



Australian Capital Territory

Unit Titles Act 2001

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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* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

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

Kinds of republications

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

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Penalties

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

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



Australian Capital Territory

Unit Titles Act 2001

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
3	Dictionary 2
4	Notes 2
Part 2	Key concepts
Division 2.1	Unit title developments
5	Parcels 3
6	Unit title application 3
7	Units plan 3
8	Unit entitlement 4
9	Units 4
10	Class A units 4
11	Class B units 4

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Unit Titles Act 2001
Effective: 02/02/09-30/03/09

contents 1

Contents

	Page
12	5
12A	5
13	5
Division 2.2	Boundaries
14	6
15	6
16	6
Part 3	Unit title applications
Division 3.1	Approval of unit title applications
17	8
18	9
19	9
20	10
21	12
22	13
Division 3.2	Endorsement of units plan for registration
23	13
24	14
25	15
26	15
27	15
28	16
Division 3.3	Amendment of development statements
29	17
30	19
31	22

	Page
Division 3.4	Developer disclosure
Part 4	Registration of units plans
Division 4.1	Subdivision, unit leases and common property lease
32	Subdivision of parcel made by registration 23
33	Leases of units and common property 23
Division 4.2	Easements
34	Unit title easement rights 24
35	Easements given by this Act 25
36	Easements declared by owners corporations 25
37	Registration—easements declared by owners corporations 26
Division 4.3	Encroachments on public places
37A	Effect of registration of units plan with encroachment on public place 27
Part 5	Owners corporations generally
Division 5.1	Establishment and legal status of owners corporation
38	Establishment of owners corporations 28
39	Legal status of owners corporation 28
Division 5.2	Membership and representatives
40	Members of owners corporation 28
41	Multiple owners of units—authorisation of representatives 29
42	Multiple owners of units—functions of representatives 30
43	Company-owned units—authorisation of representatives 31
44	Company-owned units—functions of representatives 32
45	Evidence of representative status 33
Division 5.3	General functions
46	General functions 33
46A	Restriction on owners corporation during developer control period 33
47	Common property ownership 34
48	Dealings in property 34
49	Special privileges relating to common property 35
50	Exemptions for units plans with 4 or fewer units 35

Contents

	Page
51	36
51A	38
51B	38
51C	38
52	38
53	38
54	39
55	40
Division 5.3A	People appointed by owners corporation to help run owners corporation
Division 5.3B	Service contractors
Subdivision 5.3B.1	Service contractor—contract and functions
55J	40
55K	41
55L	42
55M	42
55N	43
55O	44
55P	45
Subdivision 5.3B.2	Service contractor—protection of contract financier
55Q	46
55R	46
55S	47
55T	47
55U	48
55V	49
Division 5.4	Finances of owners corporation
55W	50
56	50
57	50
58	51

	Page
59	51
60	52
61	53
62	55
63	55
63A	56
63B	56
64	56
64A	58
65	58
66	59
67	59
68	60
69	61
Division 5.5 Information	
70	61
71	62
72	64
73	65
74	65
75	66
76	67
77	67
78	68
79	68
80	69
Part 6 Decision-making by owners corporations	
Division 6.1 Executive committee	
81	71
82	71
83	71
84	72

Contents

	Page
85	Meetings of executive committee 73
86	Quorum of executive committee 73
87	Chairperson of executive committee 73
87A	Executive committee—chairperson’s functions 74
87B	Executive committee—secretary’s functions 74
87C	Executive committee—treasurer’s functions 74
88	Voting of executive committee 74
88A	Decisions about staged development 74
88B	Decisions about use of common property 75
88C	Decisions about taking legal action 75
88D	Taking urgent legal action 75
89	Delegation by executive committee 75
90	Agents, employees and contractors 75
91	Minutes, records and accounts 76
92	Validity of acts of executive committee 77
Division 6.2 General meetings	
93	Conduct of general meetings 78
94	Annual general meetings 78
95	First annual general meeting 78
95A	First annual general meeting—developer to deliver records 78
96	General meetings other than annual general meetings 78
97	Notice of general meetings 79
98	Defective notice of meetings 80
99	Quorum at a general meeting—owners corporation with 3 or more members 81
100	Notice of reduced quorum decisions and adjournments 82
101	Reduced quorum decisions—effect 83
102	Quorum at a general meeting—owners corporation with 2 members 83
103	Chairperson at a general meeting 84
Division 6.3 Resolutions at general meetings	
104	Decision-making at general meetings 84
105	Ordinary resolutions 84
106	Special resolutions 85
107	Unopposed resolutions 86

	Page
108 Unanimous resolutions	87
109 Evidence of resolutions of owners corporation	87
Division 6.4 Voting at general meetings	
110 Who is entitled to vote?	88
110A Decisions about staged development	88
111 One vote—1 unit	89
112 Voting by mortgagees	89
113 Mortgagee voting notice—amendment and revocation	90
114 Evidence of mortgagee's entitlement to vote	91
115 Proxy votes	91
115A Proxy votes—limit on developer	92
116 Value of votes	92
117 Polls	92
118 Voting by chairperson	92
119 Owners corporations with only 2 members—votes divided	93
120 Absentee votes—unopposed and unanimous resolutions	93
121 People under 18 or under other legal disabilities	93
122 Declaration by chairperson of result of voting	94
Division 6.5 Dispute resolution	
123 What is an <i>ACAT dispute</i> ?	94
124 Who may apply to the ACAT?	96
125 Kinds of ACAT orders	96
Part 7 Owners corporation articles	
126 What are the articles of an owners corporation?	98
127 Effect of articles	99
128 Amendment of articles	99
129 Breach of articles—article infringement notice	100
129A Breach of articles—failure to comply with article infringement notice	101
129B Breach of articles—request for article infringement notice	102
130 Application of Legislation Act	102

	Page	
Part 7A	Implied warranties	
Part 8	Insurance	
131	Public liability insurance by owners corporation	103
132	Building insurance by owners corporation	103
133	Exemptions from building insurance requirements	104
134	Mortgage insurance of unit	104
135	Payment under mortgage insurance policies	105
136	Transfer of mortgagee's interest to insurer	105
137	Application of insurance money by owners corporation	106
138	Additional insurance—owners corporation	106
139	Additional insurance—unit owners	106
Part 9	Administrators	
Division 9.1	Interested parties	
140	Who may apply for an administration order?	107
141	ACAT appearances and service of applications	107
Division 9.2	Appointment, removal and functions	
142	Appointment of administrator	108
143	Removal or replacement of administrator	108
144	Functions of administrator	109
145	Delegation by administrator	109
Part 10	Amendment of units plans	
Division 10.1	Amendment of schedule of unit entitlement	
146	Unit entitlement authority—grant	110
147	Unit entitlement authorities—period of effect	111
148	Unit entitlement authorities—registration	111
Division 10.2	Minor boundary changes	
149	Boundary authority—grant	111
150	Boundary authority—period of effect	113
151	Boundary authorities—registration	113

	Page
Division 10.3	Building damage schemes
152	What is a <i>building damage scheme</i> ? 113
153	Building damage orders—right of appearance 114
154	Provisional building damage order—application 115
155	Provisional building damage order—approval of scheme 116
156	Provisional building damage order—period of effect 117
157	Final building damage order—amendment of units plan 117
158	Final building damage order—period of effect 117
159	Final building damage order—registration 118
Part 11	Cancellation of units plans
Division 11.1	Cancellation authority
160	Cancellation authority—grant by planning and land authority 119
161	Cancellation authority—period of effect 120
Division 11.2	Cancellation orders
161A	Cancellation orders—Supreme Court powers 121
161B	Cancellation orders—provisional orders 122
161C	Cancellation orders—after provisional order is made 122
161D	Cancellation orders—right of appearance 123
Division 11.3	Effects of cancellation
162	Cancellation of units plan—effects 123
163	Cancellation of units plan—new lease over parcel 124
164	Dissolution of owners corporation 125
165	Dissolution of owners corporation—Supreme Court powers 125
Part 11A	Changing 2-unit units plans to subdivisions
Part 12	Variation of unit leases
166	Development applications to vary lease under Planning and Development Act 128
167	Lease variation—amendment of schedule of unit entitlement 128
Part 13	Expiry and termination of unit leases
168	Effects of lease expiry 130

Contents

	Page
169	Dissolution of owners corporation on lease expiry—Supreme Court powers 131
170	Effect of termination of unit lease 132
171	New unit lease 133
172	New unit lease—schedule of unit entitlement 134
Part 14	Notification and review of decisions
173	Definitions—pt 14 135
173A	Internal review notices 135
174	Objections 136
174A	Internal reviewer 137
175	Review by internal reviewer 137
176	Reviewable decision notices 137
177	Effect of decision to allow objection 138
177A	Applications for review 138
Part 15	Miscellaneous
178	Removal of matters from ACAT to Supreme Court 139
179	Determination of fees 139
180	Approved forms 139
181	Regulation-making power 140
Part 20	Transitional—Unit Titles Amendment Act 2008 (No 2)
Schedule 1	Reviewable decisions 141
Dictionary	145
Endnotes	
1	About the endnotes 156
2	Abbreviation key 156
3	Legislation history 157

Contents

		Page
4	Amendment history	159
5	Earlier republications	172
6	Uncommenced amendments	173



Australian Capital Territory

Unit Titles Act 2001

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

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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

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

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, 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 the Legislation Act, 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) if the application provides for a staged development—the development statement;
 - (c) the schedule of unit entitlement;
 - (d) 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 encroachment, whether at, 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 by regulation, or as a building (or part of a building) or land suitable for a purpose prescribed by regulation (see s 19 and *Unit Titles Regulation 2001*, s 3).

12A Meaning of *annexed*

A unit subsidiary or an easement that is stated by 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.

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

U 17 Unit title applications—general requirements

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

Note 1 A fee may be determined under s 179 for this section.

Note 2 If a form is approved under s 180 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—

- (a) the development has development approval under the *Planning and Development Act 2007* (see s 20 (2) and *Planning and Development Act 2007*, ch 7); and
- (b) 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) a certificate from a registered surveyor describing the degree to which any building (including an attachment to a building) on, or being constructed on, the parcel is situated in accordance with the application; and
 - (b) if any existing or proposed attachment to a building on the parcel encroaches, or would encroach, on a public place—a plan prepared by a registered surveyor that shows—
 - (i) the nature and extent of the encroachment; and
 - (ii) whether the encroachment is for use with a unit or the common property; and
 - (iii) if the encroachment is for use with a unit—the unit to which the encroachment relates.

Note *Attachment, encroachment* and *public place*—see the dictionary.

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 encroachment at, above or 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 by regulation; or
- (b) a building, part of a building, or land, that is suitable for a purpose prescribed by regulation.

Note See the *Unit Titles Regulation 2001*, s 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 encroachment at, above or 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 planning and land authority 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; and
 - (d) if the application shows an encroachment on a public place by an attachment to a building—

- (i) if the attachment exists on the day the application is lodged with the authority—the attachment is an authorised existing attachment; or

Note **Authorised existing attachment**—see s (7).

- (ii) in any other case—
 - (A) the encroachment would not endanger public safety or unreasonably interfere with the amenity of the neighbourhood; and
 - (B) it is not in the public interest to refuse to approve the application because of the encroachment.

- (2) The planning and land authority may approve a unit title application that provides for a staged development only if satisfied that—
 - (a) the development has development approval under the *Planning and Development Act 2007*, chapter 7; and
 - (b) for a staged development of class A units—the boundary floors, walls and ceilings of each unit in the first stage have been built in accordance with the development statement.
- (3) The planning and land authority may refuse to approve the application if the lessee is in breach of the lease, or of a provision of (or requirement under) the *Planning and Development Act 2007* that applies because the lessee is the lessee of the parcel.
- (4) The planning and land authority may refuse to approve the application if the proposed subdivision would be inconsistent with the requirements of the heritage register.
- (5) If a parcel is leased for rural purposes, the planning and land authority may approve the application only if—
 - (a) criteria have been determined by the authority 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.

- (7) In this section:

authorised existing attachment, in relation to a unit title application, means—

- (a) if the application includes the cancellation of a units plan (the ***old plan***) that was registered before 1 January 2002—the old plan shows the attachment; or
- (b) in any other case—the attachment was lawful when it was constructed.

first stage, for a staged development of class A units, means the stage identified as the first stage in the development statement.

21 Unit title applications—reasonable rent

- (1) If the planning and land authority 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 authority 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 planning and land authority'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 planning and land authority's determination, equals the rent payable under the lease of the parcel when the determination is made, a decision (under part 14 (Notification and review of decisions)) on an objection or review of the authority's determination must not change the total amount.

22 Unit title applications—amendment of development statement by authority

If a unit title application provides for a staged development, the planning and land authority may, before approving the application under section 20, amend the development statement if the authority 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

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

Division 3.2 Endorsement of units plan for registration

23 Notice of approval of unit title applications

- (1) If the planning and land authority approves a unit title application for a parcel, the authority 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 authority, 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 planning and land authority 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 planning and land authority’s opinion) will not be complete when the units plan is endorsed under section 27.

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

- (2) If this section applies, the planning and land authority 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 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 planning and land authority.

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.

27 Endorsement of units plan for registration

- (1) If the planning and land authority has approved a unit title application, the lessee of the parcel may submit to the authority for endorsement under this section a units plan consisting of the following documents:
 - (a) diagrams showing the subdivision as approved (including the nature and extent of any encroachment mentioned in section 20 (1) (d) (Unit title applications—approval));
 - (b) if the application provides for a staged development—
 - (i) the development statement as approved; or
 - (ii) if the development statement has been amended under section 29—the development statement as amended;
 - (c) the schedule of unit entitlement as approved;

- (d) 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 planning and land authority 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 authority (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 *Planning and Development Act 2007* that applies because the lessee is the lessee of the parcel; or
 - (c) the documents submitted to the authority 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 that Act, section 26—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 planning and land authority for endorsement under section 27.
- (3) If the lessee of the parcel again submits the units plan to the planning and land authority 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 planning and land authority for the amendment of the development statement.

Note 1 A fee may be determined under s 179 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

- (2) The planning and land authority 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 planning and land authority may amend the development statement despite the applicant's failure to obtain an interested person's agreement if the authority 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 planning and land authority may refuse to amend the development statement if, in the authority'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

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

- (5) If the amendment of the development statement requires the change of boundaries, the planning and land authority 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.

U 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 planning and land authority for the amendment of the development statement.

Note 1 A fee may be determined under s 179 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

- (2) If the amendment of the development statement only affects an uncompleted stage of a staged development, the planning and land authority 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 a unit in that part of the parcel comprising the uncompleted stages of the development (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 within the uncompleted stages of the development.
- (3) The planning and land authority may amend the development statement under subsection (2) despite the applicant's failure to obtain an interested person's agreement if the authority 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 that part of the parcel comprising the uncompleted stages of the development.
- (4) If subsection (2) does not apply, the planning and land authority 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 authority; and
 - (b) the applicant has obtained the written agreement of each interested nonvoter (except any interested nonvoter to whom subsection (5) applies); and
 - (c) any change of unit or common property boundaries provided for by the amendment is a minor boundary change.
- (5) The planning and land authority may amend the development statement under subsection (4) despite the applicant's failure to obtain an interested nonvoter's agreement if the authority 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.

- (6) The planning and land authority may refuse to amend the development statement if, in the authority'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

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

- (7) The planning and land authority may authorise the amendment of the schedule of unit entitlement to reflect a change of boundaries if—
- (a) the amendment of the development statement requires the change of boundaries; and
 - (b) the authority is satisfied, on reasonable grounds, that the amendment is necessary to reflect accurately a change in the relative improved values of the units.
- (8) If the planning and land authority authorises the amendment of the schedule of unit entitlement under this section—
- (a) the authority must—
 - (i) endorse the amended schedule of unit entitlement; and
 - (ii) give a notice of authorisation to the lessee; and
 - (b) the lessee must lodge with the registrar-general—
 - (i) the endorsed amended schedule of unit entitlement; and
 - (ii) the notice of authorisation.

- (9) If the planning and land authority amends the development statement under this section—
- (a) the authority must endorse the amended development statement; and
 - (b) the lessee must lodge with the registrar-general the endorsed amended development statement.

31 Effect of registration of amendment

- (1) On the registration of an amended development statement, and any amended schedule of unit entitlement, lodged under section 30—
- (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 a lease for the *Planning and Development Act 2007*, chapter 7 (Development approvals).

U Division 3.4 Developer disclosure

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 Territory under the *Planning and Development Act 2007*.
- (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 Territory under the *Planning and Development Act 2007*.
- (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, apart from 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 that section; and
 - (c) is subject to, and has annexed to it, the easements given by this Act, section 35.
- (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 building and development provision (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 by regulation.

- (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.

Division 4.3 Encroachments on public places

37A Effect of registration of units plan with encroachment on public place

- (1) This section applies if—
- (a) a units plan is registered for a parcel; and
 - (b) the plan shows an encroachment on a public place by an attachment to a building on the parcel.

Note *Attachment* and *encroachment*—see the dictionary.

- (2) This Act and the *Land Titles (Unit Titles) Act 1970*, other than the provisions relating to ownership of interests and certificates of title, apply to the encroachment—
- (a) if the units plan shows the encroachment is for use with a unit—as if it were part of the unit; and
 - (b) in any other case—as if it were common property.

Note The *Land Titles (Unit Titles) Act 1970*, s 4 (1) provides that it is incorporated with and must be read as one with the *Land Titles Act 1925*.

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)).

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).

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

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.

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).

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

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 address for correspondence for the representative 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.

46A Restriction on owners corporation during developer control period

- (1) An owners corporation for a units plan must not, during the developer control period, do any of the following:
 - (a) enter into a contract unless—
 - (i) the contract is disclosed in each contract to sell a unit in the units plan; and
 - (ii) either—
 - (A) the contract is for a period not longer than 2 years; or
 - (B) the ACAT authorises the corporation entering into the contract;

- (b) change the articles of the corporation;
 - (c) approve the keeping of an animal by a member of the units plan in the member's unit unless the right to keep an animal was reserved in each contract to sell a unit in the units plan.
- (2) A developer or, if an owners corporation is established for the units plan, the owners corporation may apply to the ACAT for the authority to enter a contract during the developer control period.
 - (3) The ACAT may authorise the owners corporation entering into the contract if satisfied that the terms of the contract are reasonable in all the circumstances.

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

U 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 by regulation.

- (2) An exemption may be revoked by special resolution.

U 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 ACT.
- (3) An owners corporation must maintain the following:
- (a) for a staged development—the common property included in a completed stage of the development;
 - (b) for a development that is not a staged development—the common property;
 - (c) all other property that it holds;
 - (d) 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)).
 - (e) all facilities associated with the provision of the utility services mentioned in section 35 (Easements given by this Act), including utility conduits;
 - (f) 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);

- (g) as authorised by a special resolution (if any)—all buildings on all class B units on the units plan.

Example for par (g)

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.

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

- (4) An owners corporation's responsibility (under subsection (3) (d)) 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) (e) 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 building and development provision, subsection (3) does not apply to the owners corporation until the planning and land authority issues a certificate under the *Planning and Development Act 2007*, section 296 (Certificates of compliance)—
- (a) for the building and development provision; and
 - (b) for any building and development provision to which any of the other leases are 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.

U 51A Animals—owners corporation’s consent

U 51B Structural defects—owners corporation may represent members

U 51C Owners corporation—entry to units

U 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.

U 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.

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

Division 5.3B Service contractors

Subdivision 5.3B.1 Service contractor—contract and functions

55J Definitions—div 5.3B

In this division:

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

service contractor means a person—

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

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

55K Service contractor—contract

- (1) An owners corporation may, by ordinary resolution, enter into a service contract with a person.
- (2) To remove any doubt, an owners corporation also enters into a service contract if the corporation appoints a person to carry out service contractor services.
- (3) However, the owners corporation must not enter into a service contract with a service contractor for a period longer than 3 years (including any period for which the service contractor may renew or extend the contract) unless—
 - (a) the contract is made by special resolution after the end of the developer control period for the units plan; or
 - (b) each of the following applies:
 - (i) the ACAT is satisfied that the contract is reasonably required for the purpose for which the units plan is intended and authorises the contract before any unit in the units plan is sold, or any agreement for sale has been entered into;
 - (ii) the contract is disclosed by the developer in each sale contract entered into after the contract is made.
- (4) A service contract entered into in breach of subsection (3) is void.

- (5) In deciding whether a service contract is reasonably required for the purpose for which the units plan is intended, the ACAT must consider the following:
- (a) the layout of each building making up the units plan;
 - (b) whether the units plan is to be used for residential, commercial or other purposes;
 - (c) the kind of people likely to purchase units in the units plan;
 - (d) how management of the units plan is intended to operate.
- (6) In this section:
units plan includes part of a units plan.

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

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

55M Service contractor—functions

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

- (a) managing the common property or part of the common property;

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

55N Service contractor—transfer

- (1) A service contractor's rights under a service contract may be transferred only if the transfer is approved by the owners corporation by ordinary resolution.
- (2) In deciding whether to approve the proposed transfer, the owners corporation may consider the following:
 - (a) the character of the proposed transferee and associates of the proposed transferee;
 - (b) the proposed transferee's financial standing;
 - (c) the terms of the proposed transfer;
 - (d) the competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
 - (e) whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training;
 - (f) anything else relevant to the service contract.
- (3) The owners corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation receives the application for transfer.
- (4) However, the owners corporation must not—
 - (a) unreasonably withhold the approval to transfer; or
 - (b) require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.

(5) In this section:

associates of the proposed transferee means—

- (a) if the proposed transferee is a corporation—the corporation’s directors, substantial shareholders and principal staff; or
- (b) if the proposed transferee is in partnership—the partners and principal staff of the partnership.

55O Service contractor—ending contract

(1) The owners corporation may end a service contract—

- (a) for a remedial breach if notice has been given under section 55P; or
- (b) for misbehaviour; or
- (c) if the service contractor becomes bankrupt or executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (d) if the service contractor is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or
- (e) if the service contractor is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

(2) However, before ending a service contract under subsection (1) (d) or (e) the owners corporation must be satisfied that the conviction affects the service contractor’s suitability to exercise the contractor’s functions.

- (3) The owners corporation must end a service contract—
- (a) if the service contractor is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the service contractor's functions.
- (4) In this section:
- remedial breach* means a remedial breach under section 55P.

55P Service contractor—remedial breaches

- (1) A service contractor commits a remedial breach if the service contractor—
- (a) fails to exercise the service contractor's functions; or
 - (b) while exercising the service contractor's functions, is grossly negligent or engages in misconduct.
- (2) If the owner's corporation believes on reasonable grounds that a service contractor has committed a remedial breach, the corporation may give the service contractor written notice stating—
- (a) that the corporation believes the service contractor has committed a remedial breach; and
 - (b) details of the remedial breach committed, sufficient to allow the service contractor to identify—
 - (i) the function the service contractor failed to exercise; or
 - (ii) the gross negligence or misconduct; and
 - (c) that the service contractor must, within 14 days after the day the notice is given to the service contractor —

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

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

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

In this subdivision:

financed service contract means a service contract financed by a financier under section 55R.

financier—see section 55R.

55R Who is a *financier* for a service contract?

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

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

55S Financed service contract—notice of change

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

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

55T Financed service contract—limitation on ending

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

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

55U Financed service contract—person authorised to act for financier

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

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

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

- (1) A financier for a financed service contract must not enter into an agreement or other arrangement with the owners corporation under the contract for a matter relating to—
 - (a) the financier’s role for the contract; or
 - (b) arrangements between the financier and service contractor under which the financier is acting, or may act, under the contract in the contractor’s place; or

- (c) the operation of this subdivision in relation to the contract.
- (2) An agreement or arrangement to which this section applies is void to the extent it contravenes this section.

Division 5.4 Finances of owners corporation

U 55W Definitions—div 5.4

56 Banking and investment of money 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, 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.

U 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 (a *special purpose fund*).
- (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 when 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.

U 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 paragraph (b), (c) or (d) that is authorised by a special resolution (under section 51 (3) (g));
 - (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.

U 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 by regulation.
- (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.

U 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 subsection (3), definitions of class A unit share or class B unit share, for the financial year when the annual general meeting takes place.
- (3) In this section:

class A unit share, of general funds budget expenditure, means the following proportion of the 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 the 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).

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

U 63B Sinking funds—review of sinking fund plan

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 when 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 when 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.

64A General and sinking funds in staged developments

- (1) This section applies to a general fund or sinking fund established by an owners corporation for a staged development if the development has not been completed.
- (2) A contribution to a general fund is not payable by the owner of a unit if the unit is in an uncompleted stage of the development.
- (3) A contribution to a sinking fund is not payable by the owner of a unit if the unit is in an uncompleted stage of the development.
- (4) The owners corporation must not pay an amount from a general fund or sinking fund in relation to an uncompleted stage of the development.

U 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 by a company, 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 by regulation (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.

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

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).

U 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) (g)).
- 3 A statement of the articles applicable to the owners corporation.

Note 1 If a form is approved under s 180 for a unit title certificate, the form must be used.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (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 by regulation (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 served on an owners corporation by—

- (a) if the 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

- (b) serving it in another way approved by the corporation by ordinary resolution.

Note The methods of service provided for in this section are in addition to methods of service provided for in the Legislation Act, pt 19.5.

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 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) by serving it in another way directed by the person to be served.

Note The methods of service provided for in this section are in addition to methods of service provided for in the Legislation Act, pt 19.5.

- (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 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 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 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 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.

U **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).

U **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.

U 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—

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

U 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)).

U 87A Executive committee—chairperson’s functions

U 87B Executive committee—secretary’s functions

U 87C Executive committee—treasurer’s functions

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.

88A Decisions about staged development

- (1) This section applies to a meeting of an executive committee of an owners corporation for a staged development if the development has not been completed.
- (2) The executive committee must not decide a matter about the uncompleted stages of the development.

U 88B Decisions about use of common property

U 88C Decisions about taking legal action

U 88D Taking urgent legal action

89 Delegation by executive committee

- (1) An executive committee may delegate its functions to 1 or more executive members.

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

- (2) An owners corporation may, by ordinary resolution, impose conditions or restrictions on its executive committee's powers of delegation.

U 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 by regulation.
- (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 planning and land authority 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 only 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.

U 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.

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

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 only 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 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.

U 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).
- 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)).

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).
- 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)).

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.

Note 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.

Note 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).

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.

Note 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.

Note 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).

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.

110A Decisions about staged development

- (1) This section applies to a motion at a general meeting of an owners corporation for a staged development if the development has not been completed.
- (2) The people entitled to vote on the motion are as follows:

- (a) if the motion is only about an uncompleted stage of the development—the people entitled to vote under section 110 in relation to units in the uncompleted stages of the development;
- (b) if the motion is only about a completed stage of the development—the people entitled to vote under section 110 in relation to units in the completed stages of the development;
- (c) in any other case—the people entitled to vote under section 110.

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 address for correspondence for the representative 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.

U 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)).

U 115A Proxy votes—limit on developer

116 Value of votes

- (1) Every vote at a general meeting is of equal value, unless a poll is taken.
- (2) On a poll, the value of each vote (the *voting value*) is the value that is 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.

U 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 must 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 Dispute resolution

123 What is an *ACAT dispute*?

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

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

column 1 item	column 2 person	column 3 person	column 4 matter
1	an owner or occupier of a unit	an owner or occupier of another unit in the same units plan	
2	an owner or occupier of a unit	an owners corporation	keeping an animal or allowing an animal to be kept
3	an owners corporation	an owner or occupier of a unit in the units plan	
4	an owners corporation	the manager for the owners corporation	
5	an owners corporation	a service contractor for the owners corporation	
6	an owners corporation	a member of the executive committee of the owners corporation	
7	the executive committee	a member of the executive committee	
8	the owners corporation	a person (the <i>former manager</i>) who was the manager for the owners corporation	the return by the former manager of owners corporation property

124 Who may apply to the ACAT?

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

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

125 Kinds of ACAT orders

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

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

Part 7 Owners corporation articles

U 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 by regulation, as amended by the corporation under section 128; and

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

Note 2 If the owners corporation was established under the *Unit Titles Act 1970* (which was repealed by this Act), the articles of the corporation as in force immediately before the day this section commenced continue to apply to the corporation, but may be amended in accordance with this Act (eg, to adopt any or all of the new default articles)—see s 192.
 - (b) for a corporation with 3 members—articles for voting procedures, or for conciliation of disputes, prescribed by regulation; and

Note Conciliation articles are in the *Unit Titles Regulation 2001*, 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 by regulation.

Note These articles are in the *Unit Titles Regulation 2001*, 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) A regulation 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 that Act, section 8.

U 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 Breach of articles—article infringement notice

- (1) This section applies if the executive committee of an owners corporation reasonably believes that—
- (a) the owner or occupier (the *person*) of a unit has contravened a provision of the corporation's articles; and
 - (b) the circumstances of the contravention make it likely that the contravention will continue or be repeated.
- (2) The owners corporation may, if authorised by an ordinary resolution of the executive committee, give the person a notice (an *article infringement notice*) requiring the person to remedy the contravention.
- Note* If a form is approved under s 180 for this provision, the form must be used.
- (3) An article infringement notice must state the following:
- (a) that the owners corporation believes the person is contravening, or has contravened, a provision of the articles;

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

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

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

129B Breach of articles—request for article infringement notice

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

130 Application of Legislation Act

- (1) The Legislation Act 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) Terms used in the articles of an owners corporation have the same meaning as in this Act, unless the contrary intention appears.

U Part 7A Implied warranties

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 by regulation.

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).

- (3) In this section:

parcel, for a staged development, means the whole of the land in the completed stages of the development.

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 by regulation, 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 ACAT 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.

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

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 ACAT 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 ACAT 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 ACAT 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 ACAT 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.

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

- (2) The ACAT 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 ACAT 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 ACAT may, by order, remove or replace an administrator.
- (2) In an order removing or replacing an administrator, the ACAT 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 ACAT 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 ACAT 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

The administrator of an owners corporation may delegate the administrator's functions to anyone else.

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

Part 10 Amendment of units plans

Division 10.1 Amendment of schedule of unit entitlement

U 146 Unit entitlement authority—grant

- (1) An owners corporation may apply to the planning and land authority 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 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

- (2) The planning and land authority 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 planning and land authority 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 planning and land authority 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 *registered*).

Division 10.2 Minor boundary changes

149 Boundary authority—grant

- (1) An owners corporation may apply to the planning and land authority 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 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

- (2) The planning and land authority 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 planning and land authority may grant a boundary authority despite the owners corporation’s failure to obtain an interested nonvoter’s agreement if the planning and land authority 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 planning and land authority 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 *registered*).

- (2) A change of unit or common property boundaries under this section is not a variation of a lease for the *Planning and Development Act 2007*, chapter 7 (Development approvals).

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 ACAT 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 planning and land authority has given—
 - (i) a development approval under the *Planning and Development Act 2007*, chapter 7 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 development approval under the *Planning and Development Act 2007*, chapter 7—a certificate under subsection (4); and
 - (c) a cancellation authority or cancellation order for the units plan is not in force; and
 - (d) an application for a cancellation authority or cancellation order 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 ACAT 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 planning and land authority as a true copy; or
 - (ii) a copy of the certificate mentioned in subsection (1) (b) (ii).
- (4) On application by the applicant for the provisional damage order, if the planning and land authority is satisfied that approval under this Act or any other relevant territory law 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 authority must give the applicant a certificate to that effect.

Note 1 A fee may be determined under s 179 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

155 Provisional building damage order—approval of scheme

- (1) The ACAT 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 planning and land authority 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 planning and land authority has given the relevant approval.
- (3) The ACAT 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 an ACAT 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 ACAT 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 ACAT 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 ACAT 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 an ACAT 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 a lease for the *Planning and Development Act 2007*, chapter 7 (Development approvals).

Part 11 **Cancellation of units plans**

Division 11.1 **Cancellation authority**

160 **Cancellation authority—grant by planning and land authority**

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

Note 1 A fee may be determined under s 179 for this section.

Note 2 If a form is approved under s 180 for an application, the form must be used.

- (2) On application for a cancellation authority, the planning and land authority may—
- (a) grant the cancellation authority; or
 - (b) refuse to grant the cancellation authority.
- (3) The planning and land authority may grant a cancellation authority only if satisfied that—
- (a) the application is supported 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 (4) applies).
- (4) The planning and land authority may grant a cancellation authority despite the owners corporation's failure to obtain an interested nonvoter's agreement if the planning and land authority 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.
- (5) If the owners corporation applies for a cancellation authority that is to remain in force for longer than 3 months, the planning and land authority 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.
- (6) A cancellation authority must include a declaration of the provisions that are to govern the new lease arising under section 162 if the planning and land authority 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 authority—period of effect

- (1) A cancellation authority remains in force for—
 - (a) 3 months after it is given; or
 - (b) any period allowed under section 160 (5).
- (2) A cancellation authority must state the period for which it is in force.

Division 11.2 Cancellation orders

161A Cancellation orders—Supreme Court powers

- (1) An owners corporation may apply to the Supreme Court for an order (a *cancellation order*) authorising the cancellation of the units plan.
- (2) On an application for a cancellation order, the Supreme Court may—
 - (a) make a cancellation order; or
 - (b) make a provisional cancellation order under section 161B; or
 - (c) dismiss the application.
- (3) The Supreme Court may make a cancellation order only if satisfied that it is just and equitable to make the order (including any directions, or a declaration, mentioned in subsection (4)) having regard to the interests of everyone with interests in the units.
- (4) A cancellation order may include either or both of the following:
 - (a) directions to be complied with after cancellation of the units plan;
 - (b) a declaration of the provisions that are to govern the new lease arising under section 162 to take account of any variation of a lease of any unit, or the common property, made or applied for since the units plan was registered.
- (5) A direction mentioned in subsection (4) (a) may be enforced as if it were a judgment of the Supreme Court obtained by someone for whose benefit the direction was given against the person required to comply with the direction.
- (6) A cancellation order remains in force for the period stated in the order.

161B Cancellation orders—provisional orders

- (1) On an application for a cancellation order for a units plan, the Supreme Court may make a provisional cancellation order for the units plan imposing conditions or giving directions (or both) to be complied with before the court makes a cancellation order.
- (2) The Supreme Court may make a provisional cancellation order for a units plan only if satisfied that—
 - (a) it is necessary for either or both of the following purposes:
 - (i) to protect the interests of the Territory;
 - (ii) to adjust the rights and duties of everyone who has registered interests in the units, between each other, to the extent that the rights and duties may be affected by the cancellation of the units plan; and
 - (b) it is just and equitable to make the order having regard to the interests of everyone with interests in the units.
- (3) A provisional cancellation order remains in force for the period stated in the order.

161C Cancellation orders—after provisional order is made

- (1) This section applies if—
 - (a) the Supreme Court makes a provisional cancellation order for a units plan on an application under section 161A; and
 - (b) the owners corporation subsequently applies for a cancellation order under that section.
- (2) The Supreme Court may make a cancellation order under section 161A if satisfied that the conditions and directions stated in the provisional cancellation order have been complied with.

161D Cancellation orders—right of appearance

- (1) The following have a right to appear on an application for a cancellation order for a units plan:
 - (a) the owners corporation;
 - (b) a unit owner;
 - (c) someone else with an interest in a unit, or the common property, that is recorded on the corporate register;
 - (d) an insurer who has insured a building on the parcel for section 132 (Building insurance by owners corporation);
 - (e) the chief executive, for the Territory.
- (2) An owners corporation that applies for a cancellation order 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 Supreme Court must give a copy of an application for a cancellation order to the chief executive.

Division 11.3 Effects of cancellation

162 Cancellation of units plan—effects

On the registration of a cancellation authority or cancellation order—

- (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 planning and land authority under section 160 (6) (Cancellation authority—grant by planning and land authority) or any declaration of the Supreme Court under section 161A (4) (b) (Cancellation orders—Supreme Court powers).
- (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.

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

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

165 Dissolution of owners corporation—Supreme Court powers

- (1) On an application by an owners corporation authorised by an ordinary resolution, or a person with an interest in a unit, the

Supreme 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;
 - (c) someone else with an interest in a unit, or the common property, that is recorded on the corporate register;
 - (d) an insurer who has insured a building on the parcel for section 132;
 - (e) 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 Supreme Court must give a copy of the application to the chief executive.

U Part 11A

Changing 2-unit units plans to subdivisions

Part 12 Variation of unit leases

166 Development applications to vary lease under Planning and Development Act

- (1) An application for development approval for the variation of a unit or common property lease may be made under the *Planning and Development Act 2007*, chapter 7 (Development approvals) 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 development approval for the variation of a unit lease or common property lease is approved under the *Planning and Development Act 2007*, chapter 7, the planning and land authority 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 planning and land authority may, by written notice to the registrar-general, direct that

the schedule of unit entitlement be amended if the authority 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 planning and land authority'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.

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

- (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—
Supreme Court powers**

- (1) On an application by an owners corporation authorised by an ordinary resolution, or a person with an interest in a unit, the Supreme 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;
 - (c) someone else with an interest in a unit, or the common property, that is recorded on the corporate register;

- (d) an insurer who has insured a building on the parcel for section 132;
 - (e) 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 Supreme 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 planning and land authority as if the authority were the owner of the unit; and
- (d) a person authorised in writing by the authority 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 *Planning and Development Act 2007*, s 254 (see dict, def *termination*).

171 New unit lease

- (1) If, after the termination of the lease of a unit, a person becomes entitled under the *Planning and Development Act 2007* to the grant of a lease of the unit, the planning and land authority 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 Territory under the *Planning and Development Act 2007*.
- (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 *Planning and Development Act 2007*, s 254 (see dict, def *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 *Planning and Development Act 2007* 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 that Act, section 23 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 *Planning and Development Act 2007*, s 254 (see dict, def *termination*).

Part 14 Notification and review of decisions

173 Definitions—pt 14

In this part:

internally reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

internal reviewer—see section 174A.

internal review notice—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

reviewable decision means an internal reviewer's decision in relation to an internally reviewable decision.

173A Internal review notices

- (1) If the planning and land authority makes an internally reviewable decision, the authority must give an internal review notice only to each person mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

Note 2 Section 174 gives a person who is given an internal review notice the right to object to the internally reviewable decision (unless the person was the applicant for the decision, and the decision was made in the applicant's favour).

- (2) However, the planning and land authority is not required to give an internal review notice to a person with an interest in a parcel, or an interested non-voter, in relation to a decision if the authority is not, and could not reasonably be, aware of the person's interest because of the process of reaching the decision.

- (3) An internal review notice given to a person in relation to a decision must include a statement to the effect that the person may not object to the decision if—
- (a) the person applied for the decision; and
 - (b) the decision was made in accordance with the application.

174 Objections

- (1) A person mentioned in schedule 1, column 4 in relation to an internally reviewable decision may object to the decision.
- (2) However, a person may not object to a decision if—
- (a) the person applied for the decision; and
 - (b) the decision was made in accordance with the application.
- (3) The objection must—
- (a) be in writing; and
 - (b) state the person's name and address; and
 - (c) set out the person's reasons for making the application; and
 - (d) be given to the planning and land authority.

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

- (4) The objection must be given to the planning and land authority within—
- (a) 28 days after the day the person is given the internal review notice for the decision; or
 - (b) any longer period allowed by the planning and land authority before or after the end of the 28-day period.

174A Internal reviewer

The planning and land authority must arrange for a person (the *internal reviewer*) who did not make the internally reviewable decision to review the decision.

175 Review by internal reviewer

- (1) The internal reviewer for an internally reviewable decision must review the decision.
- (2) The review must happen within 28 days (the *28-day period*) after the day the planning and land authority receives the objection to the internally reviewable decision.
- (3) The internal reviewer must—
 - (a) allow the objection and substitute the reviewer's own decision;
or
 - (b) disallow the objection.
- (4) If the objection is not decided within the 28-day period, the objection is taken to have been disallowed by the internal reviewer.

176 Reviewable decision notices

If an internal reviewer makes a reviewable decision, the reviewer must give a reviewable decision notice only to each person to whom an internal review notice is required to be given in relation to the decision.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

177 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 no longer has effect from the date of the reviewable decision 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.

177A Applications for review

The person in relation to whom a reviewable decision is made may apply to the ACAT for review of the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 15 Miscellaneous

178 **Removal of matters from ACAT to Supreme Court**

- (1) On the joint application of all parties to an application to the ACAT under this Act, the ACAT may order that the matter be removed to the Supreme Court.
- (2) The registrar or a deputy registrar of the ACAT may exercise the functions of the ACAT 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 determine fees for this Act (other than fees that this Act provides are to be fixed by owners corporations).
Note The Legislation Act 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.

180 **Approved forms**

- (1) The planning and land authority may approve forms for this Act.
- (2) If the planning and land authority approves a form for a particular purpose, the approved form must be used for that purpose.
Note For other provisions about forms, see the Legislation Act, s 255.
- (3) An approved form is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.

181 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**U Part 20 Transitional—Unit Titles
Amendment Act 2008 (No 2)**

Schedule 1 Reviewable decisions

(see s 173)

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person
1	20 (4)	refusal to approve a unit title application on the grounds of inconsistency with the heritage 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

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person
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
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 (7) (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

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person
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

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person
17	160	grant of cancellation authority	(a) owners corporation (b) each interested nonvoter
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

U Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- appoint
- contravene
- exercise
- function
- GST
- heritage register
- planning and land authority
- reviewable decision notice.

ACAT dispute—see section 123.

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—see section 12A.

appoint includes engage.

article, for an owner corporation, means an article of the corporation under section 126.

attachment, in relation to a building, means—

- (a) an eave, gutter or downpipe; or
- (b) an awning; or
- (c) anything attached to the building prescribed by regulation.

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

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

building and development provision, in relation to a lease—see the *Planning and Development Act 2007*, section 234.

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 corporation—Supreme Court powers).

cancellation order—see section 161A (Cancellation orders—Supreme Court powers).

class A unit—see section 10.

class B unit—see section 11.

common property—see section 13.

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

company includes any body corporate.

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 statement means a statement about a staged development, accompanying a unit title application (as amended under section 22 (Unit title applications—amendment of development statement by authority), 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 planning and land authority.

encroachment includes a projection at, above or below ground level.

entitled to vote, in relation to a motion at a general meeting of an owners corporation, means a person who is entitled to vote on the motion under 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—Supreme Court powers).

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).

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.

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

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

internally reviewable decision, for part 14 (Notification and review of decisions)—see section 173.

internal reviewer, for part 14 (Notification and review of decisions)—see section 174A.

internal review notice, for part 14 (Notification and review of decisions)—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

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 the *Planning and Development Act 2007*, 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.

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

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

provisional building damage order—see section 154.

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

public place—see the *Roads and Public Places Act 1937*, dictionary.

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, for part 14 (Notification and review of decisions)—see section 173.

schedule of unit entitlement, in relation to a units plan, means the schedule of unit entitlement forming part of the plan under section 8.

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 *Planning and Development Act 2007*, section 254 (Grant of further leases).

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.

units plan means the units plan under section 7.

unit subsidiary—see section 12.

unit title application—see section 6.

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

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 and expiries 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 endnote.

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.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Unit Titles 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 1)
remainder commenced 5 October 2001 (LA s 79)

as amended by

Legislation (Consequential Amendments) 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 (s 2 (2) and amdts 1.4149-1.4161)

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

notified 5 September 2001 (Gaz 2001 No S65)
s 1, s 2 commenced 5 September 2001 (s 2 (1))
amdts commenced 12 September 2001 (s 2 (2), amdt 3.859,
amdt 3.860)

Community Title 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 commenced 10 March 2002 (LA s 79)

Statute Law Amendment Act 2002 No 30 pt 3.84

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
amdt 3.929 taken to have commenced 5 October 2001 (s 2 (2))
pt 3.84 remainder commenced 17 September 2002 (s 2 (1))

**Planning and Land (Consequential Amendments) Act 2002 No 56
sch 3 pt 3.16**

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
sch 3 pt 3.16 commenced 1 July 2003 (s 2 and see Planning and Land
Act 2002 A2002-55, s 2)

Endnotes

3 Legislation history

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.70

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.70 commenced 2 June 2005 (s 2 (1))

Unit Titles Amendment Act 2005 A2005-25

notified LR 11 May 2005

s 1, s 2 commenced 11 May 2005 (LA s 75 (1))

remainder commenced 12 May 2005 (s 2)

Unit Titles (Staged Development) Amendment Act 2005 A2005-37

notified LR 26 August 2005

s 1, s 2 commenced 26 August 2005 (LA s 75 (1))

remainder commenced 14 September 2005 (s 2 and CN2005-21)

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.24

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.24 commenced 16 November 2006 (s 2 (1))

**Planning and Development (Consequential Amendments) Act 2007
A2007-25 sch 1 pt 1.32**

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.32 commenced 31 March 2008 (s 2 and see Planning and
Development Act 2007 A2007-24, s 2 and CN2008-1)

Unit Titles Amendment Act 2008 A2008-9

notified LR 17 April 2008

s 1, s 2 commenced 17 April 2008 (LA s 75 (1))

remainder commenced 18 April 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment
Act 2008 (No 2) A2008-37 sch 1 pt 1.102**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.102 commenced 2 February 2009 (s 2 (1) and see ACT Civil
and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Unit Titles Amendment Act 2008 (No 2) A2008-45

notified LR 10 September 2008

s 1, s 2 commenced 10 September 2008 (LA s 75 (1))

s 3 commenced 2 February 2009 (s 2 (1) and CN2008-18)

s 4, s 48 (new section 251) commence 10 September 2009 (s 2 (1) and CN2008-18)

s 15, s 52 (def *manager*) commence 1 July 2009 (s 2 (1) and CN2008-18)

s 7, s 16, s 39, s 42, s 45, s 46, s 49, s 50, s 53 commenced 2 February 2009 (s 2 (2))

remainder commences 31 March 2009 (s 2 (1) and CN2008-18)

4 Amendment history**Commencement**

s 2 om LA s 89 (4)

Units plan

s 7 am A2005-37 s 4; pars renum R8 LA (see A2005-37 s 5)

Class B units

s 11 am A2008-9 amdt 1.1

Meaning of *annexed*

s 12A ins A2005-20 amdt 3.447

Unit title applications—general requirements

s 17 am 2001 No 44 amdt 1.4149; 2002 No 56 amdt 3.75; A2005-37 s 6; A2007-25 amdt 1.180; A2008-9 s 4; A2008-45 s 4

Unit title applications—class A units and class B units

s 18 am A2008-9 amdt 1.2

Unit title applications—unit subsidiaries

s 19 am A2008-9 amdt 1.2

Unit title applications—approval

s 20 am 2001 No 44 amdt 1.4150, amdt 1.4151; 2002 No 56 amdt 3.75, amdt 3.76; A2005-37 s 7, s 8; A2006-42 amdt 3.210, amdt 3.211; A2007-25 amdt 1.181, amdt 1.182; A2008-9 s 5, s 6

Unit title applications—reasonable rent

s 21 am 2002 No 56 amdts 3.57-3.59; A2008-37 amdt 1.504

Unit title applications—amendment of development statement by authority

s 22 sub 2002 No 56 amdt 3.60

Endnotes

4 Amendment history

Notice of approval of unit title applications

s 23 am 2002 No 56 amdt 3.61, amdt 3.75, amdt 3.76

Security for staged developments and unfinished work

s 24 am 2001 No 44 amdt 1.4152, amdt 1.4153; 2002 No 56
amdt 3.62, amdt 3.75

Endorsement of units plan for registration

s 27 am 2002 No 56 amdt 3.63, amdt 3.75, amdt 3.76; A2005-37
s 9; pars renum R8 LA (see A2005-37 s 10); A2007-25
amdt 1.182; A2008-9 s 7

Lapse of endorsement after 3 months

s 28 am 2002 No 56 amdt 3.75

Amendment of development statements before registration

s 29 am 2001 No 44 amdt 1.4154; 2002 No 56 amdt 3.64,
amdt 3.65, amdt 3.75

Amendment of development statements after registration

s 30 am 2001 No 44 amdt 1.4154; 2002 No 56 amdt 3.66,
amdt 3.67, amdt 3.75, amdt 3.76; A2005-37 ss 11-14;
ss renum R8 LA (see A2005-37 s 15); A2008-45 s 5

Effect of registration of amendment

s 31 sub A2005-37 s 16
am A2007-25 amdt 1.183

Developer disclosure

div 3.4 hdg ins A2008-45 s 6

Contract for sale of unit before registration of units plan

s 31A ins A2008-45 s 6

Leases of units and common property

s 33 am A2007-25 amdt 1.184

Unit title easement rights

s 34 am A2007-25 amdt 1.185

Encroachments on public places

div 4.3 hdg ins A2008-9 s 8

Effect of registration of units plan with encroachment on public place

s 37A ins A2008-9 s 8

Restriction on owners corporation during developer control period

s 46A ins A2008-45 s 7

Dealings in property

s 48 am 2001 No 58 s 103; A2008-45 s 8, s 9

Exemptions for units plans with 4 or fewer units

s 50 am A2008-45 s 10

General duties

s 51 am 2002 No 56 amdt 3.75; A2005-37 s 17; pars renum R8 LA
(see A2005-37 s 18); A2007-25 amdt 1.186; [A2008-45 s 11](#)

Animals—owners corporation's consent

s 51A [ins A2008-45 s 12](#)

Structural defects—owners corporation may represent members

s 51B [ins A2008-45 s 12](#)

Owners corporation—entry to units

s 51C [ins A2008-45 s 12](#)

Work on behalf of particular unit owners or occupiers

s 52 [am A2008-45 s 13](#)

People appointed by owners corporation to help run owners corporation

div 5.3A hdg [ins A2008-45 s 15](#)

Manager—appointment

s 55 [om A2008-45 s 14](#)
[ins A2008-45 s 15](#)

Manager—conditions of appointment

s 55A [ins A2008-45 s 15](#)

Manager—functions

s 55B [ins A2008-45 s 15](#)

Manager—ending appointment

s 55C [ins A2008-45 s 15](#)

Manager—remedial breaches

s 55D [ins A2008-45 s 15](#)

Manager—code of conduct

s 55E [ins A2008-45 s 15](#)

Manager—public liability insurance

s 55F [ins A2008-45 s 15](#)

Manager—delegated functions

s 55G [ins A2008-45 s 15](#)

Communications officer—appointment

s 55H [ins A2008-45 s 15](#)

Communications officer—function

s 55I [ins A2008-45 s 15](#)

Service contractors

div 5.3B hdg [ins A2008-45 s 16](#)

Endnotes

4 Amendment history

Service contractor—contract and functions

sdiv 5.3B.1 hdg ins A2008-45 s 16

Definitions—div 5.3B

s 55J ins A2008-45 s 16
def **service contract** ins A2008-45 s 16
def **service contractor** ins A2008-45 s 16
def **service contractor services** ins A2008-45 s 16

Service contractor—contract

s 55K ins A2008-45 s 16

Service contractor not to be contracted for longer than 25 years

s 55L ins A2008-45 s 16

Service contractor—functions

s 55M ins A2008-45 s 16

Service contractor—transfer

s 55N ins A2008-45 s 16

Service contractor—ending contract

s 55O ins A2008-45 s 16

Service contractor—remedial breaches

s 55P ins A2008-45 s 16

Service contractor—contract and functions

sdiv 5.3B.2 hdg ins A2008-45 s 16

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

s 55Q ins A2008-45 s 16

Who is a *financier* for a service contract?

s 55R ins A2008-45 s 16

Financed service contract—notice of change

s 55S ins A2008-45 s 16

Financed service contract—limitation on ending

s 55T ins A2008-45 s 16

Financed service contract—person authorised to act for financier

s 55U ins A2008-45 s 16

Financed service contract—agreement between owners corporation and financier prohibited

s 55V ins A2008-45 s 16

Definitions—div 5.4

s 55W ins A2008-45 s 17
def **initial sinking fund plan** ins A2008-45 s 17
def **sinking fund expenditure** ins A2008-45 s 17
def **sinking fund plan** ins A2008-45 s 17

Borrowing powers

s 58 [am A2008-45 s 18](#)

General funds (administrative or special purpose funds)

s 59 [am A2005-20 amdt 3.448](#)

Sinking funds

s 61 [am A2008-45 s 19, s 20](#)

Sinking funds—owners corporation to prepare initial 10-year plan

s 62 [sub A2008-45 s 21](#)

Sinking funds—review of initial sinking fund plan

s 63 [sub A2008-45 s 21](#)

Sinking funds—owners corporation to prepare subsequent 10-year plans

s 63A [ins A2008-45 s 21](#)

Sinking funds—review of sinking fund plan

s 63B [ins A2008-45 s 21](#)

General and sinking funds in staged developments

s 64A [ins A2005-37 s 19](#)

Discounts and interest—amounts owing

s 65 [am A2008-45 s 22, s 23](#)

Corporate register—information for inclusion

s 71 [am A2005-20 amdt 3.449](#)

Unit title certificate and access to owners corporation records

s 75 [am 2001 No 44 amdt 1.4155, amdt 1.4156](#)
[sub A2008-45 s 24](#)

Owners corporation name, address and letterbox

s 78 [am 2001 No 44 amdt 1.4157](#)

Service of documents on owners corporation

s 79 [sub 2002 No 30 amdt 3.925](#)

Service of documents on members, interested people and occupiers

s 80 [am 2002 No 30 amdt 3.926, amdt 3.927](#)

Executive committee—functions

s 82 [am A2008-45 s 25](#)

Executive committee—before the first annual general meeting

s 83 [am A2008-45 s 26](#)

Executive committee—after the first annual general meeting

s 84 [am A2008-45 s 27, s 28](#)

Executive committee—office-holders

s 87 [sub A2008-45 s 29](#)

Endnotes

4 Amendment history

Executive committee—chairperson’s functions

s 87A ins A2008-45 s 29

Executive committee—secretary’s functions

s 87B ins A2008-45 s 29

Executive committee—treasurer’s functions

s 87C ins A2008-45 s 29

Decisions about staged development

s 88A ins A2005-37 s 20

Decisions about use of common property

s 88B ins A2008-45 s 30

Decisions about taking legal action

s 88C ins A2008-45 s 30

Taking urgent legal action

s 88D ins A2008-45 s 30

Delegation by executive committee

s 89 sub 2002 No 30 amdt 3.928

Contractors and employees

s 90 sub A2008-45 s 31

Minutes, records and accounts

s 91 am 2002 No 56 amdt 3.75

First annual general meeting

s 95 am A2008-45 s 32, s 33

First annual general meeting—developer to deliver records

s 95A ins A2008-45 s 34

Notice of reduced quorum decisions and adjournments

s 100 am 2001 No 44 amdt 1.4158, amdt 1.4159

Quorum at a general meeting—owners corporation with 2 members

s 102 am A2008-45 s 35

Decisions about staged development

s 110A ins A2005-37 s 21

Mortgagee voting notice—amendment and revocation

s 113 am 2002 No 30 amdt 3.929

Proxy votes

s 115 am A2008-45 s 36

Proxy votes—limit on developer

s 115A ins A2008-45 s 37

Value of votes

s 116 sub A2005-20 amdt 3.450

Owners corporations with only 2 members—votes divided

s 119 om A2008-45 s 38

People under 18 or under other legal disabilities

s 121 am 2002 No 30 amdt 3.930

Dispute resolution

div 6.5 hdg sub A2008-45 s 39

What is an ACAT dispute?

s 123 sub A2008-45 s 39

Who may apply to the ACAT?

s 124 sub A2008-45 s 39

Kinds of ACAT orders

s 125 sub A2008-45 s 39

What are the articles of an owners corporation?

s 126 sub A2008-45 s 40

Effect of articles

s 127 am A2008-9 amdt 1.3

Amendment of articles

s 128 am A2008-45 s 41

Breach of articles—article infringement notice

s 129 sub A2008-45 s 42

Breach of articles—failure to comply with article infringement notice

s 129A ins A2008-45 s 42

Breach of articles—request for article infringement notice

s 129B ins A2008-45 s 42

Application of Legislation Act

s 130 hdg sub 2001 No 56 amdt 3.859

s 130 am 2001 No 56 amdt 3.860

Implied warranties

pt 7A hdg ins A2008-45 s 43

Meaning of implied warranties—pt 7A

s 130A ins A2008-45 s 43

Purpose—pt 7A

s 130B ins A2008-45 s 43

Implied warranties and right to cancel—effect

s 130C ins A2008-45 s 43

Endnotes

4 Amendment history

Implied warranties

s 130D ins A2008-45 s 43

Cancellation of contract

s 130E ins A2008-45 s 43

Claim for compensation

s 130F ins A2008-45 s 43

Building insurance by owners corporation

s 132 am A2005-37 s 22

Application of insurance money by owners corporation

s 137 am A2008-45 s 53

Who may apply for an administration order?

s 140 am A2008-45 s 53

ACAT appearances and service of applications

s 141 hdg am A2008-45 s 53

s 141 am A2008-45 s 53

Appointment of administrator

s 142 am 2002 No 30 amdt 3.931; A2008-45 s 53

Removal or replacement of administrator

s 143 am A2008-45 s 53

Functions of administrator

s 144 am A2008-45 s 53

Delegation by administrator

s 145 sub 2002 No 30 amdt 3.932

Unit entitlement authority—grant

s 146 am 2001 No 44 amdt 1.4160; 2002 No 56 amdt 3.75;
A2008-45 s 44

Boundary authority—grant

s 149 am 2001 No 44 amdt 1.4160; 2002 No 56 amdt 3.75

Boundary authorities—registration

s 151 am A2007-25 amdt 1.187

Building damage orders—right of appearance

s 153 am A2008-45 s 53

Provisional building damage order—application

s 154 am 2001 No 44 amdt 1.4160; 2002 No 56 amdt 3.68,
amdt 3.69, amdt 3.75; A2005-25 s 4; A2007-25 amdt 1.188;
A2008-45 s 53

Provisional building damage order—approval of scheme

s 155 am 2002 No 56 amdt 3.75; A2008-45 s 53

Provisional building damage order—period of effect

s 156 am A2008-45 s 45

Final building damage order—amendment of units plan

s 157 am A2008-45 s 53

Final building damage order—period of effect

s 158 am A2008-45 s 46

Final building damage order—registration

s 159 am A2007-25 amdt 1.189

Cancellation authority—grant by planning and land authority

s 160 hdg sub A2005-25 s 5

s 160 am 2001 No 44 amdt 1.4160; 2002 No 56 amdt 3.75;
A2005-25 ss 6-8; ss renum R6 LA (see A2005-25 s 9)**Cancellation authority—period of effect**

s 161 hdg sub A2005-25 s 10

Cancellation orders

div 11.2 hdg om A2005-25 s 12

ins A2005-25 s 11

Cancellation orders—Supreme Court powers

s 161A ins A2005-25 s 11

Cancellation orders—provisional orders

s 161B ins A2005-25 s 11

Cancellation orders—after provisional order is made

s 161C ins A2005-25 s 11

Cancellation orders—right of appearance

s 161D ins A2005-25 s 11

Effects of cancellation

div 11.3 hdg ins A2005-25 s 12

Cancellation of units plan—effects

s 162 am A2005-25 s 13

Cancellation of units plan—new lease over parcel

s 163 am 2002 No 56 amdt 3.75; A2005-25 s 14

Dissolution of owners corporation—Supreme Court powers

s 165 hdg sub A2005-25 s 15

s 165 am A2005-25 s 16, s 17, s 19; pars renum R6 LA
(see A2005-25 s 18)**Changing 2-unit units plans to subdivisions**pt 11A hdg ins A2008-45 s 47

Endnotes

4 Amendment history

Application—pt 11A

s 165A ins A2008-45 s 47

Subdivision of units plan—application

s 165B ins A2008-45 s 47

Development applications to vary lease under Planning and Development Act

s 166 hdg sub A2007-25 amdt 1.190
s 166 am 2002 No 56 amdt 3.75; A2007-25 amdt 1.191, amdt 1.192

Lease variation—amendment of schedule of unit entitlement

s 167 sub 2002 No 56 amdt 3.70

Dissolution of owners corporation on lease expiry—Supreme Court powers

s 169 hdg sub A2005-25 s 20
s 169 am A2005-25 s 21, s 22, s 24; pars renum R6 LA (see A2005-25 s 23)

Effect of termination of unit lease

s 170 am 2002 No 56 amdt 3.71, amdt 3.76; A2007-25 amdt 1.193

New unit lease

s 171 am 2002 No 56 amdt 3.75; A2007-25 amdt 1.194-1.196

New unit lease—schedule of unit entitlement

s 172 am A2007-25 amdt 1.197, amdt 1.198

Notification and review of decisions

pt 14 hdg sub A2008-37 amdt 1.505

Definitions—pt 14

s 173 am 2002 No 56 amdt 3.72, amdt 3.75
sub A2008-37 amdt 1.505
def ***internally reviewable decision*** ins A2008-37 amdt 1.505
def ***internal reviewer*** ins A2008-37 amdt 1.505
def ***internal review notice*** ins A2008-37 amdt 1.505
def ***reviewable decision*** ins A2008-37 amdt 1.505

Internal review notices

s 173A ins A2008-37 amdt 1.505

Objections

s 174 am 2002 No 56 amdt 3.75
sub A2008-37 amdt 1.505

Internal reviewer

s 174A ins A2008-37 amdt 1.505

Review by internal reviewer

s 175 am 2002 No 56 amdt 3.75
sub A2008-37 amdt 1.505

Reviewable decision notices

s 176 sub A2008-37 amdt 1.505

Effect of decision to allow objection

s 177 sub A2008-37 amdt 1.505

Applications for review

s 177A ins A2008-37 amdt 1.505

Removal of matters from ACAT to Supreme Court

s 178 hdg am A2008-45 s 53

s 178 am A2008-45 s 53

Determination of fees

s 179 sub 2001 No 44 amdt 1.4161

am A2006-42 amdt 3.211

Approved forms

s 180 sub 2001 No 44 amdt 1.4161

am 2002 No 30 amdt 3.933; 2002 No 56 amdt 3.75; A2006-42
amdt 3.211

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 om 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)

Endnotes

4 Amendment history

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 sub 2002 No 30 amdt 3.934
exp 5 April 2003 (s 194)

Transitional—Unit Titles Amendment Act 2008 (No 2)

pt 20 hdg ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Definitions—pt 20

s 250 ins A2008-45 s 48
def **commencement day** ins A2008-45 s 48
def **pre-amendment Act** ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Transitional—unit title application for 2-unit units plan

s 251 ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Transitional regulations

s 252 ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Transitional effect—Legislation Act, s 88

s 253 ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Expiry—pt 20

s 254 ins A2008-45 s 48
exp 5 years after the day it commences (s 254 (LA s 88
declaration applies))

Reviewable decisions

sch 1 hdg sub A2008-37 amdt 1.506
sch 1 am A2006-42 amdt 3.212; A2008-37 amdt 1.507

Dictionary

dict am 2002 No 30 amdt 3.935; A2006-42 amdt 3.213; A2008-37
amdt 1.508; A2008-45 s 49

def **ACAT dispute** ins A2008-45 s 50
def **annexed** sub A2005-20 amdt 3.451
def **appoint** ins A2008-45 s 50
def **article** ins A2005-20 amdt 3.452
def **attachment** ins A2008-9 s 9
def **building and development provision** ins A2007-25
amdt 1.199
def **cancellation dissolution order** sub A2005-25 s 25
def **cancellation order** ins A2005-25 s 26
def **company representative** om A2005-20 amdt 3.453
def **communications officer** ins A2008-45 s 50
def **default articles** sub A2008-45 s 51
def **developer** ins A2008-45 s 52
def **developer control period** ins A2008-45 s 52
def **development covenant** om A2007-25 amdt 1.200
def **development statement** sub 2002 No 56 amdt 3.74
def **eligible person** am 2002 No 56 amdt 3.75
def **encroachment** ins A2008-9 s 9
def **entitled to vote** sub A2005-20 amdt 3.454
def **expiry dissolution order** sub A2005-25 s 27
def **financier** ins A2008-45 s 52
def **GST** om A2005-20 amdt 3.455
def **implied warranties** ins A2008-45 s 52
def **initial sinking fund plan** ins A2008-45 s 52
def **internally reviewable decision** ins A2008-37 amdt 1.509
def **internal reviewer** ins A2008-37 amdt 1.509
def **internal review notice** ins A2008-37 amdt 1.509
def **Land Act** om A2007-25 amdt 1.201
def **lease** am A2007-25 amdt 1.202
def **manager** ins A2008-45 s 52
def **mortgagee's representative** om A2005-20 amdt 3.455
def **public place** ins A2008-9 s 9
def **reviewable decision** sub A2008-37 amdt 1.510
def **schedule of unit entitlement** sub A2005-20 amdt 3.456
def **secretary** ins A2008-45 s 52
def **service contract** ins A2008-45 s 52
def **service contractor** ins A2008-45 s 52
def **sinking fund expenditure** ins A2008-45 s 52
def **sinking fund plan** ins A2008-45 s 52
def **termination** sub A2007-25 amdt 1.203
def **treasurer** ins A2008-45 s 52
def **unit owners' representative** om A2005-20 amdt 3.457
def **units plan** sub A2005-20 amdt 3.458

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1*	<u>Act 2001 No 58</u>	5 October 2001
1 (RI)	<u>Act 2001 No 58</u> ‡	27 September 2002
2*	Act 2001 No 58	10 March 2002
2 (RI)	Act 2001 No 58 ‡	27 September 2002
3	Act 2002 No 30	27 September 2002
4	A2002-56	7 April 2003
5	A2002-56	1 July 2003
6	A2005-25	12 May 2005
7	A2005-25	2 June 2005
8*	A2005-37	14 September 2005
9	A2006-42	16 November 2006
10	A2007-25	31 March 2008
11	A2008-9	18 April 2008

‡ includes retrospective amendment by Act 2002 No 30

6 Uncommenced amendments

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

Unit Titles Amendment Act 2008 (No 2) A2008-45 (except ss 7, 16, 39, 42, 45, 46, 49, 50, 53)

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

substitute

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

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

substitute

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

6 New division 3.4

insert

Division 3.4 Developer disclosure**31A Contract for sale of unit before registration of units plan**

- (1) This section applies to a contract for the sale of a unit in a units plan before the units plan is registered.

Endnotes

- (2) The contract must include the following:
- (a) the proposed articles of the owners corporation of the units plan;
 - (b) details of any contract the developer intends the owners corporation to enter, including—
 - (i) the amount of the buyer's contribution to the corporation's general funds that will be used to service the contract; and
 - (ii) any personal or business relationship between the developer and another party to the contract;
 - (c) the developer's estimate, based on reasonable grounds, of the buyer's contribution to the corporation's general funds for 2 years after the units plan is registered;
 - (d) if a right to approve the keeping of animals during the developer control period is reserved—details of the reservation, including the kind and number of animals;
 - (e) if a staged development of the units is proposed—the proposed development statement and any amendment to the statement.
- (3) By entering into the contract, the developer warrants that the information disclosed under subsection (2) (a) to (e) is accurate.
- Note* If a developer is appointed as a proxy under the contract, a proxy disclosure statement must be included in the contract (see s 115A (Proxy votes—limit on developer)).
- (4) The buyer of a unit may, by written notice given to the developer, cancel the contract of sale before the contract is completed if—
- (a) the developer's disclosure under subsection (2) is incomplete or inaccurate; and
 - (b) the buyer is significantly prejudiced because the disclosure is incomplete or inaccurate.

**8 Dealings in property
Section 48 (1)**

omit everything before paragraph (a), substitute

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

9 Section 48 (2)

omit everything before paragraph (a), substitute

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

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

substitute

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

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

omit everything before paragraph (a), substitute

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

12 New sections 51A to 51C

insert

51A Animals—owners corporation’s consent

- (1) A unit owner may keep an animal, or allow an animal to be kept, within the unit or the common property only with the consent of the owners corporation.
- (2) The owners corporation may give consent under this section with or without conditions.
- (3) However, the owners corporation’s consent must not be unreasonably withheld.

Note An owner or occupier of a unit may apply to the ACAT to resolve a dispute with the owners corporation about keeping an animal, or allowing an animal to be kept (see s 123).

- (4) In this section:

animal includes—

- (a) an amphibian; and
- (b) a bird; and
- (c) a fish; and
- (d) a mammal (other than a human being); and
- (e) a reptile.

51B Structural defects—owners corporation may represent members

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

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

51C Owners corporation—entry to units

- (1) An owners corporation for a units plan does not have a right to enter a unit in the units plan without the consent of the owner or occupier, except in accordance with this section.
- (2) The owners corporation may enter the unit without notice to the owner or occupier of the unit if the access is required in an emergency.

Examples—emergencies

- 1 water flowing from 1 unit into another unit that is causing damage

Endnotes

6 Uncommenced amendments

2 an external glass window in the unit is dislodged and is likely to fall

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

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

13 **Section 52**

omit everything before paragraph (a), substitute

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

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

14 **Section 55**

omit

15 New division 5.3A

insert

Division 5.3A People appointed by owners corporation to help run owners corporation**55 Manager—appointment**

An owners corporation may, by ordinary resolution, appoint any of the following as owners corporation manager:

- (a) a person holding a licence as a real estate agent under the *Agents Act 2003*;

Note The commissioner for fair trading may issue a conditional real estate licence to a person who acts, or intends to act, only as the manager of an owners corporation (see *Agents Act 2003*, s 34).

- (b) a member of the corporation;
- (c) someone else who is not a manager of another owners corporation, and whose income as manager of the corporation will not be the person's primary source of income.

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

55A Manager—conditions of appointment

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

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

- (2) The conditions of appointment of the manager—
- (a) must include—
- (i) the remuneration of the manager; and

Endnotes

6 Uncommenced amendments

- (ii) the functions of the owners corporation that the manager is to exercise; and
- (b) may include other conditions agreed between the owners corporation and the manager.

55B Manager—functions

A manager has—

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

55C Manager—ending appointment

- (1) The owners corporation may end a person's appointment as manager—
 - (a) for a remedial breach if notice has been given under section 55D; or
 - (b) for misbehaviour; or
 - (c) if the person becomes bankrupt or executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (d) if the person is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) However, before ending a person's appointment as manager under subsection (1) (d) or (e) the owners corporation must be satisfied that the conviction affects the person's suitability as a manager of the corporation.

- (3) The owners corporation must end a person's appointment as manager—
- (a) if the person is absent for any period not allowed under the person's conditions of appointment; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the manager's functions.

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

- (4) In this section:

remedial breach means a remedial breach under section 55D.

55D Manager—remedial breaches

- (1) A manager commits a remedial breach if the manager—
- (a) fails to exercise the manager's functions; or
 - (b) contravenes the code of conduct; or
 - (c) while exercising the manager's functions, is grossly negligent or engages in misconduct.
- (2) If the owner's corporation believes on reasonable grounds that a manager has committed a remedial breach, the corporation may give the manager written notice stating—
- (a) that the corporation believes the manager has committed a remedial breach; and
 - (b) details of the remedial breach committed, sufficient to allow the manager to identify—
 - (i) the function the manager failed to exercise; or
 - (ii) the provision of the code of conduct the corporation reasonably believes the manager contravened; or
 - (iii) the gross negligence or misconduct; and

Endnotes

6 Uncommenced amendments

- (c) that the manager must, within 14 days after the day the notice is given to the manager—
 - (i) give the corporation a written representation explaining why the manager's actions do not amount to a remedial breach; or
 - (ii) remedy the breach; and
- (d) that the owners corporation may end the manager's appointment if—
 - (i) the manager does not comply with the notice; or
 - (ii) if the manager gives a written representation explaining why the manager's actions do not amount to a remedial breach—the corporation does not accept the manager's representation.

55E Manager—code of conduct

A manager must comply with the code of conduct prescribed by regulation.

55F Manager—public liability insurance

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

- (a) the manager's insurer has been told that the manager manages 2 or more owners corporations; and
- (b) the insurance policy covers the risk in relation to each owners corporation managed by the manager.

55G Manager—delegated functions

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

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

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

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

55H Communications officer—appointment

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

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

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

55I Communications officer—function

- (1) A communications officer assists the owners corporation by improving communication so that conflict within the units plan is avoided, minimised or resolved.
- (2) To improve communication, the communications officer may do 1 or more of the following:
 - (a) monitor communication techniques and procedures adopted by the owners corporation for communication (*internal communication*) between the corporation, the executive committee, unit owners and residents;
 - (b) identify for the executive committee ways in which internal communication can be improved;
 - (c) alert the executive committee, or committee members, if the officer becomes aware of potential conflict;
 - (d) advise the executive committee about ways in which the risk of conflict in the units plan can be minimised;
 - (e) be available to the executive committee, or committee members, to be consulted about any internal communication matter.
- (3) However, the communications officer must not mediate or directly resolve a dispute.

17 New section 55W

in division 5.4, insert

55W Definitions—div 5.4

In this division:

initial sinking fund plan—see section 62.

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

sinking fund plan—see section 63A.

18 Section 58

omit everything before paragraph (a), substitute

58 Borrowing powers

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

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

substitute

- (1) An owners corporation must establish and maintain a fund (the *sinking fund*) under this section if there are 4 or more units in the units plan.
- (2) Payments into the sinking fund may only be made—
 - (a) directly from sinking fund contributions; 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.

20 Section 61 (4)

omit

21 Sections 62 and 63

substitute

62 Sinking funds—owners corporation to prepare initial 10-year plan

- (1) This section applies to an owners corporation if the corporation—
 - (a) is required to establish and maintain a sinking fund; and
 - (b) has not had its 2nd annual general meeting.
- (2) The owners corporation must prepare a plan (the *initial sinking fund plan*) of anticipated sinking fund expenditure for the 10 years starting on the day of the 1st annual general meeting of the corporation after the corporation is registered.
- (3) The owners corporation must, by ordinary resolution, approve the initial sinking fund plan not later than the day of the 2nd annual general meeting of the corporation after the corporation is registered.
- (4) This section applies to an owners corporation that had its 2nd annual general meeting before the commencement of this section as if the 1st and 2nd annual general meetings of the corporation after the commencement were the 1st and 2nd annual general meetings of the corporation.
- (5) Subsection (4) is a law to which the Legislation Act section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (4) and (5) and this subsection expire 2 years after the day this section commences.

63 Sinking funds—review of initial sinking fund plan

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

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

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

63B Sinking funds—review of sinking fund plan

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

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

omit everything before paragraph (a), substitute

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

23 Section 65 (2)

omit everything before paragraph (a), substitute

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

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

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

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

25 Executive committee—functions

Section 82 (1)

substitute

- (1) The executive committee of an owners corporation exercises the functions of the corporation.

Endnotes

6 Uncommenced amendments

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

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

substitute

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

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

substitute

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

28 Section 84 (5)

substitute

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

29 Section 87

substitute

87 Executive committee—office-holders

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

87A Executive committee—chairperson’s functions

- (1) The functions of the chairperson are—
 - (a) to chair general meetings of the owners corporation and meetings of the executive committee; and
 - (b) to set the agenda for general meetings and executive meetings, in consultation with the secretary and owners corporation manager; and
 - (c) to liaise with the secretary, treasurer and manager about the performance of their functions.
- (2) At a meeting of the executive committee, the chairperson may leave the chair during the meeting for any reason.
- (3) If the chairperson leaves the chair during a meeting, the executive members present must elect another executive member present to chair the meeting.
- (4) At a meeting of the executive committee, the chairperson—
 - (a) may vote as an executive member; and
 - (b) if the votes on a question are equal—may exercise a 2nd (casting) vote, unless there are only 2 executive members.

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

87B Executive committee—secretary’s functions

The functions of the secretary are—

- (a) on behalf of the executive committee—
 - (i) to give notice of meetings of the executive committee and general meetings; and
 - (ii) to prepare and distribute to executive members minutes of executive meetings; and

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

87C Executive committee—treasurer’s functions

The functions of the treasurer are—

- (a) on behalf of the owners corporation, to give to each unit owner notice of—
 - (i) a determination of general funds contributions under section 60 (5) (Contributions to general funds); and
 - (ii) a determination of sinking fund contributions under section 64 (4) (Sinking funds—contributions); and
- (b) on behalf of the owners corporation—
 - (i) to pay all amounts the corporation receives into the corporation’s account in accordance with section 56 (1) (b) (Banking and investment of money of corporation); or
 - (ii) if the owners corporation is exempt from section 56 (1)—to receive, acknowledge receipt of, and account for amounts paid to the corporation; and

Endnotes

6 Uncommenced amendments

- (c) on behalf of the owners corporation, pay amounts the corporation spends out of the corporation's account, in accordance with section 56 (1) (c), as authorised by the executive committee; and
- (d) on behalf of the executive committee, to keep the records mentioned in section 91 (1) (e) (Minutes, records and accounts); and
- (e) if the owners corporation requires the records mentioned in section 91 (1) (e) to be audited—to arrange for the records to be audited by a qualified auditor; and
- (f) to give financial reports to meetings of the executive committee to allow the committee to monitor the financial performance of the owners corporation; and
- (g) to prepare and certify the annual financial statements mentioned in section 91 (3).

30 New sections 88B to 88D

insert

88B Decisions about use of common property

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

- (a) the use applied for is minor; and

- (b) the use will not unreasonably interfere with the reasonable use and enjoyment of the common property by other members of the corporation.

Example—minor use

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

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

88C Decisions about taking legal action

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

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

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

Endnotes

6 Uncommenced amendments

(4) In this section:

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

88D Taking urgent legal action

(1) This section applies if—

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

(2) The executive committee may take the legal action.

(3) However, the executive committee must—

- (a) seek the approval of the owners corporation as soon as practicable after beginning the legal action; and
- (b) if the owners corporation does not approve taking the legal action, the executive committee must discontinue the proceeding or withdraw the defence.

(4) For this section, the executive committee of an owners corporation ***takes legal action*** if the committee—

- (a) begins a proceeding; or
- (b) begins to defend a proceeding.

31 Section 90

substitute

90 Contractors and employees

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

Note An owners corporation may appoint a manager (see div 5.3A) and service contractors (see div 5.3B).

- (2) An owners corporation may, by ordinary resolution, impose conditions or restrictions on its executive committee's power to engage or employ people.

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

omit

6 months

substitute

3 months

33 New section 95 (3) to (5)

insert

- (3) However, if a units plan is registered not more than 6 months before the commencement of the *Unit Titles Amendment Act 2008 (No 2)*, section 32, the 1st annual general meeting of the owners corporation must be held within 6 months after the registration of the units plan.
- (4) Subsection (3) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) Subsections (3) and (4) and this subsection expire 6 months after the day they commence.

34 New section 95A

insert

95A First annual general meeting—developer to deliver records

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

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

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

omit

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

after the note, insert

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

37 New section 115A

insert

115A Proxy votes—limit on developer

- (1) This section applies to a developer of a units plan who is appointed as the proxy under a contract for the sale of a unit in the units plan.
- (2) The developer must not exercise 3 or more proxy votes in a vote on a matter at a general meeting of the owners corporation for the units plan unless—
- (a) each contract for the sale of a unit in the units plan contains a proxy disclosure statement; and
 - (b) the use of each proxy vote is consistent with the statement; and
 - (c) the matter being voted on relates to development (the *development matter*) rather than the ordinary operation of the owners corporation.
- (3) If the developer exercises a proxy vote in contravention of this section, the proxy vote is void.

Endnotes

6 Uncommenced amendments

- (4) A ***proxy disclosure statement*** is a statement that includes the following:
- (a) if a person is appointed as a proxy—the name of the person;
 - (b) if the proxy is appointed by naming the occupant of a position—the name of the position;
 - (c) the length of time of the appointment;
 - (d) a sufficient description of the development matter for the buyer of a unit to easily identify the matter.

38 Section 119

omit

40 Section 126

substitute

126 What are the articles of an owners corporation?

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

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

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

41 Amendment of articles Section 128 (2)

omit

43 New part 7A

insert

Part 7A Implied warranties**130A Meaning of *implied warranties*—pt 7A**

In this part:

implied warranties—see section 130D.

130B Purpose—pt 7A

This part—

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

130C Implied warranties and right to cancel—effect

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

130D Implied warranties

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

Endnotes

6 Uncommenced amendments

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

130E Cancellation of contract

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

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

130F Claim for compensation

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

Endnotes

6 Uncommenced amendments

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

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

substitute

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

47 New part 11A

insert

Part 11A Changing 2-unit units plans to subdivisions

165A Application—pt 11A

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

165B Subdivision of units plan—application

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

- (2) The *Planning and Development Act 2007*, chapter 11 applies to the owners corporation as if the corporation were the lessee of the parcel of land.

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

48 New part 20

insert

Part 20 Transitional—Unit Titles Amendment Act 2008 (No 2)

250 Definitions—pt 20

In this part:

commencement day means the day the *Unit Titles Amendment Act 2008 (No 2)*, section 4 commences.

pre-amendment Act means the *Unit Titles Act 2001* as in force immediately before the commencement day.

251 Transitional—unit title application for 2-unit units plan

- (1) This section applies if—
- (a) a lessee applied under the pre-amendment Act, section 17 for the subdivision of a parcel into 2 units; and
 - (b) immediately before the commencement day, the application had not been decided; and
 - (c) if the application were approved, 1 unit would not be wholly or partly superimposed on the other unit.
- (2) The pre-amendment Act applies in relation to the application.

252 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Unit Titles Amendment Act 2008 (No 2)*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or in another territory law.

253 Transitional effect—Legislation Act, s 88

This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

254 Expiry—pt 20

This part expires 5 years after the day it commences.

51 Dictionary, definition of *default articles*

substitute

default articles—see section 126.

52 Dictionary, new definitions

insert

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

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

- (a) starts on the day the owners corporation for the units plan is established; and

(b) ends on the day people other than the developer hold $\frac{1}{3}$ or more of the unit entitlements for the units plan.

financier, for a service contract—see section 55R.

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

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

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

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

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

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

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

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

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

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