



Australian Capital Territory

## **Unit Titles Act 2001    No 16**

### **Republication No 1**

Republication date: 5 October 2001

Last amendment made by Act 2001 No 58

Amendments incorporated to 5 October 2001

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Unit Titles Act 2001* as in force on 5 October 2001. It includes any amendment, repeal or expiry affecting the republished law to 5 October 2001 and any amendment made under the Legislation Act 2001, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the Legislation Act 2001 applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The Legislation Act 2001, *part 11.3* authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see Legislation Act 2001, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
5 October 2001



Australian Capital Territory

# Unit Titles Act 2001

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Amendments incorporated to  
5 October 2001



Australian Capital Territory

## Unit Titles Act 2001

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An Act to provide for the subdivision of land by units plans and the management of units plans by owners corporations, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Unit Titles Act 2001*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*administrative fund*—see section 59 (1).' means that the expression 'administrative fund' is defined in section 59 (1).

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## **Part 2**                      **Key concepts**

### **Division 2.1**              **Unit title developments**

#### **5**      **Parcels**

A *parcel* is land—

- (a) proposed (in a unit title application) to be subdivided under this Act; or
- (b) comprising the whole of the land subdivided under this Act (as shown in a registered units plan).

#### **6**      **Unit title application**

A *unit title application* is an application under section 17 for the subdivision of land under this Act.

#### **7**      **Units plan**

- (1) After a unit title application has been approved, there is a units plan consisting of the following documents mentioned in section 27 (Endorsement of units plan for registration):
  - (a) diagrams showing the subdivision;
  - (b) the schedule of unit entitlement;
  - (c) schedules of rent and lease provisions.
- (2) After those documents have been registered, the units plan consists of the registered documents as amended from time to time under this Act.

#### **8**      **Unit entitlement**

- (1) The schedule of unit entitlement forming part of a units plan is a schedule indicating (by numbers assigned to each unit) the improved

value of each unit relative to each other unit (the unit's *unit entitlement*).

- (2) For this Act, the total unit entitlement under a schedule of unit entitlement must be 10, 100, 1 000, 10 000 or 100 000.

## **9 Units**

- (1) A unit is a part of a parcel shown in a unit title application or a units plan as a unit.
- (2) After a units plan is registered, a unit of the units plan includes any unit subsidiary shown on the units plan as annexed to the unit.

## **10 Class A units**

- (1) A class A unit is a unit that is identified as a class A unit—
- (a) before a units plan is registered—in the relevant unit title application; or
- (b) after the relevant units plan is registered—in the units plan.
- (2) After a units plan is registered, a class A unit of the units plan includes any unit subsidiary shown on the units plan as annexed to the unit.

*Note* A unit title application must show a class A unit as part of a building bounded by reference to floors, walls and ceilings (see s 18).

## **11 Class B units**

- (1) A class B unit is a unit that is identified as a class B unit—
- (a) before a units plan is registered—in the relevant unit title application; or
- (b) after the relevant units plan is registered—in the units plan.

- (2) After a units plan is registered, a class B unit of the units plan includes any unit subsidiary shown on the units plan as annexed to the unit.

*Note* A unit title application must show a class B unit as land unlimited in height, except to the extent of any projection or encroachment, whether above or below ground level, by another part of the parcel (see s 18).

## 12 Unit subsidiaries

A *unit subsidiary* is a part of a parcel identified as a unit subsidiary annexed to a unit—

- (a) before a units plan is registered—in the relevant unit title application; or
- (b) after the relevant units plan is registered—in the units plan.

*Note* A unit title application must show a unit subsidiary as a building (or part of a building) of a kind prescribed under the regulations, or as a building (or part of a building) or land suitable for a purpose prescribed under the regulations (see s 19 and *Unit Titles Regulations 2001*, reg 3).

## 13 Common property

*Common property* is all the parts of a parcel identified as common property—

- (a) before a units plan is registered—in the relevant unit title application; or
- (b) after the relevant units plan is registered—in the units plan.

*Note* A unit title application must show as common property all parts of the parcel that are not shown as units or unit subsidiaries (see s 17 (2) (d)).

## Division 2.2 Boundaries

### 14 Common boundaries—internal

If a floor, wall or ceiling separates a class A unit or a unit subsidiary from common property or another unit or unit subsidiary, the common boundary lies along the centre of the floor, wall or ceiling,



unless otherwise specified in the relevant unit title application or units plan.

### 15 Common boundaries—external

If a class A unit or a unit subsidiary is bounded by an external wall of the building containing the units, then, unless otherwise indicated in the relevant unit title application or units plan—

- (a) the boundary of the unit or unit subsidiary lies along the centre of the wall; and
- (b) the part of the wall outside the boundary is common property.

### 16 Minor boundary changes

A *minor boundary change* is a change to the boundaries between units, or between units and the common property, to which all of the following criteria apply:

- (a) the change would not involve any change of the boundaries of the parcel;
- (b) the change would not substantially change the units plan, or the proposed units plan;
- (c) the change would not result in any inconsistency arising with the provisions of the lease under which any of the units, or the common property, is held;
- (d) approval under this Act or any other relevant Territory law for the subdivision and development of the parcel would still have been given if the proposals for the subdivision of the parcel under this Act, or any other relevant development proposals, had shown the boundaries as they are proposed to be changed.

## **Part 3**                      **Unit title applications**

### **Division 3.1**              **Approval of unit title applications**

#### **17**    **Unit title applications—general requirements**

- (1) The lessee of a parcel may apply to the Minister for approval of the subdivision of the parcel under this Act.

*Note 1*    A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2*    If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The application must provide for the subdivision of the parcel into—
- (a) no fewer than 2 units; and
  - (b) class A units or class B units, but not both; and
  - (c) unit subsidiaries (if any are provided for in the application); and
  - (d) common property (for the remaining parts of the parcel).

*Note*        The requirements for what may be shown as class A units, class B units and unit subsidiaries are set out in s 18 and s 19.

- (3) The application may provide for the development of all or some of the units and unit subsidiaries (their *staged development*) after the approval of the application.

*Note*        An application for a staged development may be approved only if—

- the development has been approved under the Land Act (see s 20 (2) and Land Act, pt 6); and
- for developments of class A units, the boundary floors, walls and ceilings of each unit have already been built in accordance with the development statement (see s 20 (2)).

- (4) If the application provides for a staged development, it must include a development statement prepared in accordance with the regulations.
- (5) The application must include a certificate from a registered surveyor describing the degree to which any building erected on the parcel, or in the course of being erected on the parcel, is situated in accordance with the application.

### **18 Unit title applications—class A units and class B units**

- (1) A unit title application must show any class A unit as part of a building, with boundaries defined by reference to the floors, walls and ceilings of the building as shown in the application.
- (2) A unit title application must show any class B unit as land that has boundaries unlimited in height except to the extent of any projection above, or encroachment below, ground level by another part of the parcel.

### **19 Unit title applications—unit subsidiaries**

- (1) A unit title application must show any unit subsidiary as—
  - (a) a building, or part of a building, of a kind prescribed under the regulations; or
  - (b) a building, part of a building, or land, that is suitable for a purpose prescribed under the regulations.

*Note* See *Unit Titles Regulations 2001* (reg 3) for the permissible kinds of unit subsidiaries and purposes.

- (2) The application must show any unit subsidiary consisting of a building or part of a building with boundaries defined by reference to the floors, walls and ceilings of the building.
- (3) The application must show any unit subsidiary consisting of land as having boundaries unlimited in height except to the extent of any projection above, or encroachment below, ground level by another part of the parcel.

- (4) The application must show unit subsidiaries as annexed to a particular unit, but need not show unit subsidiaries as adjoining the unit.

## **20 Unit title applications—approval**

- (1) The Minister may approve a unit title application if satisfied on reasonable grounds that—
- (a) the application is in accordance with this Act; and
  - (b) each unit is (or will be) suitable for separate occupation, and for a use that is not inconsistent with the lease of the parcel; and
  - (c) the proposed schedule of unit entitlement is reasonable, having regard to the prospective relative improved values of the units.
- (2) The Minister may approve a unit title application that provides for a staged development only if satisfied that—
- (a) the development has been approved under the Land Act, part 6; and
  - (b) for the staged development of class A units—the boundary floors, walls and ceilings of each unit have already been built in accordance with the development statement.
- (3) The Minister may refuse to approve the application if the lessee is in breach of the lease, or of a provision of (or requirement under) the Land Act that applies because the lessee is the lessee of the parcel.
- (4) The Minister may refuse to approve the application if the proposed subdivision would be inconsistent with the requirements of the heritage places register under the Land Act.
- (5) If a parcel is leased for rural purposes, the Minister may approve the application only if—
- (a) criteria have been determined, in writing, by the Minister for the approval of rural unit title applications; and

(b) the application is in accordance with the criteria.

(6) A determination under subsection (5) (a) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **21 Unit title applications—reasonable rent**

- (1) If the Minister considers that the rent proposed in a unit title application to be reserved for the lease of 1 or more units is not reasonable in the circumstances, the Minister must determine what rent is reasonable for the relevant unit or units.
- (2) The total rent for all units, worked out in accordance with the Minister's determination, must not exceed the rent payable under the lease of the parcel when the determination is made.
- (3) If the total rent for all units, worked out in accordance with the Minister's determination, equals the rent payable under the lease of the parcel when the determination is made, a decision (under part 14 (Administrative review)) on an objection or review of the Minister's determination must not change the total amount.

## **22 Unit title applications—Ministerial amendment of development statement**

If a unit title application provides for a staged development, the Minister may, before approving the application under section 20, amend the development statement if the Minister considers it reasonable to do so to minimise the adverse effect of the development on anyone's amenity while it is taking place.

### **Examples of people whose amenity may be affected**

- 1 Owners or occupiers of units.
- 2 Owners or occupiers of nearby premises.
- 3 Members of the public who regularly use the surrounding area.

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## **Division 3.2                      Endorsement of units plan for registration**

### **23      Notice of approval of unit title applications**

- (1) If the Minister approves a unit title application for a parcel, the Minister must give the lessee of the parcel—
  - (a) written notice of approval including—
    - (i) if the application provides for a staged development—a copy of the development statement, signed by the Minister, as amended (if at all) under section 22; and
    - (ii) particulars of any security required under section 24; and
  - (b) a schedule setting out the rent to be reserved under the lease of each unit and the provisions subject to which the lease of the unit is to be held; and
  - (c) a schedule setting out the provisions subject to which the lease of the common property is to be held.
- (2) The rent reserved under the lease of a unit as indicated in the schedule mentioned in subsection (1) (b) is the rent for that unit (including any unit subsidiary annexed to the unit) indicated in the application or as decided by the Minister under section 21 (Unit title applications—reasonable rent).

### **24      Security for staged developments and unfinished work**

- (1) This section applies to—
  - (a) a staged development; or
  - (b) any works (including, for example, landscaping, roadworks and work on driveways) required to give effect to a development provided for in an approved unit title application that (in the Minister’s opinion) will not be complete when the units plan is endorsed under section 27.

- (2) If this section applies, the Minister may, by written notice to the lessee of the parcel, require the lessee to give a bond to the Territory providing security for—
- (a) if it is a staged development—the completion of the development in accordance with the development statement; or
  - (b) in any other case—the completion of the works, as provided for in the unit title application, within the time stated in the notice.

*Note* If a form is approved under s 180 (Approved forms) for a bond, the form must be used.

- (3) The required security must not exceed—
- (a) for a staged development—10% of the total cost of the work required to be carried out to complete the staged development; or
  - (b) in any other case—the amount required to complete the incomplete works under the notice.
- (4) If a bond is forfeited, the Territory is entitled to all of the security or to a lesser amount decided by the Minister.

## **25 Territory rent for common property lease**

The rent reserved under a lease of common property is 5 cents per year payable if and when demanded.

## **26 Territory rent for unit leases—unit title proposals approved before 1 October 1975**

If proposals for the subdivision of a parcel of land were approved under the *Unit Titles Act 1970* before 1 October 1975 (whether conditionally or otherwise), the rent reserved under the lease of any unit provided for by the proposals is 5 cents per year payable if and when demanded.

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## **27 Endorsement of units plan for registration**

- (1) If the Minister has approved a unit title application, the lessee of the parcel may submit to the Minister for endorsement under this section a units plan consisting of the following documents:
  - (a) diagrams showing the subdivision as approved;
  - (b) the schedule of unit entitlement as approved;
  - (c) the schedules of rent and lease provisions given to the lessee under section 23 (1) (b) and (c).
- (2) The documents must comply with the regulations.
- (3) The Minister must approve the documents as the units plan in accordance with the regulations unless—
  - (a) there has been any development on the parcel since the application was approved by the Minister (except any part of a staged development carried out in accordance with the development statement); or
  - (b) the lessee is in breach of the lease, or of a provision of (or requirement under) the Land Act that applies because the lessee is the lessee of the parcel; or
  - (c) the documents submitted to the Minister are not in accordance with the application as approved, or do not comply with this section; or
  - (d) the full amount of any security required under section 24 has not been provided with the documents.

## **28 Lapse of endorsement after 3 months**

- (1) An endorsement of a units plan (under section 27) ceases to have effect—
  - (a) 3 months after it was made, unless the units plan has been lodged with the registrar-general for registration under the *Land Titles (Unit Titles) Act 1970*; or



- (b) if the units plan is lodged within 3 months after the endorsement was made, and is subsequently withdrawn under section 26 of that Act—when the endorsement under that section is made by the registrar-general.
- (2) If an endorsement of a units plan ceases to have effect, the lessee of the parcel may again submit the units plan to the Minister for endorsement under section 27.
- (3) If the lessee of the parcel again submits the units plan to the Minister for endorsement under section 27, that section and this section apply as if the previous endorsement had not been made.

### **Division 3.3**                      **Amendment of development statements**

#### **29**      **Amendment of development statements before registration**

- (1) After a unit title application providing for a staged development is approved (under section 20) and before the units plan is registered, the lessee of the parcel may apply to the Minister for the amendment of the development statement.

*Note 1*    A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2*    If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The Minister may amend the development statement as applied for if satisfied on reasonable grounds that—
  - (a) the applicant has obtained the written agreement to the amendment of each person with an interest in the parcel (except any interested person to whom subsection (3) applies); and
  - (b) any change of unit or common property boundaries provided for by the amendment is a minor boundary change.

- (3) The Minister may amend the development statement despite the applicant's failure to obtain an interested person's agreement if the Minister is satisfied on reasonable grounds that—
- (a) the applicant could not reasonably be aware of that interest, or has made reasonable efforts to obtain the agreement; and
  - (b) either—
    - (i) the interested person would not suffer any substantial long-term detriment because of the proposed amendment; or
    - (ii) despite that failure, it is desirable to authorise the amendment having regard to the overall interests of everyone with interests in the parcel.
- (4) The Minister may refuse to amend the development statement if, in the Minister's opinion based on reasonable grounds, the amendment would result in the development having a significantly adverse effect on anyone's amenity while it is taking place.

**Examples of people whose amenity may be affected**

- 1 Owners or occupiers of units.
  - 2 Owners or occupiers of nearby premises.
  - 3 Members of the public who regularly use the surrounding area.
- (5) If the amendment of the development statement requires the change of boundaries, the Minister may amend the schedule of unit entitlement to reflect the change of boundaries, if satisfied on reasonable grounds that the amendment is necessary to reflect accurately a potential change in the relative improved values of the units.

### **30 Amendment of development statements after registration**

- (1) After a units plan that is subject to a staged development has been registered, and before the development is completed, the lessee of the parcel immediately before registration may apply to the Minister for the amendment of the development statement.

*Note 1* A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2* If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The Minister may amend the development statement as applied for if satisfied on reasonable grounds that—
- (a) the application is authorised by a unanimous resolution of the owners corporation made within 3 months before the application is given to the Minister; and
  - (b) the applicant has obtained the written agreement of each interested nonvoter (except any interested nonvoter to whom subsection (3) applies); and
  - (c) any change of unit or common property boundaries provided for by the amendment is a minor boundary change.
- (3) The Minister may amend the development statement despite the applicant's failure to obtain an interested nonvoter's agreement if the Minister is satisfied on reasonable grounds that—
- (a) the applicant has made reasonable efforts to obtain the agreement; and
  - (b) either—
    - (i) the interested nonvoter would not suffer any substantial long-term detriment because of the proposed amendment; or
    - (ii) despite that failure, it is desirable to authorise the amendment having regard to the overall interests of

everyone with interests in the units and the common property.

- (4) The Minister may refuse to amend the development statement if, in the Minister's opinion based on reasonable grounds, the amendment would result in the development having a significantly adverse effect on anyone's amenity while it is taking place.

**Examples of people whose amenity may be affected**

- 1 Owners or occupiers of units.
- 2 Owners or occupiers of nearby premises.
- 3 Members of the public who regularly use the surrounding area.

- (5) If the amendment of the development statement requires a change of boundaries—
- (a) the Minister may authorise the amendment of the schedule of unit entitlement to reflect the change of boundaries, if satisfied on reasonable grounds that the amendment is necessary to reflect accurately a change in the relative improved values of the units; and
  - (b) the Minister must lodge with the registrar-general written notice of the amendment of the development statement.

### **31 Effect of registration of amendment**

- (1) On the registration of a notice of amendment of a development statement requiring the amendment of a registered units plan—
- (a) the units plan is amended accordingly; and
  - (b) if unit or common property boundaries are changed—the land covered by each affected lease is the area of land indicated by the boundaries as changed.
- (2) A change of unit or common property boundaries under this section is not a variation of any lease for the Land Act, part 6.

## **Part 4 Registration of units plans**

### **Division 4.1 Subdivision, unit leases and common property lease**

#### **32 Subdivision of parcel made by registration**

On and after the registration of a units plan, the parcel is subdivided as specified in the diagrams in the units plan.

#### **33 Leases of units and common property**

- (1) On the registration of a units plan, the lease of the parcel ends.
- (2) On the registration of the units plan, the former lessee of the parcel becomes the holder of an estate in leasehold in each unit for the term fixed under subsection (4), subject to the provisions in the units plan for each unit, as if a separate lease of that unit for that term and subject to those provisions had been granted to the former lessee by the Commonwealth under the Land Act.
- (3) On the registration of the units plan, the owners corporation becomes the holder of an estate of leasehold in the common property for the term fixed under subsection (4), subject to the provisions set out in the units plan for the common property, as if a lease of the common property for that term and subject to those provisions had been granted to the corporation by the Commonwealth under the Land Act.
- (4) The term of the leases of the units and of the common property begins on the registration of the units plan and ends on the date (stated in the units plan) when, but for the operation of this section, the term of the lease of the parcel would have ended.
- (5) The estate of which a person or the owners corporation becomes the holder under this section—

- (a) is subject to any mortgage mentioned in the *Land Titles (Unit Titles) Act 1970*, section 8; and
- (b) is subject to, and has annexed to it, any easement mentioned in section 8 of that Act; and
- (c) is subject to, and has annexed to it, the easements given by section 35 of this Act.

(6) In this section:

*former lessee* means the person who was the lessee of the parcel immediately before registration.

## Division 4.2 Easements

### 34 Unit title easement rights

This division applies to the following rights (*unit title easement rights*) that the owner of a benefited estate may have against the owner of a burdened estate:

- (a) rights of support, shelter and protection (including rights for shelter provided by encroaching eaves, awnings or similar structures)—
  - (i) provided by the burdened estate at the time of the registration of the units plan, or at the time of the latest amendment (if any) of the plan after its registration; and
  - (ii) that will be provided by the burdened estate on compliance by its owner with a development covenant (if any) in the lease of the burdened estate;
- (b) rights to utility services, and to their provision by any reasonable form of utility conduit (including rights for the collection, passage and drainage of rainwater by encroaching eaves, gutters, downpipes or similar structures);
- (c) all ancillary rights necessary to make the rights mentioned in paragraphs (a) and (b) effective, including a right of entry by

the owner of the benefited estate at all reasonable times on the burdened estate for the inspection and maintenance of—

- (i) any building on the estate; and
- (ii) facilities for any utility service on the estate; and
- (iii) any utility conduit on the estate.

*Note* **Estate** is defined in the dictionary as a unit or common property (in this context).

### **35 Easements given by this Act**

- (1) On and after the registration of a units plan, the owner of an estate (a *benefited estate*) has against the owner of another estate (the *burdened estate*) any unit title easement rights that are necessary for the reasonable use and enjoyment of the benefited estate.
- (2) A unit title easement right under this section is an easement annexed to the benefited estate.
- (3) An easement given by this section exists even if the same person is the owner of both the benefited and burdened estates.
- (4) A person carrying out work in the exercise of a unit title easement right under this section must make good any damage done in carrying out the work.

*Note* **Estate** is defined in the dictionary as a unit or common property (in this context).

### **36 Easements declared by owners corporations**

- (1) An owners corporation may, by ordinary resolution, with the consent of the owners of each affected estate, declare that the owner of an estate (a *benefited estate*) has against the owner of another estate (the *burdened estate*) any unit title easement rights that are necessary for the reasonable support and maintenance of an encroachment of a kind prescribed under the regulations.
- (2) A unit title easement right declared by an owners corporation under this section is an easement annexed to the benefited estate.

- (3) An easement declared by an owners corporation under this section exists even if the same person is the owner of both the benefited and burdened estates.
- (4) A person carrying out work in the exercise of a unit title easement right under this section must make good any damage done in carrying out the work.
- (5) An easement declared by an owners corporation under this section may only be revoked—
  - (a) by special resolution of the owners corporation; and
  - (b) with the consent of the owners of each affected estate.

*Note* **Estate** is defined in the dictionary as a unit or common property (in this context).

### **37 Registration—easements declared by owners corporations**

A resolution of an owners corporation under section 36 declaring or revoking an easement takes effect on the registration of the easement, or of a memorandum of extinguishment of the easement, together with written evidence of the consent of the owners of each affected estate.



## **Part 5 Owners corporations (generally)**

### **Division 5.1 Establishment and legal status of owners corporation**

#### **38 Establishment of owners corporations**

- (1) On the registration of a units plan, an owners corporation is established, as a body corporate, under the name 'The Owners—Units Plan No '.
- (2) The number to be included in the name of an owners corporation is the number allotted to the units plan by the registrar-general on its registration.

#### **39 Legal status of owners corporation**

An owners corporation—

- (a) has perpetual succession; and
- (b) must have a common seal; and
- (c) may sue and be sued in its corporate name.

### **Division 5.2 Membership and representatives**

#### **40 Members of owners corporation**

- (1) The members of an owners corporation are the people who are the owners of the units for the time being.
- (2) If a unit is owned by 2 or more people (whether as joint tenants or tenants in common), each part-owner is a member of the owners corporation.

#### **41 Multiple owners of units—authorisation of representatives**

- (1) This section applies if a unit is owned by 2 or more people (whether as joint tenants or tenants in common).
- (2) The owners of the unit must, by written notice to the owners corporation, authorise an individual to represent them as their agent (the unit owners' *representative*) for this Act.
- (3) The unit owners' representative must be 1 of the owners.

*Note* If a company is a part-owner of the unit, the company's own representative may also be authorised as the unit owners' representative (see s 44 (Company-owned units—functions of representatives)).

- (4) The notice of authorisation must—
  - (a) be given to the owners corporation within 14 days after the lodgment for registration of the instrument under which the unit first becomes owned by 2 or more people; and
  - (b) include the full name and an address for correspondence of the representative; and
  - (c) be signed by each owner of the unit.
- (5) The unit owners may change their representative by written notice to the owners corporation.
- (6) The notice of change of authorisation must—
  - (a) include the full name and an address for correspondence of the new representative; and
  - (b) be signed by each owner of the unit.
- (7) The unit owners' representative may change the address for correspondence by written notice to the owners corporation of the change.
- (8) The notice of change of address must be signed by the representative.

- (9) This section may be enforced in the same way as an article of the owners corporation (see section 127 (Effect of articles)).

*Note* Within 14 days after the day this section commences, the owners of a unit that was owned by 2 or more people on that day must authorise a representative for the unit under s (4) (see s 188 (1)).

## **42 Multiple owners of units—functions of representatives**

- (1) This section applies if a unit is owned by 2 or more people (whether as joint owners or tenants in common).
- (2) Anything that the owners of the unit may do, or are required to do, under this Act may be done by the unit owners' representative acting as the agent for the owners.
- (3) Any document (including a notice) that this Act requires the owners corporation or someone else to give to the unit owners may be given to the representative alone on their behalf under section 80 (Service of documents on members, interested people and occupiers).

### **Example**

The owners corporation may give a notice of general meeting to the representative on behalf of the unit owners to comply with section 97 (1) (a) (which requires notices to be given to each member of the owners corporation).

- (4) If a document is given to the unit owners by being given to the representative on their behalf, the representative must tell the other unit owners that the document has been given to the representative and (if asked) give them a copy of the document.
- (5) Subsection (4) may be enforced in the same way as an article of the owners corporation (see section 127 (Effect of articles)).

### **Example for s (4) and s (5)**

It is a breach of subsection (4) if the representative for a unit does not tell a part-owner of the unit about a notice of general funds contributions (under s 60 (5)) given to the representative on the unit owners' behalf.

In this situation, the part-owner may rely on subsection (5) to enforce subsection (4) against the representative for the unit. The relevant enforcement action is the same as for a breach of the owners corporation articles—a civil action for breach of an agreement under seal (see s 127).

### **43 Company-owned units—authorisation of representatives**

- (1) This section applies if a company is the owner or a part-owner of a unit.
- (2) The company must, by written notice to the owners corporation, authorise an individual to represent it as its agent (the company's *representative*) for this Act.
- (3) The company's representative must be an officer or employee of the company.
- (4) The notice of authorisation must—
  - (a) be given to the owners corporation within 14 days after the lodgment for registration of the instrument under which the company becomes an owner or part-owner of the unit; and
  - (b) include the full name and an address for correspondence of the representative; and
  - (c) be signed by the company.
- (5) The company may change its representative by written notice to the owners corporation.
- (6) The notice of change of authorisation must—
  - (a) include the full name and an address for correspondence of the new representative; and
  - (b) be signed by the company.
- (7) The company's representative may change the address for correspondence by written notice to the owners corporation of the change.
- (8) The notice of change of address must be signed by the representative.

- (9) This section may be enforced in the same way as an article of the owners corporation.

*Note* Within 14 days after the day this section commences, a company that was the owner (or a part owner) of a unit on that day must authorise a representative for the unit under s (4) (see s 188 (2)).

#### **44 Company-owned units—functions of representatives**

- (1) This section applies if a company is the owner or a part-owner of a unit.
- (2) Anything that the company may do, or is required to do, under this Act may be done by the company's representative acting as the agent for the company.
- (3) Any document (including a notice) that this Act requires the owners corporation or someone else to give to the company may be given to the representative on its behalf under section 80 (Service of documents on members, interested people and occupiers).

##### **Example for s (3)**

The owners corporation may give a notice of general meeting to the representative on behalf of the company to comply with section 97 (1) (a) (which requires notices to be given to each member of the owners corporation).

#### **45 Evidence of representative status**

Evidence of any of the following facts about a unit owners' representative or a company's representative may be given by a certificate sealed with the owners corporation's seal:

- (a) the fact that the authorisation of a named representative was in force on a stated date;
- (b) the fact that a stated address for correspondence for a representative was the latest such address notified to the corporation on a stated date.

## **Division 5.3            General functions**

### **46    General functions**

- (1) An owners corporation has the functions given to it under this Act.
- (2) An owners corporation has, in addition, any functions that are incidental or ancillary to the exercise of its functions under this Act.

### **47    Common property ownership**

- (1) An owners corporation holds the common property as agent—
  - (a) for the owner, if all the units are owned by the same person; or
  - (b) in any other case—for the unit owners as tenants in common in shares proportional to their unit entitlement.
- (2) The owners corporation must provide all members of the corporation opportunity for the reasonable use and enjoyment of the common property.

### **U 48    Dealings in property**

- (1) An owners corporation may, if authorised by a special resolution—
  - (a) hold property for any use in accordance with its functions (subject to subsection (3)); or
  - (b) dispose of any such property.
- (2) An owners corporation may, if authorised by an unopposed resolution, on conditions and for purposes stated in the resolution—
  - (a) grant or vary an easement over any part of the common property; or
  - (b) take or vary an easement granted for the benefit of the common property; or
  - (c) release an easement granted for the benefit of the common property.

- (3) The only forms of interest in land that an owners corporation may hold (at law or in equity) are as follows:
  - (a) the lease of the common property;
  - (b) an easement granted for the benefit of the common property;
  - (c) a registered charge (under section 64) securing an amount payable to the corporation.
- (4) The estate in the lease of the common property (held by the owners corporation) cannot be transferred, assigned, sublet or mortgaged, either at law or in equity.

#### **49 Special privileges relating to common property**

- (1) An owners corporation may, if authorised by an unopposed resolution, grant a special privilege (other than a sublease) for the enjoyment of the common property (or any part of the common property) to a unit owner, a part-owner of a unit, or someone else with an interest in a unit.
- (2) A grant under subsection (1) may be terminated, in accordance with a special resolution, by written notice given by the owners corporation to the person to whom the grant was made.

#### **50 Exemptions for units plans with 4 or fewer units**

- (1) An owners corporation for a units plan with 4 or fewer units may, by unopposed resolution, exempt itself from the requirements of this Act prescribed under the regulations.
- (2) An exemption may be revoked by special resolution.

#### **51 General duties**

- (1) An owners corporation is responsible for the enforcement of its articles and the control, management and administration of the common property.

- (2) The owners corporation must comply with all laws in force in the Territory.
- (3) An owners corporation must maintain the following:
- (a) the common property;
  - (b) all other property that it holds;
  - (c) the defined parts of any building containing class A units (whether or not the defined parts are common property);  
*Note* This does not include painting, unless the painting is required because of other maintenance (see s (4)).
  - (d) all facilities associated with the provision of the utility services mentioned in section 35 (Easements given by this Act), including utility conduits;
  - (e) any building on the common property that encroaches on a unit if the building is the subject of an easement declared under section 36 (Easements declared by owners corporations);
  - (f) as authorised by a special resolution (if any)—all buildings on all class B units on the units plan.

**Example for par (f)**

A special resolution authorising the corporation to paint all buildings on the class B units and to carry out roofing and structural repairs to all class B units, but excluding responsibility for internal painting and minor repairs of class B units.

- (4) An owners corporation's responsibility (under subsection (3) (c)) to maintain the defined parts of a building containing class A units does not require the corporation to carry out any painting of a unit except as a consequence of other maintenance being carried out because of that responsibility.
- (5) Subsection (3) (d) only authorises the owners corporation to carry out maintenance associated with the provision of utility services if the provision of services potentially benefits all units.
- (6) An owners corporation may, by unopposed 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)—

- (a) the appearance of the common property; or
  - (b) the safety of occupiers of the units or of the public.
- (7) If the lease of a unit or the common property is subject to a development covenant, subsection (3) does not apply to the owners corporation until the Minister issues a certificate under the Land Act, section 179 for that covenant, and for any development covenants to which any other of the leases is subject.

- (8) In this section:

*defined parts*, of a building containing class A units, means—

- (a) the following structures in the building, if load-bearing:
  - (i) walls;
  - (ii) columns;
  - (iii) footings;
  - (iv) slabs;
  - (v) beams; or
- (b) any part of a balcony on the building.

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

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

- (a) the maintenance of the unit; or
- (b) the provision of amenities or services for the unit (or its owner or occupier).

### 53 Recovery of costs—agreements under s 52

- (1) This section applies to an agreement for the maintenance of a unit, or the provision of amenities or services for a unit (or its owner or occupier), if—
  - (a) the agreement is authorised under section 52; and
  - (b) the owners corporation is not responsible for the maintenance, amenities or services under section 51.
- (2) The owners corporation may recover the cost of carrying out the agreement as a debt from the person with whom the agreement was entered.
- (3) If the agreement applies to a number of units, the amount recoverable for each unit is (unless the people with whom the agreement was entered agree in writing otherwise) as follows:

$$\text{amount recoverable} = \text{total cost} \times \frac{\text{unit entitlement of the unit}}{\text{total unit entitlement of relevant units}}$$

- (4) In subsection (3):

*total cost* means the total cost of carrying out the agreement.

*total unit entitlement of relevant units* means the total unit entitlement of all units covered by the agreement.

### 54 Recovery of expenditure resulting from member or unit occupier's fault

- (1) This section applies if an owners corporation has (in carrying out its functions) incurred any expense, or carried out any work, that is necessary because of—
  - (a) a wilful or negligent act or omission of a member of the corporation, or an occupier of the member's unit; or
  - (b) a breach of its articles by a member of the corporation, or an occupier of the member's unit.

- (2) The amount spent or the cost of the work is recoverable by the owners corporation from the member as a debt.
- (3) If an owners corporation recovers an amount under subsection (2) from a member for an act, omission or breach of an occupier of the member's unit, the member may recover the amount from the occupier as a debt.
- (4) In this section:  
*work*, carried out by an owners corporation, means maintenance or anything else the corporation is authorised under this Act to do.

#### **55 Magistrates Court orders against executive committee or owners corporation**

- (1) If an owners corporation fails to exercise a function under this Act, a unit owner or anyone else with an interest in a unit or the common property may apply to the Magistrates Court for an order requiring the corporation or the executive committee to exercise the function.
- (2) If the Magistrates Court is satisfied that the owners corporation has failed to exercise the function, the court may—
  - (a) order the corporation or executive committee to exercise the function; or
  - (b) make any other order it considers just.

### **Division 5.4 Finances of owners corporation**

#### **56 Banking and investment of moneys of corporation**

- (1) An owners corporation must—
  - (a) open and maintain an account or accounts with 1 or more authorised deposit-taking institutions; and
  - (b) pay all amounts it receives into such an account; and
  - (c) pay all amounts it spends out of such an account.

- (2) An owners corporation for a units plan with only 2 or 3 units may, by unopposed resolution, exempt itself from subsection (1).
- (3) An owners corporation may invest its money as it considers appropriate, subject to any direction by special resolution.
- (4) However, an owners corporation must not invest in mortgages of land.

*Note* An **authorised deposit-taking institution** is an institution (eg a bank, credit union or building society) that is authorised under the *Banking Act 1959* (Cwlth), s 9 (3) (see *Legislation Act 2001*, dict, pt 1).

## **57 Prohibition on business**

- (1) An owners corporation must not carry on business except in the exercise of its functions.
- (2) If an owners corporation contravenes subsection (1), each executive member of the corporation at the time of the breach commits an offence.

Maximum penalty: 50 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—
  - (a) the defendant took reasonable steps to ensure that the contravention did not happen; or
  - (b) the contravention happened without the defendant's knowledge.

## **58 Borrowing powers**

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

- (a) borrow amounts required for the exercise of its functions;

- (b) secure the repayment of amounts borrowed by it and the payment of interest on amounts borrowed by it.

*Note* Section 48 (4) prevents the owners corporation from taking out a mortgage over the lease in the common property to secure repayment.

### **59 General funds (administrative or special purpose funds)**

- (1) An owners corporation must establish a fund for the general administration of the corporation (the *administrative fund*).
- (2) An owners corporation may, by special resolution, establish other funds for particular purposes (*special purpose funds*).
- (3) The purposes for which a special purpose fund may be used may only be changed by special resolution of the owners corporation.
- (4) A payment or transfer out of the administrative fund or a special purpose fund may only be made for a purpose for which the fund may be used, unless the owners corporation decides otherwise by special resolution.
- (5) At each annual general meeting of an owners corporation, the corporation must, by special resolution, approve a budget for the administrative fund and each special purpose fund (the *general funds budget*) for the financial year in which the meeting is held.
- (6) The general funds budget must state the total amounts estimated to be paid into and out of the owners corporation's general funds in the financial year in which the annual general meeting is held (excluding transfers to the sinking fund).

### **60 Contributions to general funds**

- (1) An owners corporation may, from time to time, determine the amount required by way of contributions from its members for the corporation's general funds.
- (2) The general funds contribution payable for each unit is—
  - (a) the proportional share for the unit of the total general funds contributions; or

- (b) a proportion of the total general funds contributions worked out in accordance with a method set out in an unopposed resolution.
- (3) A resolution under subsection (2) (b) may provide that only stated unit owners (or unit owners in a stated class) are required to pay a particular contribution (or a contribution of a particular kind).
- (4) A resolution under subsection (2) (b) may only be—
  - (a) amended by unopposed resolution; and
  - (b) revoked by special resolution.
- (5) An owners corporation must give notice of a determination of general funds contributions to each unit owner.
- (6) The notice must include the following information:
  - (a) the general funds contribution payable for the unit;
  - (b) the general funds contributions payable for each other unit;
  - (c) the general funds for which the contribution is required, the proportion of the contribution to be paid into each fund, and the total amount to be paid into each fund;
  - (d) the proportion of the total general funds contributions payable for the unit and how the proportion is worked out;
  - (e) the date when the contribution is payable, if paid in full (which must be no later than 28 days after the date of the notice);
  - (f) if the contribution is payable by instalments—the dates on which the instalments are payable;
  - (g) how the contribution may be paid;
  - (h) details of any discount for early payment (under section 65);
  - (i) details of interest payable for late payment (under section 65).

- (7) A general fund contribution is payable by a unit owner—
- (a) if paid in full—on the date stated in the notice; or
  - (b) if payable by instalments—on the dates stated in the notice.

## **61 Sinking funds**

- (1) An owners corporation must establish and maintain a fund under this section (the *sinking fund*), unless—
- (a) there are only 2 or 3 units in the units plan; and
  - (b) the corporation has passed a resolution (under section 62 (2)) deciding that it will not establish, or continue to maintain, a sinking fund.
- (2) Payments into the sinking fund may only be made—
- (a) under section 63 (Sinking funds—annual payments); or
  - (b) by transfer from the administrative fund in accordance with an ordinary resolution; or
  - (c) by transfer from a special purpose fund, in accordance with the purpose of the fund, or a special resolution.
- (3) An owners corporation may only make payments from its sinking fund for the following purposes:
- (a) the painting or repainting of any building (or any part of a building) that forms part of the common property;
  - (b) the acquisition, renewal or replacement of property that it holds;
  - (c) the renewal, replacement or repair of fixtures and fittings that are part of the common property;
  - (d) the renewal, replacement or repair of anything else on the common property;

- (e) for a building containing class A units—any purpose mentioned in paragraph (b), (c) or (d) that relates to a defined part of a building within the meaning of section 51 (General duties);
  - (f) for a building on a class B unit—any maintenance mentioned in paragraphs (b), (c) or (d) that is authorised by a special resolution (under section 51 (3) (f));
  - (g) any other capital expenses for which the corporation is responsible.
- (4) An owners corporation may only make a transfer from its sinking fund to a general fund if section 62 (4) applies.

## **62 Sinking funds—opting out by small owners corporations**

- (1) This section applies if—
- (a) there are only 2 or 3 units in a units plan; or
  - (b) the value of the common property in a units plan is not more than an amount prescribed under the regulations.
- (2) If this section applies, the owners corporation may, by unopposed resolution, decide that it will not establish, or continue to maintain, a sinking fund.
- (3) Section 63 (Sinking funds—annual payments) and section 64 (Sinking funds—contributions) do not apply to an owners corporation if a decision under subsection (2) is in force.
- (4) If a decision under subsection (2) not to continue to maintain an existing sinking fund is in force, the owners corporation may—
- (a) keep any amount that it considers appropriate in its sinking fund for the purposes mentioned in section 61 (3); and
  - (b) at any time transfer any or all of the amount in the sinking fund into a general fund.



### 63 Sinking funds—annual payments

- (1) An owners corporation must deposit into its sinking fund each financial year an amount (the *total sinking fund amount*) raised by contributions under section 64 equal to—
  - (a) for a units plan with only class A units—10% of the general funds budget expenditure; or
  - (b) for a units plan with only class B units—4% of the general funds budget expenditure; or
  - (c) for a units plan with both class A units and class B units—the total of the class A unit share of general funds budget expenditure and the class B unit share of general funds budget expenditure.
- (2) However, an owners corporation may, by special resolution at its annual general meeting, decide to increase the relevant percentage mentioned in subsection (1), or either or both the percentages mentioned in the definitions of class A unit share or class B unit share in subsection (3), for the financial year in which the annual general meeting takes place.
- (3) In this section:

*class A unit share*, of general funds budget expenditure, means the following proportion of such expenditure:

$$10\% \times \frac{\text{unit entitlement of all class A units}}{\text{total unit entitlement}}$$

*class B unit share*, of general funds budget expenditure, means the following proportion of such expenditure:

$$4\% \times \frac{\text{unit entitlement of all class B units}}{\text{total unit entitlement}}$$

*general funds budget expenditure*, for a financial year, means the estimate in the general funds budget for the year, as approved by the annual general meeting, of the total amount to be paid out of the

corporation's general funds in the year (excluding transfers into the sinking fund).

#### **64 Sinking funds—contributions**

- (1) The sinking fund contribution payable for each unit for a financial year is—
  - (a) the proportional share for the unit of the total sinking fund amount for the financial year; or
  - (b) a proportion of the total sinking fund contributions worked out in accordance with a method set out in an unopposed resolution.
- (2) A resolution under subsection (1) (b) may provide that only stated unit owners (or unit owners in a stated class) are required to pay a contribution to the sinking fund.
- (3) A resolution under subsection (1) (b) may only be—
  - (a) amended by unopposed resolution; or
  - (b) revoked by special resolution.
- (4) An owners corporation must, within 1 month after an annual general meeting, give notice to each unit owner of the determination of sinking fund contributions for the financial year in which the meeting takes place.
- (5) The notice must include the following information:
  - (a) the sinking fund contribution payable for the unit;
  - (b) the sinking fund contributions payable for each other unit;
  - (c) the total sinking fund amount;
  - (d) the proportion of the total sinking fund amount payable for the unit and how the proportion is worked out;
  - (e) the date when the contribution is payable, if paid in full (which must be no later than 28 days after the date of the notice);

- (f) if the contribution is payable by instalments—the dates on which the instalments are payable;
  - (g) how the contribution may be paid;
  - (h) details of any discount for early payment (under section 65);
  - (i) details of interest payable for late payment (under section 65).
- (6) A sinking fund contribution is payable by a unit owner—
- (a) if paid in full—on the date stated in the notice; or
  - (b) if payable by instalments—on the dates stated in the notice.

## **65 Discounts and interest—amounts owing**

- (1) An owners corporation may, by special resolution, decide that a stated discount applies to an amount owing to the corporation by a unit owner if—
- (a) the amount is paid to the corporation before the date it becomes payable; or
  - (b) for contributions payable by instalments—if the contribution is paid in full on or before the date specified in the notice for payment in full, or if the contributions are paid in another way stated in the resolution.
- (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 special resolution the amount bears simple interest until paid—
- (a) at an annual rate of 10%; or
  - (b) at an annual rate of less than 10%, if decided by special resolution; or
  - (c) at an annual rate of more than 10% and not more than 20%, if decided by special resolution.

- (3) Interest on an amount owing to the owners corporation forms part of the fund into which the amount is payable.

## **66 Recovery of amounts owing**

- (1) If an amount owing to an owners corporation is not paid on or before the date it is payable, the corporation may recover the amount as a debt from the unit owner, together with interest (under section 65).
- (2) If the ownership of a unit changes after an amount owing to the owners corporation becomes payable, the owner at the time the amount became payable and each subsequent owner are liable both separately and together for the amount, together with interest (under section 65).

## **67 Security for unpaid amounts—declaration of charge**

- (1) If an amount owing to the owners corporation is unpaid after it becomes payable, the corporation may declare that a charge is to be imposed over the lease of the unit to secure payment of the amount.
- (2) The declaration must—
- (a) give details of the lease of the unit to be charged; and
  - (b) state the unpaid amount owing to the owners corporation.
- (3) After making the declaration, the owners corporation must—
- (a) lodge with the registrar-general a copy of the declaration, certified as a true copy under the seal of the corporation; and
  - (b) give a copy of the declaration to the unit owner and anyone else who has an interest in the unit.
- (4) On registration of the copy of the declaration, the amount stated in the declaration (together with interest on the amount under section 65) is a charge over the lease of the unit.
- (5) A registered charge under this section does not give a power of sale over the lease of the unit.

## **68 Security for unpaid amounts—discharge**

- (1) This section applies if a charge declared under section 67 has been registered, and—
  - (a) the entire amount for which the charge was declared is paid (together with interest on the amount under section 65); or
  - (b) the owners corporation considers that the charge is no longer required.
- (2) If this section applies, the owners corporation must—
  - (a) revoke the declaration of the charge; and
  - (b) lodge with the registrar-general a copy of the revocation, certified as a true copy under the seal of the corporation; and
  - (c) give a copy of the revocation to the unit owner and anyone else who has an interest in the unit.
- (3) The discharge under this section of a charge takes effect on the registration of the revocation of the charge.

## **69 Liability of co-owners**

- (1) This section applies if—
  - (a) a unit is owned by 2 or more people (whether as joint tenants or tenants in common); and
  - (b) an amount is recoverable by the owners corporation from the unit owners.
- (2) The unit owners are liable separately and together for the payment of the amount.
- (3) As between themselves, each owner is liable for a part of the amount proportional to the value of the owner's interest in the unit.
- (4) If any part-owner pays a part of the amount that is more than the owner's proportional liability, the owner may recover the excess from the other owners.

## **Division 5.5 Information**

### **70 Corporate register—establishment**

- (1) An owners corporation must establish and maintain a register (the *corporate register*) that includes—
  - (a) the information mentioned in subsection (2) for each unit; and
  - (b) the information mentioned in subsection (3).
- (2) The owners corporation must record on the corporate register the following information for each unit:
  - (a) if the unit is owned by 1 person—the full name and an address for correspondence of the unit owner;
  - (b) if the unit is owned by 2 or more people—the full name and address for correspondence of the unit owners' representative and each other part-owner;
  - (c) if the unit owner, or 1 or more part-owners of the unit, is a company—the full name and address for correspondence of the company's representative;
  - (d) if a mortgagee voting notice has been given for the unit—the full name and address for correspondence of the mortgagee's representative;
  - (e) if notified to the corporation—the full name and an address for correspondence of anyone else with an interest in the unit together with particulars of the interest;
  - (f) the full name of the occupier of the unit (including the owner or any part-owner, if the owner or part-owner occupies the unit).
- (3) In addition, the owners corporation must record on the corporate register the following information:
  - (a) the full names of the current executive members;

- (b) if notified to the corporation—the full name and an address for correspondence of anyone with an easement over the common property together with particulars of the easement.
- (4) The corporate register may be kept in electronic form.

### **71 Corporate register—information for inclusion**

- (1) A unit owner must give the owners corporation written notice of the particulars of any of the following events within 14 days after the event happens:
  - (a) the owner agreeing to transfer the lease of the unit to someone else;
  - (b) the lodgment for registration, by the unit owner, of the instrument under which the person became the owner;
  - (c) a change in the owner's name or address for correspondence;
  - (d) a change of occupancy of the unit;
  - (e) a vacancy in occupancy of the unit that is expected to be longer than a continuous period of 30 days.

*Note* Information about representatives of units owned by 2 or more people, or company representatives, must be provided to the owners corporation under the following sections:

- s 41 (Multiple owners of units—authorisation of representatives)
- s 43 (Company-owned units—authorisation of representatives).

- (2) Subsection (1) may be enforced in the same way as an article of the owners corporation.
- (3) A person (other than a unit owner) may give the owners corporation written notice of the particulars of the following events:
  - (a) the person agreeing to transfer an interest in the lease of a unit or the common property to someone else;

- (b) the lodgment for registration, by the person, of an instrument under which the person acquires an interest in a unit or the common property;
- (c) the person acquiring an interest in a unit or the common property other than a registered interest;
- (d) if the person has an interest in a unit or the common property—a change in the full name or address for correspondence of the person;
- (e) a change in the nature of an interest held by the person in a unit or the common property, including the person's ceasing to have the interest.

*Note* Information about mortgagees' representatives must be provided to the owners corporation under the following sections:

- s 112 (Voting by mortgagees)
- s 113 (Mortgagee voting notices—amendment and revocation).

## **72 Corporate register—access**

- (1) On request by an eligible person for a unit or the common property, the owners corporation must allow the person, within 14 days after the request is received, to inspect, and take a copy of—
  - (a) for a request by an eligible person for a unit—the information on the corporate register about the unit and any easements with which the common property is benefited or burdened; or
  - (b) for a request by an eligible person for the common property—the information on the corporate register about any easements with which the common property is benefited or burdened.



- (2) On request by an applicant for a court order under this Act, the owners corporation must allow the applicant to inspect, and take a copy of, the names and addresses for correspondence recorded on the corporate register of each unit owner and anyone else with an interest in a unit, or the common property, that is recorded on the register.

*Note* This is to enable the applicant for the order to comply with the requirements for service under this Act.

- (3) A request must be in writing accompanied by a fee fixed by the owners corporation of not more than an amount prescribed under the regulations (plus any GST payable in relation to that amount).
- (4) The corporate register must be kept in a way that ensures that a person who is entitled to inspect the register does not have access to any information the person is not entitled to inspect.

**Examples of how to restrict access**

- 1 If the register is kept in a book, the information could be kept on a separate page for each unit and for the common property.
- 2 If the register is kept in a computer database, the information could be stored so that information for each unit and the common property can be separately displayed, printed out or emailed.

### **73 Names and addresses of executive members**

On request by an eligible person for a unit or the common property, the owners corporation must, free of charge, give the person the full names and addresses of its current executive members within 14 days after the request is received.

### **74 Insurance information**

On request by an eligible person for a unit or the common property, the owners corporation must, free of charge, allow the person to inspect, and take a copy of, the following documents within 14 days after the request is received:

- (a) any current insurance policy or policies taken out by the corporation; and

- (b) the receipts for all premiums paid under current policies taken out by the corporation; and
- (c) the part of the minutes of any annual general meeting of the corporation that records any exemption resolution under section 133 (Exemptions from building insurance requirements).

## **75 Unit title certificate and access to owners corporation records**

- (1) On request by an eligible person for a unit or the common property, the owners corporation must, within 14 days after the request is received, give the person a certificate under the seal of the corporation (a *unit title certificate*) giving information about the unit or the common property.

### **Examples of information that may be required to be included in the certificate**

- 1 A statement of amounts owing to the owners corporation for a unit.
- 2 A statement of any resolutions passed by the owners corporation that affect the proportionate liability for contributions from each unit (under section 60 (3) or section 64 (2)), or the responsibility for maintenance of the units (under section 51 (3) (f)).
- 3 A statement of the articles applicable to the owners corporation.

*Note* If a form is approved under s 180 (Approved forms) for a unit title certificate, the form must be used.

- (2) On request by an eligible person for a unit or the common property, the owners corporation must, within 14 days after the request is received, allow the person to inspect all or any of the following:
  - (a) for a request by an eligible person for a unit—the information on the corporate register about the unit and any easements with which the common property is benefited or burdened;
  - (b) for a request by an eligible person for the common property—the information on the corporate register about any easements with which the common property is benefited or burdened;

- (c) for any eligible person—the documents mentioned in section 74 (Insurance information);
  - (d) for any eligible person—any other books, records or documents held by the owners corporation.
- (3) A request must be in writing accompanied by a fee fixed by the owners corporation of not more than an amount prescribed under the regulations (plus any GST payable in relation to that amount).
- (4) Only a single fee is payable for a request under both subsections (1) and (2).

#### **76 Acting on information in unit title certificate**

If a person acts honestly on a matter stated in a unit title certificate, then, in an action by or against the owners corporation, the corporation is estopped, as against that person, from denying the truth of that or any other matter stated in the certificate.

#### **77 Failure to provide information (or certificate)—offence**

- (1) If an owners corporation fails to comply with a request under this division for information or a unit title certificate, each executive member of the corporation at the time of the failure commits an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) the person requesting the information, when asked by someone acting for the owners corporation, did not give the corporation reasonable grounds to believe that the person was an eligible person; or
  - (b) the defendant took reasonable steps to ensure that the request was complied with; or

- (c) the failure to comply with the request happened without the defendant's knowledge.

## **78 Owners corporation name, address and letterbox**

- (1) An owners corporation must ensure that a notice showing the name of the corporation, and the address shown on the units plan for the service of documents, is continuously displayed in a conspicuous place on the parcel, unless—
- (a) the address shown on the units plan for the service of documents is the postal address of a building on the parcel; and
  - (b) the corporation provides a letterbox on the parcel under subsection (2).

Maximum penalty: 1 penalty unit.

- (2) If the address shown on the units plan for the service of documents is the postal address of a building on a parcel, the owners corporation must ensure that a letterbox suitable for postal delivery, showing the name of the corporation in clear and legible characters, is continuously available in a conspicuous and accessible place on the parcel.

Maximum penalty: 1 penalty unit.

- (3) If an owners corporation changes its address for service of documents, it must lodge notice of the change with the registrar-general in a form approved by the registrar-general under the *Land Titles Act 1925*.

Maximum penalty: 5 penalty units.

## **79 Service of documents on owners corporation**

For this Act (including an application for a court order under this Act) a document may be given to, or served on, an owners corporation—

- (a) by sending it by prepaid post as a letter addressed to the corporation at the address shown on the units plan for service of documents; or
- (b) if that address for service is the postal address of a building on the parcel—by placing it in the letterbox mentioned in section 78 (2); or
- (c) by giving it personally to an executive member; or
- (d) by serving it in another way approved by the corporation by ordinary resolution.

**80 Service of documents on members, interested people and occupiers**

- (1) For this Act (including an application for a court order under this Act) a document may be given to, or served on, a unit owner, a part-owner of a unit or anyone else with an interest in a unit or the common property on a units plan—
  - (a) by sending it by prepaid post as a letter to the relevant address for correspondence recorded on the corporate register; or
  - (b) if the latest address for correspondence recorded in the corporate register is the postal address of a building or unit on the parcel—by placing it in a letterbox for mail addressed to the building or unit; or
  - (c) if no address is recorded in the corporate register—by sending it by prepaid post as a letter addressed to the person to be served at—
    - (i) the place where the person was last known to live; or
    - (ii) if the person is a company—the company’s address for correspondence, the address of its place of business or any other known address of the company; or
  - (d) by giving it personally to the person to be served; or

- (e) by serving it in another way directed by the person to be served.
- (2) If a unit is owned by 2 or more people (whether as joint owners or tenants in common), and a document is required or permitted to be given to, or served on, the unit owner, service of the document (under this section) on the unit owners' representative is sufficient.
- (3) If an owner or part-owner of a unit is a company, and a document is required or permitted to be given to, or served on, the company, service of the document (under this section) on the company's representative is sufficient.
- (4) If a mortgagee voting notice is current for a unit, and a document is required or permitted to be given to, or served on, the mortgagee, service of the document (under this section) on the mortgagee's representative is sufficient.
- (5) If a unit has an occupier who is not an owner or part-owner of the unit, and a document is required or permitted to be given to, or served on, the occupier, the document may be served on the occupier—
- (a) by placing it in a letterbox for mail addressed to the unit; or
  - (b) by giving it personally to the occupier; or
  - (c) by serving it in another way directed by the occupier.

## **Part 6** Decision-making by owners corporations

### **Division 6.1** Executive committee

#### **81** Executive committee—establishment

On the establishment of an owners corporation, the executive committee of the corporation is also established.

#### **82** Executive committee—functions

- (1) The executive committee of an owners corporation has all the functions of the corporation.
- (2) The functions of an executive committee of an owners corporation must be exercised—
  - (a) as the corporation directs by resolution at a general meeting; or
  - (b) in the absence of any such resolution—as the committee considers appropriate.

*Note* The resolution required under s (2) (a) is an ordinary resolution, unless this Act provides that the resolution should be a special, unopposed or unanimous resolution—see s 104 (1) (Decisions at general meetings).

#### **83** Executive committee—before the first annual general meeting

- (1) Until the first annual general meeting of an owners corporation, the executive committee consists of all the members of the corporation.
- (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 an unopposed resolution.

**84 Executive committee—after the first annual general meeting**

- (1) This section provides for the constitution of the executive committee of an owners corporation as decided at its first annual general meeting and afterwards.
- (2) The executive committee is constituted as follows:
  - (a) if there are 1, 2 or 3 members of the owners corporation—each member of the owners corporation is an executive member;
  - (b) if there are 4 or more members of the owners corporation—a number of members decided by resolution at a general meeting, as follows:
    - (i) 3 to 7 executive members, if so decided by ordinary resolution;
    - (ii) 8 or more executive members, if so decided by special resolution.
- (3) If the number of members of the owners corporation falls below the number of executive members as decided by the corporation, all the members of the corporation are executive members (even if not nominated or elected).
- (4) The executive members—
  - (a) are elected (if necessary) by ordinary resolution at each annual general meeting; and
  - (b) hold office until the next annual general meeting.
- (5) An executive member of an owners corporation may be removed by special resolution providing for the appointment of another member of the corporation to replace the removed executive member until the next annual general meeting (unless the executive committee consists of all the members of the corporation).



- (6) The executive committee of an owners corporation may appoint a member of the corporation to fill a casual vacancy on the committee until the next annual general meeting.

### **85 Meetings of executive committee**

- (1) An executive committee may meet for the conduct of business when it decides, and may adjourn and otherwise regulate its meetings as it considers appropriate.
- (2) An executive member may call a meeting of the committee by giving to each other executive member not less than 7 days written notice stating the business that the member proposes to bring before the meeting and the time and place of the meeting.

### **86 Quorum of executive committee**

- (1) Business may be transacted at a meeting of an executive committee only if a quorum is present at the relevant time.
- (2) A quorum is worked out as follows:
- (a) if the total number of executive members is an odd number—

$$\frac{\text{total number of executive members} + 1}{2}$$

- (b) if the total number of executive members is an even number—

$$\left( \frac{\text{total number of executive members}}{2} \right) + 1$$

### **87 Chairperson of executive committee**

- (1) At the beginning of a meeting of an executive committee, the executive members present must elect an executive member present to be chairperson for the meeting.
- (2) The chairperson may leave the chair during a 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 be chairperson.
- (4) The chairperson—
  - (a) has a deliberative vote as an executive member; and
  - (b) if the votes on any 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)).

### **88 Voting of executive committee**

- (1) At meetings of an executive committee, all matters must be decided by a majority of the votes of the executive members present and voting.
- (2) If an executive committee has 2 members, all matters must be decided by unanimous vote.

### **89 Delegation by executive committee**

- (1) An executive committee may, in writing, delegate any of its functions (except this power of delegation) to 1 or more executive members either generally or as provided by the delegation.
- (2) An owners corporation may, by ordinary resolution, impose conditions or restrictions on its executive committee's powers of delegation.
- (3) A delegated function may only be exercised in accordance with the delegation.
- (4) A delegation is revocable at will, and does not prevent the executive committee from exercising a delegated function.

## **90 Agents, employees and contractors**

- (1) An executive committee of an owners corporation may engage or employ people, or engage agents, on the terms it considers appropriate to assist in the exercise of the corporation's functions.
- (2) An owners corporation may, by special resolution, impose conditions or restrictions on its executive committee's power to engage or employ people, or engage agents.
- (3) An agent engaged to manage the affairs of an owners corporation 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 corporation's affairs by the agent:
  - (a) death, bodily injury or illness of anyone;
  - (b) loss of, or damage to, the property of anyone.

Maximum penalty: 50 penalty units.

- (4) Public liability insurance under subsection (3) must be for a total amount of liability of not less than an amount prescribed under the regulations.
- (5) An agent engaged to manage the affairs of 2 or more owners corporations may take out and maintain a single insurance policy for subsection (3) if each of the units plans is noted on the policy.
- (6) An agent engaged to manage the affairs of an owners corporation must not, without reasonable excuse, fail to give the owners corporation details of the insurance taken out under subsection (3), and any subsequent change to the details.

Maximum penalty: 10 penalty units.

## **91 Minutes, records and accounts**

- (1) The executive committee of an owners corporation must—
  - (a) keep minutes of its proceedings; and

- (b) keep minutes of proceedings at general meetings of the corporation; and
  - (c) include in the minutes of proceedings at general meetings a record of every resolution of the corporation (including, for special, unopposed and unanimous resolutions, details of the kind of resolution) and a copy of any deadlock order; and
  - (d) keep any authorisation by the Minister and a copy of any court order given to the owners corporation; and
  - (e) keep proper records and books of account in relation to—
    - (i) the corporation's assets and liabilities (including all amounts owing to and by the corporation); and
    - (ii) all amounts received and paid by the corporation; and
  - (f) keep the documents, records and books for at least 5 years.
- (2) The executive committee may keep the minutes, records or books of account in an electronic form.
- (3) At each annual general meeting of an owners corporation, the executive committee must present to the corporation annual financial statements in relation to the matters mentioned in subsection (1) (e).
- (4) Annual financial statements must cover the period from the period for which the last statements were prepared (or, for the first annual general meeting, since the registration of the units plan), to a date no later than 3 months before the date of the annual general meeting at which they are to be presented.
- (5) If an owners corporation fails to comply with this section, each executive member of the corporation at the time of the failure commits an offence.

Maximum penalty: 20 penalty units.

- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that—

- (a) the defendant took reasonable steps to ensure that the section was complied with; or
- (b) the failure to comply happened without the defendant's knowledge.

## **92 Validity of acts of executive committee**

An act done honestly by an executive committee is not invalid merely because at the relevant time there was a defect or irregularity in the appointment or continuance in office of an executive member.

## **Division 6.2 General meetings**

### **93 Conduct of general meetings**

An owners corporation may hold, adjourn and otherwise regulate general meetings as it considers appropriate, subject to this division.

### **94 Annual general meetings**

- (1) An owners corporation must hold an annual general meeting each financial year.
- (2) Except for the first annual general meeting, an annual general meeting must be held within 15 months after the last annual general meeting.

### **95 First annual general meeting**

- (1) The first annual general meeting of an owners corporation must be held within 6 months after the registration of the units plan.
- (2) The first annual general meeting of an owners corporation may be called by the executive committee of the corporation or by any member of the corporation.

**96 General meetings other than annual general meetings**

- (1) The executive committee of an owners corporation may call a general meeting, by notice under section 97, whenever it considers appropriate.
- (2) The executive committee of an owners corporation must call a general meeting, by notice under section 97, if it receives a written request, stating the matters to be considered at the meeting, from people who are entitled to vote on all motions for units whose combined unit entitlement is at least  $\frac{1}{4}$  of the total unit entitlement in the units plan.

**97 Notice of general meetings**

- (1) The executive committee of an owners corporation must give notice of a general meeting to—
  - (a) each member of the corporation; and
  - (b) each mortgagee's representative (if any).
- (2) The executive committee must give notice of the general meeting—
  - (a) so that the notice would reasonably be expected to be received at least 14 days before the date fixed for the meeting; or
  - (b) if a motion is to be moved that requires an unopposed or unanimous resolution—so that the notice would reasonably be expected to be received at least 21 days before the date fixed for the meeting.
- (3) A notice of a general meeting for an owners corporation must state—
  - (a) the time, date and place fixed for the meeting; and

- (b) whether the person notified is entitled to vote on all (or any) motions at the meeting, and if not, why not; and

*Note* Section 110 explains who is entitled to vote on which kinds of motion. For example, if an amount is owing to the corporation in relation to a particular unit at the time of the general meeting, no vote may be cast by the unit owner (or anyone else) for that unit on any motion requiring an ordinary or special resolution.

- (c) for a member who is not entitled to vote on any motion because a mortgagee voting notice has been given—details of the notice, including the full name and address for correspondence of the mortgagee’s representative (see section 112); and
- (d) if a motion is to be moved that requires an unopposed or unanimous resolution—the text of the motion and the kind of resolution.
- (4) For a notice of a general meeting given to a person entitled to vote on any motion, the notice must include—
- (a) a proxy form approved by the executive committee; and
- (b) if a motion is to be moved that requires an unopposed or unanimous resolution—an absentee voting paper for the motion in a form approved by the executive committee.
- (5) For a notice of an annual general meeting, the notice must include a copy of the following:
- (a) the annual financial statements of the corporation to be presented at the meeting (under section 91 (3));
- (b) the general funds budget.

## **98 Defective notice of meetings**

- (1) The proceedings at a general meeting are not invalid merely because a person did not receive proper notice of the meeting (under section 97).

- (2) However, if a person did not receive notice of the meeting in accordance with section 97 (2), the person may make a request for the adjournment of the meeting by written notice to the executive committee before the day or time fixed for the start of the meeting.
- (3) A request by a person under subsection (2) may be made by someone else on the person's behalf.
- (4) If the executive committee receives a request for adjournment under subsection (2), the committee must give the request to the chairperson of the meeting immediately after the chairperson is elected.
- (5) The chairperson may adjourn the meeting to a time, date and place to be decided (by ordinary resolution) by the people present and entitled to vote on all motions at the meeting if the chairperson considers, on reasonable grounds, that—
  - (a) notice of the meeting in accordance with section 97 (2) was not given to the person by or for whom the request was made; and
  - (b) in the circumstances it would be unfair to allow the meeting to go ahead at present.

**99 Quorum at a general meeting—owners corporation with 3 or more members**

- (1) A motion may be considered at a general meeting of an owners corporation with 3 or more members only if there is present—
  - (a) a quorum (a *standard quorum*) made up by people entitled to vote (on the motion) in relation to not less than  $\frac{1}{2}$  the total number of units; or
  - (b) a quorum (a *reduced quorum*) made up under subsection (2).
- (2) If a standard quorum is not present within  $\frac{1}{2}$  an hour after the motion arises for consideration, a reduced quorum for the motion and any subsequent motion considered at the meeting is made up by 2 or more people present at the meeting who are entitled to vote on the motion.



- (3) If a reduced quorum is not present  $\frac{1}{2}$  an hour after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.
- (4) If a reduced quorum is present for the consideration of any motion and the motion is voted on, section 100 (Notice of reduced quorum decisions and adjournments) applies to the decision on the motion.
- (5) If a reduced quorum is present for the consideration of any motion and the motion is not voted on, the meeting may decide to adjourn to the same day in the next week at the same place and time to consider the motion (and any others remaining to be considered).
- (6) If a general meeting is adjourned under this section (including paragraph (c)) and a standard quorum is not present within  $\frac{1}{2}$  an hour after a motion arises for consideration at the adjourned meeting—
  - (a) a reduced quorum is made up by the people who are then present and entitled to vote on the motion and any subsequent motion considered at the adjourned meeting; and
  - (b) if a reduced quorum is present for the consideration of any motion at the adjourned meeting, and the motion is voted on—the decision on the motion must be notified under section 100; and
  - (c) if the motion (or any other) is not voted on at the adjourned meeting—the adjourned meeting may resolve to adjourn again to the same day in the next week at the same place and time to consider the resolution (and any others remaining to be considered at the meeting).

## **100 Notice of reduced quorum decisions and adjournments**

- (1) If a decision (a *reduced quorum decision*) is made on a motion while a reduced quorum was present for the consideration of the motion, within 7 days after the meeting the owners corporation must give each person mentioned in section 97 (1) (Notice of general meetings) written notice of the reduced quorum decision.

*Note* If a form is approved under s 180 (Approved forms) for a notice, the form must be used.

- (2) Within 4 days after a general meeting is adjourned under section 99, the owners corporation must give each person mentioned in section 97 (1) a written notice of the date, place and time to which the meeting is adjourned.

## **101 Reduced quorum decisions—effect**

- (1) A reduced quorum decision takes effect 21 days after the decision was made, subject to this section.
- (2) Subsection (1) does not apply if the owners corporation fails to give notice of the reduced quorum decision under section 100 (1).
- (3) A reduced quorum decision is disallowed if, within 21 days after the decision was made, the owners corporation is given a petition requiring that the decision be disallowed signed by a majority of people entitled to vote on the relevant motion at the time of signing (whether or not they were present or entitled to vote on the motion at the general meeting at which the decision was made).
- (4) If, within 21 days after a reduced quorum decision is made, a motion is passed confirming the reduced quorum decision while a standard quorum is present at a general meeting for consideration of the confirmation motion, the reduced quorum decision takes effect on confirmation, whether or not a petition under subsection (3) is at any time given to the owners corporation.
- (5) This section does not prevent a reduced quorum decision from being revoked at a general meeting, whether a standard quorum or reduced quorum is present while the revocation motion is being considered.

**102 Quorum at a general meeting—owners corporation with 2 members**

- (1) A motion may only be considered at a general meeting of an owners corporation with 2 members if a quorum constituted by all people entitled to vote on the motion is present.
- (2) If a quorum is not present within  $\frac{1}{2}$  an hour after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.
- (3) If a quorum is not present within  $\frac{1}{2}$  an hour after the motion arises for consideration at a meeting of the owners corporation adjourned under subsection (2), the articles prescribed under section 126 (1) (c) apply.

**103 Chairperson at a general meeting**

- (1) At the beginning of a general meeting, the people present and entitled to vote must elect a person present and entitled to vote as chairperson for the meeting.
- (2) The chairperson may leave the chair during a meeting for any reason.
- (3) If the chairperson leaves the chair during a meeting, the people present and entitled to vote must elect another person present and entitled to vote as chairperson.

**Division 6.3 Resolutions at general meetings**

**104 Decision-making at general meetings**

- (1) Decisions at general meetings must be made by ordinary resolution, unless this Act requires otherwise.

- (2) If, at a general meeting, an owners corporation makes a resolution of a particular kind (that is, an ordinary, special, unopposed or unanimous resolution), a resolution of the same kind at a general meeting is required to amend or revoke the earlier resolution, unless this Act requires otherwise.

### **105 Ordinary resolutions**

- (1) For an owners corporation with more than 2 members, the requirement for passing an ordinary resolution at a general meeting is that—
- (a) unless a poll is taken—the number of votes cast in favour of the resolution exceed the number of votes cast against it; or
  - (b) on a poll—the voting value of votes cast in favour of the resolution exceed the voting value of the votes cast against it.
- (2) For an owners corporation with 1 or 2 members, the requirements for passing an ordinary resolution at a general meeting are that—
- (a) no votes are cast against the resolution; and
  - (b) at least 1 vote is cast in favour of the resolution.

*Notes for s (2)—owners corporations with 1 or 2 members*

- 1 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 102), unless either is not entitled to vote on the resolution (see s 110 (Who is entitled to vote?)).
- 2 An abstention for any unit does not (in itself) prevent an ordinary resolution from being passed, if at least 1 vote is cast in favour of the resolution.
- 3 A vote may be cast for a unit on an ordinary resolution even if an amount owing to the owners corporation remains unpaid (see s 110 (3) (Who is entitled to vote?)).

## **106 Special resolutions**

- (1) For an owners corporation with more than 2 members, the requirements for passing a special resolution at a general meeting are that—
- (a) unless a poll is taken—
    - (i) the number of votes cast in favour of the resolution exceed the number of votes cast against it; and
    - (ii) the votes cast against the resolution number less than  $\frac{1}{3}$  of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes); or
  - (b) on a poll—
    - (i) the voting value of votes cast in favour of the resolution exceed the voting value of the votes cast against it; and
    - (ii) the voting value of votes cast against the resolution is less than  $\frac{1}{3}$  of the voting value of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes).
- (2) For an owners corporation with 1 or 2 members, the requirements for passing a special resolution at a general meeting are that—
- (a) no votes are cast against the resolution; and
  - (b) at least 1 vote is cast in favour of the resolution.

*Notes for s (2)—owners corporations with 1 or 2 members*

- 1 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 102), unless either is not entitled to vote on the resolution (see s 110 (Who is entitled to vote?)).
- 2 An abstention for any unit does not (in itself) prevent a special resolution from being passed, if at least 1 vote is cast in favour of the resolution.

- 3 A vote may be cast for a unit on a special resolution even if an amount owing to the owners corporation remains unpaid (see s 110 (3) (Who is entitled to vote?)).

### **107 Unopposed resolutions**

The requirements for passing an unopposed resolution at a general meeting are that—

- (a) no votes are cast against the resolution; and
- (b) at least 1 vote is cast in favour of the resolution.

#### *Notes*

- 1 An abstention for any unit does not (in itself) prevent an unopposed resolution from being passed, if at least 1 vote is cast in favour of the resolution.
- 2 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 102), unless either is not entitled to vote on the resolution (see s 110 (Who is entitled to vote?)).

### **108 Unanimous resolutions**

- (1) For an owners corporation with more than 2 members, the requirements for passing a unanimous resolution at a general meeting are that—
- (a) each person entitled to vote on the resolution—
    - (i) is present at the meeting; or
    - (ii) has given another person present at the meeting a proxy permitting the person to vote on the resolution; or
    - (iii) has cast an absentee vote on the resolution; and
  - (b) no votes are cast against the resolution; and
  - (c) at least 1 vote is cast in favour of the resolution.

- (2) For an owners corporation with 1 or 2 members, the requirements for passing a unanimous resolution at a general meeting are that—
- (a) no votes are cast against the resolution; and
  - (b) at least 1 vote is cast in favour of the resolution.

*Notes*

- 1 An abstention for any unit does not (in itself) prevent a unanimous resolution from being passed, if at least 1 vote is cast in favour of the resolution.
- 2 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 102), unless either is not entitled to vote on the resolution (see s 110 (Who is entitled to vote?)).

### **109 Evidence of resolutions of owners corporation**

Evidence of the following facts about a resolution of an owners corporation may be given by a certificate sealed with the corporation's seal:

- (a) the fact that at a general meeting held on a stated date a resolution in the terms set out in the certificate was passed;
- (b) the fact that the resolution was an ordinary, special, unopposed or unanimous resolution.

## **Division 6.4 Voting at general meetings**

### **110 Who is entitled to vote?**

- (1) The people entitled to vote on a motion at a general meeting of an owners corporation are as follows:
- (a) for a unit owned by a single individual—the unit owner;
  - (b) for a unit owned by a single company—the company's representative;
  - (c) for a unit owned by 2 or more people (whether as joint owners or tenants in common)—the unit owners' representative.

- (2) However, if a unit is subject to a mortgage and a mortgagee voting notice is in force for the unit, the person entitled to vote for the unit is the mortgagee's representative rather than the relevant person mentioned in subsection (1).
- (3) If the owners corporation has 3 or more members, a person is only entitled to vote for a unit on a motion requiring an ordinary or special resolution if all amounts payable to the owners corporation for the unit have been paid.
- (4) In addition, a person is not entitled to vote on a motion at a general meeting if a deadlock order is made withdrawing that entitlement.

#### **111 One vote—1 unit**

A single vote is exercisable for each unit at a general meeting.

#### **112 Voting by mortgagees**

- (1) If the interest of a unit owner is subject to a mortgage, the mortgagee may give the owners corporation written notice (a *mortgagee voting notice*) that—
  - (a) the unit is subject to the mortgage; and
  - (b) the mortgagee proposes to exercise the voting right given under section 110 (2); and
  - (c) an individual named in the notice (the mortgagee's *representative*) is authorised to vote at general meetings for the unit on behalf of the mortgagee, instead of the person otherwise entitled to vote for the unit.
- (2) The mortgagee voting notice must state the full name and address for correspondence of the mortgagee's representative.
- (3) If a unit is owned by 2 or more people, and the interest of 1 of the owners who has more than a  $\frac{1}{2}$  share in the unit is subject to a mortgage, the mortgagee may give a mortgagee voting notice under this section.



- (4) If the interest of a unit owner is subject to 2 or more mortgages, this section applies only to the mortgagee whose mortgage has priority.

### **113 Mortgagee voting notice—amendment and revocation**

- (1) The mortgagee may change the mortgagee's representative by written notice to the owners corporation.
- (2) The notice of change of representative must—
- (a) include the full name and an address for correspondence of the new representative; and
  - (b) be signed by the mortgagee.
- (3) The mortgagee's representative may change the address for correspondence by written notice to the owners corporation of the change.
- (4) The notice of change of address must be signed by the representative.
- (5) A mortgagee voting notice—
- (a) is revoked when the mortgagee gives written notice of revocation to the owners corporation; or
  - (b) is taken to be revoked when the mortgage is discharged.
- (6) A mortgagee who has given a mortgagee voting notice to an owners corporation must not, without reasonable excuse, fail to give written notice to the corporation of the discharge of the mortgage within 14 days after the discharge.

Maximum penalty (subsection (6)): 5 penalty units.

### **114 Evidence of mortgagee's entitlement to vote**

Evidence of any of the following facts may be given by a certificate sealed with the owners corporation's seal:

- (a) the fact that the authorisation of a named mortgagee's representative to vote for a stated unit was in force on a stated date;
- (b) the fact that a stated address for correspondence for a mortgagee's representative was the latest such address notified to the corporation on a stated date;
- (c) the fact that notice of the revocation of a mortgagee voting notice was given to the owners corporation by a named mortgagee on a stated date;
- (d) the fact that notice of the discharge of a mortgage was given to the owners corporation on a stated date.

### **115 Proxy votes**

- (1) Votes at a general meeting may be cast by proxy (whether or not a poll is demanded).
- (2) The appointment of a proxy must be in the form approved by the executive committee.

*Note* A proxy form must accompany the notice of general meeting (see s 97 (4) (a)).

### **116 Value of votes**

- (1) Every vote at a general meeting is of equal value, unless a poll is taken.
- (2) On a poll, each vote has a value (its voting value) proportional to the unit entitlement of the unit for which it is exercised.

### **117 Polls**

- (1) A poll may be demanded on an ordinary or special resolution at a general meeting by anyone present and entitled to vote at the meeting.
- (2) A demand for a poll may be withdrawn.

- (3) A poll may be taken in any way the chairperson considers appropriate.
- (4) The result of a poll—
  - (a) must be declared at the meeting by the chairperson as soon as it is worked out; and
  - (b) decides whether or not the resolution for which the poll was demanded has been carried.

### **118 Voting by chairperson**

At a general meeting, the chairperson may (whether or not a poll is demanded)—

- (a) exercise a deliberative vote as a member; and
- (b) if there is an equality of votes—also exercise a casting vote, unless the owners corporation has only 2 members.

### **119 Owners corporations with only 2 members—votes divided**

If an owners corporation has only 2 members, the articles prescribed under section 126 (1) (c) apply to the resolution of any matter on which the votes at a general meeting are divided.

### **120 Absentee votes—unopposed and unanimous resolutions**

- (1) A person entitled to vote on a motion requiring an unopposed or unanimous resolution may cast an absentee vote on the motion by recording the vote on an absentee voting paper and giving it to the owners corporation before the meeting begins.

*Note* An absentee voting form must accompany the notice of general meeting (see s 97 (4) (b)).

- (2) The absentee voting paper must be in the form approved by the executive committee.
- (3) An absentee vote under this section is a valid vote.

- (4) A person who casts an absentee vote under this section is taken to be present at the general meeting at which the motion is moved (except for the purposes of making up a quorum) and to have voted on the resolution.

### **121 People under 18 or under other legal disabilities**

- (1) The right of a person to vote at a general meeting may not be exercised by the person if—
- (a) the person is under 18 years old; or
  - (b) the person is under any other legal disability preventing the person from dealing with his or her property.
- (2) The right to vote of an incapacitated person (under subsection (1)) may be exercised—
- (a) if the person is under 18 years old—by the person's parent or guardian; or
  - (b) if the person is under any other legal disability—by a person for the time being authorised by law to control the person's property.

### **122 Declaration by chairperson of result of voting**

- (1) A declaration by the chairperson of the meeting that a motion has been passed is conclusive evidence of the fact without proof of the number or proportion of votes recorded against or in favour of the motion.
- (2) Subsection (1) does not apply if—
- (a) a poll is demanded; or
  - (b) a unanimous resolution is required.

## Division 6.5 Decision-making deadlocks

### 123 What is a deadlock order?

A *deadlock order* is any of the followings orders of the Magistrates Court, made on application under section 124, about a motion of an owners corporation or executive committee mentioned in that section:

- (a) an order declaring that the motion is taken to have been passed on the date of the order, or a later stated date;
- (b) an order that a named person who has previously voted against the motion is not entitled to vote on the motion when it is reconsidered by a general meeting;
- (c) an order that the motion may be passed by special resolution, or an ordinary resolution, when it is reconsidered by a general meeting;
- (d) any ancillary order necessary or convenient for effect to be given to another order (for example, an order that the motion be reconsidered at a general meeting to be held within a stated period after the making of the order).

### 124 Deadlock orders—application

- (1) An application to the Magistrates Court for a deadlock order may be made if an unsuccessful attempt has been made by an owners corporation to obtain the passage of motions requiring any of the following resolutions:
  - (a) an unopposed resolution;
  - (b) a unanimous resolution;
  - (c) for an owners corporation with only 2 members—a unanimous resolution at a general meeting or executive committee meeting.
- (2) The application may be made by any of the following:

- (a) the owners corporation;
  - (b) a member;
  - (c) a mortgagee's representative.
- (3) The following have a right to appear on the application:
- (a) the owners corporation;
  - (b) a unit owner, or anyone else with an interest in a unit, or the common property, that is recorded on the corporate register.
- (4) The applicant must serve a copy of the application on everyone else who has a right to appear.
- Note* The applicant may serve the application on a person with a right to appear at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 80.
- (5) A person who has a right to appear may be represented by a lawyer or someone else.
- (6) The registrar of the court must give a copy of the application to the chief executive.

## **125 Deadlock orders—making**

- (1) The Magistrates Court may make a deadlock order on application under section 124 (Irrespective of the kind of order applied for) if satisfied that it is just and equitable to do so, having regard to the overall interests of everyone with an interest in the units or the common property.
- (2) The Magistrates Court may make an order about a resolution of a general meeting of an owners corporation with 2 or 3 members (or of an executive committee of a corporation with only 2 members) only if satisfied that the applicant has done everything possible under the articles of the corporation prescribed under section 126 (1) (b) or (c) to resolve any dispute about the passage of the resolution.

## Part 7 Owners corporation articles

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

- (1) The articles of an owners corporation consist of—
- (a) for all corporations—the articles (the *default articles*) prescribed under the regulations, as amended by the corporation under section 128; and

*Note 1* The default articles are in the regulations, 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 (for example, to adopt any or all of the new default articles)—see s 192.

- (b) for a corporation with 3 members—articles for voting procedures, or for conciliation of disputes, prescribed under the regulations; and

*Note* Conciliation articles are in the regulations, sch 2.

- (c) for a corporation with 2 members—articles for dealing with a failure to obtain a quorum at a general meeting (under section 102 (3)), and for conciliation of disputes, prescribed under the regulations.

*Note* These articles are in the regulations, sch 3.

- (2) Articles prescribed under subsection (1) (b) or (c) may provide for agreements reached through the conciliation of disputes to have the force of unanimous resolutions of the owners corporation.
- (3) The regulations may provide for the appointment of conciliators for any articles prescribed under subsection (1) (b) or (c).

**127 Effect of articles**

- (1) There are taken to be agreements under seal between an owners corporation and each of its members, and between each member and each other member, under which the corporation and its members agree to be bound by the articles of the corporation.
- (2) An occupier of a unit (who is not the owner of the unit) is bound by each article of the corporation as if the occupier were the owner of the unit, unless the articles provide otherwise.
- (3) If the unit owner does not occupy the unit, the owner is liable separately and together with an occupier of the unit for any breach of the articles of the owners corporation by the occupier, unless the owner establishes that the owner took reasonable precautions and exercised appropriate care to prevent the breach.
- (4) An occupier of a unit who occupies the unit under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1997* is not bound by any article of the owners corporation to the extent that the article is inconsistent with the prescribed terms (or terms to the effect of the prescribed terms) to which the agreement is subject under section 7 of that Act.

**128 Amendment of articles**

- (1) An owners corporation may, by special resolution, amend its articles.
- (2) However, an owners corporation with 2 or 3 members may not amend the articles mentioned in section 126 (1) (b) or (c).
- (3) An amendment of the articles of an owners corporation takes effect on the registration of a copy of the special resolution making the amendment, certified under the seal of the corporation as a true copy, or from a later date stated in the resolution.
- (4) An amendment to the articles of an owners corporation has no effect to the extent that it results in the articles—
  - (a) being inconsistent with this Act; or



- (b) giving a function to the corporation that is not incidental or ancillary to the exercise of its functions under this Act; or
  - (c) prohibiting or restricting any dealing (including devolution, transfer, lease and mortgage) with—
    - (i) an interest in a unit; or
    - (ii) the equitable estate of a unit owner in the common property.
- (5) In this section:  
*amendment*, of articles, includes variation, rescission, substitution or addition.

### 129 Breaches of articles—remedy

- (1) If a member of an owners corporation or the occupier of a unit breaches the articles by act or omission, the corporation may serve on the member or occupier written notice giving particulars of the breach and requiring the member or occupier to remedy the breach within a reasonable time stated in the notice.
- (2) If the person on whom a notice is served fails to remedy the breach within the time stated in the notice, the owners corporation may remedy the breach itself.

*Note* If the owners corporation remedies the breach, it may recover the cost of remedying the breach from the member or occupier concerned (see s 54 (1) (b)).

### 130 Application of Legislation Act

- (1) The *Legislation Act 2001* applies to the articles of an owners corporation as if the articles were an Act and as if each article were a section of an Act.
- (2) Expressions used in the articles of an owners corporation have the same meaning as in this Act, unless the contrary intention appears.

## Part 8 Insurance

### 131 Public liability insurance by owners corporation

- (1) An owners corporation must take out and maintain public liability insurance in relation to all of the following events happening in relation to the common property as a result of an accident:
  - (a) death, bodily injury or illness of anyone;
  - (b) loss of, or damage to, the property of anyone.
- (2) Public liability insurance under subsection (1) must be for a total amount of liability of not less than an amount prescribed under the regulations.

*Note* The owners corporation must produce its insurance policies for inspection at the request of an eligible person (see s 74).

### 132 Building insurance by owners corporation

- (1) An owners corporation must insure and keep insured all buildings on the parcel for their replacement value from time to time against all of the following risks:
  - (a) fire, lightning, tempest, earthquake and explosion;
  - (b) riot, civil commotion, strikes and labour disturbances;
  - (c) malicious damage;
  - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;
  - (e) impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle.

- (2) For all purposes related to any insurance taken out by it under subsection (1), an owners corporation is taken to have an insurable interest in the buildings on the parcel to the extent of their replacement value.

*Note* The owners corporation must produce its insurance policies for inspection at the request of an eligible person (see s 74).

### **133 Exemptions from building insurance requirements**

- (1) If the replacement value of all common property buildings (or parts of buildings) on the parcel is less than an amount prescribed under the regulations, the owners corporation may, by unanimous resolution, exempt itself from the requirement to take out building insurance (under section 132) for any risk stated in the exemption resolution.
- (2) An owners corporation for a units plan containing only class B units may, by unanimous resolution, exempt itself from the requirement to take out building insurance for any risk stated in the exemption resolution for all buildings (or parts of buildings) that are on the class B units.
- (3) An exemption resolution under this section has effect from the date of the annual general meeting when it is passed until the date of the next annual general meeting.

### **134 Mortgage insurance of unit**

If the interest of a unit owner is subject to a mortgage, the owner may take out 1 or more policies of insurance (a *mortgage insurance policy*) for indemnity against liability under the mortgage arising out of damage to, or destruction of, the unit.

### **135 Payment under mortgage insurance policies**

- (1) If a mortgage insurance policy is in force for a unit, the insurer is liable to pay to a mortgagee whose interest is noted on the policy the least of the following amounts:

- (a) the amount insured as stated in the policy;
  - (b) the amount of the loss;
  - (c) the amount sufficient, at the date of the loss, to discharge the mortgage noted on the policy.
- (2) If the interests of 2 or more mortgagees are noted on the policy, subsection (1) applies to the mortgagees in their order of registered priority.

### **136 Transfer of mortgagee's interest to insurer**

- (1) Payment by the insurer to a mortgagee under section 135 does not entitle the unit owner to a discharge of the mortgage.
- (2) On payment by the insurer to a mortgagee under section 135—
- (a) if the amount paid equals the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of the mortgage; or
  - (b) if the amount paid is less than the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of an undivided share of the mortgagee's interest in the mortgage that bears to that interest the same proportion as the amount paid bears to the amount that was owing under the mortgage immediately before the payment.

### **137 Application of insurance money by owners corporation**

- (1) If an owners corporation receives insurance money for damage to, or destruction of, any building on the parcel, the corporation must, without delay, apply the insurance money to rebuilding and reinstating the building.

- (2) Subsection (1) applies subject to this Act and any order of a court.

**Example for s (2)**

If it is necessary to obtain building damage orders from the Magistrates Court approving a building damage scheme for rebuilding and reinstating the building (see div 10.3), the owners corporation may not apply the insurance money to the rebuilding and reinstating before obtaining the orders.

**138 Additional insurance—owners corporation**

This part does not limit the right of an owners corporation to take out additional insurance.

**139 Additional insurance—unit owners**

This part does not limit the right of a unit owner to insure against damage to, or destruction of, the unit to the extent of its replacement value.

## **Part 9 Administrators**

### **Division 9.1 Interested parties**

#### **140 Who may apply for an administration order?**

Any of the following people (an *interested party*) may apply to the Magistrates Court for an order under division 9.2 (an *administration order*) in relation to the administration of an owners corporation:

- (a) the corporation;
- (b) a creditor of the corporation;
- (c) a unit owner, or anyone else with an interest in a unit, or the common property, that is recorded in the corporate register;
- (d) the chief executive, on behalf of the Territory.

#### **141 Magistrates Court appearances and service of applications**

- (1) An interested party has a right to appear on an application by another interested party for an administration order.
- (2) The applicant must serve a copy of the application on every other interested party, except the creditors (or the other creditors) of the owners corporation and the chief executive.

*Note* The applicant may serve the application on an interested person at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 80.

- (3) The owners corporation must serve all its creditors with a copy of the application—
  - (a) if the owners corporation is the applicant—after making the application; or
  - (b) in any other case—on being served with a copy of the application.

- (4) An interested party may be represented by a lawyer or someone else.
- (5) The registrar of the Magistrates Court must give a copy of an application to the chief executive, unless the chief executive is the applicant.

## **Division 9.2 Appointment, removal and functions**

### **142 Appointment of administrator**

- (1) On an application by an interested party, the Magistrates Court may, by order, appoint the person named in the application to be administrator of the owners corporation on the terms about remuneration and anything else it considers appropriate.
- (2) The Magistrates Court may make an order appointing an administrator only if satisfied that the administrator consents to the order.
- (3) In an order appointing an administrator, the Magistrates Court may give any directions it considers appropriate for giving notice of the order to the administrator, the registrar-general and the owners corporation.
- (4) The remuneration of an administrator of an owners corporation and the expenses incurred in the exercise of the administrator's functions under this Act are taken to be expenditure incurred by the corporation.

### **143 Removal or replacement of administrator**

- (1) On an application by an interested party, the Magistrates Court may, by order, remove or replace an administrator.
- (2) In an order removing or replacing an administrator, the Magistrates Court may give any directions it considers appropriate for giving notice of the order to the registrar-general and the owners corporation.

#### **144 Functions of administrator**

- (1) The administrator of an owners corporation has all the functions of the corporation to the exclusion of the corporation and its executive committee.
- (2) However, an order of the Magistrates Court under subsection (3) is required for an administrator to do anything that is required by this Act to be authorised by an unopposed or unanimous resolution.
- (3) On application by an interested party, the Magistrates Court may make any order it considers appropriate about the exercise of the administrator's functions (including, for example, an order mentioned in subsection (2)).

#### **145 Delegation by administrator**

- (1) The administrator of an owners corporation may, in writing, delegate any of the administrator's functions (except this power of delegation) to anyone else either generally or as provided by the delegation.
- (2) A delegated function may only be exercised in accordance with the delegation.
- (3) A delegation is revocable at will, and does not prevent the administrator from exercising a delegated function.



## Part 10 Amendment of units plans

### Division 10.1 Amendment of schedule of unit entitlement

#### 146 Unit entitlement authority—grant

- (1) An owners corporation may apply to the Minister for authority (a *unit entitlement authority*) for the amendment of the schedule of unit entitlement.

*Note 1* A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2* If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The Minister may, by written notice to the owners corporation, grant a unit entitlement authority if satisfied on reasonable grounds that—
- (a) the application is authorised by an unopposed resolution of the owners corporation made within 3 months before the application is made; and
  - (b) the amendment is necessary to reflect accurately the current relative improved values of the units, or a change in those values that is anticipated after a particular event happens.
- (3) The Minister may grant a unit entitlement authority subject to the condition that it is to take effect only when a stated event happens.
- (4) If the owners corporation applies for a unit entitlement authority that is to remain in force for longer than 3 months, the Minister may, in authorising the unit entitlement amendment, if satisfied that an extended period is justified—
- (a) allow the extended period applied for; or
  - (b) allow a shorter extended period.

### 147 Unit entitlement authorities—period of effect

- (1) A unit entitlement authority remains in force for—
  - (a) 3 months after it is given, or after an event stated in the authority happens; or
  - (b) any extended period allowed under section 146 (4).
- (2) A unit entitlement authority must state the period for which it is in force.

### 148 Unit entitlement authorities—registration

On the registration of a unit entitlement authority, the units plan is amended accordingly.

*Note* A unit entitlement authority may be registered with the registrar-general under the *Land Titles (Unit Titles) Act 1970* on lodgment by the owners corporation within the period of effect of the authority (see dict, def of *registered*).

## Division 10.2 Minor boundary changes

### 149 Boundary authority—grant

- (1) An owners corporation may apply to the Minister for authority (a *boundary authority*) for the change of any unit or common property boundaries, together with any consequential amendment of the schedule of unit entitlement.

*Note 1* A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2* If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The Minister may grant a boundary authority if satisfied on reasonable grounds that—
  - (a) the application is authorised by a unanimous resolution of the owners corporation made within 3 months before the application is made; and

- (b) the corporation has obtained the written agreement of each interested nonvoter (except any interested nonvoter to whom subsection (3) applies); and
- (c) the authorised boundary change is a minor boundary change; and

*Note* A **minor boundary change** is a change to the boundaries of the units or the common property that is described in s 16.

- (d) if an amendment of the schedule of unit entitlement is authorised—the amendment is necessary to reflect accurately a change in the relative improved values of the units because of the change of boundaries as authorised.
- (3) The Minister may grant a boundary authority despite the owners corporation’s failure to obtain an interested nonvoter’s agreement if the Minister is satisfied on reasonable grounds that—
- (a) the corporation has made reasonable efforts to obtain the agreement; and
  - (b) either—
    - (i) the interested nonvoter would not suffer any substantial long-term detriment because of the proposed change; or
    - (ii) despite that failure, it is desirable to authorise the change having regard to the overall interests of everyone with interests in the units and the common property.
- (4) If the owners corporation applies for a boundary authority that is to remain in force for longer than 3 months, the Minister may, in authorising the change, if satisfied that an extended period is justified—
- (a) allow the extended period applied for; or
  - (b) allow a shorter extended period.

### **150 Boundary authority—period of effect**

- (1) A boundary authority remains in force for—
  - (a) 3 months after it is given; or
  - (b) any extended period allowed under section 149 (4).
- (2) A boundary authority must state the period for which it is in force.

### **151 Boundary authorities—registration**

- (1) On the registration of a boundary authority—
  - (a) the units plan is amended accordingly; and
  - (b) the land covered by each affected lease is the area of land indicated by the boundaries as changed.

*Note* A unit entitlement authority may be registered with the registrar-general under the *Land Titles (Unit Titles) Act 1970* on lodgment by the owners corporation within the period of effect of the authority (see dict, def of *registered*).

- (2) A change of unit or common property boundaries under this section is not a variation of any lease for the Land Act, part 6.

## **Division 10.3 Building damage schemes**

### **152 What is a building damage scheme?**

A *building damage scheme* for a units plan is a scheme for—

- (a) the reinstatement of any building on the parcel that is damaged or destroyed; and
- (b) the elimination of any class A unit that is damaged or destroyed (unless the unit is to be reinstated); and
- (c) the consequential amendment of the units plan; and
- (d) the application of any insurance amount paid (or payable) for the damage or destruction to any building on the parcel; and

- (e) the payment of compensation (or other money) to the owner of any unit, and anyone else who may be adversely affected by the scheme.

### **153 Building damage orders—right of appearance**

- (1) The following have a right to appear on an application for a provisional building damage order or a final building damage order:
  - (a) the owners corporation;
  - (b) a unit owner, or another person with an interest in a unit, or the common property, that is recorded on the corporate register;
  - (c) an insurer who has insured a building on the parcel for section 132;
  - (d) the chief executive, on behalf of the Territory.

*Note* A unit owner or the owners corporation may apply for a provisional building damage order (see s 154 (2)). The applicant for a provisional building damage order may apply for a final building damage order (see s 157 (2)).

- (2) The applicant must serve a copy of the application on everyone else who has a right to appear, except the chief executive.

*Note* The applicant may serve the application on a person who has a right to appear at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 80.

- (3) A person who has a right to appear may be represented by a lawyer or someone else.
- (4) The registrar of the Magistrates Court must give a copy of an application to the chief executive.

### **154 Provisional building damage order—application**

- (1) This section applies if—
  - (a) after the registration of a units plan, a building on the parcel is damaged or destroyed, unless the damage or destruction

happens in the course of the demolition or development of the building; and

- (b) the Minister has given—
    - (i) a development approval under the Land Act, part 6 for a development consisting of the reinstatement or elimination of any unit or building (or part of a unit or building) on the parcel (a *unit redevelopment*); or
    - (ii) if the unit redevelopment is exempt from the requirement to obtain approval under the Land Act, part 6—a certificate under subsection (4); and
  - (c) a cancellation authority for the units plan is not in force; and
  - (d) an application for a cancellation authority for the units plan is not pending.
- (2) If this section applies, the owners corporation authorised by an ordinary resolution, or a unit owner, may apply to the Magistrates Court for an order (a *provisional building damage order*) approving a building damage scheme incorporating the unit redevelopment.
- (3) The application must be accompanied by—
- (a) the proposed building damage scheme; and
  - (b) as the case requires—
    - (i) a copy of the development approval mentioned in subsection (1) (b) (i), certified by the Minister as a true copy; or
    - (ii) a copy of the Ministerial certificate mentioned in subsection (1) (b) (ii).
- (4) On application by the applicant for the provisional damage order, if the Minister is satisfied that approval under this Act or any other relevant law of the Territory for the unit redevelopment would still have been given if the proposals for the subdivision of the parcel under this Act, or any other relevant development proposals, had

shown the units plan as it is proposed to be altered by the unit redevelopment, the Minister must give the applicant a certificate to that effect.

*Note 1* A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2* If a form is approved under s 180 (Approved forms) for an application, the form must be used.

### **155 Provisional building damage order—approval of scheme**

- (1) The Magistrates Court may make a provisional building damage order on application under section 154 if satisfied that—
  - (a) the damage or destruction to the building did not happen in the course of the development or demolition of the building; and
  - (b) the Minister has given the development approval or certificate mentioned in section 154 (1) (b); and
  - (c) it is just and equitable to do so.
- (2) The certified copy of the development approval accompanying the application (see section 154 (3) (b)) is evidence that the Minister has given the relevant approval.
- (3) The Magistrates Court may make any ancillary order necessary or convenient for giving effect to a provisional building damage order.

### **156 Provisional building damage order—period of effect**

A provisional building damage order, or any ancillary order, remains in force for—

- (a) the period (not longer than 3 months) stated in the order; or
- (b) an extended or further extended period stated in a Magistrates Court order for extension made on application by the applicant for the provisional building damage order while the provisional building damage order (or the ancillary order) is in force.

**157 Final building damage order—amendment of units plan**

- (1) This section applies while a provisional building damage order approving a building damage scheme is in force.
- (2) On application by the applicant for the provisional building damage order, the Magistrates Court may make an order (a *final building damage order*) authorising the amendment of the units plan in accordance with the building damage scheme approved under the provisional building damage order.
- (3) The Magistrates Court may make a final building damage order only if satisfied that—
  - (a) the approved building damage scheme has been carried out as far as practicable; and
  - (b) any order ancillary to the provisional building damage order has been complied with.
- (4) The Magistrates Court may make any ancillary order necessary or convenient for giving effect to a final building damage order.

**158 Final building damage order—period of effect**

A final building damage order, or any ancillary order, remains in force for—

- (a) the period (not longer than 3 months) stated in the order; or
- (b) an extended or further extended period stated in a Magistrates Court order for extension made on application by the applicant for the final building damage order while the final building damage order (or the ancillary order) is in force.

**159 Final building damage order—registration**

- (1) On the registration of a final building damage order—
  - (a) the units plan is amended in accordance with the approved building damage scheme; and



- (b) if unit or common property boundaries are changed—the land covered by each affected lease is the area of land indicated by the boundaries as changed.
- (2) In addition, on the registration of a final building damage order authorising the elimination of a unit—
  - (a) the lease of the eliminated unit ends; and
  - (b) the land covered by the lease of the unit immediately before the registration of the order is included in the land covered by the lease of the common property.
- (3) A change of unit or common property boundaries under this section is not a variation of any lease for the Land Act, part 6.

## **Part 11**                      **Cancellation of units plans**

### **Division 11.1**              **Cancellation authority**

#### **160**    **Cancellation authority—grant**

- (1) An owners corporation may apply to the Minister for authority (a *cancellation authority*) for the cancellation of the units plan.

*Note 1*    A fee may be determined under s 179 (Determination of fees) for this section.

*Note 2*    If a form is approved under s 180 (Approved forms) for an application, the form must be used.

- (2) The Minister may grant a cancellation authority if satisfied on reasonable grounds that—
- (a) the application is authorised by a unanimous resolution of the corporation made within 3 months before the application is made; and
  - (b) the corporation has obtained the written agreement of each interested nonvoter (except any interested nonvoter to whom subsection (3) applies).
- (3) The Minister may grant a cancellation authority despite the owners corporation's failure to obtain an interested nonvoter's agreement if the Minister is satisfied on reasonable grounds that—
- (a) the corporation has made reasonable efforts to obtain the agreement; and
  - (b) either—
    - (i) the interested nonvoter would not suffer any substantial long-term detriment because of the proposed cancellation; or

- (ii) despite that failure, it is desirable to authorise the cancellation having regard to the overall interests of everyone with interests in the units and the common property.
- (4) If the owners corporation applies for a cancellation authority that is to remain in force for longer than 3 months, the Minister may, in authorising cancellation, if satisfied that an extended period is justified—
- (a) allow the extended period applied for; or
  - (b) allow a shorter extended period.
- (5) A cancellation authority must include a declaration of the provisions that are to govern the new lease arising under section 162 if the Minister considers on reasonable grounds that it is desirable to do so to take account of any variation of a lease of any unit, or of the common property, made (or applied for) since the units plan was registered.

### **161 Cancellation of units plan—period of effect of authority**

- (1) A cancellation authority remains in force for—
- (a) 3 months after it is given; or
  - (b) any period allowed under section 160 (4).
- (2) A cancellation authority must state the period for which it is in force.

## **Division 11.2 Effects of cancellation**

### **162 Cancellation of units plan—effects**

On the registration of a cancellation authority—

- (a) the units plan is cancelled; and
- (b) the owners corporation is dissolved (see section 164); and

- (c) the lease of the common property and the lease of each of the units end; and
- (d) the land covered by those leases forms 1 parcel of land; and
- (e) a new lease arises over that parcel in the terms provided by section 163.

### **163 Cancellation of units plan—new lease over parcel**

- (1) The new lease arising under section 162 (e)—
  - (a) is held by—
    - (i) the owners of the units immediately before registration of the authority as tenants in common in shares proportional to their former unit entitlement; or
    - (ii) if there was a single owner of all the units immediately before the registration of the authority—by the owner; and
  - (b) expires on the day each of the leases of the units, and the lease of the common property, would have expired if it were not for the cancellation of the units plan; and
  - (c) is otherwise governed by the provisions to which the lease of the parcel was subject immediately before the registration of the units plan, subject to any declaration of the Minister under section 160 (5) (Cancellation authority—grant).
- (2) If immediately before the registration of the authority, 2 or more people were the owners of a unit, 2 or more units or all the units (whether as joint tenants or tenants in common), the share in the estate, or the whole estate, vests in them under subsection (1) (a)—
  - (a) if they were joint tenants—jointly; or
  - (b) if they were tenants in common—as tenants in common in shares proportional to their former shares in the unit or units.

- (3) The share in the estate that vests in a person under subsection (1) (a) is subject to any mortgage and easement mentioned in the *Land Titles (Unit Titles) Act 1970*, section 17.

#### **164 Dissolution of owners corporation**

- (1) On the dissolution of an owners corporation (on cancellation of the units plan)—
- (a) all rights (at law or in equity) of the corporation immediately before the dissolution vest in the former members as tenants in common in shares proportional to their unit entitlement immediately before the dissolution; and
- (b) the former members are liable separately and together for all the liabilities of the corporation existing immediately before dissolution.
- (2) For subsection (1), a reference in a document to an owners corporation that has been dissolved is taken to be a reference to the former members.

##### **Example of a document**

A contract signed by the owners corporation before the dissolution under which the corporation owes, or is owed, an amount.

- (3) The operation of subsection (1) on the owners corporation may be varied by cancellation dissolution order (under section 165).

#### **165 Dissolution of owners corporation—variation of effects by Magistrates Court order**

- (1) On an application by an owners corporation authorised by an ordinary resolution, or a person with an interest in a unit, the Magistrates Court may, if it considers that it is just and equitable to do so—
- (a) by order (a *cancellation dissolution order*), vary the operation of section 164 (1) (Dissolution of owners corporation) on the corporation and its members; and

- (b) make any orders that are necessary or convenient for giving effect to the cancellation dissolution order.
- (2) The application may only be made before the units plan is cancelled (on registration of the cancellation authority).
- (3) The following have a right to appear on the application:
  - (a) the owners corporation;
  - (b) a unit owner, or another person with an interest in a unit, or the common property, that is recorded on the corporate register;
  - (c) an insurer who has insured a building on the parcel for section 132;
  - (d) the chief executive, on behalf of the Territory.
- (4) The applicant must serve a copy of the application on everyone else who has a right to appear, except the chief executive.

*Note* The applicant may serve the application on a person who has a right to appear at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 80.
- (5) A person who has a right to appear may be represented by a lawyer or someone else.
- (6) The registrar of the Magistrates Court must give a copy of the application to the chief executive.

## Part 12 Variation of unit leases

### 166 Lease variation applications under Land Act

- (1) An application may be made under the Land Act, section 226 for the variation of a unit or common property lease only if—
  - (a) all members of the owners corporation have been given notice of the proposed application under subsection (2); and
  - (b) the application is authorised by unopposed resolution; and
  - (c) a certificate under the corporation's seal is provided confirming that the requirements mentioned in paragraphs (a) and (b) have been met.
- (2) The notice of general meeting including notice of the motion to authorisation the application must set out—
  - (a) details of the variation sought; and
  - (b) the implications of the proposed variation for the unit entitlement and property interests of the members.
- (3) If an application for the variation of a unit lease or common property lease is approved under the Land Act, part 6 the Minister must give each member of the owners corporation written notice of the approval stating the date the approval is to take effect.

### 167 Lease variation—amendment of schedule of unit entitlement

- (1) On the variation of the lease of a unit, the Minister may, by written notice to the registrar-general, direct that the schedule of unit entitlement be amended if the Minister considers it necessary to do so to reflect accurately any change in the relative improved values of the units because of the variation.

- (2) On the registration of the Minister's direction to amend the schedule of unit entitlement, the units plan is amended accordingly.



## Part 13                      Expiry and termination of unit leases

### 168    Effects of lease expiry

- (1) On the expiry of the terms of the leases of the units and the common property in a units plan (as extended, if at all, under the *Unit Titles Act 1970*, section 108)—
  - (a) the units plan is cancelled; and
  - (b) the owners corporation is dissolved; and
  - (c) for each unit, the Territory is liable to pay a share of the value of the buildings on the parcel (on the date of expiry) proportional to the unit entitlement of the unit immediately before the expiry.
- (2) The Territory is liable to pay the amount mentioned in subsection (1) (c) for a unit—
  - (a) to the person who owned the unit immediately before the expiry of the leases; or
  - (b) if the unit was owned by 2 or more people immediately before the expiry of the leases—to each co-owner in proportion to the co-owner's former share in the unit.
- (3) On the dissolution of an owners corporation under subsection (1)—
  - (a) all rights (at law or in equity) vested in the corporation immediately before the expiry are vested in the former members as tenants in common in shares proportional to their former unit entitlement; and
  - (b) the former members are liable separately and together for all the liabilities of the corporation existing immediately before the dissolution.

- (4) For subsection (1), a reference in a document to an owners corporation that has been dissolved is taken to be a reference to the former members.

**Example of a document**

A contract signed by the owners corporation before the dissolution under which the corporation owes, or is owed, an amount.

- (5) The operation of subsection (3) on the owners corporation may be varied by expiry dissolution order (under section 169).

**169 Dissolution of owners corporation on lease expiry—  
variation of effects by Magistrates court order**

- (1) On an application by an owners corporation authorised by an ordinary resolution, or a person with an interest in a unit, the Magistrates Court may, if it considers that it is just and equitable to do so—
- (a) by order (an *expiry dissolution order*), vary the operation of section 168 (3) (Effects of lease expiry) on the corporation and its members; and
  - (b) make any orders that are necessary or convenient for giving effect to the expiry dissolution order.
- (2) The application may only be made before the dissolution of the owners corporation (on the expiry of the terms of the leases and common property).
- (3) The following have a right to appear on an application:
- (a) the owners corporation;
  - (b) a unit owner, or another person with an interest in a unit, or the common property, that is recorded on the corporate register;
  - (c) an insurer who has insured a building on the parcel for section 132;
  - (d) the chief executive, on behalf of the Territory.

- (4) The applicant must serve a copy of the application on everyone else who has a right to appear, except the chief executive.

*Note* The applicant may serve the application on a person who has a right to appear at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 80.

- (5) A person who has a right to appear may be represented by a lawyer or someone else.
- (6) The registrar of the Magistrates Court must give a copy of the application to the chief executive.

### **170 Effect of termination of unit lease**

- (1) If the registrar-general, under the *Land Titles (Unit Titles) Act 1970*, section 23, enters on a units plan a memorial of the termination of the lease of a unit—
- (a) the interest of the lessee in the unit ends; and
  - (b) the land that was, immediately before the endorsement, covered by the lease continues to be a unit despite the termination; and
  - (c) the unit entitlement of the unit is omitted from the schedule of unit entitlement; and
  - (d) the unit entitlement of each other unit is increased in proportion (so that the total unit entitlement remains unchanged).
- (2) After the termination of the lease of a unit and until a further lease of that unit is granted—
- (a) the easements given by section 35 continue, as they benefit or burden the unit; and
  - (b) any easement declared under section 36 in effect at the time of termination continues, as it benefits or burdens the unit; and
  - (c) all those easements are enforceable by and against the Minister as if the Minister were the owner of the unit; and

- (d) a person authorised in writing by the Minister has the same rights to use the common property as the owner of the unit would have had if the lease had not been terminated.

*Note* This section does not apply to a lease surrendered under the Land Act, s 172A (see dict, def of *termination*).

### 171 New unit lease

- (1) If, after the termination of the lease of a unit, a person becomes entitled under the Land Act to the grant of a lease of the unit, the Minister must—
- (a) lodge with the registrar-general written notice of that fact; and
  - (b) give the owners corporation written notice accordingly.
- (2) On the entry on the units plan of a memorial under the *Land Titles (Units Titles) Act 1970*, section 24, the person entitled to the grant of the lease becomes the holder of an estate of leasehold in the unit for the term mentioned in subsection (3) and subject to the provisions set out in the units plan for the lease of that unit, as if a lease of that unit for that term and subject to those provisions had been granted to the person by the Commonwealth under the Land Act.
- (3) The term of the lease begins on the registration of the notice and expires on the same day (stated in the units plan) as the terms of the leases of the other units.
- (4) When a person becomes the holder of an estate in leasehold under this section—
- (a) the easements given by section 35 continue, as they benefit or burden the unit; and
  - (b) any easement declared under section 36 to which the terminated lease was subject continues, as it benefits or burdens the unit.

*Note* This section does not apply to a new lease granted after a lease has been surrendered under the Land Act, s 172A (see dict, def of *termination*).

**172 New unit lease—schedule of unit entitlement**

- (1) This section applies if, after the termination of the lease of a unit, a person becomes entitled under the Land Act to the grant of a lease of the unit.
- (2) On the entry on the units plan of memorials under the *Land Titles (Unit Titles) Act 1970*, section 24, the schedule of unit entitlement has the same effect as it had immediately before the entry was made on that schedule under section 23 of that Act on the termination of the previous lease.

*Note* This section does not apply to a new lease granted after a lease has been surrendered under the Land Act, s 172A (see dict, def of *termination*).

## Part 14 Administrative review

### 173 Decisions subject to review

- (1) This part applies to a decision of the Minister (a *reviewable decision*) under the provision of this Act mentioned in columns 2 and 3 of an item in schedule 1.
- (2) The Minister must give written notice of the reviewable decision to each person mentioned in column 4 of the item.

*Note* Section 174 gives people who are required to be notified the right to object to a reviewable decision (unless the notified person was the applicant for the decision, and the decision was made in the applicant's favour).

- (3) However, the Minister is not required to notify a person with an interest in a parcel, or an interested nonvoter, of a reviewable decision if the Minister is not, and could not reasonably be, aware of the person's interest because of the process of reaching the decision.
- (4) Notice of a reviewable decision must state—
  - (a) the reasons for the decision; and
  - (b) that the recipient of the notice may object to the decision under section 174 (unless, if the recipient applied for the decision, the decision is made in accordance with the application); and
  - (c) the requirements for making an objection.

### 174 Objections

- (1) A person mentioned in column 4 of an item of schedule 1 may object to the reviewable decision mentioned in columns 2 and 3 of the item by written notice to the Minister (unless, if the person applied for the decision, the decision was made in accordance with the application).

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- (2) An objection to a decision must be made within 4 weeks after the notice of the decision is given under section 173.
- (3) An objection must be in writing and set out the grounds of objection.
- (4) The Minister must ensure that the individual who considers the objection is not the individual who made the decision against which the objection is made (for example, by delegating the functions given by this section).
- (5) On an objection under this section, the Minister must, by written notice to the objector within 4 weeks after receiving the objection—
  - (a) allow the objection and substitute a new decision for the decision objected to; or
  - (b) disallow the objection.

**175 Notice of decisions on objection**

- (1) A notice of a decision on an objection must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (2) The Minister must give a copy of a notice of a decision on an objection to a reviewable decision to each person (apart from the objector) to whom notice of the decision is required to be given under section 173.

**176 Effect of decision to allow objection**

If a decision is made to allow an objection and to substitute a new decision for the decision objected to—

- (a) the decision objected to ceases to have effect from the date of the notice; and
- (b) this Act applies as if the substituted decision had been made on the date of the notice, subject to paragraph (c); and
- (c) this part does not apply to the substituted decision.

**177 AAT review**

Application may be made to the administrative appeals tribunal for a review of a decision on an objection.



## Part 15                      Miscellaneous

### 178    Removal of matters from Magistrates Court to Supreme Court

- (1) On the joint application of all parties to an application to the Magistrates Court under this Act, the Magistrates Court may order that the matter be removed to the Supreme Court.
- (2) The registrar or a deputy registrar of the Magistrates Court may exercise the functions of the Magistrates Court under subsection (1) on an application for an order to remove a matter to the Supreme Court.

### 179    Determination of fees

- (1) The Minister may, in writing, determine fees for this Act (other than fees that this Act provides are to be fixed by owners corporations).

*Note*     The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note*     A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### 180    Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

**181 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 16 Repeals and transitional

### 182 Definitions for pt 16

In this part:

*commencement day* means the day this part commences.

*repealed Act* means the *Unit Titles Act 1970*.

*transitional corporation* means a corporation established under the repealed Act that is still in existence immediately before the commencement day.

### 184 Units plans, corporations and committees

- (1) If the registration of a units plan was still current immediately before the commencement day, the plan is taken to be a registered units plan under this Act.
- (2) A transitional corporation continues in existence under the new Act as an owners corporation with the new name 'The Owners—Units Plan No ', and the number to be included in the name is the number allotted to the units plan by the registrar-general on its registration.
- (3) The transitional committee of a transitional corporation continues in existence under this Act as the executive committee of the corporation.
- (4) A person who held office as a committee-man of a transitional committee immediately before the commencement day continues to hold office under the new Act as an executive member of the committee.
- (5) A person who was a member of a transitional corporation immediately before the commencement day continues under the new Act to be a member of the corporation.
- (6) In this section:

*transitional committee* means the committee of a transitional corporation, as constituted immediately before the commencement day.

### **185 Mixed class A and class B unit title proposals**

On or after the day this Act is notified in the Gazette and before the commencement day, the Minister must not (under the repealed Act) approve proposals for the subdivision of a parcel under a units plan with both class A and class B units, unless the subdivision was applied for under that Act before that day.

### **186 Transitional unit title proposals**

- (1) The Minister may approve transitional unit title proposals as if they were a unit title application under this Act if satisfied that the proposals comply with the requirements of this Act.
- (2) In this section:

*transitional unit title proposals* means proposals for the subdivision of a parcel under the repealed Act about which the Minister had not made a decision immediately before the commencement day.

### **187 Transitional unit title approvals**

- (1) A units plan authorised by a transitional unit title approval may be endorsed under the repealed Act for registration, and registered, as if the new Act had not been made.
- (2) A registered units plan authorised by a transitional unit title approval is taken to be a registered units plan for the purposes of this Act.
- (3) In this section:

*transitional unit title approval* means an approval under the repealed Act of proposals for the subdivision of a parcel, if a units plan authorised by that approval had not been registered immediately before the commencement day.

**188 Representatives—multiply-owned units and company-owned units**

- (1) Within 14 days after the commencement day, the owners of each unit that is owned by 2 or more people (whether as joint tenants or tenants in common) must authorise a representative for the unit owners under section 41 (Multiply-owned units—authorisation of representatives).
- (2) Within 14 days after the commencement day, a company that is the owner or part-owner of a unit must authorise a representative for the company under section 43 (Company-owned units—authorisation of representatives).

**189 General meetings notified before commencement day**

- (1) If a notice of a general meeting of an owners corporation to be held after the commencement day is given before the commencement day—
  - (a) this Act, section 97 (Notice of general meetings) applies to the notice as if the remainder of this Act had already commenced; and
  - (b) the repealed Act, section 63 (Notice of general meetings) does not apply to the notice; and
  - (c) this Act applies to the general meeting.
- (2) If a general meeting of an owners corporation held before the commencement day is adjourned to a date on or after the commencement day, the repealed Act continues to apply to the general meeting.

**190 Finances of transitional corporations**

- (1) Until the first annual general meeting of a transitional corporation on or after the commencement day—
  - (a) the repealed Act, section 38 (Contributions by members of the corporation) continues to apply to the corporation; and

(b) this Act, sections 59 to 65 do not apply to the corporation.

*Note* Sections 59 to 64 require the owners corporation to establish general funds (administration and special purpose funds) and sinking funds. section 65 allows the owners corporation to provide discounts for the early payment of amounts and to charge interest on overdue amounts.

(2) On and after the commencement day, sections 66 to 69 of this Act apply in relation to any amount payable to the owners corporation (whether the amount became payable before, on or after the commencement day).

*Note* Sections 66 to 69 provide revised procedures for recovering amounts payable to the owners corporation.

### **191 Work on behalf of unit owners**

If, before the commencement day, a transitional corporation had entered into an agreement mentioned in the repealed Act, section 45 (Agreements with members), section 47 of that Act (Recovery of cost of certain repairs, etc) continues to apply to the recovery of any amount spent by the corporation under the agreement.

### **192 Articles**

(1) The articles of a transitional corporation, as in force immediately before the commencement day, continue to apply to the corporation, but may be amended in accordance with this Act.

(2) If, before the commencement day, there was a breach of the articles of a transitional corporation—

(a) the repealed Act, section 43 (Breaches of articles may be remedied) continues to apply to the breach; and

(b) this Act, section 129 (Breaches of articles—remedy) does not apply to the breach.

### **193 Insurance**

Until the first annual general meeting of a transitional corporation on or after the commencement day—

**Part 16**                      Repeals and transitional

Section 194

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- (a) the repealed Act, part 6 (Insurance) continues to apply to the corporation; and
- (b) this Act, part 8 (Insurance) does not apply to the corporation.

**194 Expiry of pt 16**

This part expires 18 months after the commencement day.

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## Schedule 1 Administrative review

(see s 173)

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
1	20 (4)	refusal to approve a unit title application on the grounds of inconsistency with the heritage places register	lessee of the parcel
2	21 (1)	determination of a reasonable rent to be reserved under the lease of a unit in a units plan	lessee of the parcel
3	22	amendment of a development statement	lessee of the parcel
4	29	amendment of a development statement before registration of the units plan	each person with an interest in the parcel
5	29	refusal to amend a development statement before registration of the units plan	each person with an interest in the parcel
6	29 (5)	amendment of a schedule of unit entitlement in amending a development statement before registration of the units plan	each person with an interest in the parcel
7	30	amendment of a development statement after registration of the units plan.	(a) lessee of the parcel immediately before registration (b) owners corporation (c) each interested nonvoter



Schedule 1 Administrative review

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
8	30	refusal to amend a development statement after registration of the units plan	(a) lessee of the parcel immediately before registration (b) owners corporation (c) each interested nonvoter
9	30 (5) (a)	authorisation of amendment of a schedule of unit entitlement in amending a development statement after registration of the units plan	(a) lessee of the parcel immediately before registration (b) owners corporation (c) each interested nonvoter
10	146	refusal to grant unit entitlement authority	owners corporation
11	146	grant of unit entitlement authority otherwise than as applied for	owners corporation
12	146 (4) (b)	grant of shorter extended period than applied for, for which a unit entitlement authority is to remain in force	owners corporation
13	149	grant of boundary authority	(a) owners corporation (b) each interested nonvoter
14	149	refusal to grant boundary authority	(a) owners corporation (b) each interested nonvoter
15	149 (4) (b)	grant of shorter extended period than applied for, for which a boundary authority is to remain in force	(a) owners corporation (b) each interested nonvoter
16	154 (4)	grant of certificate about unit redevelopment	applicant for certificate
17	160	grant of cancellation authority	(a) owners corporation (b) each interested nonvoter

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<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
18	160	refusal to grant cancellation authority	(a) owners corporation (b) each interested nonvoter
19	160 (4) (b)	grant of shorter extended period than applied for, for which a cancellation authority is to remain in force	(a) owners corporation (b) each interested nonvoter
20	160 (5)	grant of cancellation authority including a declaration of provisions that are to govern the new lease arising under section 163	(a) owners corporation (b) each interested nonvoter

## Dictionary

(see s 3)

***address for correspondence***, of a company, means the address of the company's office, as registered under the law under which the company is incorporated (if that law so provides).

***administration order***—see section 140 (Who may apply for an administration order?).

***administrative fund***—see section 59 (1).

***administrator***, of an owners corporation, means a person who is appointed as the administrator of the corporation under part 9 (Administrators).

***annexed***—a unit subsidiary or an easement that is stated under this Act to be annexed to a unit, common property or an estate in leasehold is taken to be appurtenant to the unit, common property or estate.

*Note* Property in a unit subsidiary or easement that is, at law, 'appurtenant' to a unit, common property or a leasehold estate is transferred with that estate when the unit, common property or lease is transferred.

***benefited estate***—see section 35 (Easements given by this Act) and section 36 (Easements declared by owners corporations).

***boundary authority***—see section 149.

***building*** includes—

- (a) a structure; and
- (b) any other improvement (including fixtures, fittings and site improvements); and

- (c) as shown in a unit title application—a building, structure or improvement (including fixtures, fittings and site improvements) proposed to be erected, or as proposed to be altered or added to.

**Examples of site improvements**

- 1 A paved path.
- 2 A paved barbecue area.

***building damage scheme***—see section 152.

***burdened estate***—see section 35 (Easements given by this Act) and section 36 (Easements declared by owners corporations).

***cancellation authority***—see section 160.

***cancellation dissolution order***—see section 165 (Dissolution of owners corporations—variation of effects by Magistrates Court order).

***class A unit***—see section 10.

***class B unit***—see section 11.

***common property***—see section 13.

***company*** includes any body corporate.

***company representative***, for a company that is the owner or a part-owner of a unit—see section 43 (Company-owned units—authorisation of representatives).

***contribution*** means a contribution to a general fund or the sinking fund of an owners corporation.

***corporate register***—see section 70.

***deadlock order***—see section 123.

***default articles***—see section 126 (1) (a).

***development***, of a parcel, a unit or common property—

- (a) means the erection, alteration or addition of a building on the parcel, unit or common property; and
- (b) for a unit title application—includes a proposal for the erection, alteration or addition of a building on the parcel, unit or common property.

**development covenant** means a covenant of a lease requiring the lessee to carry out works on the leased land or on adjacent unleased land.

**development statement** means a statement about a staged development, accompanying a unit title application (as amended under section 22 (Unit title applications—Ministerial amendment of development statement), or amended under section 29 (Amendment of development statements before registration) or section 30 (Amendment of development statements after registration)).

**eligible person**, for a unit or common property in relation to which access to information is required, means—

- (a) the owner, or another person with an interest in the unit, or in an easement over the common property; or
- (b) for a unit that is owned, or part-owned, by a company—the representative of the company; or
- (c) anyone authorised in writing by a person mentioned in paragraph (a) or (b); or
- (d) if access to the information is necessary or desirable for the administration of this Act—the Minister.

**entitled to vote**—see section 110.

**estate**, in relation to a unit title easement right given by this Act, means the unit or common property benefited or burdened by the right.

*Note* See div 4.2 (Easements) (which defines **unit title easement rights** in s 34 and **benefited estate** and **burdened estate** in s 35 and s 36).

***executive committee***, of an owners corporation, means the executive committee of the corporation established under section 81.

***executive member*** means a member of an executive committee.

***expiry dissolution order***—see section 169 (Dissolution of owners corporation on lease expiry—variation of effects by Magistrates Court order).

***final building damage order***—see section 157.

***financial year***, for an owners corporation, means—

- (a) a period of 12 months beginning on 1 July; or
- (b) any other period of 12 months decided by the owners corporation.

***former members***, of an owners corporation that is dissolved, means the people who were the members of the corporation immediately before the dissolution.

***full name***, of a company, means the full name of the company together with the full name of its secretary or public officer (or an equivalent office-holder).

***general fund***, of an owners corporation, means—

- (a) the administrative fund of the corporation (see section 59 (1)); or
- (b) a special purpose fund of the corporation (see section 59 (2)).

***general funds budget***—see section 59 (5).

***GST***—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

***improved value***, for calculating the unit entitlement of a unit (whether before or after the registration of the units plan) means—

- (a) for a class A unit—the total of the following values:
  - (i) the value of the unit itself;

- (ii) for any unit subsidiaries annexed to the unit that are buildings or parts of buildings—the value of the buildings or parts of buildings;
  - (iii) for any unit subsidiaries annexed to the unit that are constituted by land—the combined value of the land and all buildings on the land; or
- (b) for a class B unit—the total of the following values:
- (i) the combined value of the land occupied by the unit itself and of all buildings on the land;
  - (ii) for any unit subsidiaries annexed to the unit that are buildings or parts of buildings—the value of the buildings or parts of buildings;
  - (iii) for any unit subsidiaries annexed to the unit that are constituted by land—the combined value of the land and all buildings on the land.

*interest*, in a unit or common property, means a legal or equitable estate or interest (whether registered or unregistered) in the lease of the unit or of the common property, except an interest in a sublease of a unit.

*interested nonvoter*—a person with an interest in a unit or the common property is an *interested nonvoter* in relation to an application under this Act for amendment of a development statement (under section 30), a boundary authority (under section 149) or a cancellation authority (under section 160) if—

- (a) the interest was shown on the corporate register (or known to an executive member) when the application was made; and
- (b) either—
  - (i) the person's interest was in a unit (otherwise than as mortgagee) or the common property when the resolution authorising the application was passed, but the person was not entitled to vote on the resolution; or

- (ii) the person's interest was as mortgagee in a unit when the resolution authorising the application was passed, but the mortgagee was not entitled to vote on the resolution through a mortgagee's representative.

**Examples of interested nonvoters**

- 1 The proprietor of a property adjoining the parcel on which the units stand, if the property benefits from an easement over the common property, and the proprietor's easement interest is shown on the corporate register.
- 2 For paragraph (b) (i)—A part-owner of a unit that is owned by 2 or more people, if the part-owner was not the representative for the unit when the application was authorised at a general meeting. The part-owner would not have been 'entitled to vote' under section 110.
- 3 For paragraph (b) (i)—An owner of a unit for which a mortgagee has issued a mortgagee voting notice under section 112. The owner would not have been 'entitled to vote' under section 110.
- 4 For paragraph (b) (ii)—The mortgagee of a unit who was not entitled to vote on the motion authorising the application because the mortgagee did not (or was not entitled to) issue a mortgagee voting notice under section 112.

***interested party***, in an administration order—see section 140 (Who may apply for an administration order?).

***Land Act*** means the *Land (Planning and Environment) Act 1991*.

***lease*** means—

- (a) for a unit—the lease of the unit under section 33 (2) (Leases of units and common property) or section 171 (2) (New unit lease); or
- (b) for common property—the lease of the common property under section 33 (3) (Leases of units or common property); or
- (c) for a parcel—the lease of the parcel granted under, or continued in force by, the Land Act, or the lease arising under section 162 (Cancellation of units plan—effects) of this Act.

***lessee*** means—

- (a) for a unit—the owner of the unit; or
- (b) for the common property—the owners corporation; or



- (c) for a parcel—the registered proprietor of the lease of the parcel.

***maintenance***, of a building, a facility for a utility service or a utility conduit, means maintenance in good repair and working order, and includes—

- (a) repair; and  
(b) replacement; and  
(c) renewal; and  
(d) restoration.

***minor boundary change***—see section 16.

***mortgage*** means a registered mortgage, or a registered encumbrance, within the meaning of the *Land Titles Act 1925*.

***mortgagee*** means—

- (a) for a unit—the registered proprietor of a mortgage of the lease of the unit; or  
(b) in any other case—the registered proprietor of a mortgage.

***mortgagee's representative***, for a mortgagee that has issued a mortgagee voting notice—see section 112 (Voting by mortgagees).

***mortgage insurance policy***—see section 134 (Mortgage insurance of unit).

***mortgagee voting notice***—see section 112 (Voting by mortgagees).

***ordinary resolution*** means a resolution of a general meeting passed as required by section 105.

***owner*** means—

- (a) for a unit—the registered proprietor of the lease of the unit; or

*Note* The term unit owner is also defined in the dictionary with the same meaning.

(b) for common property—the owners corporation.

**owners corporation** means a corporation established under section 38.

**parcel**—see section 5.

**part owner**, of a unit, means ownership of the unit as a tenant in common or as a joint owner.

**proportional share**, of a contribution payable for a unit, is the proportion of the total contributions payable for all units worked out as follows:

$$\text{total contributions} \times \frac{\text{unit entitlement of the unit or group of units}}{\text{total unit entitlement}}$$

**proprietor**, of an interest in land, includes anyone who is entitled to exercise the rights of the proprietor in relation to the land.

#### Examples

- 1 Someone to whom the proprietor has assigned those rights.
- 2 The heir, executor or administrator of the proprietor.
- 3 The trustee in relation to the proprietor's interest under the *Bankruptcy Act 1966* (Cwlth).
- 4 For a company that is a proprietor, the company's liquidators.

**provisional building damage order**—see section 154.

**provisions**, of a lease, means the provisions, covenants and conditions subject to which the lease is held.

**reduced quorum**—see section 99 (Quorum at a general meeting—owners corporations with 3 or more members).

**reduced quorum decision**—see section 100 (Notice of reduced quorum decisions and adjournments).

**registered** means registered with the registrar-general under the *Land Titles Act 1925* or the *Land Titles (Unit Titles) Act 1970*.

**representative**—

- (a) for the owners of a unit owned by 2 or more people (whether as joint tenants or tenants in common)—see section 41 (Multiple owners of units—authorisation of representatives); or
- (b) for a company that is the owner or a part-owner of a unit—see section 43 (Company-owned units—authorisation of representatives); or
- (c) for a mortgagee that has given a mortgagee voting notice to an owners corporation—see section 112 (Voting by mortgagees).

**reviewable decision**—see section 173 (Decisions subject to review).

**schedule of unit entitlement**—see section 8 (Unit entitlement).

**sinking fund**—see section 61.

**special purpose fund**—see section 59 (2).

**special resolution** means a resolution of a general meeting passed as required by section 106.

**staged development**, in relation to a unit title application—see section 17 (3) (Unit title applications—general requirements).

**standard quorum**—see section 99 (Quorum at a general meeting—owners corporations with 3 or more members).

**termination**, of a lease of a unit, does not include the termination of the lease on surrender under the Land Act, section 172A.

**total sinking fund amount**—see section 63 (1) (Sinking funds—annual payments).

**unanimous resolution** means a resolution of a general meeting passed as required by section 108.

**unit**—see section 9.

**unit entitlement**—see section 8.

**unit entitlement authority**—see section 146.

**unit owner** means the registered proprietor of the lease of the unit.

***unit owners' representative***, for a unit owned by 2 or more people—see section 41 (Multiply-owned units—authorisation of representatives);

***units plan***—see section 7.

***unit subsidiary***—see section 12.

***unit title application***—see section 17.

***unit title certificate***—see section 75.

***unit title easement rights***—see section 34.

***unopposed resolution*** means a resolution of a general meeting passed as required by section 107.

***utility conduit*** means a conduit of any kind for the provision of a utility service, and includes, for example, pipes, wires, cables and ducts for a utility service.

***utility services*** includes—

- (a) the collection and passage of stormwater; and
- (b) the supply of water (for drinking or any other use); and
- (c) sewerage and drainage services; and
- (d) garbage collection services; and
- (e) gas, electricity and air services (including airconditioning and heating); and
- (f) communication services (including telephone, radio and television).

***voting value***—see section 116 (2) (Value of votes).

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the Legislation Act 2001, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

**Unit Titles Act 2001 Act 2001 No 16**

notified 5 April 2001 (Gaz 2001 No 14)  
s 1, s 2 commenced 5 April 2001 (IA s 10B)  
s 182, s 185 and s 189 commenced 5 April 2001 (s 2)  
remainder (ss 3-181, s 183, s 184, ss 186-188 and ss 190-194)  
commenced 5 October 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 Act 2001 No 44 pt 401**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 401 commenced 5 October 2001 (see s 2 (2) and amdts 1.4149-1.4161)

**Statute Law Amendment Act 2001 (No 2) Act 2001 No 56 pt 3.51**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 12 September 2001 (s 2 (2), amdt 3.859 and amdt 3.860)

**Community Title Act 2001 Act 2001 No 58 s 103**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
s 103 awaiting commencement (s 2)

### 4 Amendment history

**Commencement**

s 2 om R1 (LA s 89 (4))

**Unit title applications—general requirements**

s 17 am 2001 No 44 amdt 1.4149

**Unit title applications—approval**

s 20 am 2001 No 44 amdt 1.4150, amdt 1.4151

**Security for staged developments and unfinished work**

s 24 am 2001 No 44 amdt 1.4152, amdt 1.4153

**Amendment of development statements before registration**

s 29 am 2001 No 44 amdt 1.4154

**Amendment of development statements after registration**

s 30 am 2001 No 44 amdt 1.4154

## Endnotes

4 Amendment history

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### **Dealings in property**

s 48 [am Act 2001 No 58 s 103](#)

### **Unit title certificate and access to owners corporation records**

s 75 am 2001 No 44 amdt 1.4155, amdt 1.4156

### **Owners corporation name, address and letterbox**

s 78 am 2001 No 44 amdt 1.4157

### **Notice of reduced quorum decisions and adjournments**

s 100 am 2001 No 44 amdt 1.4158, amdt 1.4159

### **Application of Legislation Act**

s 130 hdg sub Act 2001 No 56 amdt 3.859

s 130 am Act 2001 No 56 amdt 3.860

### **Unit entitlement authority—grant**

s 146 am 2001 No 44 amdt 1.4160

### **Boundary authority—grant**

s 149 am 2001 No 44 amdt 1.4160

### **Provisional building damage order—application**

s 154 am 2001 No 44 amdt 1.4160

### **Cancellation authority—grant**

s 160 am 2001 No 44 amdt 1.4160

### **Determination of fees**

s 179 sub 2001 No 44 amdt 1.4161

### **Approved forms**

s 180 sub 2001 No 44 amdt 1.4161

### **Regulation-making power**

s 181 sub 2001 No 44 amdt 1.4161

### **Repeals and transitional**

pt 16 hdg [exp 5 April 2003 \(s 194\)](#)

### **Definitions for pt 16**

s 182 [exp 5 April 2003 \(s 194\)](#)

### **Repeal of Unit Titles Act 1970 and Unit Titles Regulations**

s 183 [exp 5 October 2001 \(LA s 89 \(3\)\)](#)

### **Units plans, corporations and committees**

s 184 [exp 5 April 2003 \(s 194\)](#)

### **Mixed class A and class B unit title proposals**

s 185 [exp 5 April 2003 \(s 194\)](#)

### **Transitional unit title proposals**

s 186 [exp 5 April 2003 \(s 194\)](#)

**Transitional unit title approvals**s 187 [exp 5 April 2003 \(s 194\)](#)**Representatives—multiply-owned units and company-owned units**s 188 [exp 5 April 2003 \(s 194\)](#)**General meetings notified before commencement day**s 189 [exp 5 April 2003 \(s 194\)](#)**Finances of transitional corporations**s 190 [exp 5 April 2003 \(s 194\)](#)**Work on behalf of unit owners**s 191 [exp 5 April 2003 \(s 194\)](#)**Articles**s 192 [exp 5 April 2003 \(s 194\)](#)**Insurance**s 193 [exp 5 April 2003 \(s 194\)](#)**Expiry of pt 16**s 194 [exp 5 April 2003 \(s 194\)](#)

## 5 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Community Title Act 2001 No 58 s 103**

### 103 Unit Titles Act 2001, new section 48 (3) (d)

*insert*

- (d) an interest in the common property of a community title scheme that includes the land subdivided by the units plan.



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