the annual accounts of a retirement village are not required to be audited if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not have the accounts audited.

Proposed section 119B provides that the operator of a retirement village is not required to provide the residents of the village with a copy of the quarterly accounts for the village if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not receive a copy. Schedule 1 [25] makes a consequential amendment.

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Section 152 of the principal Act specifies the circumstances in which a former occupant of a retirement village who is a registered interest holder ceases to be liable for recurrent charges for general services. Schedule 1 [127] amends that section to provide that liability of the former occupant to fund the whole of that amount ceases 42 days after the former occupant permanently vacates the residential premises. After that period, the former occupant and operator of the retirement village are required to meet those charges in the same proportion as they are to share any capital gain under a village contract until the former occupant ceases to be liable for the recurrent charges for general services in accordance with that section. Schedule 1 [123] makes a consequential amendment.

Section 153 of the principal Act specifies the circumstances in which a former occupant (other than a registered interest holder) ceases to be liable for recurrent charges for general services. Currently, section 153 (2) (e) provides that the liability ceases on the date that is 6 months after the resident permanently vacates the premises (unless the liability ceases earlier in accordance with that section).

Schedule 1 [129] amends that section to reduce that period from 6 months to 42 days.

Schedule 1 [130] amends section 153 of the principal Act to make it clear that when a former occupant (other than a registered interest holder) ceases to be liable for recurrent charges for general services the operator of the retirement village becomes liable for that amount until the operator enters into a village contract with an incoming resident for those premises.

Amendments relating to payments to former occupants

Schedule 1 [146] and [148] amend sections 180 and 181 of the principal Act, respectively. The proposed amendments provide that a former occupant may apply to the Tribunal for an order directing that the operator pay the former occupant any outstanding amount required to be paid under the Act. If the payment is not made, interest will be payable in relation to that outstanding amount.

The proposed amendments also provide that a former occupant may apply to the Tribunal for an order directing the operator to recalculate the amount that is to be paid to the former occupant in accordance with the relevant section. The Tribunal may order that interest is payable in relation to any such amount.

Amendments relating to the protection of ongoing contributions

Schedule 1 [149] inserts proposed Part 10A (proposed sections 182A–182I) into the principal Act. The proposed Part makes provision for the creation of a statutory charge over land in a retirement village to ensure that a former occupant of a retirement village (other than a registered interest holder) receives the amount to which they are entitled under a village contract on the termination of that contract.

Proposed section 182A provides that the proposed Part applies to a village contract that provides for the refund of the whole or any part of an ongoing contribution paid by a resident of the retirement village under a village contract. The proposed section

also provides that the Part does not apply in respect of a village contract for residential premises, the occupant of which is a registered interest holder in respect of those premises.

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Proposed section 182B provides that a statutory charge is created over the land within the retirement village on the day that a resident enters into a village contract to which the Part applies. The proposed section also provides that the charge is not created over land that is not registered as part of a retirement village or which is held by a resident as a registered interest holder.

Proposed section 182C provides that it is an offence for a person to dispose of land that is subject to such a charge otherwise than in accordance with an order of the Supreme Court. The proposed section does not prevent the sale of the retirement village as a going concern.

Proposed section 182D provides that a charge created under the proposed Part is not terminated by the transfer of title in the land.

Proposed section 182E provides that certain persons may apply for an order of the Supreme Court to dispose of land that is the subject of a charge if it appears that it is unlikely that the operator of the retirement village will be able to refund any part of an ongoing contribution that a resident or former occupant is entitled to be refunded.

Proposed section 182F provides that the Supreme Court may, on the application of a person referred to in proposed section 182E, order that land that is the subject of a charge is to be sold and may appoint a person to act as an agent for the sale. The proposed section also provides that the Court may make orders with respect to the distribution of the proceeds of the sale having regard to the order that interests are to be satisfied in accordance with proposed section 182G.

Proposed section 182G provides the order in which interests in land that is subject to a charge are to be satisfied from the proceeds of the sale of that land.

Proposed section 182H provides that the Supreme Court may only make an order under proposed section 182F if the Court is satisfied that the making of such an order is in the best interests of the majority of the residents of the retirement village.

Proposed section 182I provides that a charge created under proposed Part 10A remains in force until the village contract that caused the creation of the charge has been terminated and all of the operator's liabilities under that contract have been met or the land has been sold in accordance with an order under the Part.

Amendments relating to the settling-in period for residents of a retirement village

Schedule 1 [38] inserts proposed Division 2 in Part 5 of the principal Act (proposed sections 44A–44E). The proposed Division makes provision for a settling-in period to apply to new residents of a retirement village. Schedule 1 [29] makes a consequential amendment.

Proposed section 44A enables the resident of a retirement village to terminate a village contract before the end of the settling-in period. The proposed section provides that the end of the settling-in period is the later of 90 days after the resident is entitled to occupy the premises or, if the resident first occupies the premises during that period, 90 days after the resident first occupies the premises or such other date as the operator and resident agree.

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Proposed section 44B provides that a resident who terminates a village contract before the end of the settling-in period is only required to make certain payments under the contract.

Proposed section 44C provides that the operator is required to refund certain payments made by the resident under a village contract that is terminated in accordance with the proposed Division and, in certain cases, the proceeds from the sale of the premises.

Proposed section 44D sets out the time within which a refund that a former occupant is entitled to receive under proposed section 44C must be made and provides that the Tribunal may resolve disputes relating to any such refund.

Proposed section 44E provides that a resident who has terminated a village contract before the end of the settling-in period is not required to pay certain fees on the termination of the village contract.

Miscellaneous amendments

Schedule 1 [1] amends section 3 of the principal Act to provide that encouraging the retirement village industry to adopt best practice management standards is an object of the principal Act.

Schedule 1 [15] amends section 17 of the principal Act to provide that the operator of a retirement village must not publish or distribute promotional material of a type prescribed by the regulations.

Section 18 of the principal Act currently provides that the operator of a retirement village is required to provide a prospective resident with a disclosure statement.

Schedule 1 [16] amends that section to provide that the operator of a retirement village must provide a prospective resident with a general inquiry document, and must provide the prospective resident with a disclosure statement if the prospective resident expresses an interest in specific premises within the village, or requests a copy of that statement. An operator who fails to provide a disclosure statement is guilty of an offence with a maximum penalty of 20 penalty units (currently \$2,200).

Schedule 1 [5], [17] and [18] make consequential amendments.

Schedule 1 [19] replaces section 19 of the principal Act. Currently section 19 of the principal Act requires the operator of a retirement village to provide certain information about the retirement village. The proposed section 19 provides that the Director-General may, by notice in writing to the operator of a retirement village, require the operator to provide specified information to the residents of the retirement village or a prospective resident. It is an offence to fail to comply with any such notice without reasonable excuse.

Section 23 of the Principal Act currently provides that deposit paid to the operator of a retirement village under a village contract is to be held in trust and specifies the type of account in which such amounts may be held as well as providing the circumstances in which the amounts may be removed from the trust. Section 23 (1) provides that the section does not apply to the operator of a retirement village if the operator is a body constituted or established under an Act, or is a body constituted or established for a benevolent, philanthropic or patriotic purpose. Schedule 1 [26] and Explanatory note page 11

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[27] amend that section to provide that the requirement that any such amounts are to be held in trust applies to all retirement villages, and that the provision specifying the type of account in which such an amount may be held does not apply to the operator of a retirement village if the operator is a body constituted or established under an Act, or is a body constituted or established for a benevolent, philanthropic or patriotic purpose. Schedule 1 [28] amends that section to provide that any money that is so held may form part of a resident's ongoing contribution.

Schedule 1 [30] amends section 24 of the principal Act to provide that a village contract must be in writing.

Schedule 1 [31] amends section 24 of the principal Act to provide that, if the operator of a retirement village does not make a refund to a former occupant within the time

required by that section, the former occupant may apply to the Tribunal for an order directing the operator to make the payment.

Schedule 1 [33] amends section 29 of the principal Act to provide that it is an offence for the operator of a retirement village to vary a village contract or to terminate a village contract and enter into a new village contract unless the resident affected has obtained a written certificate under that section. The maximum penalty for such an offence is 100 penalty units (currently \$11,000).

Section 38 of the principal Act provides that the operator of a retirement village must not permit a resident to occupy residential premises within the retirement village until the operator prepares, and provides the prospective resident with, a condition report. Schedule 1 [34] amends that section to provide that the regulations may prescribe the time within which such a report is to be provided.

Schedule 1 [36] inserts proposed section 41A into the principal Act. The proposed section provides that a resident of a retirement village may add, remove or alter fixtures and fittings, and make renovations to residential premises, with the consent of the operator of the retirement village. The operator must not unreasonably withhold consent. The proposed section also provides that the consent of the operator is not required in respect of certain alterations or renovations. Schedule 1 [137] makes a consequential amendment.

Schedule 1 [37] amends section 43 of the principal Act to provide that a village contract may make provision for the payment of ingoing contributions by way of instalments and for the interest to be calculated in respect of the unpaid portion.

Schedule 1 [39] amends section 51 of the principal Act to provide that the operator of a retirement village is required to notify the residents of the retirement village of the outcome of a vote to amend the village rules within 7 days after the operator becomes aware of the outcome of the vote.

Schedule 1 [44] inserts proposed section 58A into the principal Act. The proposed section provides that the operator of a retirement village must ensure that the village is reasonably safe, and that the operator is required to conduct safety inspections. The proposed section also provides that a resident may, if the resident believes that the village is not reasonably safe, apply to the Tribunal for an order directing the operator to ensure that the village is reasonably safe.

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Schedule 1 [46] inserts proposed section 59A into the principal Act. The proposed section provides that the operator of a retirement village must ensure that emergency and home care service personnel have unimpeded vehicular access to residential premises within the retirement village at all times.

Section 67 of the principal Act provides that the operator of a retirement village or any person authorised by the operator of a retirement village, must not enter occupied residential premises otherwise than in accordance with that section. Schedule 1 [49] amends that section to make it an offence to enter residential premises in contravention of that section.

Section 84 of the principal Act provides that the Director-General may apply to the Supreme Court for an order appointing an administrator to exercise certain functions of the operator of a retirement village. Schedule 1 [61] amends that section to provide that the Director-General may only apply for an order under that section if the Director-General is of the opinion that the well-being or financial security of the residents of the village will be seriously affected by the continued operation of the village by the operator, or if the Director-General is of the opinion that the operator is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court.

Schedule 1 [62] inserts proposed sections 87A and 87B into the principal Act.

Proposed section 87A provides that expenses incurred by an administrator appointed under Division 6 of Part 6 of the principal Act are payable from recurrent charges, and such other funds as would be available to the operator, and that the appointment of such an administrator does not make the Director-General liable for the expenses incurred in operating the village or any other liability of the operator of the village in respect of which the administrator is appointed.

Proposed section 87B provides that an administrator appointed under the principal Act has power, with the consent of the Director-General, to vary the approved annual budget, recurrent charges payable or the services offered by the village to assist in finding a new operator for the village and to maintain the financial viability of the village.

Schedule 1 [108] inserts proposed Division 7 into Part 7 of the principal Act (proposed sections 120A–120C). Schedule 1 [107] makes a consequential amendment.

Proposed section 120A defines certain terms that are used in the proposed Division.

Proposed section 120B provides that any surplus in the annual accounts of a retirement village is to be carried forward into the next financial year unless the residents of the village consent to a proposal for the expenditure of the surplus or consent to a proposal that the whole or part of the surplus be distributed to the residents of the village. The proposed section also provides that the Tribunal may order that the surplus is not to be distributed to the residents.

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Proposed section 120C provides that the operator of a retirement village is to make good any deficit in the annual accounts of the retirement village and prevents the operator from requiring the residents to contribute to the making good of any such deficit except as provided by the regulations.

Schedule 1 [111], [112], [125], [126] and [136] make minor amendments to ensure that consistent terminology is used with respect to the permanent vacation of residential premises.

Schedule 1 [115] inserts proposed Division 3A into Part 9 of the principal Act (proposed section 136A).

Proposed section 136A provides that the administrator of a retirement village may apply to the Supreme Court for an order terminating village contracts with respect to that retirement village if there is no reasonable prospect of finding a new operator for the retirement village.

Section 139 of the principal Act provides that a person must not enter residential premises for the purpose of recovering possession of the premises except as provided by that section. Schedule 1 [116] extends the operation of the section to provide that a person must not remove a resident from the premises, or take action that is likely, or intended, to cause a resident to permanently vacate the premises.

Section 147 of the principal Act provides that the operator of a retirement village may apply to the Tribunal for an order relating to uncollected goods or sell or dispose of those goods in accordance with the regulations. Schedule 1 [118] makes it an offence to sell or otherwise dispose of uncollected goods except in accordance with that section.

Section 170 of the principal Act provides that the operator of a retirement village and a resident (who is a registered interest holder) are to share the costs of the sale of the resident's residential premises in the same proportions as they are to share any capital gains under the village contract. Schedule 1 [139] amends that section to provide that the regulations may prescribe costs that are, or are not, included in the calculation of the costs of sale.

Schedule 1 [141] amends section 175 of the principal Act to make it clear that the

Tribunal may order that the operator of a retirement village is to pay compensation if the operator's refusal to consent to the letting or subletting of premises within the retirement village was unreasonable.

Schedule 1 [142] makes a minor amendment in the nature of statute law revision.

Schedule 1 [150] and [151] amend section 189 of the principal Act to make it clear that the Director-General's functions under the principal Act include the function of prosecuting any offence under the principal Act or the regulations.

Schedule 1 [152] inserts proposed section 189A into the principal Act. The proposed section provides that the Director-General may authorise the publication of a notice warning persons of the risks involved in dealing with a person who is (or appears to be) the operator of a retirement village and has a history of unconscionable conduct in dealing with consumers.

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Schedule 1 [153] amends section 190 of the principal Act to remove the requirement that the Director-General must be satisfied, before taking or defending proceedings on behalf of a resident of a retirement village, that the Director-General is acting in the public interest.

Schedule 1 [155]–[157] amend section 196 of the principal Act to exonerate the Registrar-General and persons acting under the direction of the Registrar-General from personal liability incurred in respect of any act done or omitted in good faith for the purposes of the principal Act.

Schedule 1 [158] inserts proposed Part 12A (proposed sections 196A–196E) into the principal Act. Schedule 1 [154] makes a consequential amendment.

Proposed section 196A gives investigators appointed under the Fair Trading Act 1987 powers of entry and inspection in relation to the investigation of matters under the principal Act.

Proposed section 196B sets out the powers of investigators to obtain information, documents and evidence.

Proposed section 196C creates offences relating to the obstruction of investigators.

Proposed section 196D provides for an investigator to take documents to be used as evidence.

Proposed section 196E provides for the issue of search warrants to investigators.

Schedule 1 [159] inserts proposed section 197A. The proposed section provides that it is an offence for the operator of a retirement village to give information that the operator knows to be false or misleading in a material particular in purported compliance with a requirement of the principal Act.

Schedule 1 [162] amends section 202 to provide that the Minister may fund the provision of advisory and advocacy services to the residents and prospective residents of retirement villages in the course of administering the principal Act.

Schedule 1 [163] amends section 203 to provide that the regulations may exempt a specified village contract or a specified class of village contracts from any provision of the principal Act.

Schedule 1 [165]–[167] insert provisions of a savings and transitional nature.