

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Unit Titles Amendment Bill 2008

### Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Unit title applications—general requirements	
Section 17 (2) (a)	3
5 Amendment of development statements after registration	
Section 30 (4) (a)	3
6 New division 3.4	3
7 New section 46A	5
8 Dealings in property	
Section 48 (1)	5
9 Section 48 (2)	6

## Contents

---

	Page
10 Exemptions for units plans with 4 or fewer units Section 50 (1)	6
11 General duties Section 51 (6)	6
12 New sections 51A and 51B	6
13 Section 52	8
14 Section 55	8
15 New divisions 5.3A and 5.3B	9
16 New section 55X	25
17 Section 58	25
18 Sinking funds Section 61 (1) and (2)	26
19 Section 61 (4)	26
20 Sections 62 and 63	26
21 Discounts and interest—amounts owing Section 65 (1)	28
22 Section 65 (2)	28
23 Corporate register—establishment New section 70 (2A)	28
24 Section 75	29
25 Executive committee—functions Section 82 (1)	31
26 Executive committee—before the first annual general meeting Section 83 (2)	32
27 Executive committee—after the first annual general meeting Section 84 (4) (b)	32
28 Section 84 (5)	32
29 Section 87	33
30 New sections 88B to 88D	36
31 Section 90	38
32 First annual general meeting Section 95 (1)	39
33 New section 95 (3) to (5)	39
34 New section 95A	39

## EXPOSURE DRAFT

	Page
35 Quorum at a general meeting—owners corporation with 2 members Section 102 (3)	40
36 Proxy votes New section 115 (3)	40
37 New section 115A	41
38 Section 119	42
39 Division 6.5	42
40 Section 126	46
41 Amendment of articles Section 128 (2)	46
42 Section 129	46
43 New part 7A	49
44 Unit entitlement authority—grant Section 146 (2) (a)	52
45 Provisional building damage order—period of effect Section 156 (b)	52
46 Final building damage order—period of effect Section 158 (b)	52
47 New part 11A	53
48 New schedule 2	54
49 Dictionary, note 2, new dot point	54
50 Dictionary, new definitions	54
51 Dictionary, definition of <i>default articles</i>	54
52 Dictionary, new definitions	55
53 Further amendments, mentions of Magistrates Court	56
<b>Schedule 1 Consequential amendments</b>	<b>57</b>
<b>Part 1.1 Agents Act 2003</b>	<b>57</b>
<b>Part 1.2 Planning and Development Act 2007</b>	<b>60</b>
<b>Part 1.3 Unit Titles Regulation 2001</b>	<b>60</b>

## EXPOSURE DRAFT



# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Unit Titles Amendment Bill 2008

---

### A Bill for

An Act to amend the *Unit Titles Act 2001*, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## **1 Name of Act**

This Act is the *Unit Titles Amendment Act 2008*.

## **2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

## **3 Legislation amended**

This Act amends the *Unit Titles Act 2001*.

*Note* This Act also amends the following legislation:

- *Agents Act 2003* (see sch 1)
- *Planning and Development Act 2007* (see sch 1)
- *Unit Titles Regulation 2001* (see sch 1).

**4 Unit title applications—general requirements**  
**Section 17 (2) (a)**

*substitute*

- (a) no fewer than—
  - (i) if 1 unit is wholly or partly superimposed on another unit—2 units; or
  - (ii) in any other case—3 units; and

**5 Amendment of development statements after registration**  
**Section 30 (4) (a)**

*substitute*

- (a) the application is authorised by a special resolution of the owners corporation made within 3 months before the day the application is given to the authority; and

**6 New division 3.4**

*insert*

**Division 3.4 Developer disclosure**

**31A Contract for sale of unit before registration of units plan**

- (1) This section applies to a contract for the sale of a unit in a units plan before the units plan is registered.
- (2) The contract must include the following information:
  - (a) the proposed articles of the owners corporation of the units plan;

**EXPOSURE DRAFT**

- (b) details of any contract the developer intends the owners corporation to enter, including—
  - (i) the amount of the buyer's contribution to the corporation's general funds that will be used to service the contract; and
  - (ii) any personal or business relationship between the developer and another party to the contract;
- (c) the developer's estimate of the buyer's contribution to the corporation's general funds for 2 years after the units plan is registered;
- (d) if a right to approve the keeping of animals during the developer control period is reserved—details of the reservation, including the kind and number of animals;
- (e) if a staged development of the units is proposed—the proposed development statement and any amendment to the statement;
- (f) a warranty by the developer that the information disclosed under paragraphs (a) to (e) is accurate.

*Note* If a developer is appointed as a proxy under the contract, a proxy disclosure statement must be included in the contract (see s 115A (Proxy votes—limit on developer)).

- (3) The buyer of a unit may, by written notice given to the developer, cancel the contract of sale before the contract is completed if—
  - (a) the developer's disclosure under subsection (2) is incomplete or inaccurate; and
  - (b) the buyer is significantly prejudiced because the disclosure is incomplete or inaccurate.

## EXPOSURE DRAFT



**7 New section 46A***insert***46A Restriction on owners corporation during developer control period**

- (1) An owners corporation for a units plan must not, during the developer control period, do any of the following:
  - (a) enter into a contract unless—
    - (i) the contract is disclosed in each contract to sell a unit in the units plan; and
    - (ii) the ACAT authorises the corporation entering into the contract;
  - (b) change the articles of the corporation;
  - (c) approve the keeping of an animal by a member of the units plan in the member's unit unless the right to keep an animal was reserved in each contract to sell a unit in the units plan.
- (2) A developer or, if an owners corporation is established for the units plan, the owners corporation may apply to the ACAT for the authority to enter a contract during the developer control period.
- (3) The ACAT may authorise the owners corporation entering into the contract if satisfied that the terms of the contract are reasonable in all the circumstances.

**8 Dealings in property  
Section 48 (1)***omit everything before paragraph (a), substitute*

- (1) An owners corporation may, if authorised by an ordinary resolution—

**EXPOSURE DRAFT**

**9 Section 48 (2)**

*omit everything before paragraph (a), substitute*

- (2) An owners corporation may, if authorised by a special resolution, on conditions and for purposes stated in the resolution—

**10 Exemptions for units plans with 4 or fewer units  
Section 50 (1)**

*substitute*

- (1) An owners corporation for a units plan with 4 or fewer units may, by special resolution, exempt itself from the requirements of this Act prescribed by regulation.

**11 General duties  
Section 51 (6)**

*omit everything before paragraph (a), substitute*

- (6) An owners corporation may, by special resolution, exempt itself from any (or all) maintenance requirements under subsection (3) if the exemption is not reasonably likely to affect adversely (to a significant extent)—

**12 New sections 51A and 51B**

*insert*

**51A Structural defects—owners corporation may represent members**

- (1) This section applies if a building, or the site of a building, that is part of the units or common property of a units plan, has a structural defect that affects, or is likely to affect, the support or shelter provided by that part of the building or site to another part of the building or site.

- (2) The owners corporation may, by ordinary resolution, take legal action for the rectification of the structural defects if—
  - (a) the legal action could be taken by a member of the corporation; and
  - (b) the member does not take the legal action within a reasonable time after the defect becomes known.
- (3) To remove any doubt, if the owners corporation takes legal action under this section—
  - (a) the corporation and not the member who could have taken the action is liable for the costs incurred by the corporation in taking the legal action; and
  - (b) the corporation and not the member may take the benefit of any order for costs in the corporation's favour in the legal action.
- (4) For this section, the owners corporation *takes legal action* if the corporation—
  - (a) begins a proceeding; or
  - (b) continues a proceeding.

**51B Owners corporation—entry to units**

- (1) An owners corporation for a units plan does not have a right to enter a unit in the units plan without the consent of the owner or occupier, except in accordance with this section.

**EXPOSURE DRAFT**

- (2) The owners corporation may enter the unit without notice to the owner or occupier of the unit if the access is required in an emergency.

**Examples of emergencies**

- 1 water flowing from 1 unit into another unit that is causing damage
- 2 an external glass window in the unit is dislodged and is likely to fall

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If entry to the unit is required to inspect or maintain the common property of the units plan, a person may enter the unit on behalf of the owners corporation if—
- (a) the executive committee authorises the entry, and the person to enter, by resolution; and
  - (b) the executive committee gives the owner or occupier written notice that the entry must be allowed on a stated day.
- (4) A notice under subsection (3) (b) must be given to the owner or occupier not less than 7 days before the entry it relates to.

**13 Section 52**

*omit everything before paragraph (a), substitute*

**52 Work on behalf of particular unit owners or occupiers**

An owners corporation may, if authorised by an ordinary resolution, enter into and carry out an agreement with an owner or occupier of a unit for—

**14 Section 55**

*omit*

**15 New divisions 5.3A and 5.3B**

*insert*

**Division 5.3A People appointed by owners corporation to help run owners corporation**

**55A Manager—appointment**

- (1) An owners corporation may, by ordinary resolution, appoint any of the following as owners corporation manager:
  - (a) a licensed real estate agent;
  - (b) a member of the corporation;
  - (c) someone else who is not a manager of another owners corporation, and whose income as manager of the corporation will not be the person's primary source of income.

*Note* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) In this section:

*licensed real estate agent*—see the *Agents Act 2003*, dictionary.

**55B Manager—conditions of appointment**

- (1) A manager must be appointed for a term of not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (2) The conditions of appointment of the manager—
  - (a) must include—
    - (i) the remuneration of the manager; and
    - (ii) the functions of the owners corporation that the manager is to exercise; and
  - (b) may include other conditions agreed between the owners corporation and the manager.

**55C      Manager—functions**

A manager has—

- (a) the functions stated in the manager's conditions of appointment; and
- (b) any other function delegated to the manager under section 55H.

**55D      Manager—ending appointment**

- (1) The owners corporation may end a person's appointment as manager—
  - (a) for a remedial breach if notice has been given under section 55E; or
  - (b) for misbehaviour; or
  - (c) if the person becomes bankrupt or executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (d) if the person is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or

**EXPOSURE DRAFT**

- (e) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) The owners corporation must end a person's appointment as manager—
  - (a) if the person is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the manager's functions.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (3) In this section:

***remedial breach*** means a remedial breach under section 55E.

## **55E Manager—remedial breaches**

- (1) A manager commits a remedial breach if the manager—
  - (a) fails to exercise the manager's functions; or
  - (b) contravenes the code of conduct; or
  - (c) while exercising the manager's functions, is grossly negligent or engages in misconduct.
- (2) If the owner's corporation believes on reasonable grounds that a manager has committed a remedial breach, the corporation may give the manager written notice stating—
  - (a) that the corporation believes the manager has committed a remedial breach; and

# **EXPOSURE DRAFT**

- (b) details of the remedial breach committed, sufficient to allow the manager to identify—
  - (i) the function the manager failed to exercise; or
  - (ii) the provision of the code of conduct the corporation reasonably believes the manager contravened; or
  - (iii) the gross negligence or misconduct; and
- (c) that the manager must, within 14 days after the day the notice is given to the manager—
  - (i) give the corporation a written representation explaining why the manager's actions do not amount to a remedial breach; or
  - (ii) remedy the breach; and
- (d) that the owners corporation may end the manager's appointment if—
  - (i) the manager does not comply with the notice; or
  - (ii) if the manager gives a written representation explaining why the manager's actions do not amount to a remedial breach—the corporation does not accept the manager's representation.

**55F      Manager—code of conduct**

A manager must comply with the code of conduct in schedule 2.



**55G Manager—public liability insurance**

- (1) A manager must take out and maintain public liability insurance in relation to all of the following events happening because of any act or omission in the management of the owners corporation by the manager:
  - (a) death, bodily injury or illness to anyone;
  - (b) loss of, or damage to, the property of anyone.
- (2) Public liability insurance under this section must be for a total amount of liability of at least the amount prescribed by regulation.
- (3) A manager appointed to manage 2 or more owners corporations may take out and maintain a single insurance policy for this section only if—
  - (a) the manager's insurer has been told that the manager manages 2 or more owners corporations; and
  - (b) the insurance policy covers the risk in relation to each owners corporation managed by the manager.

**55H Manager—delegated functions**

- (1) The owners corporation may, in writing given to the manager, delegate to the manager any of its functions under this Act or another territory law.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) The executive committee may, in writing given to the manager, delegate to the manager any of its functions under this Act or another territory law.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**EXPOSURE DRAFT**

**55I Communications officer—appointment**

- (1) This section applies to an owners corporation if the units plan has 7 or more units.
- (2) The owners corporation may, by ordinary resolution, appoint an owners corporation communications officer.

*Note* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (3) To remove any doubt—
  - (a) a person may be appointed as a communications officer whether or not the person is a member of the owners corporation; and
  - (b) the corporation may appoint the officer as a volunteer or may pay the officer.

**55J Communications officer—function**

- (1) A communications officer assists the owners corporation by improving communication so that conflict within the units plan is avoided, minimised or resolved.
- (2) To improve communication, the communications officer may do 1 or more of the following:
  - (a) monitor communication techniques and procedures adopted by the owners corporation for communication (*internal communication*) between the corporation, the executive committee, unit owners and residents;
  - (b) identify for the executive committee ways in which internal communication can be improved;
  - (c) alert the executive committee, or committee members, if the officer becomes aware of potential conflict;

**EXPOSURE DRAFT**

- (d) advise the executive committee about ways in which the risk of conflict in the units plan can be minimised;
  - (e) be available to the executive committee, or committee members, to be consulted about any internal communication matter.
- (3) However, the communications officer must not mediate or directly resolve a dispute.

## **Division 5.3B      Service contractors**

### **Subdivision 5.3B.1   Service    contractor—contract      and    functions**

#### **55K      Definitions—div 5.3B**

In this division:

*service contract* means a contract to provide service contractor services to an owners corporation.

*service contractor* means a person—

- (a) contracted under section 55L; or
- (b) with whom an owners corporation has a service contract.

*service contractor services* means services provided by a service contractor in exercising the contractor's functions.

#### **55L      Service contractor—contract**

- (1) An owners corporation may, by ordinary resolution, enter into a service contract with a person.

## **EXPOSURE DRAFT**

- (2) To remove any doubt, an owners corporation also enters into a service contract if the corporation appoints a person to carry out service contractor services.
- (3) However, the owners corporation must not enter into a service contract with a service contractor for a period longer than 3 years (including any period for which the service contractor may renew or extend the contract) unless—
  - (a) the contract is made by special resolution after the end of the developer control period for the units plan; or
  - (b) each of the following applies:
    - (i) the ACAT is satisfied that the contract is reasonably required for the purpose for which the units plan is intended and authorises the contract before any unit in the units plan is sold, or any agreement for sale has been entered into;
    - (ii) the contract is disclosed by the developer in each sale contract entered into after the contract is made.
- (4) A service contract entered into in breach of subsection (3) is void.
- (5) In deciding whether a service contract is reasonably required for the purpose for which the units plan is intended, the ACAT must consider the following:
  - (a) the layout of each building making up the units plan;
  - (b) whether the units plan is to be used for residential, commercial or other purposes;
  - (c) the kind of people likely to purchase units in the units plan;
  - (d) how management of the units plan is intended to operate.

## EXPOSURE DRAFT

- (6) In this section:

*units plan* includes part of a units plan.

**55M Service contractor not to be contracted for longer than 25 years**

- (1) An owners corporation must not enter into a service contract with a service contractor for longer than 25 years.
- (2) If an owners corporation enters into a service contract with a service contractor for longer than 25 years, the contract is taken, for all purposes, to be a contract for 25 years.
- (3) To remove any doubt, this section does not apply to a service contract entered into before the commencement of this section.

**55N Service contractor—functions**

A service contractor for an owners corporation assists the corporation to exercise 1 or more of the following functions in relation to the common property, or part of the common property, of the units plan:

- (a) managing the common property or part of the common property;
- (b) supervising use of the common property or part of the common property;
- (c) maintaining and repairing the common property or part of the common property.

**55O Service contractor—transfer**

- (1) A service contractor's rights under a service contract may be transferred only if the transfer is approved by the owners corporation by ordinary resolution.

## EXPOSURE DRAFT

- (2) In deciding whether to approve the proposed transfer, the owners corporation may consider the following:
  - (a) the character of the proposed transferee and associates of the proposed transferee;
  - (b) the proposed transferee's financial standing;
  - (c) the terms of the proposed transfer;
  - (d) the competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
  - (e) whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training;
  - (f) anything else relevant to the service contract.
- (3) The owners corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation receives the application for transfer.
- (4) However, the owners corporation must not—
  - (a) unreasonably withhold the approval to transfer; or
  - (b) require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.
- (5) In this section:
  - associates of the proposed transferee* means—
    - (a) if the proposed transferee is a corporation—the corporation's directors, substantial shareholders and principal staff; or
    - (b) if the proposed transferee is in partnership—the partners and principal staff of the partnership.

## EXPOSURE DRAFT

**55P Service contractor—ending contract**

- (1) The owners corporation may end a service contract—
  - (a) for a remedial breach if notice has been given under section 55Q; or
  - (b) for misbehaviour; or
  - (c) if the service contractor becomes bankrupt or executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (d) if the service contractor is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or
  - (e) if the service contractor is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) The owners corporation must end a service contract—
  - (a) if the service contractor is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the service contractor's functions.

- (3) In this section:

***remedial breach*** means a remedial breach under section 55Q.

**EXPOSURE DRAFT**

**55Q Service contractor—remedial breaches**

- (1) A service contractor commits a remedial breach if the service contractor—
  - (a) fails to exercise the service contractor's functions; or
  - (b) contravenes the code of conduct; or
  - (c) while exercising the service contractor's functions, is grossly negligent or engages in misconduct.
- (2) If the owner's corporation believes on reasonable grounds that a service contractor has committed a remedial breach, the corporation may give the service contractor written notice stating—
  - (a) that the corporation believes the service contractor has committed a remedial breach; and
  - (b) details of the remedial breach committed, sufficient to allow the service contractor to identify—
    - (i) the function the service contractor failed to exercise; or
    - (ii) the provision of the code of conduct the corporation reasonably believes the service contractor contravened; or
    - (iii) the gross negligence or misconduct; and
  - (c) that the service contractor must, within 14 days after the day the notice is given to the service contractor —
    - (i) give the corporation a written representation explaining why the service contractor's actions do not amount to a remedial breach; or
    - (ii) remedy the breach; and

**EXPOSURE DRAFT**



- (d) that the owners corporation may end the service contract if—
  - (i) the service contractor does not comply with the notice; or
  - (ii) if the service contractor gives a written representation explaining why the service contractor's actions do not amount to a remedial breach—the corporation does not accept the service contractor's representation.

### **Subdivision 5.3B.2 Service contractor—protection of contract financier**

#### **55R Meaning of *financed service contract* and *financier*—subdiv 5.3B.2**

In this subdivision:

*financed service contract* means a service contract financed by a financier under section 55S.

*financier*—see section 55S.

#### **55S Who is a *financier* for a service contract?**

- (1) A person is a *financier* for a service contract if—
  - (a) the person—
    - (i) is a financial institution; or
    - (ii) in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts for security; or

## **EXPOSURE DRAFT**

- (iii) if the contract exists immediately before the commencement of this subdivision—at the time the finance was supplied for a business acquisition using a charge over the contract for security, was a person mentioned in subparagraph (ii); and
  - (b) a service contractor for the contract and the person give written notice signed by each of them to the owners corporation that the person is a financier for the contract.
- (2) A person stops being a financier for a service contract if the person gives the owners corporation a written notice withdrawing the notice given under subsection (1).
- (3) A notice under subsection (2) may be given without the service contractor's agreement.

**55T      Financed service contract—notice of change**

The owners corporation must give the financier of a financed service contract written notice of—

- (a) any change made to the contract by the corporation and the service contractor; or
- (b) any arrangement entered into by the corporation and the service contractor that affects the contract.

**55U      Financed service contract—limitation on ending**

- (1) The owners corporation may end a financed service contract only if—
  - (a) the corporation gives the financier written notice that the corporation has the right to end the contract; and
  - (b) when the notice is given to the financier, the corporation has the right to end the contract; and

## **EXPOSURE DRAFT**

- (c) the corporation gives the notice to the financier not less than 21 days before the day the contract is ended.
- (2) However, the owners corporation may not end the financed service contract if, under an arrangement between the financier and the service contractor, the financier has given the corporation notice under section 55V.
- (3) Subsection (2) does not stop the owners corporation ending a service contract for something done or not done after the financier started to act under the contract.
- (4) This section does not stop a financed service contract ending by agreement between the owners corporation, service contractor and financier.

**55V      Financed service contract—person authorised to act for financier**

- (1) The financier for a financed service contract may take the following action:
  - (a) act under the contract in place of the contractor;
  - (b) appoint a receiver, or a receiver and manager, for the contract.
- (2) However, the financier may only take action under subsection (1) if—
  - (a) the financier has given written notice to the owners corporation of the financier’s intention to take the action; and
  - (b) at the time the notice is given to the owners corporation, the corporation—
    - (i) has not given the financier notice under section 55U (1) (c); or
    - (ii) has given and withdrawn the notice to the financier.

**EXPOSURE DRAFT**

- (3) The financier may authorise a person to act for the financier for subsection (1) (a) if—
  - (a) the person is not the service contractor or an associate of the contractor; and
  - (b) the owners corporation approves the person.
- (4) In deciding whether to approve a person under subsection (3), the owners corporation—
  - (a) must act reasonably in the circumstances and decide as soon as practicable; and
  - (b) may only consider—
    - (i) the person's character; and
    - (ii) the person's competence, qualifications and experience.
- (5) However, the owners corporation must not—
  - (a) unreasonably withhold the person's approval; or
  - (b) require or receive a fee or other consideration for approving the person, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.

**55W      Financed service contract—agreement between owners corporation and financier prohibited**

- (1) A financier for a financed service contract must not enter into an agreement or other arrangement with the owners corporation under the contract for a matter relating to—
  - (a) the financier's role for the contract; or

- (b) arrangements between the financier and service contractor under which the financier is acting, or may act, under the contract in the contractor's place; or
  - (c) the operation of this subdivision in relation to the contract.
- (2) An agreement or arrangement to which this section applies is void to the extent it contravenes this section.

## **16 New section 55X**

*in division 5.4, insert*

### **55X Definitions—div 5.4**

In this division:

*initial sinking fund plan*—see section 62.

*sinking fund expenditure* means payments allowed to be made from the sinking fund under section 61 (3).

*sinking fund plan*—see section 63A.

## **17 Section 58**

*omit everything before paragraph (a), substitute*

### **58 Borrowing powers**

An owners corporation may, if authorised by a special resolution, do either or both of the following:

# **EXPOSURE DRAFT**

**18      Sinking funds  
Section 61 (1) and (2)**

*substitute*

- (1) An owners corporation must establish and maintain a fund (the ***sinking fund***) under this section if there are 4 or more units in the units plan.
- (2) Payments into the sinking fund may only be made—
  - (a) by transfer from the administrative fund in accordance with an ordinary resolution; or
  - (b) by transfer from a special purpose fund, in accordance with the purpose of the fund or a special resolution.

**19      Section 61 (4)**

*omit*

**20      Sections 62 and 63**

*substitute*

**62      Sinking funds—owners corporation to prepare initial  
10 years plan**

- (1) This section applies to an owners corporation if the corporation—
  - (a) is required to establish and maintain a sinking fund; and
  - (b) has not had its 2nd annual general meeting.
- (2) The owners corporation must prepare a plan (the ***initial sinking fund plan***) of anticipated sinking fund expenditure for the 10 years starting on the day of the 1st annual general meeting of the corporation after the corporation is registered.

## EXPOSURE DRAFT

- (3) The owners corporation must, by ordinary resolution, approve the initial sinking fund plan not later than the day of the 2nd annual general meeting of the corporation after the corporation is registered.
- (4) This section applies to an owners corporation that had its 2nd annual general meeting before the commencement of this section as if the 1st and 2nd annual general meetings of the corporation after the commencement were the 1st and 2nd annual general meetings of the corporation.
- (5) Subsection (4) is a law to which the Legislation Act section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (4) and (5) and this subsection expire 2 years after the day this section commences.

**63            Sinking funds—review of initial sinking fund plan**

An owners corporation with an initial sinking fund plan must review and, if necessary, amend the plan not later than 4 years after the plan is approved.

**63A          Sinking funds—owners corporation to prepare subsequent 10 year plans**

- (1) This section applies if an owners corporation has, or has had, an initial sinking fund plan.
- (2) The owners corporation must prepare a plan (the *sinking fund plan*) of anticipated sinking fund expenditure every 10 years (the *10-year period*) following the period mentioned in section 62 (2).
- (3) The owners corporation must, by ordinary resolution, approve the sinking fund plan not later than the 1st annual general meeting after the start of each 10-year period.

## EXPOSURE DRAFT

**63B      Sinking funds—review of sinking fund plan**

An owners corporation with a sinking fund plan must review and, if necessary, amend the plan not later than 5 years after the plan is approved.

**21      Discounts and interest—amounts owing  
Section 65 (1)**

*omit everything before paragraph (a), substitute*

- (1) An owners corporation may, by ordinary resolution, decide that a stated discount applies to an amount owing to the corporation by a unit owner if—

**22      Section 65 (2)**

*omit everything before paragraph (a), substitute*

- (2) If an amount owing to an owners corporation by a unit owner is not paid on or before the date it becomes payable, unless otherwise decided by ordinary resolution, the amount bears simple interest until paid—

**23      Corporate register—establishment  
New section 70 (2A)**

*insert*

- (2A) A unit owner may ask that information about the owner recorded on the corporate register under subsection (2) not be disclosed to a person under section 75 (Unit title certificate and access to owners corporation records).



**24      Section 75***substitute***75      Unit title certificate and access to owners corporation records**

- (1) On request by an eligible person for a unit or the common property for a certificate (the *unit title certificate*), the owners corporation must, within 14 days after the day the request is received, give the person the certificate under the seal of the corporation giving the following information about the unit or common property:
- (a) the name and contact details of each member of the corporation's executive committee;
  - (b) the name and contact details of the corporation's manager;
  - (c) the place where the corporation's records can be inspected, and the name and contact details of the person to be contacted to arrange inspection;
  - (d) for each insurance policy held by the corporation—
    - (i) the type of insurance policy; and
    - (ii) the name of the insurer that issued the policy; and
    - (iii) the amount of the liability covered by the policy;
  - (e) for the general fund and the sinking fund, at the date the certificate is signed—
    - (i) the amount of the current contribution to the fund; and
- Note*      The contribution to the general fund is determined under s 60, and the contribution to the sinking fund is determined under section 64.
- (ii) the date the contribution is due; and

**EXPOSURE DRAFT**

- (iii) the period the contribution is for; and
  - (iv) whether the contribution is paid or unpaid; and
  - (v) the balance of the fund.
- (2) On request by an eligible person for a unit or the common property to inspect the records of an owners corporation, the corporation must, within 14 days after the day the request is received, allow the person—
  - (a) to inspect—
    - (i) the information on the corporate register; and
    - (ii) any other records held by the corporation; and
  - (b) to take copies of any document inspected.
- (3) The owners corporation may withhold the following documents from inspection:
  - (a) if a unit owner has asked that information about the owner recorded in the corporate register under section 70 (2) not be disclosed—the information not to be disclosed;
  - (b) if a dispute exists—documents subject to legal professional privilege in relation to the dispute.
- (4) A request under this section must be in writing accompanied by a fee fixed by the owners corporation of not more than an amount prescribed by regulation (plus any GST payable in relation to the amount).
- (5) If a request is made under both subsections (1) and (2), only a single fee is payable.

## EXPOSURE DRAFT

**25 Executive committee—functions  
Section 82 (1)**

*substitute*

- (1) The executive committee of an owners corporation exercises the functions of the corporation.
- (1A) Without limiting subsection (1), the executive committee's functions include the following:
  - (a) developing matters in relation to—
    - (i) the common property; and
    - (ii) the strategic affairs of the owners corporation;
  - (b) submitting matters developed under paragraph (a) to the owners corporation for consideration;
  - (c) monitoring the financial performance of the owners corporation;
  - (d) approving the annual financial statements and budget for presentation to the owners corporation at the corporation's annual general meeting;
  - (e) supervising the treasurer, secretary, manager, communications officer and caretaker;
  - (f) carrying out decisions made by the owners corporation.

**EXPOSURE DRAFT**

**26      Executive committee—before the first annual general meeting  
Section 83 (2)**

*substitute*

- (2) Until the first annual general meeting, the executive committee may exercise a function of the owners corporation only if authorised to do so by a special resolution.

**27      Executive committee—after the first annual general meeting  
Section 84 (4) (b)**

*substitute*

- (b) hold office until the earlier of—
- (i) the next annual general meeting; and
  - (ii) the member ceasing to be a member of the owners corporation.

**28      Section 84 (5)**

*substitute*

- (5) An executive member (the *removed member*) of an owners corporation may be removed by ordinary resolution that appoints another member of the corporation to replace the removed member until the next annual general meeting.

---

**29      Section 87**

*substitute*

**87            Executive committee—office-holders**

- (1) At the first meeting of the executive committee, the committee must elect—
  - (a) a chairperson; and
  - (b) a secretary; and
  - (c) a treasurer.
- (2) The committee may elect a person to 2 or more positions.

**87A          Executive committee—chairperson’s functions**

- (1) The functions of the chairperson are—
  - (a) to chair general meetings of the owners corporation and meetings of the executive committee; and
  - (b) to set the agenda for general meetings and executive meetings, in consultation with the secretary and owners corporation manager; and
  - (c) to liaise with the secretary, treasurer and manager about the performance of their functions.
- (2) At a meeting of the executive committee, the chairperson may leave the chair during the meeting for any reason.
- (3) If the chairperson leaves the chair during a meeting, the executive members present must elect another executive member present to chair the meeting.

**EXPOSURE DRAFT**

- (4) At a meeting of the executive committee, the chairperson—
- (a) may vote as an executive member; and
  - (b) if the votes on a question are equal—may exercise a 2nd (casting) vote, unless there are only 2 executive members.

*Note* If there are only 2 executive members, all matters must be decided by unanimous vote (see s 88 (2)).

### **87B Executive committee—secretary’s functions**

The functions of the secretary are—

- (a) on behalf of the executive committee—
  - (i) to give notice of meetings of the executive committee and general meetings; and
  - (ii) to prepare and distribute to executive members minutes of executive meetings; and
  - (iii) to prepare and distribute to members of the owners corporation minutes of general meetings; and
  - (iv) to keep the records of the owners corporation, other than the records mentioned in section 91 (1) (e) (which are financial records); and
- (b) on behalf of the executive committee, and the owners corporation, to give notices under the Act; and
- (c) on behalf of the owners corporation—
  - (i) to give certificates required under the Act; and
  - (ii) to prepare and answer correspondence; and
- (d) to give any other administrative support to the executive committee or owners corporation.

## **EXPOSURE DRAFT**

**87C Executive committee—treasurer’s functions**

The functions of the treasurer are—

- (a) on behalf of the owners corporation, to give to each unit owner notice of—
  - (i) a determination of general funds contributions under section 60 (5) (Contributions to general funds); and
  - (ii) a determination of sinking fund contributions under section 64 (4) (Sinking funds—contributions); and
- (b) on behalf of the owners corporation—
  - (i) to pay all amounts the corporation receives into the corporation’s account in accordance with section 56 (1) (b) (Banking and investment of money of corporation); or
  - (ii) if the owners corporation is exempt from section 56 (1)—to receive, acknowledge receipt of, and account for amounts paid to the corporation; and
- (c) on behalf of the owners corporation, pay amounts the corporation spends out of the corporation’s account, in accordance with section 56 (1) (c), as authorised by the executive committee; and
- (d) on behalf of the executive committee, to keep the records mentioned in section 91 (1) (e) (Minutes, records and accounts); and
- (e) if the owners corporation requires the records mentioned in section 91 (1) (e) to be audited—to arrange for the records to be audited by a qualified auditor; and

**EXPOSURE DRAFT**

- (f) to give financial reports to meetings of the executive committee to allow the committee to monitor the financial performance of the owners corporation; and
- (g) to prepare and certify the annual financial statements mentioned in section 91 (3).

### **30 New sections 88B to 88D**

*insert*

#### **88B Decisions about use of common property**

The executive committee of an owners corporation may consent to an application by a member of the corporation to use the common property if—

- (a) the use applied for is minor; and
- (b) the use will not unreasonably interfere with the reasonable use and enjoyment of the common property by other members of the corporation.

##### **Example of minor use**

installation of airconditioner or awning on unit that extends over common property

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **88C Decisions about taking legal action**

- (1) This section applies if the executive committee proposes to take legal action.



- (2) The executive committee of an owners corporation must not take legal action on behalf of the owners corporation unless—
- (a) the legal action relates to the payment of a contribution under the Act by a member of the corporation to the corporation; or
  - (b) the costs of taking the legal action are reasonably estimated by the corporation's legal representative to be not more than the amount prescribed by regulation; or
  - (c) the corporation approves taking the legal action by ordinary resolution.

*Note* Section 88D allows urgent legal action to be taken.

- (3) For this section, the executive committee of an owners corporation ***takes legal action*** if the committee—
- (a) begins a proceeding; or
  - (b) begins to defend a proceeding; or
  - (c) continues, or continues to defend, a proceeding.
- (4) In this section:

***costs***, of taking legal action, means the legal costs and disbursements incurred by the owners corporation for its legal representation for the legal action.

## **88D Taking urgent legal action**

- (1) This section applies if—
- (a) the executive committee of an owners corporation is satisfied on reasonable grounds that it is necessary to take legal action urgently on behalf of the corporation; and
  - (b) the executive committee cannot reasonably get the corporation's approval before taking the legal action.

# **EXPOSURE DRAFT**

- (2) The executive committee may take the legal action.
- (3) However, the executive committee must—
  - (a) seek the approval of the owners corporation as soon as practicable after beginning the legal action; and
  - (b) if the owners corporation does not approve taking the legal action, the executive committee must discontinue the proceeding or withdraw the defence.
- (4) For this section, the executive committee of an owners corporation *takes legal action* if the committee—
  - (a) begins a proceeding; or
  - (b) begins to defend a proceeding.

## **31 Section 90**

*substitute*

### **90 Contractors and employees**

- (1) An executive committee of an owners corporation may engage or employ people on the terms it considers appropriate to assist in the exercise of the corporation's functions.

*Note* An owners corporation may appoint a manager (see div 5.3A) and service contractors (see div 5.3B).
- (2) An owners corporation may, by ordinary resolution, impose conditions or restrictions on its executive committee's power to engage or employ people.

## **EXPOSURE DRAFT**

**32 First annual general meeting  
Section 95 (1)**

*omit*

6 months

*substitute*

3 months

**33 New section 95 (3) to (5)**

*insert*

- (3) However, if a units plan is registered not more than 6 months before the commencement of the *Unit Titles Amendment Act 2008*, section 32, the 1st annual general meeting of the owners corporation must be held within 6 months after the registration of the units plan.
- (4) Subsection (3) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) Subsection (3), subsection (4) and this subsection expire 6 months after the day they commence.

**34 New section 95A**

*insert*

**95A First annual general meeting—developer to deliver records**

At the first annual general meeting of an owners corporation, the developer must give the following records to the corporation:

- (a) the statutory books and records of the corporation, up to the date of the meeting;

**EXPOSURE DRAFT**

- (b) any insurance policy issued in the name of the corporation;
- (c) any plans, specifications, diagrams or drawings that relate to the design or service of the units or common property of the units plan for which the corporation is established;
- (d) a copy of any contract entered into by the corporation that relate to the common property of the units plan;
- (e) any warranty that relates to the common property of the units plan;
- (f) the corporation's seal;
- (g) any other document that relates to the units or common property of the units plan.

**35 Quorum at a general meeting—owners corporation with 2 members  
Section 102 (3)**

*omit*

**36 Proxy votes  
New section 115 (3)**

*after the note, insert*

- (3) A person entitled to vote at a general meeting of an owners corporation must not—
  - (a) appoint a proxy for more than 1 year after the day the appointment is made; or
  - (b) appoint a person as a proxy if the person is—
    - (i) the manager; or
    - (ii) a service contractor.

## EXPOSURE DRAFT

**37      New section 115A***insert***115A      Proxy votes—limit on developer**

- (1) This section applies to a developer of a units plan who is appointed as the proxy under a contract for the sale of a unit in the units plan.
- (2) The developer must not exercise 3 or more proxy votes in a vote on a matter at a general meeting of the owners corporation for the units plan unless—
  - (a) each contract for the sale of a unit in the units plan contains a proxy disclosure statement; and
  - (b) the use of each proxy vote is consistent with the statement; and
  - (c) the matter being voted on relates to development (the ***development matter***) rather than the ordinary operation of the owners corporation.
- (3) If the developer exercises a proxy vote in contravention of this section, the proxy vote is void.
- (4) A ***proxy disclosure statement*** is a statement that includes the following:
  - (a) if a person is appointed as a proxy—the name of the person;
  - (b) if the proxy is appointed by naming the occupant of a position—the name of the position;
  - (c) the length of time of the appointment;
  - (d) a sufficient description of the development matter for the buyer of a unit to easily identify the matter.

**EXPOSURE DRAFT**

**38 Section 119**

*omit*

**39 Division 6.5**

*substitute*

**Division 6.5 Dispute resolution**

**123 What is an *ACAT dispute*?**

An *ACAT dispute* is a dispute between someone mentioned in table 123, column 2 and someone mentioned in column 3, if the dispute relates to—

- (a) an owners corporation; or
- (b) if something is stated in column 4 in relation to the dispute, the matter mentioned in column 4.

**Table 123 ACAT disputes**

column 1 item	column 2 person	column 3 person	column 4 matter
1	an owner or occupier of a unit	an owner or occupier of another unit in the same units plan	
2	an owner or occupier of a unit	an owners corporation	keeping an animal or allowing an animal to be kept
3	an owners corporation	an owner or occupier of a unit in the units plan	

**EXPOSURE DRAFT**

column 1 item	column 2 person	column 3 person	column 4 matter
4	an owners corporation	the manager for the owners corporation	
5	an owners corporation	a service contractor for the owners corporation	
6	an owners corporation	a member of the executive committee of the owners corporation	
7	the executive committee	a member of the executive committee	
8	the owners corporation	a person (the <i>former manager</i> ) who was the manager for the owners corporation	the return by the former manager of owners corporation property

#### 124 Who may apply to the ACAT?

- (1) A person mentioned in table 123, column 2 of an item may apply to the ACAT for an order in relation to a person mentioned in column 3 of the item if the application relates to an ACAT dispute.
- (2) A person mentioned in table 123, column 3 of an item may apply to the ACAT for an order in relation to a person mentioned in column 2 of the item if the application relates to an ACAT dispute.

## EXPOSURE DRAFT

- (3) A person mentioned in table 123, column 2 or 3 may apply to the ACAT for a declaration in relation to the owners corporation.

*Note* Under s 46A, pt 9 and div 10.3, other people may apply to the ACAT.

## **125 Kinds of ACAT orders**

- (1) The ACAT may make the following orders:
- (a) an order requiring a party to do, or refrain from doing, a stated thing;
  - (b) an order requiring a party to exercise a function under this Act;
  - (c) an order requiring an owners corporation to do a stated thing that is ancillary to a function of the corporation under this Act;
  - (d) an order requiring a person to pay to the Territory or someone else an amount of not more than \$1 000;
  - (e) a declaration—
    - (i) that a general meeting or executive committee meeting is void for irregularity; or
    - (ii) that a resolution of a general meeting or executive committee meeting is void for irregularity; or
    - (iii) that an article of the owners corporation is invalid for irregularity;
  - (f) an order repealing or amending a resolution of a general meeting or executive committee based on a merits review of the resolution by the ACAT;

## **EXPOSURE DRAFT**



- (g) an order giving effect to an unsuccessful motion for a resolution of a general meeting (either as originally proposed or as amended by the ACAT) if the ACAT is satisfied after a merits review of the motion that opposition to the motion was unreasonable;
- (h) an order requiring stated accounts of an owners corporation to be audited, whether by a stated person or a person of a stated kind;
- (i) an order allowing an applicant to examine records of the owners corporation;
- (j) an order requiring an owners corporation to make or repeal an article and register a copy of the resolution making or repealing the article;
- (k) an order appointing an administrator to exercise all or stated functions of the owners corporation, the executive committee or an executive officer;
- (l) if the dispute relates to a matter mentioned in table 123, item 2—an order to remove the animal from the unit if—
  - (i) a condition requiring the owners corporation's consent to keeping the animal is not complied with; or
  - (ii) the animal is causing a nuisance.
- (2) The ACAT may make any other order it considers necessary or convenient to resolve an ACAT dispute.
- (3) This section does not limit the orders the ACAT may make in relation to an ACAT dispute.

## **EXPOSURE DRAFT**

**40      Section 126**

*substitute*

**126      What are the articles of an owners corporation?**

The articles of an owners corporation consist of the articles (the ***default articles***) prescribed by regulation, as amended by the corporation under section 128.

*Note 1*    The default articles are in the *Unit Titles Regulation 2001*, sch 1.

*Note 2*    If the owners corporation was established under the *Unit Titles Act 1970* (which was repealed by this Act), the articles of the corporation as in force immediately before the day this section commenced continue to apply to the corporation, but may be amended in accordance with this Act (eg to adopt any or all of the new default articles)—see s 192 (expired).

**41      Amendment of articles  
Section 128 (2)**

*omit*

**42      Section 129**

*substitute*

**129      Breach of articles—article infringement notice**

- (1) This section applies if the executive committee of an owners corporation reasonably believes that—
  - (a) the owner or occupier (the ***person***) of a unit has contravened a provision of the corporation's articles; and
  - (b) the circumstances of the contravention make it likely that the contravention will continue or be repeated.

## EXPOSURE DRAFT

- (2) The owners corporation may, if authorised by an ordinary resolution of the executive committee, give the person a notice (an ***article infringement notice***) requiring the person to remedy the contravention.

*Note* If a form is approved under s 180 for this provision, the form must be used.

- (3) An article infringement notice must state the following:
- (a) that the owners corporation believes the person is contravening, or has contravened, a provision of the articles;
  - (b) the provision of the articles the owners corporation believes is, or was, contravened;
  - (c) details sufficient to identify the contravention;
  - (d) if the owners corporation believes the contravention is continuing—the period (which must be reasonable in the circumstances) within which the person must remedy the contravention;
  - (e) if the owners corporation believes the contravention is likely to be repeated—that the person must not repeat the contravention;
  - (f) if the person does not comply with the notice—
    - (i) the person commits an offence; and
    - (ii) the owners corporation may, without further notice, apply to the ACAT for an order in relation to the failure to comply with the notice.
- (4) If an article infringement notice is given to a person following a request under section 129B, the owners corporation must, not later than 14 days after the day the request was received, tell the person who made the request that the notice has been given.

## EXPOSURE DRAFT

**129A Breach of articles—failure to comply with article infringement notice**

- (1) A person commits an offence if the person—
  - (a) is given an article infringement notice under section 129; and
  - (b) does not comply with the notice.Maximum penalty: 5 penalty units.
- (2) However, the person does not commit an offence under this section if, when the article infringement notice is given to the person, the person is not contravening, or has not contravened, the provision mentioned in the notice in the way detailed for section 129 (3) (c).

**129B Breach of articles—request for article infringement notice**

- (1) This section applies if—
  - (a) a dispute exists between the owner or occupier of a unit in a units plan (the *complainant*) and the owner or occupier of another unit in the units plan (the *accused person*); and
  - (b) the dispute arises because the complainant reasonably believes that—
    - (i) the accused person has contravened a provision of the corporation's articles; and
    - (ii) the circumstances of the contravention make it likely that contravention will continue or be repeated.
- (2) The complainant may ask the owners corporation to give the accused person an article infringement notice for the contravention.

**43      New part 7A***insert***Part 7A                      Implied warranties****130A      Meaning of *implied warranties*—pt 7A**

In this part:

*implied warranties*—see section 130D.

**130B      Purpose—pt 7A**

This part—

- (a) sets out warranties that are taken to be part of a contract for the sale of a unit; and
- (b) provides a right to cancel a contract for the sale of a unit.

**130C      Implied warranties and right to cancel—effect**

- (1) The implied warranties and the right to cancel a contract for sale under this part have effect despite anything in the contract or in any other contract or arrangement.
- (2) The right to cancel a contract for sale under this part is in addition to, and does not limit, any other remedy available to the buyer of a unit for a breach of warranty established under this part.

**130D      Implied warranties**

- (1) The warranties (the *implied warranties*) in this section are taken to be part of a contract for the sale of a unit.

**EXPOSURE DRAFT**

- (2) The seller of a unit warrants that, at the date of the contract—
  - (a) to the seller's knowledge, there are no unfunded latent or patent defects in the common property or owners corporation assets, other than the following:
    - (i) defects arising through fair wear and tear;
    - (ii) defects disclosed in the contract; and
  - (b) the owners corporation records do not disclose any defects to which the warranty in paragraph (a) applies; and
  - (c) to the seller's knowledge, there are no actual, contingent or expected unfunded liabilities of the owners corporation that are not part of the corporation's normal operating expenses, other than liabilities disclosed in the contract; and
  - (d) the owners corporation records do not disclose any liabilities of the corporation to which the warranty in paragraph (c) applies.
- (3) The seller warrants that, at the completion of the contract, to the seller's knowledge, there are no circumstances (other than circumstances disclosed in the contract) in relation to the affairs of the owners corporation likely to materially prejudice the buyer.
- (4) For subsection (2), a seller is taken to have knowledge of a thing if the seller has actual knowledge, or ought reasonably to have knowledge, of the thing.

### **130E Cancellation of contract**

- (1) The buyer of a unit may, by written notice given to the seller, cancel the contract for the sale of the unit if there would be a breach of an implied warranty were the contract completed at the time it is cancelled.

## **EXPOSURE DRAFT**

- (2) A notice under this section must be given—
  - (a) if the contract for the unit is entered before the units plan for the unit is registered—not later than 3 days before the buyer is required to complete the contract; or
  - (b) in any other case—not later than 14 days after the later of the following happens:
    - (i) the buyer's copy of the contract is received by the buyer;
    - (ii) another period agreed between the buyer and seller ends.
- (3) If the buyer cancels the contract, the seller must repay any amount paid to the seller towards the purchase of the unit.

#### **130F Claim for compensation**

- (1) This section applies if, before completion of a contract for the sale of a unit, the buyer reasonably believes there would be a breach of a warranty established under this part were the contract to be completed.
- (2) The buyer may, by written notice given to the seller—
  - (a) tell the seller—
    - (i) about the breach; and
    - (ii) that the buyer will complete the contract; and
  - (b) claim compensation for the breach.
- (3) A notice under this section must be given—
  - (a) if the contract for the unit is entered before the units plan for the unit is registered—not later than 3 days before the buyer is required to complete the contract; or

## **EXPOSURE DRAFT**

- (b) in any other case—not later than 14 days after the later of the following happens:
  - (i) the buyer’s copy of the contract is received by the buyer;
  - (ii) another period agreed between the buyer and seller ends.

**44      Unit entitlement authority—grant  
Section 146 (2) (a)**

*substitute*

- (a) the application is authorised by a special resolution of the owners corporation made within 3 months before the day the application is made; and

**45      Provisional building damage order—period of effect  
Section 156 (b)**

*omit*

a Magistrates Court

*substitute*

an ACAT

**46      Final building damage order—period of effect  
Section 158 (b)**

*omit*

a Magistrates Court

*substitute*

an ACAT



**47 New part 11A**

*insert*

**Part 11A Changing 2-unit units plans to subdivisions**

**165A Application—pt 11A**

This part applies to a units plan with only 2 units.

**165B Subdivision of units plan—application**

- (1) An owners corporation to which this part applies may, on behalf of the members of the corporation, apply for development approval under the *Planning and Development Act 2007* to subdivide the parcel of land covered by the leases of the units and common property into 2 parcels in accordance with a subdivision plan.
- (2) The *Planning and Development Act 2007*, chapter 11, applies to the owners corporation as if the corporation were the lessee of the parcel of land.

*Note* A development approval for the subdivision of a units plan must be conditional on the units plan being cancelled (see *Planning and Development Act 2007*, s 165 (2) (ab)).

**EXPOSURE DRAFT**

**48 New schedule 2**

*insert*

**Schedule 2 Code of conduct**

(see s 55F)

[Code of conduct to be inserted.]

**49 Dictionary, note 2, new dot point**

*insert*

- ACAT

**50 Dictionary, new definitions**

*insert*

***ACAT dispute***—see section 123.

***appoint*** includes engage.

***communications officer***, for an owners corporation, means the owners corporation communications officer appointed by the owners corporation under section 55I.

**51 Dictionary, definition of *default articles***

*substitute*

***default articles***—see section 126.

**52 Dictionary, new definitions**

*insert*

***developer*** means the lessee of a parcel who applies for the approval of the subdivision of the parcel under section 17 (Unit title applications—general requirements).

***developer control period***, for a units plan, means the period that—

- (a) starts on the day the owners corporation for the units plan is established; and
- (b) ends on the day people other than the developer hold  $\frac{1}{3}$  or more of the unit entitlements for the units plan.

***financier***, for a service contract—see section 55S.

***implied warranties***, for part 7A (Implied warranties)—see section 130D.

***initial sinking fund plan***, for division 5.4 (Finances of owners corporation)—see section 62.

***manager***, for an owners corporation, means the owners corporation manager appointed by the owners corporation under section 55A.

***secretary***, for an owners corporation, means the secretary of the corporation elected under section 87.

***service contract***, for an owners corporation, means a contract entered into by the owners corporation with a service contractor to provide service contractor services under section 55K.

***service contractor***, for an owners corporation, means the owners corporation service contractor contracted by the owners corporation under section 55K.

**EXPOSURE DRAFT**

*sinking fund expenditure*, for division 5.4 (Finances of owners corporation)—see section 55X.

*sinking fund plan*, for division 5.4 (Finances of owners corporation)—see section 63A.

*treasurer*, for an owners corporation, means the treasurer of the corporation elected under section 87.

## **53 Further amendments, mentions of Magistrates Court**

*omit*

Magistrates Court

*substitute*

ACAT

*in*

- section 137 (2), example
- sections 140 to 144
- section 153 (4)
- section 154 (2)
- section 155
- section 157
- section 178

## **EXPOSURE DRAFT**

## **Schedule 1      Consequential amendments**

(see s 3)

### **Part 1.1              Agents Act 2003**

#### **[1.1]      New section 8 (2) (da)**

*insert*

(da) acting as manager of an owners corporation for a units plan;

#### **[1.2]      New section 8A**

*insert*

#### **8A              People not taken to carry on business as real estate agent**

- (1) The following people do not carry on business as a real estate agent only because they act as manager of an owners corporation for a units plan:
  - (a) a member of the owners corporation appointed as treasurer of the corporation;
  - (b) a member of the owners corporation appointed as manager of the corporation;
  - (c) a person who manages only 1 owners corporation and whose income from the owners corporation is not the person's primary source of income.
- (2) However, the following provisions apply to a person mentioned in subsection (1) as if the person were a licensed real estate agent:
  - (a) section 24 (Eligibility for licences);

## **EXPOSURE DRAFT**

- (b) division 3.3 (Licence procedures and details), other than—
  - (i) section 28 (Advertising intended licence applications); and
  - (ii) section 29 (1) (Licence applications); and
  - (iii) section 30 (Objections to licences); and
  - (iv) section 34 (Licence conditions);
- (c) division 3.4 (Disciplinary action against agents), other than section 41 (1) (b), (c) and (e) (Grounds for disciplinary action—agents);
- (d) section 68 (Main place of business);
- (e) part 7 (Trust accounts);
- (f) part 8 (Records);
- (g) part 9 (Appointment of administrators);
- (h) part 10 (Consumer compensation fund);
- (i) section 173 (Evidentiary certificates).

**[1.3] Section 102**

*substitute*

**102 What is *trust money*?**

- (1) For this Act, money is *trust money* if it is received—
  - (a) by a licensed agent—
    - (i) in relation to the business for which the agent is licensed on behalf of someone else; and

- (ii) on the basis that the money is to be paid to the other person or as the other person directs; or
  - (b) by an owners corporation under the *Unit Titles Act 2001*.
- (2) However, the following is not trust money for this Act:
- (a) money received by a licensed agent as bond under the *Leases (Commercial and Retail) Act 2001*, part 7 (Bonds and guarantees);
  - (b) money paid into a sinking fund for an owners corporation under the *Unit Titles Act 2001*.

**[1.4] New section 149 (2A) and (2B)**

*insert*

- (2A) However, if the claim is in relation to a licensed real estate agent acting as manager of an owners corporation for a units plan, the amount that the claimant is entitled to claim is limited to \$50 000 for a single claim.
- (2B) Subsection (2A) does not apply to a claim if the cause of action on which the claim is based arose before the commencement of subsection (2A).

## EXPOSURE DRAFT

## Part 1.2 Planning and Development Act 2007

### [1.5] New section 139 (2) (l)

*after paragraph (k), insert*

- (l) if the application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—be accompanied by the resolution of the owners corporation under the *Unit Titles Act 2001*, section 160 (3) to cancel the units plan.

### [1.6] New section 165 (2) (ab)

*insert*

- (ab) if the application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—must include a condition that the units plan is cancelled; and

## Part 1.3 Unit Titles Regulation 2001

### [1.7] Section 10

*substitute*

#### 10 Manager insurance—Act, s 55G (2)

The manager of an owners corporation must take out and maintain public liability insurance for a total amount of liability of not less than \$10 000 000.

## EXPOSURE DRAFT



**[1.8] Section 12**

*substitute*

**12 Fees for requests for unit title certificates and access to owners corporation records—Act, s 75 (4)**

- (1) The fee fixed by the owners corporation for a request for a unit title certificate must not be more than \$80 (plus any GST payable in relation to that amount).
- (2) The fee fixed by the owners corporation for a request for access to owners corporation information, records and documents in relation to a unit or common property must not be more than—
  - (a) if the person making the request has requested a unit title certificate in relation to the unit or the common property—\$0; or
  - (b) in any other case—\$30 (plus any GST payable in relation to that amount).

**[1.9] Section 13**

*omit*

**[1.10] Divisions 4.2 and 4.3**

*omit*

**EXPOSURE DRAFT**

**[1.11] Schedule 1, section 9**

*substitute*

**9 Animals**

- (1) A unit owner must not keep an animal, or allow an animal to be kept, within the unit or the common property without the consent of the owners corporation.
- (2) The owners corporation may give consent under this section with or without conditions.
- (3) However, the owners corporation's consent must not be unreasonably withheld.
- (4) In this section:  
*animal* includes—
  - (a) an amphibian; and
  - (b) a bird; and
  - (c) a fish; and
  - (d) a mammal (other than a human being); and
  - (e) a reptile.

**[1.12] Schedules 2 and 3**

*omit*

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2008.

**2 Notification**

Notified under the Legislation Act on 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

## EXPOSURE DRAFT