

**2011**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**UNIT TITLES (MANAGEMENT) BILL 2011**

**EXPLANATORY STATEMENT**

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## UNIT TITLES (MANAGEMENT) BILL 2011

### Overview of the Bill

The key goal of the Bill is to make the rules relating to managing a units plan more accessible to frequent users of the legislation. The Bill aims to assist owners, managers and others involved in managing the units plan to better understand their respective roles in the day-to-day activities of managing a units plan.

Unit titles management legislation has been relocated to a separate statute (the *Unit Titles (Management) Act 2011*), and reorganised to make it more user-friendly. Provisions concerning registration of units plans are retained in the *Unit Titles Act 2001* (UTA).

Many provisions in the new *Unit Titles (Management) Act 2011* have been redrafted consistent with current ACT drafting standards, making the provisions easier to read and understand. The substantive content of most provisions is unchanged. Having a separate unit title management statute is consistent with the legislative approach taken in other jurisdictions (e.g. New South Wales' *Strata Schemes Management Act 1996*, Victoria's *Owners Corporations Act 2006*).

While most of the Bill consists of a reorganisation and redrafting of unit title management provisions, some new provisions have been introduced. Key features of the new provisions are:

- removing unnecessary barriers to the adoption of sustainability measures and utility infrastructure;
- introducing a code of conduct for executive committee members;
- changing the resolution for annual administrative and special purpose fund budget approval from special to ordinary, which removes an excessive restriction on managing owners corporation funds;
- clarification of financial provisions to clearly link budgets, contributions and expenditure for each type of fund;
- providing guidance for ACAT approval of developer control period contracts; and
- clarification of insurance requirements

### Human Rights Implications

#### Entry into units in limited circumstances

The Bill may have human rights implications in terms of the human right of privacy and reputation under section 12 of the *Human Rights Act 2004*. A person has a right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The Unit Titles (Management) Bill 2011 provides for rules (previously known as articles) which regulate the rights and obligations a person has when their home is a unit in relation to other unit owners and occupiers in the units plan and the owners corporation.

It should be noted that a unit owner voluntarily enters into an owners corporation and his/her rights are subject to the scheme established in relation to that corporation.

The default rules provide that an executive committee representative of an owners corporation can inspect a unit to investigate breaches of the rules and carry out any maintenance or anything else required to be carried out by the owners corporation under the Act. There is a right for a representative of the executive committee to enter a unit and remain in the unit to carry out these functions.

However, the executive committee representative is not authorised to do so unless notice has been given to the owner, occupier or user of the unit, unless in an emergency it is essential that the action be taken without the notice.

A similar provision (section 28, UTA s 51C) permits the owners corporation to enter a unit without notice in the event of an emergency (eg water flowing from 1 unit to another and causing damage, an external glass window in the unit is dislodged and is likely to fall). Otherwise, the owners corporation may enter the unit to inspect or maintain the common property, if the executive committee authorises the entry, and the executive committee gives the owner or occupier at least 7 days written notice.

The default rules and section 28 do not allow an unlawful or arbitrary interference with a person's home or privacy. The rules are necessary for helping to prevent discord and disputes between unit owners or occupiers with other unit owners or occupiers, and for the effective operation of owners corporations in the ACT. They are also necessary for ensuring the structural integrity of unit title complexes and the safety of unit owners and other occupiers of the units plan.

### Collection of personal information

There are a range of provisions dealing with collection of personal information in the course of managing a units plan (such as the corporate register, minutes of meetings etc). Personal information collected under these provisions is subject to the Privacy Principles (Schedule 3 of the *Privacy Act 1988* (Cth)).

The requirement to keep a corporate register may engage with the human right to privacy under section 12 of the Human Rights Act. However, an owners corporation must maintain a current corporate register containing the information set out in section 113, to ensure that the owners corporation and executive committee can carry out their functions under the Act. It also ensures that all owners are able to receive copies of notices, resolutions and levies determinations so that they are able to be informed about matters affecting their units plan and to participate in decision-making processes. The provisions concerning the corporate register, minutes etc are therefore proportionate to any limitations placed on the human right to privacy.

## Clause Notes

**NB: Many sections in the Bill are equivalent to provisions contained in the current UTA. Provisions have been reordered to create a more logical, narrative style in the legislation.**

**Many provisions have been redrafted in a clearer, plain-English drafting style, whilst maintaining the same substance and meaning of the equivalent UTA section. The intention of redrafting these provisions is to make the law easy to understand for the reader, with minimum recourse to additional materials.**

**To assist transition to the new legislation, the sections of the Bill that are equivalent to sections in the current Act contain bracketed notes in their headings (eg UTA, s 51(3)). Further details are contained in section 4 (Notes).**

### Part 1 Preliminary

**Section 1 Name of Act** - states that the name of the Act is the *Unit Titles (Management) Act 2001*.

**Section 2 Commencement** - states that the Act commences on a date fixed by the Minister by written notice. If a date is not fixed, the Act will automatically commence after 6 months (see Legislation Act, section 79).

**Section 3 Dictionary** - states that the dictionary at the end of the Act is part of the Act.

**Section 4 Notes** - states that a note included in this Act is explanatory and is not part of the Act.

Certain sections contain bracketed notes in their headings (eg UTA, s 59(1)), drawing attention to equivalent or comparable (though not necessarily identical) provisions of republication 20 of the *Unit Titles Act 2001* (that is, the *Unit Titles Act 2001* as at June 2011, hereafter referred to as 'the current UTA').

The bracketed notes in the headings will expire 1 year after commencement.

**Section 5 Offences against Act—application of Criminal Code etc** – states that other legislation applies in relation to offences against this Act, such as the Criminal Code, Legislation Act etc.

**Section 6 Objects of Act** – this is a new section, as the UTA does not currently contain an objects section. The objects of the Act are to:

- make it clear who is responsible for managing units plans; and
- help people who manage, or help in the management of units plans, understand and exercise their functions; and

- assist in the resolution of disputes in relation to the management of unit plans; and
- make the law about the management of units plans easier to use generally.

Many frequent users of the UTA have indicated difficulty in understanding the legislation and subsequently how to carry out various functions within the units plan. One of the key goals of the Bill is to make the law of unit title management more accessible in order to assist owners, managers and others involved in the day-to-day activities of managing a units plan.

## **Part 2 Management of units plans**

### **Division 2.1 Who manages a units plan?**

**Section 7 Owners corporation** - This new section is included to provide context to existing provisions to do with units plan management. The section clarifies that primary responsibility for managing the units plan lies with the owners corporation. The section includes a note, explaining that the owners corporation may be assisted in its duty to manage the units plan by the executive committee, a manager and/or service contractor/s.

### **Division 2.2 Owners corporations general**

**Section 8 Owners corporation—establishment (UTA s 38)** – This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Owners corporations established under the current UTA are preserved in the transitional provisions (refer section 150).

**Section 9 Owners corporation—legal status (UTA s 39)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

### **Division 2.3 Owners corporation—membership and representatives**

**Section 10 Members of owners corporation (UTA s 40)** –This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 11 Part- owners of units—authorisation of representatives (UTA s 41)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Representatives authorised under the current UTA are preserved in the transitional provisions

(refer section 151).

**Section 12 Part-owners of units—functions of representatives (UTA s 42)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Representatives authorised under the current UTA are preserved in the transitional provisions (refer section 151).

**Section 13 Company-owned units—authorisation of representatives (UTA s 43)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Representatives authorised under the current UTA are preserved in the transitional provisions (refer section 151).

**Section 14 Company-owned units—functions of representatives (UTA s 44)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Representatives authorised under the current UTA are preserved in the transitional provisions (refer section 151).

**Section 15 Evidence of representative status (UTA s 45)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Representatives authorised under the current UTA are preserved in the transitional provisions (refer section 151).

## **Part 3 Functions of owners corporations**

### **Division 3.1 Functions generally**

**Section 16 Owners corporation—functions (UTA s 46 (1) and s 51 (1))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 17 Owners corporation—general meetings** – This is a new section, directing the

reader to the location of the legislation relating to owners corporation meetings and procedure (refer schedule 3). Putting the rules for meetings and procedure in a separate schedule of the legislation allows the provisions to be easily separated from the rest of the statute and used as a quick guide to meeting procedure.

**Section 18 Exemptions for units plans with 4 or fewer units (UTA s 50)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

### **Division 3.2 Functions relating to property**

**Section 19 Common property (UTA s 47)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

A new note is included, which states that the owners corporation may decide (by ordinary resolution) to hold sustainability infrastructure installed on common property as trustee for the unit owners.

**Section 20 Dealings with common property (UTA s 48 (2) and (4))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

A new note is included, which states that the owners corporation may (by ordinary resolution) grant an easement or any other right over the common property for the purpose of installation, operation or maintenance of sustainability or utility infrastructure.

**Section 21 Dealings in property generally (UTA s 48 (1) and (3))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 22 Special privileges relating to common property (UTA s 49)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 23 Installation of sustainability and utility infrastructure on common property** – This new section creates a streamlined procedure for the installation of sustainability or utility infrastructure on common property.

Currently, an owners corporation would have to pass a number of resolutions in order to install sustainability or utility infrastructure on common property (such as solar panels, a communal clothes line, cabling etc). Separate resolutions may be required for financing, siting, easements etc. Creating a streamlined procedure removes unnecessary barriers to a units plan adopting environmental sustainability measures or utility infrastructure, while ensuring that owners are presented with all the costing and other information required to make an informed decision.

Under new section 23, by way of one ordinary resolution (i.e. simple majority), the owners corporation can decide to install sustainability or utility infrastructure on common property, after undertaking a cost/benefit analysis of the proposed infrastructure. Under subsection (2), the owners corporation may only approve the installation, and financing, of sustainability or utility infrastructure if reasonably satisfied, after considering certain factors, that the long-term benefit of the proposed infrastructure outweighs the costs of installation and maintenance. Factors which must be considered include:

- (a) a site plan of the proposed infrastructure;
- (b) a maintenance plan for the proposed infrastructure;
- (c) if the proposed infrastructure is to be financed by a third party—the terms of the financing arrangements;
- (d) the direct and indirect costs of the proposed infrastructure;
- (e) the long-term environmental sustainability benefits of the proposed infrastructure; and
- (f) any other matter prescribed by regulation.

‘Sustainability infrastructure’ is defined in the dictionary as ‘infrastructure and equipment that—

- (i) improves the environmental sustainability of the units; or
- (ii) reduces the environmental impact of the owners corporation and the unit owners; and
- (b) includes related utility service connections and equipment.

Examples given (which are not exhaustive) are solar panels, clothes lines and rainwater tank.

‘Utility infrastructure’ is defined in the dictionary as infrastructure and equipment necessary for, or related to, the provision of utility services. ‘Utility services’ is defined in the dictionary in the UTA.

#### Owners corporation may hold sustainability infrastructure as trustee

Subsection 23(3) states that the owners corporation may decide (by ordinary resolution) to hold sustainability infrastructure installed on common property as trustee for the unit owners as tenants-in-common in shares proportional to their unit entitlement. This option is available for existing sustainability infrastructure installed on common property before the commencement of this new section.

Generally, the owners corporation holds common property as agent for the unit owners as tenants-in-common in shares proportional to their unit entitlement (see section 19(1)). If the owners corporation holds the common property as agent, the ownership of the property lies with the owners. However, if the owners corporation were to hold the common property as trustee, the ownership of the property would lie with the owners corporation, with the unit owners being trust beneficiaries.

From a taxation perspective, where the common property is held by the owners corporation as agent for the owners, the income derived from the use of the common property constitutes assessable income of the individual unit owners. If, however, common property is held by the owners corporation as trustee for the owners, the income derived from the use of the common property would be assessable income of the owners corporation.

The purpose of subsection (3) is to give the owners corporation flexibility in managing taxation liability that might arise out of sustainability infrastructure (such as taxable income generated by feed-in-tariff credits), without disrupting existing arrangements.

For further information about taxation liability for the feed-in tariff and similar schemes, individuals should contact the Australian Taxation Office and/or seek independent legal advice.

#### Qualification to prohibition on carrying on a business

Subsection 23(4) states that an owners corporation is not considered to be ‘carrying on a business’ in the context of section 71 of the Act (refer section 71, current section 57 of the UTA), if it receives income from the operation of the sustainability infrastructure and the income is used only to pay—

- (a) costs, including financing costs, in relation to the installation and maintenance of the infrastructure; or
- (b) costs of utilities used by, or provided to, the owners corporation.

The general prohibition on carrying on a business, while designed to protect owners, may create a challenge for owners wishing to adopt certain sustainability measures such as the feed-in tariff. The purpose of subsection (4) is to remove any doubt that these activities could be a violation of the general principle that an owners corporation should not carry on a business.

The exemption does not permit the owners corporation to engage in large-scale commercial ventures, such as a solar farm – but such ventures could be progressed through more appropriate business platforms – such as a corporation or cooperative.

### **Division 3.3 Maintenance and other services**

**Section 24 Maintenance obligations (UTA s 51 (3), (5) and (8))** - Section 51 of the current UTA is very long, and has been split into sections 16, 24-26 (plus new section headings) to make the section easier to read and interpret.

**Section 25 Owners corporation may exempt itself from maintenance obligations (UTA s 51 (6))** – Refer explanatory note for section 24.

**Section 26 Other qualifications on owners corporation’s maintenance obligations (UTA s 51 (4) and (7))** – Refer explanatory note for section 24.

**Section 27 Structural defects—owners corporation may represent members (UTA s 51B)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 28 Owners corporation—entry to units (UTA s 51C)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

This provision engages with the human right of privacy and under section 12 of the *Human Rights Act 2004*. Further discussion on how this provision engages with the right of privacy is contained in the overview of human rights implications at the beginning of the explanatory statement.

**Section 29 Work on behalf of particular unit owners or occupiers (UTA s 52)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 30 Recovery of costs—agreements under s 29 (UTA s 53)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 31 Recovery of expenditure resulting from member or unit occupier's fault (UTA s 54)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

### **Division 3.4 Other matters**

**Section 32 Animals—owners corporation's consent (UTA s 51A)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 33 Restriction on owners corporation during developer control period (UTA s 46A)** – subsections (1) and (2) are identical to section 46A of the current UTA. New subsection (3) provides guidance to the ACAT in regards to the types of issues which should be considered if an application is made to authorise a long term (greater than 2 years) contract during the developer control period.

Under new subsection (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. New subsection (4) requires any matter prescribed by regulation to be taken into account, as well as any other thing the ACAT considers relevant. Examples are given of other things which might be relevant to the ACAT's decision:

- (i) the short-term and long-term economic benefits and disadvantages of the contract;
- (ii) the existence of a financing agreement related to the contract;
- (iii) environmental sustainability measures provided for by the contract.

Defining the types of issues to be considered brings greater certainty to the operation of the section. Consideration of these issues is consistent with the original policy intent of the section, to provide greater consumer protection and transparency to owners and purchasers during the developer control period.

A new note has been added to clarify that this section also applies to the engagement of a manager or service contractor under division 4.2 or 4.3 during the developer control period.

## **Part 4 People helping the owners corporation exercise its functions**

### **Division 4.1 Executive committees**

**Section 34 Executive committee—establishment (UTA s 81)** - This section is identical to a provision in the current UTA.

Executive Committees established under the current UTA are preserved in the transitional provisions (refer section 150).

**Section 35 Executive committee—functions (UTA s 82)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

The reference to the executive committee 'supervising the caretaker' in current paragraph 82(2)(e) of the UTA has been omitted from new section 35, as the term 'caretaker' is not explained or referred to elsewhere in the Act.

**Section 36 Executive committee—what it must, may and cannot do** - This is a new section, directing the reader to the location of the legislation relating to the role and functions of the executive committee (refer schedule 2, part 2.1). Putting the role and functions in a separate schedule of the legislation allows the provisions to be easily separated from the rest of the statute and used as a quick guide to meeting procedure.

**Section 37 Executive committee—meetings** - This is a new section, directing the reader to the location of the legislation relating to executive committee meetings and procedure (refer

schedule 2, part 2.2). Putting the rules for meetings and procedure in a separate schedule of the legislation allows the provisions to be easily separated from the rest of the statute and used as a quick guide to meeting procedure.

**Section 38 Executive committee—before the first annual general meeting (UTA s 83)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 39 Executive committee—at and from the first annual general meeting (UTA s 84)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 40 Executive committee—office-holders (UTA s 87)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

Current section 87 of the UTA refers to an election of office-holders at the first meeting of the executive committee. This wording has been omitted to cover on-going elections of office-holders into the future.

**Section 41 Executive committee—chairperson’s functions (UTA s 87A(1))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Current section 87A has been split into new sections 41 and 2.11 (schedule 2). These sections have been modified to ensure consistency with new section 3.13, schedule 3 (chairperson at general meeting, current section 103 of the UTA).

**Section 42 Executive committee—secretary’s functions (UTA s 87B)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 43 Executive committee—treasurer’s functions (UTA s 87C)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 44 Executive committee—delegation (UTA s 89)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern

ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 45 Executive committee—contractors and employees (UTA s 90)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 46 Executive members—code of conduct** – This new section directs the reader to the code of conduct for executive committee members, contained in schedule 1, part 1.1.

**Section 47 Executive members—protection from liability** - This new section accompanies the new code of conduct for committee members. It confirms that an executive member is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act, or in the reasonable belief that the conduct was in the exercise of a function under this Act. Any civil liability that would, apart from this section, attach to the executive committee attaches instead to the owners corporation. The wording of this section has been adapted from similar limitation of liability sections in other ACT statutes.

A similar protection from liability exists in the Victorian *Owners Corporations Act 2006*, section 118. Introducing a code of conduct together with a limitation on liability in the event of actions taken in good faith strikes an appropriate balance with respect to the rights and obligations of executive committee members.

**Section 48 Executive committee—validity of acts (UTA s 92)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

#### **Division 4.2 Managers**

**Section 49 Definitions – div 4.2** – This new section includes new definitions for division 4.2, including ‘management contract’, ‘manager’ and ‘management services’. These new definitions are introduced as part of correcting the terminology in the manager provisions, which are currently cast in a *Legislation Act 2001* appointment framework, rather than in terms of a commercial contract or engagement. See explanatory note for section 50 for further details regarding the change of terminology.

**Section 50 Manager—contract (UTA s 55 and s55A(2))** - This section is comparable to sections 55 and 55A(2) of the current UTA. The provisions in the current UTA dealing with managers use an appointment framework as set out in the *Legislation Act 2001*. The appointment provisions under the *Legislation Act 2001* are appropriate for the appointment of non-elected office holders (eg statutory office holders). In contrast, the engagement of a manager is a purely commercial engagement, whether it is in the form of a formal contract

with a professional manager or an implied contract with a member of the corporation to take on the role of manager. The terminology in the provisions dealing with managers has been revised accordingly.

The appointment of a manager under section 55 of the current UTA is preserved in the transitional provisions (refer section 152).

**Section 51 Manager not to be contracted for longer than 3 years (UTA s 55A(1))** - This section is equivalent to section 55A(1) of the current UTA. A new subsection (2) has been added to reinforce the intention of current 55A(1), which is to limit management contracts to 3 years. It is equivalent to new section 59(2), ‘service contractor not to be contracted for longer than 25 years’ (current section 55L(2)). New subsection (2) states that if an owners corporation enters into a management contract with a manager for longer than 3 years, the contract is taken, for all purposes, to be a contract for 3 years.

**Section 52 Manager—functions (UTA s 55B)** – This section is equivalent to section 55B in the current UTA. The terminology has been updated from ‘conditions of appointment’ to ‘manager’s contract’, consistent with the revised terminology adopted for the manager provisions.

**Section 53 Manager – transfer** – This new section has been introduced, equivalent to section 55N of the current UTA (service contractor-transfer). This new section is in keeping with the revised terminology for provisions dealing with managers.

**Section 54 Manager—ending contract (UTA s 55C)** - This section is equivalent to section 55C in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged. The terminology has been updated from ‘appointment’ to ‘management contract’, consistent with the revised terminology adopted for the manager provisions.

New section 54(1)(d) has been inserted. New section 54(1)(d) provides that the owners corporation may end a management contract where, if the manager is a corporation, the corporation becomes insolvent.

The term ‘insolvent’ for a corporation is defined in new section 54(4).

**Section 55 Manager—remedial breaches (UTA s 55D)** - This section is equivalent to section 55D in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 56 Manager—code of conduct (UTA s 55E)** - This section is equivalent to section

55E of the current UTA. The section has been updated to reflect the relocation of the manager's code of conduct from the Unit Titles Regulation 2001, to schedule 1 of the new Act.

**Section 57 Manager—public liability insurance (UTA s 55F)** - This section is identical to section 55F of the current UTA.

**Section 58 Manager—delegated functions (UTA s 55G)** - This section is equivalent to section 55G in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

A new note has been added to this section to clarify that a function that has been delegated by the owners corporation or executive committee (a delegator) may, despite the delegation, be exercised by the delegator (see Legislation Act, s 240)).

#### **Division 4.3 Service contractors**

**Section 59 Definitions—div 4.3 (UTA s 55J)** - This section is equivalent to section 55J of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 60 Service contractor—contract (UTA s 55K(1), (2), (3)(a) and (4))** - This section is equivalent to section 55K of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

Subsection (3) has been amended to maintain a 3 year term limit on service contracts, unless agreed by special resolution after the end of the developer control period. Paragraph 55K(3)(b) of the current UTA and subsection 55K(5) are duplicated by section 33 (restriction on owners corporation during developer control period) and have been omitted from new section 60.

A service contract entered into under section 55K of the current UTA is preserved in the transitional provisions (refer section 153).

**Section 61 Service contractor not to be contracted for longer than 25 years (UTA s 55L)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

Current subsection 55L(3) has been omitted from redrafted provision. The subsection is not necessary, as it states the legal effect of the provision which applies irrespective of whether

there is an explicit statement in the statute (being that, section 55L does not apply to a service contract entered into before the commencement of section 55L). While the original intention of subsection (3) was to remove doubt, its inclusion in this Act may introduce doubt and the subsection has been omitted accordingly.

**Section 62 Service contractor—functions (UTA s 55M)** - This section is equivalent to section 55M of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 63 Service contractor—transfer (UTA s 55N)** - This section is equivalent to section 55N of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

Under current section 55N of the UTA, there is no provision for what happens if the owners corporation fails to make a decision within the timeframe mentions in subsection (3). Accordingly, a new subsection (5) has been added to this provision. New subsection (5) states that if the owners corporation has not decided whether to approve a proposed transfer within 30 days, the corporation is taken to have approved the transfer.

**Section 64 Service contractor—ending contract (UTA s 55O)** - This section is equivalent to section 55O of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

A new paragraph (1)(d) has been added to this provision. New paragraph (1)(d) provides that if the service contractor is a corporation, an owners corporation may end the service contract if the corporation becomes insolvent. ‘Insolvent’ is defined for the purposes of the section.

**Section 65 Service contractor—remedial breaches (UTA s 55P)** - This section is identical to section 55P of the current UTA.

#### **Division 4.4      Communication officers**

**Section 66 Communications officer—appointment (UTA s 55H)** - This section is equivalent to section 55H of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

The appointment of a communication officer under section 55H of the current UTA is preserved in the transitional provisions (refer section 154).

**Section 67 Communications officer—function (UTA s 55I)** - This section is equivalent to section 55I of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of

the provision is unchanged.

## **Part 5 Financial management**

### **Division 5.1 Financial functions generally**

**Section 68 Owners corporation must have bank account (UTA s 56 (1) and (2))** – Section 56 of the current UTA is very long, and has been split into Sections 66 and 67 (plus new section headings) to make the section easier to read and interpret. Identical wording has been maintained (with cross-referencing updated).

**Section 69 Owners corporation may invest (UTA s 56 (3) and (4))** – See section 68 explanatory note.

**Section 70 Owners corporation may borrow (UTA s 58)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 71 Owners corporation must not carry on business (UTA s 57)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

A new note has been added stating that the earning of income from the operation of sustainability infrastructure by an owners corporation does not amount to carrying on a business if the income is used to pay certain costs (see section 23(4)).

### **Division 5.2 Administrative, special purpose and sinking funds**

**Section 72 Definitions—div 5.2 (UTA s 55W)** – This section is equivalent to s 55W of the current UTA. Additional definitions have been included to reflect other redrafted provisions in this division.

**Section 73 Administrative fund (UTA s 59 (1))** - Section 59 of the current UTA is very long, and has been split into sections 73-75 (plus new section headings) to make the section easier to read and interpret.

**Section 74 Special purpose fund (UTA s 59 (2) and (3))** - Section 59 of the current UTA is very long, and has been split into sections 73-75 (plus new section headings) to make the section easier to read and interpret.

**Section 75 General fund—budget (UTA s 59 (4), (5) and (6))** - Section 59 of the current UTA is very long, and has been split into sections 73-75 (plus new section headings) to make the section easier to read and interpret.

Under current 59(5), at the AGM the owners corporation must approve a budget for the administrative fund and each special purpose fund by special resolution (less than 1/3 opposed). No other Australian jurisdiction requires a special resolution for approval of administrative funds and equivalents. This requirement has the potential to become unworkable in practice, leading to the possibility of no budget being approved. Accordingly, the vote required to set a budget for an administrative fund and each special purpose fund (collectively defined as the ‘general funds budget’) is to be set by way an ordinary resolution (simple majority).

Current section 59(6) simply states that ‘the general funds budget must state the total amounts estimates to be paid *into and out* of the owners corporation’s general funds in the financial year in which the AGM is held’. New section 75(2) remedies the lack of detail surrounding developing a general funds budget by introducing a new definition of ‘total general funds contribution’ and giving more specific guidance as to how the general funds budget is to be prepared. New subsection (2) clearly expresses a link between the general funds budget and the levying/calculation of contributions from members. Presumably, a link would be implied under the existing provisions, but subsection (2) removes any doubt.

New paragraph 75(2)(c) introduces a prudent budgeting requirement. Paragraph 75(2)(c) guides the owners corporation in developing the general fund budget to estimate payments necessary for the basic functions of the owners corporation. This includes maintaining the common property in good condition (eg lawn mowing), insurance premiums and other recurrent expenses (eg accounting fees). Paragraph 75(2)(c) is based on the prudent budgeting provision in the NSW *Strata Schemes Management Act 1996* (s 75).

New subsection 75(3) is equivalent to current section 59(4). A payment out of a special purpose fund may only be included in the general fund budget if the payment is for the purpose for which the fund was established, unless the proposed payment is authorised by special resolution. This provision forces separate administration of the administrative and special purpose funds (if a special purpose fund exists).

**Section 76 General fund—what must be paid into the funds?** - This new section clarifies what must be paid into the general funds. Currently, there is no express obligation on the owners corporation to pay general funds contributions into the general fund. This section establishes an express requirement to remove any doubt and assist with interpreting the financial provisions more generally. The section is based on the corresponding section in the NSW *Strata Schemes Management Act 1996* (s 67).

**Section 77 General fund—what can fund be used for? (UTA s 59 (4))** – This new section builds on current section 59(4) of the UTA: ‘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’. The new

section creates a clearer link between the budget and expenditure, which could be implied under the current provisions but is not explicitly stated.

**Section 78 General fund—contributions (UTA s 60 (1) to (4))** – New section 78 continues to use the new defined term ‘general funds contribution’. Otherwise, new section 78 is equivalent to current section 60(1)-(4) of the UTA.

**Section 79 General fund—notice of contributions (UTA s 60 (5) and (6))** – New section 79 is equivalent to current subsections 60(5)-(6) of the UTA, which has been split from the rest of current section 60 to make it easier to read.

**Section 80 General fund – when are contributions payable? (UTA 60(7))** – This section is identical to current subsection 60(7) of the current UTA.

**Section 81 Sinking fund (UTA 61(1))** - This section is equivalent to section 61(1) of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

**Section 82 Sinking fund plan (UTA s 62(2) and (3) and s 63A(2) and (3))** – The current UTA sinking fund plan provisions require units plans with 4 or more units to prepare an ‘initial sinking fund plan’ for the first 10 years of the units plan existence, and then subsequent ‘sinking fund plans’ for subsequent 10 year blocks. Distinguishing between the ‘initial’ plan and subsequent plans adds unnecessary complication to these provisions. Accordingly, the new sinking fund plan provisions refer to a single sinking fund plan. New sections 82 and 83 also introduce the term ‘expected sinking fund expenditure’. This explicitly links the preparation of a sinking fund plan with consideration of expected expenditure and the type of expenditure permitted from the sinking fund. See the explanatory notes for section 83 for further information.

Sinking fund plans prepared under the current UTA are preserved by transitional provisions (see section 157).

**Section 83 Sinking fund plan – meaning of *expected sinking fund expenditure* (UTA s 61(3))** – Section 61(3) of the current UTA states that an owners corporation may only make payments from its sinking fund for certain defined purposes. New section 83, through the introduction of the term ‘expected sinking fund expenditure’ explicitly links preparation of the sinking fund plan with the type of expenditure permitted from the sinking fund (as currently stated in section 61(3)). New subsection 83(1) states the ‘expected sinking fund expenditure means expenditure for the following purposes that the owners corporation reasonably expects will be necessary to maintain in good condition the common property and any other property that it holds’.

Current paragraph 61(3)(b) states that an owners corporation may only make payments from

its sinking fund for ‘the acquisition, renewal or replacement of property that it holds’. Despite the grammatical error, the inclusion of the term ‘acquisition’ in current paragraph 61(3)(b) indicates a clear intention that the sinking fund may be used to acquire new property, and not only to renew or replace property. Accordingly, the grammatical error has been corrected in new paragraph 83(1)(b), and now states ‘the acquisition of new property or renewal or replacement of property that it holds’.

**Section 84 Sinking fund plan – when must it be approved? (UTA s 62(3) and 63A)** – This new section clarifies when a sinking fund plan must be approved. Section 62(3) of the current UTA requires that the owners corporation must approve the initial sinking fund plan not later than the day of the 2<sup>nd</sup> AGM after the corporation is registered. This requirement is preserved in new paragraph 84(1)(a). New paragraph 84(1)(b) covers any situation where a units plan with 4 or more units has not yet prepared a sinking fund plan. This removes any possible confusion created by current subsections 62(1) and (4).

New subsection 84(2) sets out when subsequent sinking fund plans must be approved. New subsection (2) states that if the owners corporation has approved a sinking fund plan under this Act, the corporation must approve a new sinking fund plan not later than 12 months before the end of the 10-year period to which the existing plan relates. Requiring approval of the sinking fund plan 12 months before the plan commences is consistent with the policy intent behind introducing sinking fund plans, which was to enforce prudent budgeting for the sinking fund and consideration of long-term renewal and replacement costs for common property and other property held by the owners corporation.

**Section 85 Sinking fund plan – review (UTA s 63 and s 63B)** - This section maintains the requirement in current section 63 that the first sinking fund plan must be reviewed no later than 4 years. The section also maintains the requirement in current section 63B that subsequent sinking fund plans must be reviewed after 5 years.

An owners corporation may amend sinking fund plans at any time by ordinary resolution (refer section 86).

**Section 86 Sinking fund plan – amendment** – This new section states that an owners corporation may at any time amend its sinking fund plan (by ordinary resolution) to ensure that the plan reflects expected sinking fund expenditure.

The power to amend the sinking fund plan by ordinary resolution at any time could be implied from the provisions in the current UTA, however new section 86 clarifies this issue by introducing an explicit statement.

**Section 87 Sinking funds—what must be paid into the fund? (UTA s 61 (2))** – This section is equivalent to current section 61(2) of the UTA. The provision is recast in terms of amounts that an owners corporation must pay into the sinking fund (under current section

61(2)), it refers to ‘payments into the sinking fund may only be made’). New paragraph (b) requires any amount received by the owners corporation that is not required or allowed to be paid into the general fund, to be paid into the sinking fund. Paragraph (b) complements new section 76 (general fund – what must be paid into the fund?). As mentioned in the explanatory notes for new section 76, there is currently no express obligation on the owners corporation for contributions to be paid into the fund. Paragraph 87(b), combined with new section 76, corrects this omission and gives clear guidance as to where all types of monies received by the owners corporation should be directed.

**Section 88 Sinking funds—what can funds be used for?** – This new section expressly links sinking fund expenditure with the sinking fund plan. Section 88 requires that the owners corporation may only make payments from its sinking fund if the payments are consistent with the sinking fund plan. The term ‘consistent with’ has been used to allow sufficient flexibility in relation to sinking fund expenditure, as anticipated in the sinking fund plan. This scheme is comparable to new section 77, where expenditure from a general fund must be ‘approved’ by the yearly budget for those funds.

Two notes are included. Note 1 states that the owner corporation may at any time, by ordinary resolution, amend its sinking fund plan to ensure that the plan reflects expected sinking fund expenditure (see section 86).

Note 2 states that expenditure from the sinking fund for the purpose of installing sustainability or utility infrastructure must be provided for in the sinking fund plan (see section 23).

These two notes combined alert the reader to the need to balance the requirements to generally follow the sinking fund plan, but with the option to amend the plan as circumstances change.

**Section 89 Sinking fund—contributions (UTA s 64 (1), (2) and (3))** – Subsections 89(2)-(4) are equivalent to current subsections 64(1)-(3) of the UTA. Subsection 89(1) has no equivalent provision in the current UTA, because the UTA does not expressly give power to the owners corporation to determine sinking funds contributions. Accordingly, subsection 89(1) includes a new defined term, a ‘sinking fund contribution’ to address this anomaly.

In the current UTA, paragraph 64(1)(b) refers to ‘total sinking fund contribution’ rather than ‘total sinking fund amount’, the term used in 64(1)(a). This drafting error is corrected so that both paragraphs in new subsection 89(2)(a) and (b) now refer to ‘total sinking fund amount’, which is defined in section 72.

A new note is included, stating that total sinking fund amount, for a financial year, means the total expected sinking fund expenditure for the year set out in the sinking fund plan (see s 72). Expected sinking fund expenditure means expenditure for the purposes mentioned in

section 83(1) that the owners corporation reasonably expects will be necessary to maintain in good condition the common property and any other property it holds (see s 83). The note creates an express link between the sinking fund plan, contributions and expected expenditure.

**Section 90 Sinking fund—notice of contributions (UTA s 64 (4) and (5))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 91 Sinking fund—when are contributions payable? (UTA s 64 (6))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 92 General and sinking funds in staged developments (UTA s 64A)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

#### **Division 5.3 Powers in relation to money owing to owners corporation**

**Section 93 Discounts—amounts owing (UTA s 65 (1))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 94 Interest—amounts owing (UTA s 65 (2) and (3))** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 95 Recovery of amounts owing (UTA s 66)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 96 Security for unpaid amounts—declaration of charge (UTA s 67)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 97 Security for unpaid amounts—discharge (UTA s 68)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with

the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

**Section 98 Liability of part-owners (UTA s 69)** - This section is equivalent to a provision in the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

#### **Division 5.4 Insurance**

**Section 99 Meaning of *building* and *land*—div 5.4** – This new section shifts the dictionary definitions relevant to the insurance provisions to the front of the insurance division. This makes the insurance provisions easier to read, by ensuring key defined terms such as ‘building’ and ‘land’ are more prominently placed relative to the insurance provisions.

The term ‘building’ has been more clearly defined in division 5.4 for insurance purposes. Like similar NSW, Queensland and Victorian legislation, the Act now makes clear that, for insurance purposes, the term does not include various items (such as wall coverings or finishes or removable fixtures). The definition of ‘building’ for insurance purposes no longer applies to proposed buildings or proposed improvements.

The term ‘parcel’ in the previous section has been replaced with ‘land’, in keeping with a more modern, plain-English drafting style.

**Section 100 Building insurance by owners corporation (UTA s 132)** – New section 100(1) is equivalent to section 132(1) of the current UTA and introduces a regulation-making power (to allow regulations to be made providing for the management of insurance policies and risk).

New section 100(1), like current section 132(1) declares that the owners corporation must insure and keep insured buildings in the unit title. In much the same way that liability for damage to an ordinary residential house is the responsibility of the owner of that house, the owners corporation is responsible for liability for damage to all buildings. Note that individual unit owners may choose to separately insure their own unit.

Section 100(2) makes it clear that an owners corporation must take out a policy of insurance for the replacement value of all buildings in the units plan. Section 100(2) provides that the owners corporation must take out a policy of insurance that covers, to the greatest practicable extent, the risks listed in section 100(1). The use of the words “to the greatest practicable extent” recognises that many insurance policies may not insure against all the risks mentioned in section 100(1). To the extent that there is a gap between the duty of the owners corporation to insure all risks and the extent of any particular policy, the owners corporation meets the difference. For example, the owners corporation may only be able to obtain

\$100,000 building insurance arising from riot. However, if owners suffer losses of \$250,000 to buildings as a result of riot, the insurance policy will meet \$100,000 of the loss and the owners corporation will meet the remaining \$150,000.

Section 100(2)(b) additionally provides that an insurance policy must cover, to the greatest practicable extent, costs incidental to the reinstatement or replacement of the insured building, including the cost of removing debris and the fees of architects and other professional advisors. This recognises that these costs can be costly for an owners corporation in the event that buildings need to be reinstated or replaced. There are similar provisions operating in NSW, Victoria and Queensland in relation to these matters.

Section 100(3) provides a regulation-making power in relation to policies of insurance. The matters listed in section 100(3) include some matters that are addressed in other jurisdictions such as Victoria, NSW and Queensland, such as provisions necessitating periodic valuations for the purposes of ascertaining the current replacement value of buildings. Regulations will be made following consultation with relevant stakeholders.

The power to make regulations includes regulations providing for payment by unit owners of excesses payable under the policy. A regulation might require a proportion of the excess payable by the unit owner who has received a payment under the policy, or might include a cap on the amount payable by a unit owner towards an excess. Where there is no provision for the payment of excesses by unit owners, the owners corporation would need to pay all excesses for claims, as the policy of insurance is between the owners corporation and the insurance provider.

The power to make regulations also includes regulations about combining the policy of insurance taken out by the owners corporation with other insurance policies. This recognises that many unit owners take out their own building insurance for their units in addition to the building insurance taken out by the owners corporation. It may be desirable in these circumstances for regulations to be made about the interaction between concurrent policies to prevent a situation where, hypothetically, neither insurer accepts liability for payment due to the existence of two concurrent policies of insurance.

The power to make regulations about notification requirements by unit owners in relation to improvements made to units recognises that the owners corporation may be obliged to notify an insurer of certain types of improvements under the insurance contract.

The power to make regulations about the proportion of the premium payable for the policy by particular unit owners recognises that certain improvements carried out by individual unit owners or greater insurance risks caused by certain unit owners may increase insurance premiums for the owners corporation, the cost of which might be borne by those unit owners who have caused the increase in premiums. An example of where this may be particularly relevant is where there is a units plan with a mix of residential and commercial units. Where

there are owners who carry on commercial activities that attract higher insurable premiums, it might be just for those commercial unit owners to pay higher proportional premiums than residential unit owners, who would otherwise attract lower insurance premiums. While this power might be useful where there are significant differences between classes of units within a development (such as a mixed residential/commercial development), existing rating provisions already recognise differences in the value of certain units.

The power to make regulations about valuations of the insured buildings recognises that, in some jurisdictions, owners corporations are required to obtain independent valuations for insurance purposes. Before any regulations requiring valuations are made, consultation will occur with the sector to determine whether all unit titles should be included, or whether it should be restricted to higher value plans. Further, consideration needs to be given to the cost and the frequency of valuations.

Section 100(4) is equivalent to section 132(2) of the current UTA. Note 1 in section 100(4) is equivalent to the note in current section 132(2). Note 2 refers the reader to schedule 2, section 2.3, which requires the executive committee to disclose certain information about the insurance policy to the owners corporation at each annual general meeting. This is to ensure that unit owners are properly informed of the details of their collective insurance policy.

**Section 101 Exemption from building insurance requirements (UTA s 133)** - This section is identical to section 133 of the current UTA. Cross references have been updated as necessary.

**Section 102 Public liability insurance by owners corporation (UTA s 131)** - This section is equivalent to section 131 of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand. The substance and meaning of the provision is unchanged.

A new note has been added to alert the reader to the requirement on the executive committee to give certain details about the corporation's current insurance policies at each AGM (refer schedule 2, s 2.3).

**Section 103 Application of insurance money by owners corporation (UTA s 137)** - This section is equivalent to section 137 of the current UTA. The section has been redrafted consistent with the modern ACT drafting style to make it easier to read and understand.

Subsection (2) has been updated to clarify that subsection 91) applies subject to this Act, other territory laws and any order of a court. The example of 'other territory law' given is if it is necessary to obtain building damage orders from the ACAT approving a building damages scheme for rebuilding and reinstating the building (see UTA, div 10.3), the owners corporation may not apply the insurance money to the rebuilding and reinstating before obtaining the orders.

**Section 104 Additional insurance—owners corporation (UTA s 138)** - This section is identical to section 138 of the current UTA. The reference to ‘this part’ has been updated to ‘this division’.

**Section 105 Additional insurance—unit owners (UTA s 139)** - This section is identical to section 139 of the current UTA. The reference to ‘this part’ has been updated to ‘this division’.

## **Part 6 Owners corporation rules**

**Section 106 What are the rules of an owners corporation? (UTA s 126)** – This section is equivalent to a provision in the current UTA. It uses the simpler term ‘default rules’ in place of ‘default articles’. The new section refers the reader to the location of the default rules, which have been moved from the regulation to schedule 4 of the UTA.

Note 1 states that the owners corporation may amend the default rules under section 108. Note 1 has been inserted to assist the reader to understand when and how the default rules can be amended.

Note 2 in the section states that the new default rules do not apply to any owners corporations established before the commencement of part 16 of the UTA. This is equivalent to note 2 of the current UTA, which provides that if the owners corporation was established under the *Unit Titles Act 1970* (repealed), the articles of the corporation continue to apply unless a special resolution is passed to adopt some or all of the UTA default articles.

Note 3 states that where the owners corporation was established under the UTA, the articles of the corporation are taken to be rules of the corporation under the new Act and that it may amend its rules under this Act. However, an existing article that is inconsistent with the new Act or another territory law has no effect (see section 108(3)). This includes any existing article that:

- gives a function to the corporation not incidental or ancillary to the exercise of its functions under the new Act (s 108(3)(b));
- prohibits or restricts any dealing with an interest in a unit or equitable estate of a unit owner in the common property (s 108(3)(c)); or
- prohibits or restricts the installation, operation or maintenance of sustainability or utility infrastructure (s 108(3)(d)).

Note 3 assists the reader by referring to the relevant sections of the Act, including the transitional provisions. The effect of the new provisions referred to the note is that articles of owners corporations established under the UTA are saved, except to the extent to which they are inconsistent with subsection section 108(3). For example, the articles of an owners corporation that has been established since the commencement of the UTA would be saved,

but under the new provisions, an article that prohibits the installation of solar panels would have no effect.

**Section 107 Effect of rules (UTA s 127)** – This section is identical to section 127 of the current UTA. Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

**Section 108 Owners corporation may amend rules (UTA s 128)** – This section is identical to section 128 of the current UTA but introduces new subsection (3)(d). The subsection provides that any rules which have the effect of prohibiting or restricting the installation, operation or maintenance of sustainability infrastructure on the common property have no effect.

This is intended to render any rules which effectively ban the owners corporation from being able to consider a motion to incorporate a sustainability or utility infrastructure into the units plan void. Any motion to incorporate such measures, however, would still require an ordinary resolution of the owners corporation.

New subsection (3)(d) applies to all new and existing rules (articles) prohibiting or restricting the installation, operation or maintenance sustainability infrastructure on common property.

Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

**Section 109 Breach of rules—rule infringement notice (UTA s 129)** – This section is identical to section 129 of the current UTA. Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

**Section 110 Breach of rules—failure to comply with rule infringement notice (UTA s 129A)** - This section is identical to section 129A of the current UTA. Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

**Section 111 Breach of rules—request for rule infringement notice (UTA s 129B)** – This section is identical to section 129B of the current UTA. Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

**Section 112 Application of Legislation Act (UTA s 130)** – This section identical to section 130 of the current UTA. Reference to the term ‘article’ in the section is replaced with the term ‘rule’.

## **Part 7 Owners corporation records**

**Section 113 Corporate register—establishment (UTA s 70 (1) and (4))** – This section is identical to subsections 70(1) and 70(4) of the current UTA. The new section includes new note 1, which states that the corporate register contains personal information as defined

under the Commonwealth *Privacy Act 1988* and that the national privacy principles apply to the owners corporation in relation to the corporate register.

The requirement to keep a corporate register may engage with the human right to privacy under section 12 of the *Human Rights Act 2004*. Further discussion on how this provision engages with the right of privacy is contained in the overview of human rights implications at the beginning of the explanatory statement.

**Section 114 Corporate register—information to be included (UTA s 70 (2) and (3))**  
– This section is identical to subsections 70(2) and 70(3) of the current UTA.

**Section 115 Corporate register—provision of information (UTA s 71)** – This section is identical to section 71 of the current UTA.

**Section 116 Corporate register – access (UTA s72)** – This section is identical to section 72 of the current UTA. The new section includes new note 1, which states that the corporate register contains personal information as defined under the Commonwealth *Privacy Act 1988* and that the national privacy principles apply to the owners corporation in relation to the corporate register.

**Section 117 Names and addresses of executive members (UTA s 73)** – This section is identical to section 73 of the current UTA.

**Section 118 Insurance information (UTA s 74)** – This section is identical to section 74 of the current UTA.

**Section 119 Unit title certificate and access to owners corporation records (UTA s 75)** – This section is equivalent to section 75 of the current UTA.

The content of the unit title certificate under this provision will be determined by the Minister in a disallowable instrument. This permits greater flexibility in modifying the requirements of the unit title certificate to better suit conveyancing and general disclosure requirements.

The section also provides that a fee may be fixed by the owners corporation of not more than an amount determined by the Minister by disallowable instrument. This similarly gives greater flexibility in determining the fee to be paid in a way that reflects both the content of the certificate as determined by the Minister and the costs that are incurred by an owners corporation in complying with the section.

**Section 120 Acting on information in unit title certificate (UTA s 76)** – This section is identical to section 76 of the current UTA.

**Section 121 Failure to provide information or certificate—offence (UTA s 77)** –

This section is identical to section 77 in the current UTA.

**Section 122 Owners corporation name, address and letterbox (UTA s 78)** – This section is identical to section 78 of the current UTA, except that the word ‘parcel’ is replaced with ‘land’ in keeping with a more modern, plain-English drafting style.

**Section 123 Service of documents on owners corporation (UTA s 79)** – This section is identical to section 79 of the current UTA, except that the new section refers to “this Act” and the *Unit Titles Act 2001* (which will provide for matters relating to planning, development and registration). Also, the word “parcel” is replaced with “land” in keeping with a more modern, plain-English drafting style.

**Section 124 Service of documents on members, interested people and occupiers (UTA s 80)** - This section is identical to section 80 of the current UTA, except that it refers to “this Act” and the *Unit Titles Act 2001* (which will provide for matters relating to planning, development and registration). Reference to the word “parcel” in the section is replaced with “land” in keeping with a more modern, plain-English drafting style, and the words “part owner of a unit” are omitted from the subsection as they are superfluous and unnecessary.

## **Part 8 Dispute resolution**

**Section 125 Disputes involving the owners corporation—generally (UTA s 123 and s 124)** - This section is equivalent to sections 123 and 124 of the current UTA. The table format of the current provisions is difficult to read. The table has been replaced with new sections 125 – 128, which make it easier to determine who may apply to the ACAT for an order in relation to a dispute. Section 125 clarifies that the owners corporation may bring an action, or be subject to an action brought by, any of the people listed in the section.

**Section 126 Disputes involving the owners corporation—particular matters (UTA s 123 and s 124)** – The intention of this section is to prevent applications being brought to the ACAT about the keeping of animals by anyone other than the owners corporation against the unit owner or occupier or vice versa. The section also restricts the persons who can bring applications involving the return by a former manager of owners corporation property. Only the owners corporation or the former manager would be able to bring such an action.

Section 126(3) has been inserted to make clear that other people are not able to bring the actions mentioned in the section as described above. Section 126(3) includes an example of a unit owner or occupier in a dispute with another unit owner or occupier about an animal. Such an action can only be brought by an owners corporation against an owner or occupier or vice versa, and therefore individual unit owners or occupiers cannot bring actions against another unit owner or occupier to the ACAT about an animal.

These provisions are equivalent in their effect to current sections 123-124 in the UTA as

these matters are currently “column 4 matters” in the table in section 123.

The table format of the current provisions is difficult to read. Placing these provisions in separate sections makes them easier to read and clarifies the intention of the current provisions.

**Section 127 Disputes involving the executive committee (UTA s 123 and s 124) –**

This section clarifies that an executive committee may take an action against an executive committee member or vice versa.

This provision is equivalent to current sections 123-124 of the current UTA as an item 7 matter in column 1 of the table in section 123.

The table format of the current provisions is difficult to read. The table has been replaced with new sections 125 – 128, which make it easier to determine who may apply to the ACAT for an order in relation to a dispute.

**Section 128 Disputes between unit owners (UTA s 123 and 124) -** This section is equivalent to sections 123 and 124 of the current UTA as an item 1 matter in column 1 of the table in section 123.

The table format of the current provisions is difficult to read. The table has been replaced with new sections 125 – 128, which make it easier to determine who may apply to the ACAT for an order in relation to a dispute.

**Section 129 Kinds of ACAT orders (UTA s 125) –** This section is identical to section 125 of the current UTA.

## **Part 9 Protection of financiers for service contracts**

**Section 130 Meaning of *financed service contract* and *financier*—pt 9 (UTA s 55Q) –** This section is identical to section 55Q of the current UTA.

**Section 131 Who is a *financier* for a service contract? (UTA s 55R) –** This section is identical to section 55R of the current UTA.

**Section 132 Financed service contract—notice of change (UTA s 55S) –** This section is identical to section 55S of the current UTA. The word “of” in “the financier of a financed service contract” is changed to “for” to make the section consistent with other sections. Also, the words “for a units plan” are inserted after “owners corporation” in the section to make it clear who the parties to the financed service contract are.

**Section 133 Financed service contract—limitation on ending (UTA s 55T) -** This

section is identical to section 55T of the current UTA. The words “for a units plan” are inserted after “owners corporation” in the section to make it clear who the parties to the financed service contract are.

**Section 134**      **Financed service contract—person authorised to act for financier (UTA s 55U)** - This section is identical to section 55U of the current UTA.

**Section 135**      **Financed service contract—agreement between owners corporation and financier prohibited (UTA s 55V)** - This section is identical to section 55V of the current UTA. The reference to “this subdivision” in section 55V(1)(c) is substituted with “this part” as the financed service contract provisions which are in part 5 of the current UTA with the financial management provisions will be moved to their own part.

## **Part 10 Administrators**

### **Division 10.1 Interested parties**

**Section 136**      **Who may apply for an administration order? (UTA s 140)** - This section is identical to current section 140 of the current UTA. Reference to “the chief executive” is substituted with “the director-general” to reflect current administrative arrangements in the ACT Government.

**Section 137**      **ACAT appearances and service of applications (UTA s 141)** - This section is identical to section 141 of the current UTA. References to “the chief executive” are substituted with “the director-general” to reflect current administrative arrangements in the ACT Government.

### **Division 10.2 Appointment, removal and functions**

**Section 138**      **Appointment of administrator (UTA s 142)** - This section is identical to section 142 of the current UTA.

**Section 139**      **Removal or replacement of administrator (UTA s 143)** - This section is identical to section 143 of the current UTA.

**Section 140**      **Functions of administrator (UTA s 144)** - This section is identical to section 144 of the current UTA. Subsection (3) includes a note about the meaning of an example in an Act, as the subsection refers to subsection (2) as an example of an order the ACAT may make about the exercise of an administrator’s functions.

**Section 141**      **Delegation by administrator (UTA s 145)** - This section is identical to section 145 of the current UTA. The note in the section about the making of delegations clarifies that, notwithstanding that a delegation has been made, the person making the

delegation may still exercise the function.

## **Part 11 Miscellaneous**

### **Division 11.1 Mortgage insurance**

**Section 142 Mortgage insurance of unit (UTA s 134)** - This section is identical to section 134 of the current UTA.

**Section 143 Payment under mortgage insurance policies (UTA s 135)** - This section is identical to section 135 of the current UTA.

**Section 144 Transfer of mortgagee's interest to insurer (UTA s 136)** - This section is identical to section 136 of the current UTA.

### **Division 11.2 Miscellaneous**

NB: The Bill omits section 178 of the current UTA, which allows the ACAT to order that an application made to the ACAT under the Act be removed to the Supreme Court on the joint application of all parties. This section has been omitted as section 83 of the *ACT Civil and Administrative Tribunal Act 2008* requires the ACAT to remove an application to the Supreme Court on joint application by the parties.

**Section 145 Determination of fees (UTA s 179)** - This section is identical to section 179 of the current UTA.

**Section 146 Approved forms (UTA s 180)** - This section is identical to section 180 of the current UTA. References to “the planning and land authority” have been substituted with “the Minister”.

**Section 147 Regulation-making power (UTA s 181)** - This section is identical to section 181 of the UTA.

**Section 148 Legislation amended—sch 5** - This section provides for the legislation mentioned in schedule 5 to be amended as set out in that schedule.

## **Part 12 Transitional**

**Section 149 Definitions –pt 12** – defines ‘commencement day’, ‘existing executive committee’, ‘existing owners corporation’ and UTA for the purpose of the transitional provisions.

**Section 150 Existing corporations and executive committees** – This section preserves owners corporations and executive committees established or in existence immediately before the commencement day.

**Section 151 Representatives** – This section preserves representatives authorised under sections 41, 43 and 112 of the current UTA immediately before the commencement day.

**Section 152 Managers** – This section preserves the appointment of a manager under section 55 of the current UTA immediately before the commencement day.

**Section 153 Service contracts** – This section preserves a service contract entered into by an existing owners corporation under section 55K of the current UTA immediately before commencement day.

**Section 154 Communication officers** - This section preserves the appointment of a communication officer under section 55H of the current UTA immediately before the commencement day.

**Section 155 Administrators** - This section preserves the appointment of an administrator under section 142 of the current UTA immediately before the commencement day.

**Section 156 Agreements for work on behalf of unit owners or occupiers** – This section preserves agreements entered into by an existing owners corporation under section 52 of the current UTA immediately before the commencement day.

**Section 157 Sinking fund plans** – This section preserves a sinking fund plan approved by an existing owners corporation under division 5.4 of the current UTA immediately before the commencement day.

**Section 158 Approvals, authorisations, consents, decisions of existing owners corporation etc** – This section preserves approvals, authorisations, consents and other decisions of an existing owners corporation under repealed provisions, in force immediately before commencement day.

**Section 159 General meetings notified before commencement day** – This section preserves a notice of a general meeting of an owners corporation to be held after commencement day, if the notice was given before commencement day.

With respect to a general meeting of the owners corporation held before commencement day which is adjourned to a date on or after the commencement date, the meeting is taken to be adjourned under this Act, schedule 3, section 3.9 (Quorum at a general meeting – owners

corporation with 3 or more members), and this Act applies to the general meeting.

**Section 160 Articles of pre-2001 corporation** – This section clarifies the application of articles for owners corporations formed before commencement of the *Unit Titles Act 2001*, part 16. For this category of owners corporations, the articles of the owners corporation, as in force immediately before the commencement day, continue to apply to the corporation, but may be amended in accordance with this Act. The section also states that if, before the commencement day there was a breach of an article of the corporation, the breach is taken to be a breach of a rule under this Act.

This section confirms the continued effect of expired section 192 of the *Unit Titles Act 2001*.

**Section 161 Articles of owners corporation under UTA** – This section clarifies the application of rules for owners corporations formed after commencement of the *Unit Titles Act 2001*, part 16. For this category of owners corporations, the articles of the owners corporation, as in force immediately before the commencement day are taken to be rules under this Act, continue to apply to the corporation, and may be amended under this Act, section 107. The section also states that an article of the owners corporation has no effect if the article is inconsistent with this Act or another territory law or does any of the thing mentioned in this Act, section 108(3)(b) – (d).

**Section 162 Transitional regulations** - provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Unit Titles (Management) Act 2011*.

Subsection (2) provides that a regulation may modify this division 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. A regulation under subsection (2) has effect despite anything elsewhere in the proposed Act.

**Section 163 Unit Titles (Management) Regulation 2011** – This section is included to ensure continuity of effect of provisions currently contained in the *Unit Titles Regulation 2001*, republication 10, when those provisions are transitioned to the new *Unit Titles (Management) Regulation 2011*.

**Section 164 Transitional effect – Legislation Act, s 88** – This section states that this part (other than s 162 (transitional regulations)) is a law to which the Legislation Act, section 88 (repeal does not end effect of transitional laws etc) applies.

**Section 165 Expiry – pt 12 etc** – This section states that part 12, as well as certain defined notes, expire 1 year after commencement day.

## Schedule 1 Codes of conduct

This schedule contains a new code of conduct for executive committee members. The code of conduct is based on the code of conduct for committee voting members under the Queensland *Body Corporate and Community Management Act 1997*, schedule 1A. Provisions in the code of conduct have been updated to accord with the current ACT legislative drafting style. An additional provision has been added about unconscionable conduct, based on the existing provision in the ACT's manager code of conduct (see *Unit Titles Regulation 2001* republication 10, section 2.8).

The code of conduct works with new section 48 (limitation on executive member liability) to provide an appropriate balance between the rights and obligations on executive committee members in carrying out their duties.

## **Part 1.1 Executive committees—code of conduct**

- 1 Understanding of Act and code**
- 2 Honesty and fairness**
- 3 Care and diligence**
- 4 Acting in owners corporation's best interests**
- 5 Complying with Act and code**
- 6 Nuisance**
- 7 Unconscionable conduct**
- 8 Conflict of interest**

## **Part 1.2 Managers—code of conduct**

The manager's code of conduct is currently located in schedule 2 of the *Unit Titles Regulation 2001* republication 10. The provisions in the code of conduct remain unchanged, except for the addition of a 4<sup>th</sup> example in the 'unconscionable conduct' provision.

- 1 Knowledge of Act and code**
- 2 Honesty, fairness and professionalism**
- 3 Skill, care and diligence**
- 4 Acting in owners corporation's best interests**
- 5 Keeping owners corporation informed of developments**
- 6 Ensuring employees comply with Act and code**
- 7 Fraudulent or misleading conduct**
- 8 Unconscionable conduct**
- 9 Conflict of duty or interest**
- 10 Goods and services to be supplied at competitive prices**
- 11 Manager to demonstrate keeping of particular records**

## Schedule 2 Executive committees

New schedule 2 contains the rules regarding what the executive committee must, may or cannot do (part 2.1), as well as the rules regarding executive committee meetings and procedures (part 2.2). These provisions are equivalent to those contained in the current UTA.

Having the rules for the executive committee actions and meetings in separate schedules allows stakeholders to quickly identify the relevant provisions. A similar approach is taken in the NSW *Strata Schemes Management Act 1996*. The schedule includes a note at the start of the schedule that sets out the provisions in the Act dealing with the composition of the executive committee and the office-holders of the executive committee. The schedule can be used as a guide and taken to meetings to assist proceedings.

The substantive content of the provisions is unchanged, except for an additional requirement in new section 2.3 that the executive committee present details of each insurance policy held by the owners corporation to the corporation at each annual general meeting.

### New requirement for executive committee to present insurance details at annual general meeting

Similar to the requirements in new sections 2.1 and 2.2 (section 91 of the current UTA), failure to disclose details of the insurance policies of the owners corporation at each annual general meeting is an offence that carries a maximum penalty of 20 penalty units, and the new requirement has an identical defence provision to the offences in sections 2.1 and 2.2.

New section 2.3 is intended to ensure that unit owners are aware of their entitlements and obligations under their collective insurance policies.

Other changes that have been made to provisions in the schedule are designed to clarify the existing provisions.

The defence provision in sections 2.1 and 2.2 (section 91 of the current UTA) has been extended to all offences in those sections. Previously a defence could only be raised to an offence against section 91(4), for failures to provide financial statements that are current as at the date of the annual general meeting.

Also, sections 2.2(2) and (3), which are equivalent to section 91(4) of the current UTA, are re-cast to make the requirement easier to understand. The purpose of the provision in 91(4) of the current UTA (new sections 2.2(2) and (3)) is to ensure that annual financial statements that are to be presented at the annual general meeting are current.

## **Part 2.1 What the executive committee must, may or cannot do**

**2.1 Executive committee must keep minutes, and records and accounts (UTA s 91 (1), (2) and (5))**

**2.2 Executive committee must present financial statements at annual general meeting (UTA s 91 (3) to (6))**

**2.3 Executive committee must present insurance details at annual general meeting**

**2.4 Approving use of common property (UTA s 88B)**

**2.5 Decisions about taking legal action (UTA s 88C)**

**2.6 Taking urgent legal action (UTA s 88D)**

**2.7 Decisions about staged development (UTA s 88A)**

## **Part 2.2 Executive committee—meetings and procedures**

**2.8 Meetings of executive committee (UTA s 85)**

**2.9 Quorum of executive committee (UTA s 86)**

**2.10 Voting of executive committee (UTA s 88)**

**2.11 Chairperson – meetings (UTA s 87A(2), (3) and (4))**

## **Schedule 3 General meetings**

New Schedule 3 contains the rules regarding owners corporation meetings and procedures. These provisions are equivalent to those contained in the current UTA. Provisions have been redrafted consistent with current ACT drafting style, to make the provisions easier to read and understand.

Having the rules for owners corporation meetings in a separate schedule allows stakeholders to quickly identify the relevant provisions. A similar approach is taken in the NSW *Strata Schemes Management Act 1996*. The schedule includes a note at the start of the schedule that provides basic information about general meetings. The schedule can be used as a guide and taken to the meeting to assist proceedings.

The substantive content of the provisions is unchanged, other than sections 3.11, 3.13 and 3.31.

### **Increased timeframes in relation to reduced quorum decisions**

Section 3.11(section 101 of the current UTA) substitutes the 21 day period after which a reduced quorum decision takes effect with 28 days, and also substitutes the 21 day period within which a reduced quorum decision can be challenged or confirmed with 28 days. This is intended to provide a more realistic time frame within which a reduced quorum decision can be defeated by a petition of the majority of unit owners requiring the decision be disallowed being given to the owners corporation. Similarly, it provides a more realistic time

frame within which a reduced quorum decision can be confirmed by a motion being passed while a standard quorum is present.

#### Consistency of chairperson provisions

Section 3.13 (section 103 of the current UTA) has been amended to ensure it is consistent with section 87A(1)(a) of the current UTA (new section 41) to provide that the person elected as chairperson by the executive committee is the chairperson at general meetings.

#### Absentee votes

Section 3.31 (section 120 of the current UTA) has been amended to allow absentee votes to be cast on any motion. Section 120 of the current UTA only allows an absentee vote to be cast on a motion requiring an unopposed or unanimous resolution.

Currently, for motions not requiring an unopposed or unanimous resolution, unit owners must either be present at the meeting in person or cast a proxy vote which empowers another member of the owners corporation to vote on their behalf. Providing unit owners with the power to cast an absentee vote for any motion gives unit owners greater flexibility in how they choose to participate in the decision-making process, especially for unit owners who are unable to attend general meetings.

### **Division 3.1.1 General meetings**

- 3.1 Conduct of general meetings (UTA s 93)**
- 3.2 Annual general meetings (UTA s 94)**
- 3.3 First annual general meeting (UTA s 95)**
- 3.4 First annual general meeting—developer to deliver records (UTA s 95A)**
- 3.5 General meetings other than annual general meetings (UTA s 96)**
- 3.6 Notice of general meetings (UTA s 97 (1) and (2))**
- 3.7 Requirements for notice of general meetings (UTA s 97 (3), (4) and (5))**
- 3.8 Defective notice of meetings (UTA s 98)**
- 3.9 Quorum at a general meeting—owners corporation with 3 or more members (UTA s 99)**
- 3.10 Notice of reduced quorum decisions and adjournments (UTA s 100)**
- 3.11 Reduced quorum decisions—effect (UTA s 101)**
- 3.12 Quorum at a general meeting—owners corporation with 2 members (UTA s 102)**
- 3.13 Chairperson at a general meeting (UTA s 103)**

### **Division 3.1.2 Resolutions at general meetings**

- 3.14 Decision-making at general meetings (UTA s 104)**
- 3.15 Ordinary resolutions (UTA s 105)**
- 3.16 Special resolutions (UTA s 106)**
- 3.17 Unopposed resolutions (UTA s 107)**
- 3.18 Unanimous resolutions (UTA s 108)**
- 3.19 Evidence of resolutions of owners corporation (UTA s 109)**

### **Division 3.1.3 Voting at general meetings**

- 3.20 Who is entitled to vote? (UTA s 110)**
- 3.21 General meeting—decisions about staged development (UTA s 110A)**
- 3.22 One vote—1 unit (UTA s 111)**
- 3.23 Voting by mortgagees (UTA s 112)**
- 3.24 Mortgagee voting notice—amendment and revocation (UTA s 113)**
- 3.25 Evidence of mortgagee’s entitlement to vote (UTA s 114)**
- 3.26 Proxy votes (UTA s 115)**
- 3.27 Proxy votes—limit on developer (UTA s 115A)**
- 3.28 Value of votes (UTA s 116)**
- 3.29 Polls (UTA s 117)**
- 3.30 Voting by chairperson (UTA s 118)**
- 3.31 Absentee votes (UTA s 120)**
- 3.32 People under 18 or under other legal disabilities (UTA s 121)**
- 3.33 Declaration by chairperson of result of voting (UTA s 122)**

## **Schedule 4 Default rules**

New schedule 4 contains the default rules of the owners corporation (formerly known as the default articles). They are identical to the articles in the current *Unit Titles Regulation 2001*, except for the change of terminology from ‘article’ to ‘rule’ and consequential amendments to cross-references. Rules 10-12 have been renumbered, as the current articles do not contain an article 9.

Rule 10 (What may an executive committee representative do?) engages with the human right of privacy and under section 12 of the *Human Rights Act 2004*. Further discussion on how this provision engages with the right of privacy is contained in the overview of human rights implications at the beginning of the explanatory statement.

- 1 Definitions—default rules**
- 2 Payment of rates and taxes by unit owners**
- 3 Repairs and maintenance**
- 4 Erections and alterations**
- 5 Use of common property**
- 6 Hazardous use of unit**
- 7 Use of unit—nuisance or annoyance**
- 8 Noise**
- 9 Illegal use of unit**

## **10 What may an executive committee representative do?**

## **11 Seal of owners corporation**

# **Schedule 5 Consequential amendments**

This schedule contains amendments to other ACT legislation, consequential to the introduction of the new *Unit Titles (Management) Act 2011*. The amendments ensure that any cross-references to the existing UTA in other statutes are updated as appropriate.

### Relocation of developer disclosure and implied warranties provisions

More significant consequential amendments include the relocation of developer disclosure requirements (division 3.4/section 31A of the current UTA) and implied warranties (part 7A of the current UTA) to the *Civil Law (Property) Act 2006* (refer clauses 5.38 and 5.47). These provisions have been relocated because they relate to the conveyance of real property, and are better placed in Chapter 2 (Conveyancing) of the *Civil Law (Property) Act 2006*. A reference to ‘proposed articles’ in current section 31A has been replaced with ‘default rules’ to correct an inconsistency with section 33 (current 46A - Restriction on owners corporation during developer control period) (refer clause 5.34).

### Correction of *Agents Act 2003* in relation to occupational discipline orders

Section 43 of the *Agents Act 2003* deals with occupational discipline orders for agents. This section applies if the ACAT makes an occupational discipline order to cancel or suspend an agent’s licence. Current paragraph 43(2)(b) empowers the ACAT to make order that prohibits the agent administering an administrative or special purpose fund under the *Unit Titles Act 2001*. Paragraph 43(2)(b) has been corrected to include sinking fund in the types of funds that an agent might be prohibited from administering. The terms ‘administrative and special purpose fund’ have been revised to ‘general fund’, consistent with terminology used in the new *Unit Titles (Management) Act 2011*.

### **Part 5.1 Agents Act 2003**

### **Part 5.2 Civil Law (Property) Act 2006**

### **Part 5.3 Civil Law (Sale of Residential Property) Act 2003**

### **Part 5.4 Heritage Act 2004**

### **Part 5.5 Land Tax Act 2004**

### **Part 5.6 Land Titles (Unit Titles) Act 1970**

### **Part 5.7 Land Titles Act 1925**

### **Part 5.8 Leases (Commercial and Retail) Act 2001**

### **Part 5.9 Planning and Development Regulation 2008**

### **Part 5.10 Rates Act 2004**

### **Part 5.11 Residential Tenancies Act 1997**

### **Part 5.12 Unit Titles Act 2001**

### **Part 5.13 Unit Titles Regulation 2001**

## **Schedule 6 New Unit Titles (Management) Regulation**

The new Unit Titles (Management) Regulations are to include provisions in the *Unit Titles Regulations 2001* required by provisions which are to be shifted to the new Unit Titles (Management) Act.

### **Dictionary**

Terms from the current UTA which are used in the Unit Titles (Management) Act are replicated in the dictionary. New terms for the new legislation are also included, such as 'sinking fund contribution'.