



Australian Capital Territory

Unit Titles (Management) Act 2011

A2011-41

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Australian Capital Territory

Unit Titles (Management) Act 2011

A2011-41

An Act to provide for the management of units plans, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Unit Titles (Management) Act 2011*.

2 Commencement

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

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

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

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

3 Dictionary

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

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

For example, the signpost definition '*class A unit*—see the *Unit Titles Act 2001*, section 10.' means that the term 'class A unit' is defined in that Act, section 10 and the definition applies to this Act.

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

4 Notes

- (1) A note included in this Act is explanatory and is not part of this Act.

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

- (2) In this section:

note includes material enclosed in brackets in section headings.

Note The *Unit Titles Act 2001* was amended because of the commencement of this Act. Some sections of this Act contain bracketed notes under their headings (eg UTA, s 59 (1)) drawing attention to equivalent or comparable (though not necessarily identical) provisions of the *Unit Titles Act 2001*, R20.

- (3) Subsection (2), the notes mentioned in subsection (2), and this subsection expire 1 year after the day this section commences.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Objects of Act

The objects of this Act are to—

- (a) make it clear who is responsible for managing units plans; and
- (b) help people who manage, or help in the management of units plans, understand and exercise their functions; and
- (c) assist in the resolution of disputes in relation to the management of units plans; and
- (d) make the law about the management of units plans easier to use generally.

Part 2 Management of units plans

Division 2.1 Who manages a units plan?

7 Owners corporation

The owners corporation for a units plan is responsible for managing the units plan.

Note An owners corporation may be helped by 1 or more of the following:

- (a) the executive committee of the owners corporation;
- (b) a manager engaged under s 50;
- (c) a service contractor engaged under s 60.

Division 2.2 Owners corporation—general

8 Owners corporation—establishment

(UTA s 38)

- (1) On the registration of a units plan, an owners corporation for the units plan is established under the name ‘The Owners—Units Plan No X’.

- (2) In this section:

X means the number given to the units plan by the registrar-general on its registration.

9 Owners corporation—legal status

(UTA s 39)

- (1) An owners corporation is a body corporate.
- (2) An owners corporation—
 - (a) has perpetual succession; and
 - (b) must have a common seal; and

- (c) may sue and be sued in its corporate name.

Division 2.3 Owners corporation—membership and representatives

10 Members of owners corporation

(UTA s 40)

- (1) The members of an owners corporation for a units plan are the owners of the units.
- (2) If a unit is owned by 2 or more part-owners, each part-owner is a member of the owners corporation.

11 Part-owners of units—authorisation of representatives

(UTA s 41)

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

Note If a company is a part-owner of the unit, the company's own representative may also be authorised as the part-owners' representative (see s 14 (Company-owned units—functions of representatives)).

- (4) The notice of authorisation must—
 - (a) be given to the owners corporation within 14 days after the lodgment for registration of the instrument under which the unit first becomes owned by the part-owners; and
 - (b) include the full name and an address for correspondence of the representative; and
 - (c) be signed by each part-owner of the unit.

- (5) The part-owners of the unit may change their representative by written notice to the owners corporation.
- (6) The notice of change of authorisation must—
 - (a) include the full name and an address for correspondence of the new representative; and
 - (b) be signed by each part-owner of the unit.
- (7) The part-owners' representative may change the address for correspondence of the representative by written notice to the owners corporation.
- (8) The notice of change of address must be signed by the representative.
- (9) This section may be enforced in the same way as a rule of the owners corporation (see section 107 (Effect of rules)).

12 Part-owners of units—functions of representatives

(UTA s 42)

- (1) This section applies if a unit is owned by 2 or more part-owners.
- (2) Anything that an owner of the unit may do, or is required to do, under this Act may be done by the part-owners' representative acting as the agent for the part-owners.
- (3) Any document, including a notice, that this Act requires the owners corporation or someone else to give to the part-owners may be given to the representative alone on their behalf under section 124 (Service of documents on members, interested people and occupiers).

Note The owners corporation must give notice of a general meeting to the part-owners' representative on behalf of the part-owners to comply with sch 3, s 3.6 (1) (a) (which requires notices to be given to each member of the owners corporation).

- (4) If a document is given to the part-owners by being given to the representative on their behalf, the representative must tell the other part-owners that the document has been given to the representative and (if asked) give them a copy of the document.
- (5) Subsection (4) may be enforced in the same way as a rule of the owners corporation (see section 107 (Effect of rules)).

Example—s (4) and s (5)

In breach of s (4), a part-owners' representative for a unit does not tell a part-owner of the unit about a notice of a determination of general fund contribution (under s 78 (1)) given to the representative on the unit owners' behalf.

The part-owner may rely on s (5) to enforce s (4) against the representative for the unit. The relevant enforcement action is the same as for a breach of the owners corporation rules—a civil action for breach of an agreement under seal (see s 107).

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

13 Company-owned units—authorisation of representatives

(UTA s 43)

- (1) This section applies if a company is the owner of a unit.
Note **Owner** includes a part-owner (see dict).
- (2) The company must, by written notice to the owners corporation, authorise an individual to represent it as its agent (the company's **representative**) for this Act.
- (3) The company's representative must be an officer or employee of the company.

- (4) The notice of authorisation must—
 - (a) be given to the owners corporation within 14 days after the lodgment for registration of the instrument under which the company becomes an owner of the unit; and
 - (b) include the full name and an address for correspondence of the representative; and
 - (c) be signed on behalf of the company.
- (5) The company may change its representative by written notice to the owners corporation.
- (6) The notice of change of authorisation must—
 - (a) include the full name and an address for correspondence of the new representative; and
 - (b) be signed on behalf of the company.
- (7) The company's representative may change the address for correspondence of the representative by written notice to the owners corporation.
- (8) The notice of change of address must be signed by the representative.
- (9) This section may be enforced in the same way as a rule of the owners corporation (see section 107 (Effect of rules)).

14 Company-owned units—functions of representatives

(UTA s 44)

- (1) This section applies if a company is the owner of a unit.
- (2) Anything that the company may do, or is required to do, under this Act may be done by the company's representative acting as the agent for the company.

- (3) Any document, including a notice, that this Act requires the owners corporation or someone else to give to the company may be given to the representative on its behalf under section 124 (Service of documents on members, interested people and occupiers).

Note The owners corporation must give notice of a general meeting to the company's representative on behalf of the company to comply with sch 3, s 3.6 (1) (a) (which requires notices to be given to each member of the owners corporation).

15 Evidence of representative status

(UTA s 45)

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

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

Part 3 **Functions of owners corporations**

Division 3.1 **Functions generally**

16 **Owners corporation—functions**

(UTA s 46 (1) and s 51 (1))

- (1) An owners corporation for a units plan has the following functions:
- (a) the enforcement of its rules;
 - (b) the control, management and administration of the common property;
 - (c) any other function given to the corporation under this Act or another territory law.

Note 1 The executive committee of an owners corporation exercises the functions of the corporation (see s 35 (1)). The executive committee must exercise its functions in accordance with any decision made by the owners corporation at a general meeting (see s 35 (3)).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) The owners corporation must comply with all applicable laws in force in the Territory.

17 **Owners corporation—general meetings**

Schedule 3 applies to general meetings of an owners corporation for a units plan.

18 Exemptions for units plans with 4 or fewer units

(UTA s 50)

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

Division 3.2 Functions relating to property

19 Common property

(UTA s 47)

- (1) An owners corporation for a units plan holds the common property as agent for—
 - (a) if all the units are owned by the same person—the owner; or
 - (b) in any other case—the unit owners as tenants in common in shares proportional to their unit entitlement.

Note The owners corporation may, by ordinary resolution, decide to hold sustainability infrastructure installed on common property as trustee for the unit owners (see s 23 (3)).

- (2) The owners corporation must give all members of the corporation opportunity for the reasonable use and enjoyment of the common property.

20 Dealings with common property

(UTA s 48 (2) and (4))

- (1) An owners corporation for a units plan may, if authorised by a special resolution, on conditions and for purposes stated in the resolution—
 - (a) grant or vary an easement over any part of the common property; or

- (b) take or vary an easement granted for the benefit of the common property; or
- (c) release an easement granted for the benefit of the common property.

Note The owners corporation may, by ordinary resolution, grant an easement or any other right over the common property for the purpose of the installation, operation or maintenance of sustainability or utility infrastructure (see s 23 (1) (c)).

- (2) The owners corporation may not transfer, sublet or mortgage, at law or in equity, its interest in the common property.

21 Dealings in property generally

(UTA s 48 (1) and (3))

- (1) An owners corporation for a units plan may, if authorised by an ordinary resolution—
 - (a) hold property for a use in accordance with its functions; or
 - (b) dispose of that property.
- (2) However, the only interests in land that an owners corporation may hold, at law or in equity, are as follows:
 - (a) the lease of the common property;
 - (b) an easement granted for the benefit of the common property;
 - (c) a registered charge under section 96 securing an amount payable to the corporation;
 - (d) an interest in the common property of a community title scheme that includes the land subdivided by the units plan.

22 Special privileges relating to common property

(UTA s 49)

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

23 Installation of sustainability and utility infrastructure on common property

- (1) An owners corporation for a units plan may, if authorised by an ordinary resolution—
 - (a) approve the installation of sustainability or utility infrastructure on the common property; and
 - (b) approve the financing of the installation of the sustainability or utility infrastructure; and
 - (c) grant an easement or any other right over any part of the common property for the purpose of the installation, operation or maintenance of the sustainability or utility infrastructure.
- (2) The owners corporation may only approve the installation, and financing, of sustainability or utility infrastructure under this section if satisfied, after considering the following, the long-term benefit of the proposed infrastructure is greater than the cost of installing and maintaining the infrastructure:
 - (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;
 - (f) any other matter prescribed by regulation.
- (3) The owners corporation may, by ordinary resolution, decide to hold sustainability infrastructure (including existing sustainability infrastructure) installed on common property and any income earned from the operation of the infrastructure as trustee for—
- (a) if all the units are owned by the same person—the owner; or
 - (b) in any other case—the unit owners as tenants in common in shares proportional to their unit entitlement.

Example—income

income from an electricity feed-in tariff scheme

Note 1 If the owners corporation does not decide to hold sustainability infrastructure as trustee for the unit owners, it holds the infrastructure as agent for the owners (see s 20 (1)).

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

- (4) For section 71, an owners corporation is not carrying on a business 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.

Division 3.3 Maintenance and other services

24 Maintenance obligations

(UTA s 51 (3), (5) and (8))

- (1) An owners corporation for a units plan must maintain the following:
 - (a) for a staged development—the common property included in a completed stage of the development;
 - (b) for a development that is not a staged development—the common property;
 - (c) other property that it holds;
 - (d) the defined parts of any building containing class A units (whether or not the defined parts are common property);

Note This does not include painting, unless the painting is required because of other maintenance (see s 26 (1)).
 - (e) if a utility service mentioned in the *Unit Titles Act 2001*, section 35 (Easements given by this Act) is provided for the potential benefit of all units—facilities associated with the provision of the utility services including utility conduits;
 - (f) any building on the common property that encroaches on a unit if the building is the subject of an easement declared under the *Unit Titles Act 2001*, section 36 (Easements declared by owners corporations);

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

Example—par (g)

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

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

- (2) In this section:

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

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

25 Owners corporation may exempt itself from maintenance obligations

(UTA s 51 (6))

An owners corporation for a units plan may, by special resolution, exempt itself from 1 or more maintenance obligations under section 24 (1) if the exemption is not reasonably likely to have a significant adverse effect on—

- (a) the appearance of the common property; or
- (b) the safety of occupiers of the units or of the public.

26 Other qualifications on owners corporation's maintenance obligations

(UTA s 51 (4) and (7))

- (1) An owners corporation's obligation under section 24 (1) (d) to maintain the defined parts of a building containing class A units does not require the corporation to carry out any painting of a unit unless the painting is necessary because of other maintenance being carried out by the owners corporation.
- (2) If the lease of a unit or the common property is subject to a building and development provision, section 24 (1) does not apply to the owners corporation until the planning and land authority issues a certificate under the *Planning and Development Act 2007*, section 296 (Certificates of compliance)—
 - (a) for the building and development provision; and
 - (b) for any building and development provision to which any of the other leases are subject.

Note **Building and development provision**—see the *Planning and Development Act 2007*, s 234.

- (3) In this section:
defined parts, of a building containing class A units—see section 24 (2).

27 Structural defects—owners corporation may represent members

(UTA s 51B)

- (1) This section applies if a building, or the site of a building, that is part of the units or common property of a units plan, has a structural defect that affects, or is likely to affect, the support or shelter provided by that part of the building or site to another part of the building or site.
- (2) The owners corporation for the units plan may, by ordinary resolution, take legal action for the rectification of the structural defects if—
 - (a) the legal action could be taken by a member of the corporation; and
 - (b) the member does not take the legal action within a reasonable time after the defect becomes known.
- (3) If the owners corporation takes legal action under this section—
 - (a) the corporation and not the member who could have taken the action is liable for the costs incurred by the corporation in taking the legal action; and
 - (b) the corporation and not the member may take the benefit of any order for costs in the corporation's favour in the legal action.
- (4) For this section, the owners corporation *takes legal action* if the corporation—
 - (a) begins a proceeding; or
 - (b) continues a proceeding.

28 Owners corporation—entry to units

(UTA s 51C)

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

Examples—emergencies

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

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

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

29 Work on behalf of particular unit owners or occupiers

(UTA s 52)

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

- (a) the maintenance of the unit; or

- (b) the provision of facilities or services for the unit (or its owner or occupier).

30 Recovery of costs—agreements under s 29

(UTA s 53)

- (1) This section applies to an agreement for the maintenance of a unit, or the provision of facilities or services for a unit (or its owner or occupier), if—
- (a) the agreement is authorised under section 29; and
- (b) the owners corporation is not responsible for the maintenance, facilities or services under section 29.
- (2) The owners corporation may recover the cost of carrying out the agreement as a debt from the person with whom the agreement was entered.
- (3) If the agreement applies to a number of units, the amount recoverable for each unit is (unless the people with whom the agreement was entered agree in writing otherwise) as follows:

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

- (4) In subsection (3):

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

total unit entitlement of relevant units means the total unit entitlement of all units that the agreement applies to.

Note *Unit entitlement*—see the *Unit Titles Act 2001*, s 8.

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

(UTA s 54)

- (1) This section applies if an owners corporation for a units plan has in carrying out its functions incurred an expense, or carried out work, that is necessary because of—
 - (a) a wilful or negligent act or omission of a member of the corporation, or an occupier of the member's unit; or
 - (b) a breach of its rules by a member of the corporation, or an occupier of the member's unit.
- (2) The amount spent or the cost of the work is recoverable by the owners corporation from the member as a debt.
- (3) If the owners corporation recovers an amount under subsection (2) from a member for an act, omission or breach of an occupier of the member's unit, the member may recover the amount from the occupier as a debt.
- (4) In this section:

work, carried out by an owners corporation, means maintenance or anything else the corporation is authorised under this Act to do.

Division 3.4 Other matters

32 Animals—owners corporation's consent

(UTA s 51A)

- (1) A unit owner may keep an animal, or allow an animal to be kept, within the unit or the common property only with the consent of the owners corporation.
- (2) The owners corporation may give consent under this section with or without conditions.

- (3) However, the owners corporation's consent must not be unreasonably withheld.

Note An owner or occupier of a unit may apply to the ACAT to resolve a dispute with the owners corporation about keeping an animal, or allowing an animal to be kept (see s 126).

- (4) In this section:

animal includes—

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

33 Restriction on owners corporation during developer control period

(UTA s 46A)

- (1) An owners corporation for a units plan must not, during the developer control period, do any of the following:
- (a) enter into a contract unless—
 - (i) the contract is disclosed in each contract to sell a unit in the units plan; and
 - (ii) either—
 - (A) the contract is for a period not longer than 2 years; or
 - (B) the ACAT authorises the corporation entering into the contract in accordance with subsection (3);

Note This section also applies to the engagement of a manager or service contractor under div 4.2 or div 4.3.

- (b) change the rules of the corporation;
 - (c) approve the keeping of an animal in a unit unless the right to keep an animal was reserved in each contract to sell a unit in the units plan.
- (2) A developer or, if an owners corporation is established for the units plan, the owners corporation may apply to the ACAT for the authority to enter a contract during the developer control period.
- (3) The ACAT may authorise the owners corporation entering into the contract if satisfied that the terms of the contract are reasonable in all the circumstances.
- (4) In making a decision under subsection (3), the ACAT—
- (a) must take into account any matter prescribed by regulation; and
 - (b) may take into account any other thing it considers relevant.

Examples—other things that may be relevant

- 1 short and long-term economic benefits and disadvantages of the contract
- 2 the existence of a financing agreement related to the contract
- 3 environmental sustainability measures provided for by the contract

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

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

Division 4.1 **Executive committees**

34 **Executive committee—establishment**

(UTA s 81)

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

35 **Executive committee—functions**

(UTA s 82)

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

(f) carrying out the decisions of the owners corporation made at general meetings.

(3) The executive committee must exercise its functions—

- (a) as the corporation directs by resolution at a general meeting; or
- (b) in the absence of a resolution—as the committee considers appropriate.

Note The resolution required under s (3) (a) is an ordinary resolution, unless the Act provides that the resolution should be a special, unopposed or unanimous resolution—see sch 3, s 3.14 (Decision-making at general meetings).

36 Executive committee—what it must, may and cannot do

The executive committee must act in accordance with schedule 2, part 2.1.

37 Executive committee—meetings

Schedule 2, part 2.2 applies to executive committee meetings.

38 Executive committee—before the first annual general meeting

(UTA s 83)

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

39 Executive committee—at and from the first annual general meeting

(UTA s 84)

- (1) This section applies to the executive committee of an owners corporation beginning at the corporation's first annual general meeting.
- (2) The number of members of the executive committee (the *executive members*) is decided as follows:
 - (a) if there are only 1, 2 or 3 members of the owners corporation—each member of the owners corporation is an executive member;
 - (b) if there are 4 or more members of the owners corporation—the members of the corporation must, at a general meeting, decide—
 - (i) by ordinary resolution to have 3 to 7 executive members; or
 - (ii) by special resolution to have 8 or more executive members.
- (3) If the number of members of the owners corporation is equal to or falls below the number of executive members as decided by the corporation, all the members of the corporation are executive members (even if not nominated or elected).
- (4) The executive members—
 - (a) are elected (if necessary) by ordinary resolution at each annual general meeting; and
 - (b) hold office until the earlier of—
 - (i) the next annual general meeting; and
 - (ii) the executive member ceasing to be a member of the owners corporation.

- (5) An executive member (the *removed member*) of an owners corporation may be removed by the ordinary resolution that elects another member of the corporation to replace the removed member until the next annual general meeting.
- (6) The executive committee of an owners corporation may appoint a member of the corporation to fill a casual vacancy on the committee until the next annual general meeting.

40 Executive committee—office-holders

(UTA s 87)

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

41 Executive committee—chairperson’s functions

(UTA s 87A (1))

The functions of the chairperson are—

- (a) to chair general meetings of the owners corporation and meetings of the executive committee; and
- (b) to set the agenda for general meetings and executive meetings, in consultation with the secretary and owners corporation manager (if any); and
- (c) to talk to the secretary, treasurer and manager (if any) about the exercise of their functions.

42 Executive committee—secretary’s functions

(UTA s 87B)

The functions of the secretary are—

- (a) on behalf of the executive committee—
 - (i) to give notice of meetings of the executive committee and general meetings; and
 - (ii) to prepare and send out to executive members minutes of executive meetings; and
 - (iii) to prepare and send out to members of the owners corporation minutes of general meetings; and
 - (iv) to keep the records of the owners corporation, other than the records mentioned in schedule 2, section 2.1 (1) (f) (which are financial records); and
- (b) on behalf of the executive committee, and the owners corporation, to give notices under the Act; and
- (c) on behalf of the owners corporation—
 - (i) to give certificates required under the Act; and
 - (ii) to prepare and answer correspondence; and
- (d) to give any other administrative support to the executive committee or owners corporation.

43 Executive committee—treasurer’s functions

(UTA s 87C)

The functions of the treasurer are—

- (a) on behalf of the owners corporation, to give to each unit owner notice of—
 - (i) a determination of general fund contributions under section 78 (1); and

- (ii) a determination of sinking fund contributions under section 89 (1); and
 - (b) on behalf of the owners corporation—
 - (i) to pay all amounts the corporation receives into the corporation's account in accordance with section 68 (1) (b); or
 - (ii) if the owners corporation is exempt from section 68 (1)—to receive, acknowledge receipt of, and account for amounts paid to the corporation; and
- Note* An owners corporation for a units plan with only 2 or 3 units may, by unopposed resolution, exempt itself from s 68 (1) (see s 68 (2)).
- (c) on behalf of the owners corporation, to pay amounts the corporation spends out of the corporation's account, in accordance with section 68 (1) (c), as authorised by the executive committee; and
 - (d) on behalf of the executive committee, to keep the records (the *records*) mentioned in schedule 2, section 2.1 (1) (f); and
 - (e) if the owners corporation requires the records to be audited—to arrange for the records to be audited by a qualified auditor; and
 - (f) to give financial reports to meetings of the executive committee to allow the committee to monitor the financial performance of the owners corporation; and
 - (g) to prepare and certify the annual financial statements mentioned in schedule 2, section 2.2 (1).

44 Executive committee—delegation

(UTA s 89)

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

Note A function that has been delegated by the executive committee may, despite the delegation, be exercised by the committee (see Legislation Act, s 240). For the making of delegations and the exercise of delegated functions generally, see the Legislation Act, pt 19.4.

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

45 Executive committee—contractors and employees

(UTA s 90)

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

Note An owners corporation may engage a manager (see div 4.2) and service contractors (see div 4.3).

- (2) However, the executive committee may only engage a person under this section—
 - (a) on a short-term basis; or
 - (b) for functions other than those for which a manager or service contractor would usually be engaged to undertake.
- (3) An owners corporation may, by ordinary resolution, impose conditions or limitations on its executive committee's power to engage or employ people.

46 Executive members—code of conduct

An executive member must comply with the code of conduct set out in schedule 1, part 1.1.

47 Executive members—protection from liability

- (1) An executive member is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the executive committee attaches instead to the owners corporation.
- (3) In this section:
conduct means an act or omission to do an act.

48 Executive committee—validity of acts

(UTA s 92)

An act done honestly by an executive committee is not invalid only because there was a defect or irregularity in or in relation to the member's election or appointment.

Division 4.2 Managers

49 Definitions—div 4.2

In this division:

management contract means a contract to provide management services to an owners corporation.

management services means services provided by a manager in exercising the manager's functions.

manager means a person—

- (a) contracted under section 50; or
- (b) with whom an owners corporation has a management contract.

50 Manager—contract

(UTA s 55 and s 55A (2))

- (1) An owners corporation for a units plan may, by ordinary resolution, enter into a management contract with any of the following:
 - (a) a person holding a licence as a real estate agent under the *Agents Act 2003*;

Note The commissioner for fair trading may issue a conditional real estate licence to a person who acts, or intends to act, only as the manager of an owners corporation (see *Agents Act 2003*, s 34).
 - (b) a member of the corporation;
 - (c) someone else who is not a manager of another owners corporation, and whose income as manager of the corporation will not be the person's primary source of income.
- (2) The management contract—
 - (a) must state—
 - (i) the remuneration of the manager; and
 - (ii) the functions of the owners corporation that the manager is to exercise; and
 - (b) may include other conditions agreed between the owners corporation and the manager.
- (3) Without limiting subsection (1), an owners corporation enters into a management contract if the corporation engages a person to carry out management services.

51 Manager not to be contracted for longer than 3 years

(UTA s 55A (1))

- (1) An owners corporation must not enter into a management contract with a manager for longer than 3 years (including any period for which the contract may be renewed or extended).

- (2) If an owners corporation enters into a management contract for longer than 3 years, the contract is taken, for all purposes, to be a contract for 3 years.

52 Manager—functions

(UTA s 55B)

A manager has—

- (a) the functions stated in the manager’s contract; and
- (b) any other function delegated to the manager under section 58.

53 Manager—transfer

- (1) A manager’s rights under a management contract may be transferred only if the transfer is approved by the owners corporation by ordinary resolution.
- (2) In deciding whether to approve the proposed transfer, the owners corporation may consider the following:
- (a) the character of the proposed transferee and associates of the proposed transferee;
 - (b) the proposed transferee’s financial standing;
 - (c) the terms of the proposed transfer;
 - (d) the competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
 - (e) whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training in relation to the manager’s functions;
 - (f) anything else relevant to the management contract.
- (3) The owners corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation is asked in writing to approve the transfer.

- (4) However, the owners corporation must not—
- (a) unreasonably withhold the approval to transfer; or
 - (b) require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.
- (5) If the owners corporation has not decided whether to approve a proposed transfer within the period mentioned in subsection (3), the corporation is taken to have approved the transfer.
- (6) In this section:
- associates of the proposed transferee means—*
- (a) if the proposed transferee is a corporation—the corporation’s directors, substantial shareholders and principal staff; or
 - (b) if the proposed transferee is a partnership or is in partnership—the partners and principal staff of the partnership.

54 Manager—ending contract

(UTA s 55C)

- (1) The owners corporation may end a management contract—
- (a) for a remedial breach if notice has been given under section 55; or
 - (b) for misbehaviour; or
 - (c) if the manager is an individual—if the individual—
 - (i) becomes bankrupt or personally insolvent; or
 - (ii) is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or

- (iii) is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (d) if the manager is a corporation—if the corporation becomes insolvent.
- (2) However, before ending a management contract under subsection (1) (c) (ii) or (iii), the owners corporation must be satisfied that the conviction affects the manager's suitability to exercise the manager's functions.
- (3) The owners corporation must end a management contract—
 - (a) if the manager is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the manager's functions.
- (4) In this section:
 - insolvent***—a corporation is taken to be ***insolvent*** if the corporation—
 - (a) is being wound up; or
 - (b) has had a receiver or other controller appointed; or
 - (c) has entered into a deed of company arrangement with its creditors; or
 - (d) is otherwise under external administration under the Corporations Act, chapter 5.

remedial breach means a remedial breach under section 55.

55 Manager—remedial breaches

(UTA s 55D)

- (1) A manager commits a remedial breach if the manager—
 - (a) fails to exercise the manager’s functions; or
 - (b) contravenes the manager’s code of conduct; or

Note See sch 1, pt 1.2 for manager’s code of conduct.

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

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

56 Manager—code of conduct

(UTA s 55E)

A manager must comply with the code of conduct set out in schedule 1, part 1.2.

57 Manager—public liability insurance

(UTA s 55F)

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

58 Manager—delegated functions

(UTA s 55G)

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

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

Division 4.3 Service contractors

59 Definitions—div 4.3

(UTA s 55J)

In this division:

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

service contractor means a person—

- (a) contracted under section 60; or
- (b) with whom an owners corporation has a service contract.

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

60 Service contractor—contract

(UTA s 55K (1), (2), (3) (a) and (4))

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

Note Pt 9 provides for the protection of financiers of service contracts.

- (2) Without limiting subsection (1), an owners corporation enters into a service contract if the corporation engages a person to carry out service contractor services.
- (3) However, the owners corporation must not enter into a service contract for a period longer than 3 years (including any period for which the contract may be renewed or extended) unless the contract is authorised by special resolution and made after the end of the developer control period for the units plan.
- (4) A service contract entered into in breach of subsection (3) is void.
- (5) In this section:

units plan includes part of a units plan.

61 Service contractor not to be contracted for longer than 25 years

(UTA s 55L)

- (1) An owners corporation must not enter into a service contract with a service contractor for longer than 25 years.
- (2) If an owners corporation enters into a service contract with a service contractor for longer than 25 years, the contract is taken, for all purposes, to be a contract for 25 years.

62 Service contractor—functions

(UTA s 55M)

- (1) A service contractor for an owners corporation helps the corporation to exercise 1 or more of the following functions in relation to the common property of the units plan:
 - (a) managing the common property;
 - (b) supervising use of the common property;
 - (c) maintaining and repairing the common property.
- (2) In this section:
common property includes part of the common property.

63 Service contractor—transfer

(UTA s 55N)

- (1) A service contractor's rights under a service contract may be transferred only if the transfer is approved by the owners corporation by ordinary resolution.
- (2) In deciding whether to approve the proposed transfer, the owners corporation may consider the following:
 - (a) the character of the proposed transferee and associates of the proposed transferee;
 - (b) the proposed transferee's financial standing;
 - (c) the terms of the proposed transfer;
 - (d) the competence, qualifications and experience of the proposed transferee and associates of the proposed transferee;
 - (e) whether the proposed transferee or associates of the proposed transferee have received, or are likely to receive, training in relation to the service contractor's functions;
 - (f) anything else relevant to the service contract.

- (3) The owners corporation must decide whether to approve a proposed transfer not later than 30 days after the day the corporation is asked in writing to approve the transfer.
- (4) However, the owners corporation must not—
 - (a) unreasonably withhold the approval to transfer; or
 - (b) require or receive a fee or other consideration for approving the transfer, other than reimbursement of legal or administrative expenses reasonably incurred by the corporation for the approval.
- (5) If the owners corporation has not decided whether to approve a proposed transfer within the period mentioned in subsection (3), the corporation is taken to have approved the transfer.
- (6) In this section:
associates of the proposed transferee means—
 - (a) if the proposed transferee is a corporation—the corporation’s directors, substantial shareholders and principal staff; or
 - (b) if the proposed transferee is a partnership or is in partnership—the partners and principal staff of the partnership.

64 Service contractor—ending contract

(UTA s 55O)

- (1) The owners corporation may end a service contract—
 - (a) for a remedial breach if notice has been given under section 65; or
 - (b) for misbehaviour; or
 - (c) if the service contractor is an individual—if the individual—
 - (i) becomes bankrupt or personally insolvent; or

- (ii) is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or
 - (iii) is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (d) if the service contractor is a corporation—if the corporation becomes insolvent.
- (2) However, before ending a service contract under subsection (1) (c) (ii) or (iii), the owners corporation must be satisfied that the conviction affects the service contractor's suitability to exercise the contractor's functions.
- (3) The owners corporation must end a service contract—
- (a) if the service contractor is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the service contractor's functions.
- (4) In this section:
- insolvent***—a corporation is taken to be ***insolvent*** if the corporation—
- (a) is being wound up; or
 - (b) has had a receiver or other controller appointed; or
 - (c) has entered into a deed of company arrangement with its creditors; or
 - (d) is otherwise under external administration under the Corporations Act, chapter 5.

remedial breach means a remedial breach under section 65.

65 Service contractor—remedial breaches

(UTA s 55P)

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

Division 4.4 Communication officers

66 Communications officer—appointment

(UTA s 55H)

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

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

- (3) Without limiting subsection (2)—
 - (a) a person may be appointed as a communications officer whether or not the person is a member of the owners corporation; and
 - (b) the corporation may appoint the officer as a volunteer or may pay the officer.

67 Communications officer—function

(UTA s 55I)

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

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

Part 5 **Financial management**

Division 5.1 **Financial functions generally**

68 **Owners corporation must have bank account**

(UTA s 56 (1) and (2))

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

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

- (2) An owners corporation for a units plan with only 2 or 3 units may, by unopposed resolution, exempt itself from subsection (1).

69 **Owners corporation may invest**

(UTA s 56 (3) and (4))

- (1) An owners corporation may invest its money as it considers appropriate, subject to any direction by special resolution.
- (2) However, an owners corporation must not invest in a mortgage of land.

70 **Owners corporation may borrow**

(UTA s 58)

An owners corporation may, if authorised by a special resolution, do 1 or more of the following:

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

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

Note Section 20 (2) prevents the owners corporation from taking out a mortgage over the lease in the common property to secure repayment.

71 Owners corporation must not carry on business
(UTA s 57)

- (1) An owners corporation must not carry on business except in the exercise of its functions.

Note The earning of income from the operation of sustainability infrastructure by an owners corporation does not amount to carrying on business if the income is used to pay certain costs (see s 23 (4)).

- (2) If an owners corporation contravenes subsection (1), each executive member of the corporation at the time of the breach commits an offence.

Maximum penalty: 50 penalty units.

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

Division 5.2 Administrative, special purpose and sinking funds

72 Definitions—div 5.2
(UTA s 55W)

In this division:

administrative fund—see section 73.

expected sinking fund expenditure—see section 83.

general fund, of an owners corporation, means the corporation's administrative fund or a special purpose fund.

general fund budget—see section 75 (1).

general fund contribution—see section 78 (1).

sinking fund—see section 81 (2).

sinking fund contribution—see section 89 (1).

sinking fund plan—see section 82 (2).

special purpose fund—see section 74 (1).

total general fund contribution—see section 75 (2) (a).

total sinking fund amount, for a financial year, means the total of expected sinking fund expenditure for the year set out in the sinking fund plan.

73 Administrative fund

(UTA s 59 (1))

An owners corporation for a units plan must establish a fund for the general administration of the corporation (an *administrative fund*).

74 Special purpose fund

(UTA s 59 (2) and (3))

- (1) An owners corporation for a units plan may, by special resolution, establish funds for particular purposes (a *special purpose fund*).
- (2) The purposes for which a special purpose fund may be used may only be changed by special resolution of the owners corporation.

75 General fund—budget

(UTA s 59 (4), (5) and (6))

- (1) At each annual general meeting of an owners corporation, the corporation must, by ordinary resolution, approve a budget (the *general fund budget*) for the administrative fund and each special purpose fund for the financial year in which the meeting is held.
- (2) The general fund budget must state for the financial year in which the annual general meeting is held—
 - (a) an estimate of the total contributions (the *total general fund contribution*) to be paid into the general fund by the owners corporation's members; and
 - (b) an estimate of any other amounts to be paid into the general fund; and
 - (c) an estimate of payments to be made out of the general fund including an estimate of payments necessary—
 - (i) to maintain in good condition on a day-to-day basis the common property and any other property held by the owners corporation; and
 - (ii) to pay for insurance premiums; and
 - (iii) to pay for recurrent expenses.

Examples—par (b)

- 1 the proceeds from the sale of any personal property of the owners corporation
- 2 fees paid to the owners corporation for inspection of its records and the provision of information and certificates relating to its records

Examples—par (c) (i)

carpet cleaning, lawnmowing services, minor expenses relating to maintenance of the common property

Examples—par (c) (iii)

utility service charges, accounting fees

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

- (3) A payment out of a special purpose fund may only be included in the budget if the payment is for the purpose for which the fund was established, unless the proposed payment is authorised by special resolution.
- (4) The amount mentioned in subsection (2) (c) must not include transfers to the sinking fund.

76 General fund—what must be paid into the fund?

An owners corporation for a units plan must pay the following amounts into its general fund:

- (a) general fund contributions paid to the owners corporation;
- (b) the proceeds of the disposal of any personal property of the owners corporation;
- (c) any fees paid to the owners corporation for inspection of its records and the provision of information and certificates relating to its records.

77 General fund—what can fund be used for?

(UTA s 59 (4))

An owners corporation for a units plan may only make payments from a general fund if the payments are—

- (a) approved in the general fund budget; or
- (b) authorised by ordinary resolution.

78 General fund—contributions

(UTA s 60 (1) to (4))

- (1) An owners corporation for a units plan may, from time to time, determine a contribution (a *general fund contribution*) required from its members for the corporation's general fund.
- (2) The general fund contribution payable for each unit is—
 - (a) the proportional share for the unit of the total general fund contribution; or
 - (b) a proportion of the total general fund contribution worked out in accordance with a method set out in an unopposed resolution.
- (3) A resolution under subsection (2) (b) may provide that only stated unit owners, or unit owners in a stated class, are required to pay a particular contribution, or a contribution of a particular kind.
- (4) A resolution under subsection (2) (b) may only be—
 - (a) amended by unopposed resolution; and
 - (b) revoked by special resolution.

79 General fund—notice of contributions

(UTA s 60 (5) and (6))

- (1) An owners corporation for a units plan must give notice of a determination of general fund contributions to each unit owner.
- (2) The notice must include the following information:
 - (a) the general fund contribution payable for the unit;
 - (b) the general fund contributions payable for each other unit;
 - (c) the general fund for which the contribution is required, the proportion of the contribution to be paid into each fund, and the total amount to be paid into each fund;

- (d) the proportion of the total general fund contribution payable for the unit and how the proportion is worked out;
- (e) the date when the contribution is payable, if paid in full (which must be not later than 28 days after the date of the notice);
- (f) if the contribution is payable by instalments—the dates when the instalments are payable;
- (g) how the contribution may be paid;
- (h) details of any discount for early payment decided by the owners corporation under section 93;
- (i) details of interest payable for late payment under section 94.

80 General fund—when are contributions payable?

(UTA s 60 (7))

A general fund contribution is payable by a unit owner—

- (a) if paid in full—on the date stated in the notice; or
- (b) if payable by instalments—on the dates stated in the notice.

81 Sinking fund

(UTA s 61 (1))

- (1) This section applies if there are 4 or more units in a units plan.
- (2) An owners corporation for the units plan must establish and maintain a fund (the *sinking fund*).

82 Sinking fund plan

(UTA s 62 (2) and (3) and s 63A (2) and (3))

- (1) This section applies to an owners corporation for a units plan if the corporation is required to establish and maintain a sinking fund.

- (2) The owners corporation must approve, by ordinary resolution, a plan of expected sinking fund expenditure (a *sinking fund plan*) for each year in the 10-year period beginning on the day of the next annual general meeting following the approval.

Note A sinking fund plan of an existing owners corporation that was current immediately before the commencement of this division is taken to be a sinking fund plan under this Act (see s 157 (2)). The day the existing sinking fund plan is approved for this Act is the day the existing sinking fund plan was approved by the owners corporation for the *Unit Titles Act 2001* (see s 157 (3) and (4)).

83 Sinking fund plan—meaning of *expected sinking fund expenditure*

(UTA s 61 (3))

- (1) For this division, *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 it holds:
- (a) the painting or repainting of any building (or any part of a building) that forms part of the common property;
 - (b) the acquisition of new property or renewal or replacement of property that it holds;
 - (c) the renewal, replacement or repair of fixtures and fittings that are part of the common property;
 - (d) the renewal, replacement or repair of anything else on the common property;
 - (e) for a building containing class A units—any purpose mentioned in paragraph (b), (c) or (d) that relates to defined parts of the building;
 - (f) for a building on a class B unit—any maintenance mentioned in paragraph (b), (c) or (d) that is authorised by a special resolution under section 24 (1) (g);

(g) any other capital expenses for which the corporation is responsible.

(2) In this section:

defined parts, of a building containing class A units—see section 24 (2).

property includes sustainability or utility infrastructure.

84 Sinking fund plan—when must it be approved?

(1) The owners corporation for a units plan must approve a sinking fund plan not later than—

(a) if the corporation is established after the commencement of this division—12 months after the day of the corporation's 1st annual general meeting; or

(b) in any other case—12 months after the day this division commences.

Note A sinking fund plan of an existing owners corporation that was current immediately before the commencement of this division is taken to be a sinking fund plan under this Act (see s 157 (2)). The day the existing sinking fund plan is approved for this Act is the day the existing sinking fund plan was approved by the owners corporation for the *Unit Titles Act 2001* (see s 157 (3) and (4)).

(2) 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.

85 Sinking fund plan—review

(UTA s 63 and s 63B)

An owners corporation for a units plan must review its sinking fund plan—

- (a) not later than 4 years after the plan is first approved by the owners corporation (the *first review*); and
- (b) not later than the end of each 5-year period after the first review.

Note A sinking fund plan of an existing owners corporation that was current immediately before the commencement of this division is taken to be a sinking fund plan under this Act (see s 157 (2)). The day the existing sinking fund plan is first approved for this section is the day the initial sinking fund plan was approved by the owners corporation under the *Unit Titles Act 2001* (see s 157 (3)).

86 Sinking fund plan—amendment

An owners corporation for a units plan may at any time, by ordinary resolution, amend its sinking fund plan to ensure that the plan reflects expected sinking fund expenditure.

87 Sinking fund—what must be paid into the fund?

(UTA s 61 (2))

An owners corporation for a units plan must pay the following amounts into its sinking fund:

- (a) sinking fund contributions paid to the owners corporation;
- (b) any amount received by the owners corporation that is not required or allowed to be paid into a general fund;
- (c) any amount authorised by an ordinary resolution to be transferred from the administrative fund to the sinking fund;

- (d) any amount to be transferred from a special purpose fund to the sinking fund—
 - (i) in accordance with the purpose of the special purpose fund; or
 - (ii) that is authorised by a special resolution.

88 Sinking fund—what can fund be used for?

An owners corporation for a units plan may only make payments from its sinking fund if the payments are consistent with the sinking fund plan.

Note 1 An owners corporation may at any time, by ordinary resolution, amend its sinking fund plan to ensure that the plan reflects expected sinking fund expenditure.

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

89 Sinking fund—contributions

(UTA s 64 (1), (2) and (3))

- (1) An owners corporation for a units plan may determine a contribution (a *sinking fund contribution*) required from its members for the corporation's sinking fund.
- (2) The sinking fund contribution payable for each unit for a financial year is—
 - (a) the proportional share for the unit of the total sinking fund amount for the financial year; or

- (b) a proportion of the total sinking fund amount worked out using a method set out in an unopposed resolution.

Note **Total sinking fund amount**, for a financial year, means the total of expected sinking fund expenditure for the year set out in the sinking fund plan (see s 82). **Expected sinking fund expenditure** means expenditure for the purposes mentioned in s 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).

- (3) A resolution under subsection (2) (b) may provide that only stated unit owners, or unit owners in a stated class, are required to pay a sinking fund contribution.
- (4) A resolution under subsection (2) (b) may only be—
 - (a) amended by unopposed resolution; or
 - (b) revoked by special resolution.

90 Sinking fund—notice of contributions

(UTA s 64 (4) and (5))

- (1) An owners corporation for a units plan must, within 1 month after an annual general meeting, give notice to each unit owner of the determination of sinking fund contributions for the financial year when the meeting takes place.
- (2) The notice must include the following information:
 - (a) the sinking fund contribution payable for the unit;
 - (b) the sinking fund contributions payable for each other unit;
 - (c) the total sinking fund amount for the financial year;
 - (d) the proportion of the total sinking fund amount payable for the unit and how the proportion is worked out;
 - (e) the date when the contribution is payable, if paid in full (which must be not later than 28 days after the date of the notice);

- (f) if the contribution is payable by instalments—the dates when the instalments are payable;
- (g) how the contribution may be paid;
- (h) details of any discount for early payment decided by the owners corporation under section 93;
- (i) details of interest payable for late payment under section 94.

91 Sinking fund—when are contributions payable?

(UTA s 64 (6))

A sinking fund contribution is payable by a unit owner—

- (a) if paid in full—on the date stated in the notice; or
- (b) if payable by instalments—on the dates stated in the notice.

92 General and sinking funds in staged developments

(UTA s 64A)

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

Division 5.3 Powers in relation to money owing to owners corporation

93 Discounts—amounts owing

(UTA s 65 (1))

- (1) An owners corporation for a units plan may, by ordinary resolution, decide that a stated discount applies to an amount owing to the corporation by a unit owner if—
 - (a) the amount is paid to the corporation before the date it becomes payable; or
 - (b) for contributions payable by instalments—if the contribution is paid—
 - (i) in full on or before the date stated in the notice of the contribution for payment in full; or
 - (ii) in another way stated in the resolution.

- (2) In this section:

contribution means a general fund contribution or a sinking fund contribution.

94 Interest—amounts owing

(UTA s 65 (2) and (3))

- (1) If an amount owing to an owners corporation by a unit owner is not paid on or before the date it becomes payable, unless otherwise decided by ordinary resolution, the amount bears simple interest until paid—
 - (a) at an annual rate of 10%; or
 - (b) at an annual rate of less than 10%, if decided by special resolution; or
 - (c) at an annual rate of more than 10% and not more than 20%, if decided by special resolution.

- (2) Interest on an amount owing to the owners corporation is payable into the fund into which the amount owing is payable.

95 Recovery of amounts owing

(UTA s 66)

- (1) If an amount owing to an owners corporation is not paid on or before the date it is payable, the corporation may recover the amount as a debt from the unit owner, together with interest under section 94.
- (2) If the ownership of a unit changes after an amount owing to the owners corporation becomes payable, the owner at the time the amount becomes payable and each subsequent owner are liable both separately and together for the amount, together with interest under section 94.

96 Security for unpaid amounts—declaration of charge

(UTA s 67)

- (1) If an amount owing to the owners corporation is unpaid after it becomes payable, the corporation may declare that a charge is to be imposed over the lease of the unit to secure payment of the amount.
- (2) The declaration must—
- (a) give details of the lease of the unit to be charged; and
 - (b) state the unpaid amount owing to the owners corporation.
- (3) After making the declaration, the owners corporation must—
- (a) lodge with the registrar-general a copy of the declaration, certified as a true copy under the seal of the corporation; and
 - (b) give a copy of the declaration to the unit owner and anyone else who has an interest in the unit.

- (4) On registration of the copy of the declaration, the amount stated in the declaration, together with interest on the amount under section 94, is a charge over the lease of the unit.
- (5) A registered charge under this section does not give a power of sale over the lease of the unit.

97 Security for unpaid amounts—discharge

(UTA s 68)

- (1) This section applies if a charge declared under section 96 has been registered, and—
 - (a) the entire amount for which the charge was declared is paid, together with interest on the amount under section 94; or
 - (b) the owners corporation considers that the charge is no longer required.
- (2) The owners corporation must—
 - (a) revoke the declaration of the charge; and
 - (b) lodge with the registrar-general a copy of the revocation, certified as a true copy under the seal of the corporation; and
 - (c) give a copy of the revocation to the unit owner and anyone else who has an interest in the unit.
- (3) The discharge under this section of a charge takes effect on the registration of the revocation of the charge.

98 Liability of part-owners

(UTA s 69)

- (1) This section applies if—
 - (a) a unit is owned by 2 or more part-owners; and
 - (b) an amount is recoverable by the owners corporation from the owners.

- (2) The part-owners are liable separately and together for the payment of the amount.
- (3) As between themselves, each part-owner is liable for a part of the amount proportional to the value of the part-owner's interest in the unit.
- (4) If a part-owner pays a part of the amount that is more than the part-owner's proportional liability, the part-owner may recover the excess from the other part-owners.

Division 5.4 Insurance

99 Meaning of *building* and *land*—div 5.4

In this division:

building, on the land—

- (a) includes—
 - (i) any improvements and fixtures forming part of the building; and
 - (ii) any improvements and fixtures, including site improvements, consisting entirely of common property; and
 - (iii) anything prescribed by regulation as forming part of a building; but

Examples—site improvements

landscaping, paved areas

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

- (b) does not include—
 - (i) paint, wallpaper and temporary wall, floor and ceiling coverings; or

- (ii) fixtures removable by a lessee or sublessee of a unit at the end of a lease; or
- (iii) anything prescribed by regulation as not forming part of a building.

land means—

- (a) land subdivided by a units plan; and
- (b) for a staged development—the whole of the land in the completed stages of the development.

100 Building insurance by owners corporation

(UTA s 132)

- (1) An owners corporation for a units plan must insure and keep insured all buildings on the land for their replacement value from time to time against all of the following risks:
 - (a) fire, lightning, tempest, earthquake and explosion;
 - (b) riot, civil commotion, strikes and labour disturbances;
 - (c) malicious damage;
 - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;
 - (e) impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle;
 - (f) anything prescribed by regulation.
- (2) The owners corporation must take out an insurance policy that covers, to the greatest practicable extent—
 - (a) the risks mentioned in subsection (1); and

- (b) 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 advisers.

Note If a developer is the only member of the owners corporation, the developer must on behalf of the owners corporation take out an insurance policy under s (2), unless exempted under s 101.

- (3) A regulation may make provision in relation to an insurance policy required to be taken out by the owners corporation under this section including for the following:
 - (a) payment by unit owners of any excess payable under the policy;
 - (b) combining the policy with other insurance policies;
 - (c) notification requirements by unit owners in relation to improvements made to units;
 - (d) the proportion of the premium payable for the policy by particular unit owners by way of a general fund contribution;
 - (e) valuation of the insured buildings.
- (4) For all purposes related to any insurance taken out by it under this section, an owners corporation is taken to have an insurable interest in the buildings on the land to the extent of their replacement value.

Note 1 The owners corporation must produce its insurance policies for inspection at the request of an eligible person (see s 118).

Note 2 The executive committee of the owners corporation must give certain details about the corporation's current insurance policies at each annual general meeting (see sch 2, s 2.3).

101 Exemption from building insurance requirements

(UTA s 133)

- (1) If the replacement value of all common property buildings (or parts of buildings) on the land is less than an amount prescribed by regulation, the owners corporation may, by unanimous resolution, exempt itself from the requirement to take out building insurance under section 100 (1) for any risk stated in the exemption resolution.
- (2) An owners corporation for a units plan containing only class B units may, by unanimous resolution, exempt itself from the requirement to take out building insurance for any risk stated in the exemption resolution for all buildings (or parts of buildings) that are on the class B units.
- (3) An exemption resolution under this section has effect from the date of the annual general meeting when it is passed until the date of the next annual general meeting.

102 Public liability insurance by owners corporation

(UTA s 131)

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

Note 1 The owners corporation must produce its insurance policies for inspection at the request of an eligible person (see s 118).

Note 2 The executive committee of the owners corporation must give certain details about the corporation's current insurance policies at each annual general meeting (see sch 2, s 2.3).

103 Application of insurance money by owners corporation

(UTA s 137)

- (1) If an owners corporation for a units plan receives insurance money for damage to, or destruction of, any building on the land, the corporation must, without delay, apply the insurance money to rebuilding and reinstating the building.
- (2) Subsection (1) applies subject to this Act, other territory laws and any order of a court.

Example—other territory law

If it is necessary to obtain building damage orders from the ACAT approving a building damage scheme for rebuilding and reinstating the building (see *Unit Titles Act 2001*, div 10.3), the owners corporation may not apply the insurance money to the rebuilding and reinstating before obtaining the orders.

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

104 Additional insurance—owners corporation

(UTA s 138)

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

105 Additional insurance—unit owners

(UTA s 139)

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

Part 6 Owners corporation rules

106 What are the rules of an owners corporation?

(UTA s 126)

The rules of an owners corporation are set out in schedule 4 (the *default rules*).

Note 1 The owners corporation may amend the default rules under s 108.

Note 2 If a corporation was established before the commencement of the *Unit Titles Act 2001 (UTA)*, pt 16—

- the corporation's articles applying immediately before the commencement of the UTA continue to apply (see s 160 (2)); and
- the default rules under this Act may be adopted (in part or in full) by special resolution at a general meeting (see s 108 (1) and s 160 (2)).

Note 3 If an owners corporation was established under the UTA—

- the owners corporation's articles applying immediately before the commencement of this part are taken to be rules under this Act (see s 161 (2)); and
- the corporation may amend the rules under this Act (see s 108 (1) and s 161 (2)).

However, an existing 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 things mentioned in this Act, s 108 (3) (b) to (d).

107 Effect of rules

(UTA s 127)

- (1) There are taken to be agreements under seal between an owners corporation and each of its members, and between each member and each other member, under which the corporation and its members agree to be bound by the rules of the corporation.

- (2) An occupier of a unit (who is not the owner of the unit) is bound by each rule of the corporation as if the occupier were the owner of the unit, unless the rules provide otherwise.
- (3) If the unit owner does not occupy the unit, the owner is liable separately and together with an occupier of the unit for any breach of the rules of the owners corporation by the occupier, unless the owner proves that the owner took reasonable precautions and exercised appropriate care to prevent the breach.
- (4) An occupier of a unit who occupies the unit under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1997* is not bound by any rule of the owners corporation to the extent that the rule is inconsistent with the prescribed terms (or terms to the effect of the prescribed terms) to which the agreement is subject under that Act, section 8.

108 Owners corporation may amend rules

(UTA s 128)

- (1) An owners corporation may, by special resolution, amend its rules.
- (2) An amendment of the rules of an owners corporation takes effect—
 - (a) on the registration of a copy of the special resolution making the amendment, certified under the seal of the corporation as a true copy; or
 - (b) from a later date stated in the resolution.
- (3) An amendment to the rules of an owners corporation has no effect to the extent that it results in the rules—
 - (a) being inconsistent with this Act or another territory law; or
 - (b) giving a function to the corporation that is not incidental or ancillary to the exercise of its functions under this Act; or

- (c) prohibiting or restricting any dealing (including devolution, transfer, lease and mortgage) with—
 - (i) an interest in a unit; or
 - (ii) the equitable estate of a unit owner in the common property; or
 - (d) prohibiting or restricting the installation, operation or maintenance of sustainability or utility infrastructure.
- (4) In this section:
amendment, of rules, includes variation, rescission, substitution or addition.

109 Breach of rules—rule infringement notice

(UTA s 129)

- (1) This section applies if the executive committee of an owners corporation reasonably believes that—
- (a) the owner or occupier (the *person*) of a unit has contravened a provision of the corporation's rules; and
 - (b) the circumstances of the contravention make it likely that the contravention will continue or be repeated.
- (2) The owners corporation may, if authorised by an ordinary resolution of the executive committee, give the person a notice (a *rule infringement notice*) requiring the person to remedy the contravention.
- Note* If a form is approved under s 146 for this provision, the form must be used.
- (3) A rule infringement notice must state the following:
- (a) that the owners corporation believes the person is contravening, or has contravened, a provision of the rules;

- (b) the provision of the rules the owners corporation believes is, or was, contravened;
 - (c) details sufficient to identify the contravention;
 - (d) if the owners corporation believes the contravention is continuing—the period (which must be reasonable in the circumstances) within which the person must remedy the contravention;
 - (e) if the owners corporation believes the contravention is likely to be repeated—that the person must not repeat the contravention;
 - (f) if the person does not comply with the notice—
 - (i) the person commits an offence; and
 - (ii) the owners corporation may, without further notice, apply to the ACAT for an order in relation to the failure to comply with the notice.
- (4) If a rule infringement notice is given to a person following a request under section 111, the owners corporation must, not later than 14 days after the day the request was received, tell the person who made the request that the notice has been given.

110 Breach of rules—failure to comply with rule infringement notice

(UTA s 129A)

- (1) A person commits an offence if the person—
- (a) is given a rule infringement notice under section 109; and
 - (b) does not comply with the notice.

Maximum penalty: 5 penalty units.

- (2) However, the person does not commit an offence under this section if, when the rule infringement notice is given to the person, the person is not contravening, or has not contravened, the provision mentioned in the notice in the way detailed for section 109 (3) (c).

111 Breach of rules—request for rule infringement notice

(UTA s 129B)

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

112 Application of Legislation Act

(UTA s 130)

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

Part 7 Owners corporation records

113 Corporate register—establishment

(UTA s 70 (1) and (4))

- (1) An owners corporation for a units plan must establish and maintain a register (the *corporate register*) that includes—
 - (a) the information mentioned in section 114 (1) for each unit; and
 - (b) the information mentioned in section 114 (2).
- (2) The corporate register may be kept in electronic form.

Note The corporate register contains personal information as defined under the *Privacy Act 1988* (Cwlth). The national privacy principles under that Act apply to the owners corporation in relation to the collection, use, disclosure and storage of personal information.

114 Corporate register—information to be included

(UTA s 70 (2) and (3))

- (1) The owners corporation for a units plan must record on the corporate register the following information for each unit:
 - (a) if the unit is owned by 1 person—the full name and an address for correspondence of the unit owner;
 - (b) if the unit is owned by 2 or more part-owners—the full name and address for correspondence of the part-owners' representative and each other part-owner;
 - (c) if the unit owner is a company—the full name and address for correspondence of the company's representative;
 - (d) if a mortgagee voting notice has been given for the unit—the full name and address for correspondence of the mortgagee's representative;

- (e) if notified in writing to the corporation—the full name and an address for correspondence of anyone else with an interest in the unit together with details of the interest;
 - (f) the full name of the occupier of the unit (including the owner if the owner occupies the unit).
- (2) Also, the owners corporation must record on the corporate register the following information:
- (a) the full names of the current executive members;
 - (b) if notified in writing to the corporation—the full name and an address for correspondence of anyone with an easement over the common property together with details of the easement.

115 Corporate register—provision of information

(UTA s 71)

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

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

- s 11 (Part-owners of units—authorisation of representatives)
- s 13 (Company-owned units—authorisation of representatives).

- (2) Subsection (1) may be enforced in the same way as a rule of the owners corporation.
- (3) A person, other than a unit owner, may give the owners corporation written notice of the details of the following events:
- (a) the person agreeing to transfer an interest in the lease of a unit or the common property to someone else;
 - (b) the lodgment for registration, by the person, of an instrument under which the person acquires an interest in a unit or the common property;
 - (c) the person acquiring an interest in a unit or the common property other than a registered interest;
 - (d) if the person has an interest in a unit or the common property—a change in the full name or address for correspondence of the person;
 - (e) a change in the nature of an interest held by the person in a unit or the common property, including the person's ceasing to have the interest.

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

- sch 3, s 3.23 (Voting by mortgagees)
- sch 3, s 3.24 (Mortgagee voting notices—amendment and revocation).

116 Corporate register—access

(UTA s 72)

- (1) On request by an eligible person for a unit or the common property, the owners corporation for the units plan must allow the person, within 14 days after the request is received, to inspect, and take a copy of—
 - (a) for a request by an eligible person for a unit—the information on the corporate register about the unit and any easements with which the common property is benefited or burdened; or
 - (b) for a request by an eligible person for the common property—the information on the corporate register about any easements with which the common property is benefited or burdened.
- (2) On request by an applicant for a court order under this Act, the owners corporation must allow the applicant to inspect, and take a copy of, the names and addresses for correspondence recorded on the corporate register of each unit owner and anyone else with an interest in a unit, or the common property, that is recorded on the register.

Note This is to enable the applicant for the order to comply with the requirements for service under this Act.
- (3) A request must be in writing accompanied by a fee fixed by the owners corporation of not more than an amount prescribed by regulation.
- (4) The corporate register must be kept in a way that ensures that a person who is entitled to inspect the register does not have access to any information the person is not entitled to inspect.

Examples—how to restrict access

- 1 if the register is kept in a book, the information could be kept on a separate page for each unit and for the common property

- 2 if the register is kept in a computer database, the information could be stored so that information for each unit and the common property can be separately displayed, printed out or emailed

Note 1 The corporate register contains personal information as defined under the *Privacy Act 1988* (Cwlth). The national privacy principles under that Act apply to the owners corporation in relation to the collection, use, disclosure and storage of personal information.

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

117 Names and addresses of executive members

(UTA s 73)

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

118 Insurance information

(UTA s 74)

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

- (a) any current insurance policy or policies taken out by the corporation;
- (b) the receipts for all premiums paid under current policies taken out by the corporation;
- (c) the part of the minutes of any annual general meeting of the corporation that records any exemption resolution under section 101 (Exemptions from building insurance requirements).

119 Unit title certificate and access to owners corporation records

(UTA s 75)

- (1) On request by an eligible person for a unit or the common property for a certificate (the *unit title certificate*), the owners corporation must, within 14 days after the day the request is received, give the person the certificate under the seal of the corporation giving the information about the unit or common property determined by the Minister.
- (2) A determination is a disallowable instrument.
Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (3) On request by an eligible person for a unit or the common property to inspect the records of an owners corporation, the corporation must, within 14 days after the day the request is received, allow the person—
 - (a) to inspect—
 - (i) the information on the corporate register; and
 - (ii) any other records held by the corporation; and
 - (b) to take copies of any document inspected.
- (4) If a dispute exists, the owners corporation may withhold from inspection documents subject to legal professional privilege in relation to the dispute.
- (5) A request under this section must be in writing accompanied by a fee fixed by the owners corporation of not more than an amount determined by the Minister.
- (6) A determination is a disallowable instrument.

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

120 Acting on information in unit title certificate

(UTA s 76)

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

121 Failure to provide information or certificate—offence

(UTA s 77)

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

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
 - (a) the person requesting the information, when asked by someone acting for the owners corporation, did not give the corporation reasonable grounds to believe that the person was an eligible person; or
 - (b) the defendant took reasonable steps to ensure that the request was complied with; or
 - (c) the failure to comply with the request happened without the defendant's knowledge.

122 Owners corporation name, address and letterbox

(UTA s 78)

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

Maximum penalty: 1 penalty unit.

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

Maximum penalty: 1 penalty unit.

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

Maximum penalty: 5 penalty units.

123 Service of documents on owners corporation

(UTA s 79)

For this Act and the *Unit Titles Act 2001* (including an application for a court order under either Act) a document may be served on an owners corporation by—

- (a) if the address for service is the postal address of a building on the land—placing it in the letterbox mentioned in section 122 (2); or
- (b) serving it in another way approved by the corporation by ordinary resolution.

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

124 Service of documents on members, interested people and occupiers

(UTA s 80)

- (1) For this Act and the *Unit Titles Act 2001* (including an application for a court order under either Act) a document may be served on a unit owner or anyone else with an interest in a unit or the common property on a units plan by—
 - (a) sending it by prepaid post as a letter to the relevant address for correspondence recorded on the corporate register; or
 - (b) if the latest address for correspondence recorded in the corporate register is the postal address of a building or unit on the land—placing it in a letterbox for mail addressed to the building or unit; or
 - (c) serving it in another way directed by the person to be served.

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

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

Part 8 Dispute resolution

125 **Disputes involving the owners corporation—generally**

(UTA s 123 and s 124)

- (1) This section applies to a dispute relating to an owners corporation for a units plan between the corporation and any 1 of the following:
 - (a) an owner or occupier of a unit in the units plan;
 - (b) the manager (if any) for the owners corporation;
 - (c) a service contractor for the owners corporation;
 - (d) an executive member.
- (2) A party to the dispute may apply to the ACAT for an order in relation to the other party if the application relates to the dispute.

126 **Disputes involving the owners corporation—particular matters**

(UTA s 123 and s 124)

- (1) This section applies to the following disputes between the people mentioned in relation to the dispute:
 - (a) a dispute relating to keeping an animal or allowing an animal to be kept in a unit between—
 - (i) the owners corporation; and
 - (ii) an owner or occupier of a unit;
 - (b) a dispute relating to the return by a former manager of owners corporation property between—
 - (i) the owners corporation; and
 - (ii) the former manager.

- (2) A party to the dispute may apply to the ACAT for an order in relation to the other party if the application relates to the dispute.
- (3) To avoid doubt, only a party mentioned in this section in relation to a particular dispute may apply to the ACAT in relation to the dispute.

Example

Tony is in dispute with his neighbour, Fabian, about the pets Fabian keeps in his unit. The owners corporation is also in dispute with Fabian about the pets. Only the owners corporation can apply to the ACAT for an order against Fabian in relation to the dispute.

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

- (4) In this section:

former manager means a person who was the manager for the owners corporation.

127 Disputes involving the executive committee

(UTA s 123 and s 124)

- (1) This section applies to a dispute relating to an owners corporation for a units plan between the executive committee of the corporation and an executive member.
- (2) A party to the dispute may apply to the ACAT for an order in relation to the other party if the application relates to the dispute.

128 Disputes between unit owners

(UTA s 123 and s 124)

- (1) This section applies to a dispute relating to an owners corporation for a units plan between 2 or more unit owners.
- (2) A party to the dispute may apply to the ACAT for an order in relation to the other party if the application relates to the dispute.

129 Kinds of ACAT orders

(UTA s 125)

- (1) The ACAT may make the following orders:
 - (a) an order requiring a party to do, or refrain from doing, a stated thing;
 - (b) an order requiring a party to exercise a function under this Act;
 - (c) an order requiring an owners corporation to do a stated thing that is ancillary to a function of the corporation under this Act;
 - (d) an order requiring a person to pay to the Territory or someone else an amount of not more than \$1 000;
 - (e) a declaration—
 - (i) that a general meeting or executive committee meeting is void for irregularity; or
 - (ii) that a resolution of a general meeting or executive committee meeting is void for irregularity; or
 - (iii) that a rule of the owners corporation is invalid for irregularity;
 - (f) an order repealing or amending a resolution of a general meeting or executive committee based on a merits review of the resolution by the ACAT;
 - (g) an order giving effect to an unsuccessful motion for a resolution of a general meeting (either as originally proposed or as amended by the ACAT) if the ACAT is satisfied after a merits review of the motion that opposition to the motion was unreasonable;
 - (h) an order requiring stated accounts of an owners corporation to be audited, whether by a stated person or a person of a stated kind;

- (i) an order allowing an applicant to examine records of the owners corporation;
- (j) an order requiring an owners corporation to make or repeal a rule and register a copy of the resolution making or repealing the rule;
- (k) an order appointing an administrator to exercise all or stated functions of the owners corporation, the executive committee or an office-holder in the committee;
- (l) if the dispute relates to a matter mentioned in section 126 (1) (a)—an order to remove the animal from the unit if—
 - (i) a condition requiring the owners corporation’s consent to keeping the animal is not complied with; or
 - (ii) the animal is causing a nuisance.
- (2) The ACAT may make any other order it considers reasonably necessary or convenient to resolve a dispute under this part.
- (3) This section does not limit the orders the ACAT may make in relation to a dispute under this part.

Part 9 Protection of financiers for service contracts

130 **Meaning of *financed service contract* and *financier*—pt 9**

(UTA s 55Q)

In this part:

financed service contract means a service contract financed by a financier under section 131.

financier—see section 131.

131 **Who is a *financier* for a service contract?**

(UTA s 55R)

- (1) A person is a *financier* for a service contract if—
- (a) the person—
 - (i) is a financial institution; or
 - (ii) in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts for security; or
 - (iii) if the contract exists immediately before the commencement of this part—at the time the finance was supplied for a business acquisition using a charge over the contract for security, was a person mentioned in subparagraph (ii); and
 - (b) a service contractor for the contract and the person give written notice signed by each of them to the owners corporation that the person is a financier for the contract.

- (2) A person stops being a financier for a service contract if the person gives the owners corporation written notice withdrawing the notice given under subsection (1).
- (3) A notice under subsection (2) may be given without the service contractor's agreement.

132 Financed service contract—notice of change

(UTA s 55S)

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

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

133 Financed service contract—limitation on ending

(UTA s 55T)

- (1) The owners corporation for a units plan may end a financed service contract only if—
 - (a) the corporation gives the financier written notice that the corporation has the right to end the contract; and
 - (b) when the notice is given to the financier, the corporation has the right to end the contract; and
 - (c) the corporation gives the notice to the financier not less than 21 days before the day the contract is ended.
- (2) However, the owners corporation may not end the financed service contract if, under an arrangement between the financier and the service contractor, the financier has given the corporation notice under section 134.

- (3) Subsection (2) does not stop the owners corporation ending a service contract for something done or not done after the financier started to act under the contract.
- (4) This section does not stop a financed service contract ending by agreement between the owners corporation, service contractor and financier.

134 Financed service contract—person authorised to act for financier

(UTA s 55U)

- (1) The financier for a financed service contract may take the following action:
 - (a) act under the contract in place of the contractor;
 - (b) appoint a receiver, or a receiver and manager, for the contract.
- (2) However, the financier may only take action under subsection (1) if—
 - (a) the financier has given written notice to the owners corporation of the financier's intention to take the action; and
 - (b) at the time the notice is given to the owners corporation, the corporation—
 - (i) has not given the financier notice under section 133 (1) (c); or
 - (ii) has given and withdrawn the notice to the financier.
- (3) The financier may authorise a person to act for the financier for subsection (1) (a) if—
 - (a) the person is not the service contractor or an associate of the contractor; and
 - (b) the owners corporation approves the person.

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

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

(UTA s 55V)

- (1) A financier for a financed service contract must not enter into an agreement or other arrangement with the owners corporation under the contract for a matter relating to—
 - (a) the financier's role for the contract; or
 - (b) arrangements between the financier and service contractor under which the financier is acting, or may act, under the contract in the contractor's place; or
 - (c) the operation of this part in relation to the contract.
- (2) An agreement or arrangement to which this section applies is void to the extent it contravenes this section.

Part 10 Administrators

Division 10.1 Interested parties

136 Who may apply for an administration order?

(UTA s 140)

Any of the following people (an *interested party*) may apply to the ACAT for an order under division 10.2 (an *administration order*) in relation to the administration of an owners corporation:

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

137 ACAT appearances and service of applications

(UTA s 141)

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

Note The applicant may serve the application on an interested person at the person's address for correspondence shown on the corporate register. Other forms of service are also permitted. See s 124.

- (3) The owners corporation must serve all its creditors with a copy of the application—
 - (a) if the owners corporation is the applicant—after making the application; or

- (b) in any other case—on being served with a copy of the application.
- (4) An interested party may be represented by a lawyer or someone else.
- (5) The registrar of the ACAT must give a copy of an application to the director-general, unless the director-general is the applicant.

Division 10.2 Appointment, removal and functions

138 Appointment of administrator

(UTA s 142)

- (1) On an application by an interested party, the ACAT may, by order, appoint the person named in the application to be administrator of the owners corporation on the terms about remuneration and anything else it considers appropriate.

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

- (2) The ACAT may make an order appointing an administrator only if satisfied that the administrator consents to the order.
- (3) In an order appointing an administrator, the ACAT may give any directions it considers appropriate for giving notice of the order to the administrator, the registrar-general and the owners corporation.
- (4) The remuneration of an administrator of an owners corporation and the expenses incurred in the exercise of the administrator's functions under this Act are taken to be expenditure incurred by the corporation.

139 Removal or replacement of administrator

(UTA s 143)

- (1) On an application by an interested party, the ACAT may, by order, remove or replace an administrator.

- (2) In an order removing or replacing an administrator, the ACAT may give any directions it considers appropriate for giving notice of the order to the registrar-general and the owners corporation.

140 Functions of administrator

(UTA s 144)

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

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

141 Delegation by administrator

(UTA s 145)

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

Note A function that has been delegated by the administrator may, despite the delegation, be exercised by the administrator (see Legislation Act, s 240). For the making of delegations and the exercise of delegated functions generally, see the Legislation Act, pt 19.4.

Part 11 Miscellaneous

Division 11.1 Mortgage insurance

142 Mortgage insurance of unit

(UTA s 134)

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

143 Payment under mortgage insurance policies

(UTA s 135)

- (1) If a mortgage insurance policy is in force for a unit, the insurer is liable to pay to a mortgagee whose interest is noted on the policy the least of the following amounts:
 - (a) the amount insured as stated in the policy;
 - (b) the amount of the loss;
 - (c) the amount sufficient, at the date of the loss, to discharge the mortgage noted on the policy.
- (2) If the interests of 2 or more mortgagees are noted on the policy, subsection (1) applies to the mortgagees in their order of registered priority.

144 Transfer of mortgagee's interest to insurer

(UTA s 136)

- (1) Payment by the insurer to a mortgagee under section 143 does not entitle the unit owner to a discharge of the mortgage.
- (2) On payment by the insurer to a mortgagee under section 143—
 - (a) if the amount paid equals the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of the mortgage; or
 - (b) if the amount paid is less than the amount necessary to discharge the mortgage—the insurer is entitled to obtain from the mortgagee a transfer of an undivided share of the mortgagee's interest in the mortgage that bears to that interest the same proportion as the amount paid bears to the amount that was owing under the mortgage immediately before the payment.

Division 11.2 Miscellaneous

145 Determination of fees

(UTA s 179)

- (1) The Minister may determine fees for this Act (other than fees that this Act provides are to be fixed by an owners corporation).

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

- (2) A determination is a disallowable instrument.

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

146 Approved forms

(UTA s 180)

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

147 Regulation-making power

(UTA s 181)

- (1) The Executive may make regulations for this Act.
- (2) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.

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

148 Legislation amended—sch 5

This Act amends the legislation mentioned in schedule 5.

Part 12 Transitional

149 Definitions—pt 12

In this part:

commencement day means the day this part commences.

existing executive committee means the executive committee of an owners corporation, as established immediately before the commencement day.

existing owners corporation means an owners corporation established under the UTA that is in existence immediately before the commencement day.

Note 1 An existing owners corporation includes a corporation established under the *Unit Titles Act 1970* (repealed) and continued in existence under the *Unit Titles Act 2001*, s 184 (expired).

Note 2 *Establish* includes constitute and continue in existence (see Legislation Act, dict, pt 1, def *establish*).

UTA means the *Unit Titles Act 2001*.

150 Existing corporations and executive committees

- (1) An existing owners corporation continues in existence under this Act as an owners corporation.
- (2) The existing executive committee of an existing owners corporation continues in existence under this Act as the executive committee of the corporation.
- (3) An office-holder in, or other member of, an existing executive committee immediately before the commencement day continues under this Act to hold office, or be a member of the committee.

- (4) A person who was a member of an existing owners corporation immediately before the commencement day continues under this Act to be a member of the corporation.

151 Representatives

- (1) This section applies to a person—
 - (a) authorised as a representative under the UTA, section 41, section 43 or section 112; and
 - (b) who was a representative immediately before the commencement day.
- (2) The person is taken to have been authorised as a representative under this Act, section 11, section 13 or schedule 3, section 3.23.

152 Managers

- (1) This section applies to a person—
 - (a) appointed as a manager of an existing owners corporation under the UTA, section 55; and
 - (b) who was the manager of the corporation immediately before the commencement day.
- (2) The person is taken to have been engaged under a management contract under this Act, section 50.

153 Service contracts

- (1) This section applies to a service contract—
 - (a) entered into by an existing owners corporation under the UTA, section 55K; and
 - (b) that was in force immediately before the commencement day.
- (2) The service contract is taken to be a service contract entered into under this Act, section 60.

154 Communication officers

- (1) This section applies to a person—
 - (a) appointed as a communications officer for an existing owners corporation under the UTA, section 55H; and
 - (b) who was the communications officer for the corporation immediately before the commencement day.
- (2) The person is taken to have been appointed as the communications officer for the owners corporation under this Act, section 66.

155 Administrators

- (1) This section applies to a person—
 - (a) appointed as an administrator of an existing owners corporation under the UTA, section 142; and
 - (b) who was the administrator of the corporation immediately before the commencement day.
- (2) The person is taken to have been appointed as the administrator of the owners corporation under this Act, section 138.

156 Agreements for work on behalf of unit owners or occupiers

- (1) This section applies to an agreement—
 - (a) entered into by an existing owners corporation under the UTA, section 52; and
 - (b) that was in force immediately before the commencement day.
- (2) The agreement is taken to be an agreement entered into under this Act, section 29.

157 Sinking fund plans

- (1) This section applies to a sinking fund plan—
 - (a) approved by an existing owners corporation under the UTA, division 5.4; and
 - (b) that was current immediately before the commencement day.
- (2) The sinking fund plan is taken to be a sinking fund plan under this Act, section 82.
- (3) The day the sinking fund plan is taken to be first approved for this Act is the day the initial sinking fund plan was approved by the owners corporation under the UTA, section 62.
- (4) The day any subsequent sinking fund plan is taken to be approved for this Act is the day the subsequent sinking fund plan was approved by the owners corporation under the UTA, section 63A.

158 Approvals, authorisations, consents, decisions of existing owners corporation etc

- (1) This section applies to an approval, authorisation, consent or other decision (a *decision*) of an existing owners corporation or an existing executive committee—
 - (a) under the repealed provisions; and
 - (b) that was in force immediately before the commencement day.
- (2) The decision is taken to be a decision under this Act.
- (3) In this section:

repealed provisions means the provisions of the UTA omitted by this Act, schedule 5, part 5.12.

159 General meetings notified before commencement day

- (1) If a notice of a general meeting of an owners corporation to be held after the commencement day is given before the commencement day—
 - (a) the notice is taken to be a notice under this Act, schedule 3, section 3.6 (Notice of general meetings); and
 - (b) this Act applies to the general meeting.
- (2) If a general meeting of an owners corporation held before the commencement day is adjourned to a date on or after the commencement day—
 - (a) 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
 - (b) this Act applies to the general meeting.

160 Articles of pre-2001 corporation

- (1) This section applies to a corporation—
 - (a) established under the *Unit Titles Act 1970* (repealed); and
 - (b) that was in existence immediately before the UTA, part 16 commenced.
- (2) The articles of the corporation, as in force immediately before the commencement day, continue to apply to the corporation, but may be amended in accordance with this Act.
- (3) 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.

161 Articles of owners corporation under UTA

- (1) This section applies to an owners corporation—
 - (a) established under the UTA; and
 - (b) that is in existence immediately before the commencement day.
- (2) The articles of the owners corporation, as in force immediately before the commencement day—
 - (a) are taken to be rules under this Act; and
 - (b) continue to apply to the corporation; and
 - (c) may be amended under this Act, section 108.
- (3) However, 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 things mentioned in this Act, section 108 (3) (b) to (d).
- (4) If, before the commencement day—
 - (a) there was a breach of an article of the owners corporation—the breach is taken to be a breach of a rule under this Act; and
 - (b) an infringement notice was given under the UTA, section 129—the notice is taken to be a notice under this Act, section 109.

162 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

163 Unit Titles (Management) Regulation 2011

- (1) The provisions set out in schedule 6 are taken, on the commencement of this section, to be a regulation made under this Act, section 147 (Regulation-making power).
- (2) To remove any doubt and without limiting subsection (1), the provisions set out in schedule 6 may be amended or repealed as if they had been made as a regulation by the Executive under this Act, section 147.
- (3) To remove any doubt, the regulation mentioned in subsection (1) is taken—
- (a) to have been notified under the Legislation Act on the day this Act is notified; and
 - (b) to have commenced on the commencement day; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) Subsections (1), (2) and (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

164 Transitional effect—Legislation Act, s 88

This part (other than section 162 (Transitional regulations)) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

165 Expiry—pt 12 etc

This part and the following provisions expire 1 year after the commencement day:

- (a) section 82 (2), note;
- (b) section 84 (1) (b), note;
- (c) section 85 (b), note;
- (d) section 106, notes 2 and 3;
- (e) schedule 4 heading, notes 2 and 3.

Schedule 1 **Codes of conduct**

(see s 46 and s 56)

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

1 **Understanding of Act and code**

An executive member must have—

- (a) a commitment to acquiring an understanding of the Act, as relevant to the member's role on the executive committee; and
- (b) a good understanding of this code.

2 **Honesty and fairness**

An executive member must act honestly and fairly in exercising the member's functions as an executive member.

3 **Care and diligence**

An executive member must exercise reasonable care and diligence in exercising the member's functions as an executive member.

4 **Acting in owners corporation's best interests**

An executive member must act in the best interests of the owners corporation in exercising the member's functions as an executive member, unless it is unlawful to do so.

5 **Complying with Act and code**

An executive member must take reasonable steps to ensure that the member complies with the Act, including this code, when exercising the member's functions as an executive member.

6 Nuisance

An executive member must not—

- (a) cause a nuisance on the land; and
- (b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a unit or the common property.

7 Unconscionable conduct

An executive member must not engage in unconscionable conduct in exercising the member's functions as an executive member.

Examples

- 1 improperly using the executive member's position on the executive committee to gain, directly or indirectly, an advantage personally or for someone else
- 2 exerting undue influence on, or using unfair tactics against, the owner of a unit in the units plan

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

8 Conflict of interest

An executive member must disclose to the executive committee any conflict of interest the member may have in a matter before the committee.

Part 1.2 Managers—code of conduct

1 Knowledge of Act and code

A manager must have a good working knowledge and understanding of the Act, including this code, as relevant to the manager's functions.

2 Honesty, fairness and professionalism

- (1) A manager must act honestly, fairly and professionally in exercising the manager's functions.
- (2) A manager must not try to unfairly influence the outcome of an election for the owners corporation executive committee.

3 Skill, care and diligence

A manager must exercise reasonable skill, care and diligence in exercising the manager's functions.

4 Acting in owners corporation's best interests

A manager must act in the best interests of the owners corporation unless it is unlawful to do so.

5 Keeping owners corporation informed of developments

A manager must keep the owners corporation informed of any significant development or issue about an activity carried out for the owners corporation.

6 Ensuring employees comply with Act and code

A manager must take reasonable steps to ensure that the manager's employees comply with the Act, including this code, when exercising the manager's functions.

7 Fraudulent or misleading conduct

A manager must not engage in fraudulent or misleading conduct in exercising the manager's functions.

8 Unconscionable conduct

A manager must not engage in unconscionable conduct in carrying out the manager's functions.

Examples

- 1 taking unfair advantage of the manager's superior knowledge relative to the owners corporation
- 2 requiring the owners corporation to comply with conditions that are unlawful or not reasonably necessary
- 3 improperly using the executive member's position on the executive committee to gain, directly or indirectly, an advantage personally or for someone else
- 4 exerting undue influence on, or using unfair tactics against, the owners corporation or the owner of a unit in the units plan

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

9 Conflict of duty or interest

A manager for an owners corporation (the *first corporation*) must not accept an engagement for another owners corporation if accepting the engagement may place the manager's duty to, or the interests of, the first corporation in conflict with the manager's duty to, or the interests of, the other owners corporation.

10 Goods and services to be supplied at competitive prices

A manager must take reasonable steps to ensure the goods and services the manager gets for, or supplies to, the owners corporation are obtained or supplied at competitive prices.

11 Manager to demonstrate keeping of particular records

If an owners corporation or its executive committee asks the manager, in writing, to show that the manager has kept the owners corporation's records as required under the Act, the manager must comply with the request within a reasonable time.

Schedule 2 Executive committees

(see s 36 and s 37)

Note The executive committee exercises the functions of the owners corporation (see s 35 (1)).

Who are the members of the executive committee and how many members there must be depends on whether the owners corporation has had its first annual general meeting and how many members of the owners corporation there are (see s 38 and s 39).

The executive committee must elect a chairperson, secretary and treasurer (see s 40). The functions of those office-holders are set out in ss 41 to 43.

The executive committee may—

- be helped in the exercise of its functions by a person employed or engaged under s 45; and
- delegate its functions to 1 or more executive members (see s 44 (1) or a manager (see s 58 (2))).

An executive committee member is protected from civil liability in relation to the exercise of the member's functions if the member acts honestly and without recklessness (see s 47).

Part 2.1 What the executive committee must, may and cannot do

2.1 Executive committee must keep minutes, and records and accounts

(UTA s 91 (1), (2) and (5))

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

- (c) include in the minutes of proceedings at general meetings a record of every resolution of the corporation (including, for special, unopposed and unanimous resolutions, details of the kind of resolution); and
- (d) keep a copy of any court order given to the owners corporation; and
- (e) keep any authorisation by the planning and land authority given to the owners corporation; and
- (f) keep proper records and books of account in relation to—
 - (i) the corporation's assets and liabilities (including all amounts owing to and by the corporation); and
 - (ii) all amounts received and paid by the corporation.

Note If minutes or other records kept by the executive committee contain personal information, the executive committee must comply with the national privacy principles under the *Privacy Act 1988* (Cwlth) in relation to that information.

- (2) The executive committee must keep the documents, records and books for at least 5 years.
- (3) The executive committee may keep the minutes, records or books of account in an electronic form.
- (4) If an owners corporation fails to comply with this section, each executive member of the corporation at the time of the failure commits an offence.
- (5) It is a defence to a prosecution for an offence against this section if the defendant proves that—
 - (a) the defendant took reasonable steps to ensure that the section was complied with; or

- (b) the failure to comply happened without the defendant's knowledge.

Maximum penalty: 20 penalty units.

2.2 Executive committee must present financial statements at annual general meeting

(UTA s 91 (3) to (6))

- (1) At each annual general meeting of an owners corporation, the executive committee must present to the corporation annual financial statements in relation to the matters mentioned in section 2.1 (1) (f).
- (2) Annual financial statements must cover the period from the end of the period for which the last statements were prepared (or, for the first annual general meeting, since the registration of the units plan), to a stated day (the *stated day*) before the annual general meeting at which they are to be presented.
- (3) The annual financial statements must be presented to the annual general meeting within 3 months from the stated day.
- (4) If an owners corporation fails to comply with this section, each executive member of the corporation at the time of the failure commits an offence.

Maximum penalty: 20 penalty units.

- (5) It is a defence to a prosecution for an offence against this section if the defendant proves that—
 - (a) the defendant took reasonable steps to ensure that the section was complied with; or
 - (b) the failure to comply happened without the defendant's knowledge.

2.3 Executive committee must present insurance details at annual general meeting

- (1) At each annual general meeting of an owners corporation, the executive committee must give to the corporation the following details about each insurance policy held by the corporation under this Act that is current at the time of the meeting:
- (a) the name of the insurer;
 - (b) the amount of cover under the policy;
 - (c) for a building insurance policy—details of any recent valuation of the insured buildings;
 - (d) a summary of the type of cover under the policy;

Examples

public liability insurance, building insurance, personal property insurance

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

- (e) the amount of the premium;
- (f) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (g) the date the cover expires;
- (h) the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any person.

Example—financial or other benefit

commissions, discounts

- (2) If an owners corporation fails to comply with this section, each executive member of the corporation at the time of the failure commits an offence.

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that—
- (a) the defendant took reasonable steps to ensure that the section was complied with; or
 - (b) the failure to comply happened without the defendant's knowledge.

2.4 Approving use of common property

(UTA s 88B)

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

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

Example—minor use

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

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

2.5 Decisions about taking legal action

(UTA s 88C)

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

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

Note Section 2.6 allows urgent legal action to be taken.

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

- (4) In this section:

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

2.6 Taking urgent legal action

(UTA s 88D)

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

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

2.7

Decisions about staged development

(UTA s 88A)

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

Part 2.2 Executive committee—meetings and procedures

2.8 Meetings of executive committee (UTA s 85)

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

2.9 Quorum of executive committee (UTA s 86)

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

- (a) if the total number of executive members is an odd number—

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

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

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

2.10 Voting of executive committee (UTA s 88)

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

- (2) If an executive committee has only 2 members, all matters must be decided by unanimous vote.

2.11 Chairperson—meetings

(UTA s 87A (2), (3) and (4))

- (1) At a meeting of the executive committee, the chairperson may leave the chair during the meeting for any reason.
- (2) If the chairperson leaves the chair during a meeting, the executive members present must elect another executive member present to chair the meeting.
- (3) At a meeting of the executive committee, the chairperson—
- (a) may vote as an executive member; and
 - (b) if the votes on a matter are equal—may exercise a 2nd (casting) vote, unless there are only 2 executive members.

Note If there are only 2 executive members, all matters must be decided by unanimous vote (see s 2.10 (2)).

Schedule 3 General meetings

(see s 17)

Note The owners corporation of a units plan is responsible for managing the units plan. In managing the units plan the owners corporation is required to, or may, make various decisions under this Act. The members of the owners corporation make those decisions at general meetings. The following provisions set out how general meetings (including annual general meetings) must be conducted and how decisions are made at those meetings.

Part 3.1 General meetings

3.1 Conduct of general meetings

(UTA s 93)

An owners corporation for a units plan may hold, adjourn and otherwise regulate general meetings as it considers appropriate, subject to this schedule.

3.2 Annual general meetings

(UTA s 94)

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

3.3 First annual general meeting

(UTA s 95)

- (1) The first annual general meeting of an owners corporation for a units plan must be held within 3 months after the registration of the units plan.

- (2) The first annual general meeting of an owners corporation may be called by the executive committee of the corporation or by a member of the corporation.

3.4 First annual general meeting—developer to deliver records

(UTA s 95A)

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

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

3.5 General meetings other than annual general meetings

(UTA s 96)

- (1) The executive committee of an owners corporation may call a general meeting, by notice under section 3.6, whenever it considers appropriate.
- (2) Subsection (3) applies if the executive committee of an owners corporation receives a written request (a *meeting request*), stating the matters to be considered at the meeting, from people who are entitled to vote on all motions for units whose combined unit entitlement is at least $\frac{1}{4}$ of the total unit entitlement in the units plan.
- (3) The executive committee must hold a general meeting, by notice under section 3.6, within 28 days after the day it receives the meeting request.

3.6 Notice of general meetings

(UTA s 97 (1) and (2))

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

3.7 Requirements for notice of general meetings

(UTA s 97 (3), (4) and (5))

- (1) A notice of a general meeting for an owners corporation must state—
 - (a) the time, date and place fixed for the meeting; and
 - (b) whether the person notified is entitled to vote on all (or any) motions at the meeting, and if not, why not; and

Note Section 3.20 explains who is entitled to vote on which kinds of motion. For example, if an amount is owing to the corporation in relation to a particular unit at the time of the general meeting, no vote may be cast by the unit owner (or anyone else) for that unit on any motion requiring an ordinary or special resolution.

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

3.8 Defective notice of meetings

(UTA s 98)

- (1) The proceedings at a general meeting are not invalid only because a person did not receive proper notice of the meeting.
- (2) However, if a person did not receive notice of the meeting in accordance with section 3.6 (2), the person may make a request for the adjournment of the meeting by written notice to the executive committee before the day or time fixed for the start of the meeting.
- (3) A request by a person under subsection (2) may be made by someone else on the person's behalf.
- (4) If the executive committee receives a request for adjournment under subsection (2), the committee must give the request to the chairperson of the meeting immediately after the chairperson is elected.
- (5) The chairperson may adjourn the meeting to a time, date and place to be decided (by ordinary resolution) by the people present and entitled to vote on all motions at the meeting if the chairperson considers on reasonable grounds that—
 - (a) notice of the meeting in accordance with section 3.6 (2) was not given to the person by or for whom the request was made; and
 - (b) in the circumstances it would be unfair to allow the meeting to go ahead at present.

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

(UTA s 99)

- (1) A motion may be considered at a general meeting of an owners corporation with 3 or more members only if there is present—
 - (a) a quorum (a *standard quorum*) made up by people entitled to vote (on the motion) in relation to not less than $\frac{1}{2}$ the total number of units; or
 - (b) a quorum (a *reduced quorum*) made up under subsection (2).
- (2) If a standard quorum is not present within $\frac{1}{2}$ an hour after the motion arises for consideration, a reduced quorum for the motion and any subsequent motion considered at the meeting is made up by 2 or more people present at the meeting who are entitled to vote on the motion.
- (3) If a reduced quorum is not present $\frac{1}{2}$ an hour after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.
- (4) If a reduced quorum is present for the consideration of any motion and the motion is voted on, section 3.10 (Notice of reduced quorum decisions and adjournments) applies to the decision on the motion.
- (5) If a reduced quorum is present for the consideration of any motion and the motion is not voted on, the meeting may decide to adjourn to the same day in the next week at the same place and time to consider the motion (and any others remaining to be considered).
- (6) If a general meeting is adjourned under this section (including paragraph (c)) and a standard quorum is not present within $\frac{1}{2}$ an hour after a motion arises for consideration at the adjourned meeting—
 - (a) a reduced quorum is made up by the people who are then present and entitled to vote on the motion and any subsequent motion considered at the adjourned meeting; and

- (b) if a reduced quorum is present for the consideration of any motion at the adjourned meeting, and the motion is voted on—the decision on the motion must be notified under section 3.10; and
- (c) if the motion (or any other) is not voted on at the adjourned meeting—the adjourned meeting may resolve to adjourn again to the same day in the next week at the same place and time to consider the resolution (and any others remaining to be considered at the meeting).

3.10 Notice of reduced quorum decisions and adjournments

(UTA s 100)

- (1) If a decision (a *reduced quorum decision*) is made on a motion while a reduced quorum was present for the consideration of the motion, within 7 days after the meeting the owners corporation must give each person mentioned in section 3.6 (1) (Notice of general meetings) written notice of the reduced quorum decision.

Note If a form is approved under s 146 for a notice, the form must be used.

- (2) Within 4 days after a general meeting is adjourned under section 3.9, the owners corporation must give each person mentioned in section 3.6 (1) a written notice of the date, place and time to which the meeting is adjourned.

3.11 Reduced quorum decisions—effect

(UTA s 101)

- (1) A reduced quorum decision takes effect 28 days after the decision was made, subject to this section.
- (2) Subsection (1) does not apply if the owners corporation fails to give notice of the reduced quorum decision under section 3.10 (1).

- (3) A reduced quorum decision is disallowed if, within 28 days after the decision was made, the owners corporation is given a petition requiring that the decision be disallowed signed by a majority of people entitled to vote on the relevant motion at the time of signing (whether or not they were present or entitled to vote on the motion at the general meeting at which the decision was made).
- (4) If, within 28 days after a reduced quorum decision is made, a motion is passed confirming the reduced quorum decision while a standard quorum is present at a general meeting for consideration of the confirmation motion, the reduced quorum decision takes effect on confirmation, whether or not a petition under subsection (3) is at any time given to the owners corporation.
- (5) This section does not prevent a reduced quorum decision from being revoked at a general meeting, whether a standard quorum or reduced quorum is present while the revocation motion is being considered.

3.12 Quorum at a general meeting—owners corporation with 2 members

(UTA s 102)

- (1) A motion may only be considered at a general meeting of an owners corporation with 2 members if a quorum constituted by all people entitled to vote on the motion is present.
- (2) If a quorum is not present within ½ an hour after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.

3.13 Chairperson at a general meeting

(UTA s 103)

- (1) The chairperson of a general meeting is the chairperson of the executive committee, unless that person—
 - (a) is not present at the meeting; or
 - (b) does not wish to be chairperson of the meeting.

- (2) If the executive committee's chairperson is not present at the general meeting, at the beginning of the meeting, the people present and entitled to vote may elect someone else who is present and entitled to vote as chairperson for the meeting.
- (3) The chairperson for the meeting may leave the chair during the meeting for any reason.
- (4) If the chairperson leaves the chair during the meeting, the people present and entitled to vote must elect another person present and entitled to vote as chairperson.

Part 3.2 Resolutions at general meetings

3.14 Decision-making at general meetings

(UTA s 104)

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

3.15 Ordinary resolutions

(UTA s 105)

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

(b) at least 1 vote is cast in favour of the resolution.

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

- 1 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 3.12), unless either is not entitled to vote on the resolution (see s 3.20).
- 2 An abstention for any unit does not in itself prevent an ordinary resolution from being passed, if at least 1 vote is cast in favour of the resolution.
- 3 A vote may be cast for a unit on an ordinary resolution even if an amount owing to the owners corporation remains unpaid (see s 3.20 (3)).

3.16 Special resolutions

(UTA s 106)

- (1) For an owners corporation with more than 2 members, the requirements for passing a special resolution at a general meeting are that—
 - (a) unless a poll is taken—
 - (i) the number of votes cast in favour of the resolution is greater than the number of votes cast against it; and
 - (ii) the votes cast against the resolution number less than $\frac{1}{3}$ of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes); or
 - (b) on a poll—
 - (i) the voting value of votes cast in favour of the resolution is greater than the voting value of the votes cast against it; and
 - (ii) the voting value of votes cast against the resolution is less than $\frac{1}{3}$ of the voting value of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes).

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

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

- 1 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 3.12), unless either is not entitled to vote on the resolution (see s 3.20).
- 2 An abstention for any unit does not in itself prevent a special resolution from being passed, if at least 1 vote is cast in favour of the resolution.
- 3 A vote may be cast for a unit on a special resolution even if an amount owing to the owners corporation remains unpaid (see s 3.20 (3)).

3.17 Unopposed resolutions

(UTA s 107)

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

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

Note 1 An abstention for any unit does not in itself prevent an unopposed resolution from being passed, if at least 1 vote is cast in favour of the resolution.

Note 2 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 3.12), unless either is not entitled to vote on the resolution (see s 3.20).

3.18 Unanimous resolutions

(UTA s 108)

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

Note 1 An abstention for any unit does not in itself prevent a unanimous resolution from being passed, if at least 1 vote is cast in favour of the resolution.

Note 2 If the owners corporation has 2 members, both must be present to make up a quorum for consideration of the resolution (see s 3.12), unless either is not entitled to vote on the resolution (see s 3.20).

3.19 Evidence of resolutions of owners corporation

(UTA s 109)

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

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

Part 3.3 Voting at general meetings

3.20 Who is entitled to vote?

(UTA s 110)

- (1) The people entitled to vote on a motion at a general meeting of an owners corporation are as follows:
 - (a) for a unit owned by a single individual—the unit owner;
 - (b) for a unit owned by a single company—the company’s representative;
 - (c) for a unit owned by 2 or more part-owners—the part-owners’ representative.
- (2) However, if a unit is subject to a mortgage and a mortgagee voting notice is in force for the unit, the person entitled to vote for the unit is the mortgagee’s representative rather than the relevant person mentioned in subsection (1).
- (3) If the owners corporation has 3 or more members, a person is only entitled to vote for a unit on a motion requiring an ordinary or special resolution if all amounts payable to the owners corporation for the unit have been paid.
- (4) In addition, a person is not entitled to vote on a motion at a general meeting if an ACAT order requires the person to not vote on the motion or at the meeting.

3.21 General meeting—decisions about staged development

(UTA s 110A)

- (1) This section applies to a motion at a general meeting of an owners corporation for a staged development if the development has not been completed.

- (2) The people entitled to vote on the motion are as follows:
- (a) if the motion is only about an uncompleted stage of the development—the people entitled to vote under section 3.20 in relation to units in the uncompleted stages of the development;
 - (b) if the motion is only about a completed stage of the development—the people entitled to vote under section 3.20 in relation to units in the completed stages of the development;
 - (c) in any other case—the people entitled to vote under section 3.20.

3.22 One vote—1 unit
(UTA s 111)

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

3.23 Voting by mortgagees
(UTA s 112)

- (1) If the interest of a unit owner is subject to a mortgage, the mortgagee may give the owners corporation written notice (a *mortgagee voting notice*) that—
- (a) the unit is subject to the mortgage; and
 - (b) the mortgagee proposes to exercise the voting right given under section 3.20 (2); and
 - (c) an individual named in the notice (the mortgagee's *representative*) is authorised to vote at general meetings for the unit on behalf of the mortgagee, instead of the person otherwise entitled to vote for the unit.
- (2) The mortgagee voting notice must state the full name and address for correspondence of the mortgagee's representative.

- (3) If a unit is owned by 2 or more part-owners, and the interest of 1 of the owners who has more than a ½ share in the unit is subject to a mortgage, the mortgagee may give a mortgagee voting notice under this section.
- (4) If the interest of a unit owner is subject to 2 or more mortgages, this section applies only to the mortgagee whose mortgage has priority.

3.24 Mortgagee voting notice—amendment and revocation
(UTA s 113)

- (1) The mortgagee may change the mortgagee’s representative by written notice to the owners corporation.
- (2) The notice of change of representative must—
 - (a) include the full name and an address for correspondence of the new representative; and
 - (b) be signed by the mortgagee.
- (3) The mortgagee’s representative may change the address for correspondence by written notice to the owners corporation of the change.
- (4) The notice of change of address must be signed by the representative.
- (5) A mortgagee voting notice—
 - (a) is revoked when the mortgagee gives written notice of revocation to the owners corporation; or
 - (b) is taken to be revoked when the mortgage is discharged.

- (6) A mortgagee who has given a mortgagee voting notice to an owners corporation commits an offence if, without reasonable excuse, the mortgagee fails to give written notice to the corporation of the discharge of the mortgage within 14 days after the discharge.

Maximum penalty: 5 penalty units.

3.25 Evidence of mortgagee's entitlement to vote

(UTA s 114)

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

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

3.26 Proxy votes

(UTA s 115)

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

Note A proxy form must accompany the notice of general meeting (see s 3.7 (2) (a)).

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

3.27 Proxy votes—limit on developer

(UTA s 115A)

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

- (d) a sufficient description of the development matter for the buyer of a unit to easily identify the matter.

3.28 Value of votes

(UTA s 116)

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

3.29 Polls

(UTA s 117)

- (1) A poll may be demanded on an ordinary or special resolution at a general meeting by anyone present and entitled to vote at the meeting.
- (2) A demand for a poll may be withdrawn.
- (3) A poll may be taken in any way the chairperson considers appropriate.
- (4) The result of a poll—
 - (a) must be declared at the meeting by the chairperson as soon as it is worked out; and
 - (b) decides whether or not the resolution for which the poll was demanded has been carried.

3.30 Voting by chairperson

(UTA s 118)

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

- (a) exercise a deliberative vote as a member; and

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

3.31 Absentee votes

(UTA s 120)

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

Note An absentee voting form must accompany the notice of general meeting (see s 3.7 (2) (b)).

- (2) The absentee voting paper must be in the form approved by the executive committee.
- (3) An absentee vote under this section is a valid vote.
- (4) A person who casts an absentee vote under this section is taken to be present at the general meeting at which the motion is moved (except for the purposes of making up a quorum) and to have voted on the resolution.

3.32 People under 18 or under other legal disabilities

(UTA s 121)

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

- (b) if the person is under any other legal disability—by a person for the time being authorised by law to control the person’s property.

3.33 Declaration by chairperson of result of voting

(UTA s 122)

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

Schedule 4 Default rules

(see s 106)

Note 1 The owners corporation may amend the default rules under s 108.

Note 2 If a corporation was established before the commencement of the *Unit Titles Act 2001 (UTA)*, pt 16—

- the corporation's articles applying immediately before the commencement of the UTA continue to apply (see s 160 (2)); and
- the default rules under this Act may be adopted (in part or in full) by special resolution at a general meeting (see s 108 (1) and s 160 (2)).

Note 3 If an owners corporation was established under the UTA—

- the owners corporation's articles applying immediately before the commencement of this Act, pt 6 are taken to be rules under this Act (see s 161 (2)); and
- the corporation may amend the rules under this Act (see s 108 (1) and s 161 (2)).

However, an existing 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 things mentioned in this Act, s 108 (3) (b) to (d).

1 **Definitions—default rules**

(1) In these rules:

executive committee representative means a person authorised in writing by the executive committee under rule 10 (4).

owner, occupier or user, of a unit, includes an invitee or licensee of an owner, occupier or user of a unit.

(2) A word or expression in the Act has the same meaning in these rules.

2 Payment of rates and taxes by unit owners

A unit owner must pay all rates, taxes and any other amount payable for the unit.

3 Repairs and maintenance

- (1) A unit owner must ensure that the unit is in a state of good repair.
- (2) A unit owner must carry out any work in relation to the unit, and do anything else in relation to the unit, that is required by a territory law.

4 Erections and alterations

- (1) A unit owner may erect or alter any structure in or on the unit or the common property only—
 - (a) in accordance with the express permission of the owners corporation by unopposed resolution; and
 - (b) in accordance with the requirements of any applicable territory law (for example, a law requiring development approval to be obtained for the erection or alteration).

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

- (2) Permission may be given subject to conditions stated in the resolution.

5 Use of common property

A unit owner must not use the common property, or permit it to be used, to interfere unreasonably with the use and enjoyment of the common property by an owner, occupier or user of another unit.

6 Hazardous use of unit

A unit owner must not use the unit, or permit it to be used, so as to cause a hazard to an owner, occupier or user of another unit.

7 Use of unit—nuisance or annoyance

- (1) A unit owner must not use the unit, or permit it to be used, in a way that causes a nuisance or substantial annoyance to an owner, occupier or user of another unit.
- (2) This rule does not apply to a use of a unit if the executive committee has given an owner, occupier or user of the unit written permission for that use.
- (3) Permission may be given subject to stated conditions.
- (4) Permission may be withdrawn by special resolution of the owners corporation.

8 Noise

- (1) A unit owner must not make, or permit to be made, such a noise within the unit as might (in the circumstances) be reasonably likely to cause substantial annoyance to an owner, occupier or user of another unit.
- (2) This rule does not apply to the making of a noise if the executive committee has given the person responsible for making the noise written permission to do so.
- (3) Permission may be given subject to stated conditions.
- (4) Permission may be withdrawn by special resolution of the owners corporation.

9 Illegal use of unit

A unit owner must not use the unit, or permit it to be used, to contravene a law in force in the ACT.

10 What may an executive committee representative do?

- (1) An executive committee representative may do any of the following in relation to a unit at all reasonable times:
 - (a) if the committee has reasonable grounds for suspecting that there is a breach of the Act or these rules in relation to a unit—inspect the unit to investigate the breach;
 - (b) carry out any maintenance required under the Act or these rules;
 - (c) do anything else the owners corporation is required to do under the Act or these rules.
- (2) An executive committee representative may enter a unit and remain in the unit for as long as is necessary to do something mentioned in subrule (1).
- (3) An executive committee representative is not authorised to do anything in relation to a unit mentioned in subrule (1) unless—
 - (a) the executive committee or the representative has given the owner, occupier or user of the unit reasonable notice of his or her intention to do the thing; or
 - (b) in an emergency, it is essential that it be done without notice.
- (4) The executive committee may give a written authority to a person to represent the corporation under this rule.

11 Seal of owners corporation

For the attaching of the seal of the owners corporation to a document to be effective—

- (a) the seal must be attached by decision of the executive committee; and

Note Executive committee decisions must be made by majority vote, or by unanimous vote if there are only 2 members of the committee (see sch 2, s 2.10).

- (b) the seal must be attached in the presence of 2 executive members; and

- (c) the executive members witnessing the attaching of the seal must sign the document as witnesses.

Schedule 5 Consequential amendments

(see s 148)

Part 5.1 Agents Act 2003

[5.1] Section 43 (2) (b), except note

substitute

- (b) prohibit the agent administering a general fund or sinking fund under the *Unit Titles (Management) Act 2011*.

[5.2] Dictionary, definition of *owners corporation managing agent*

omit

Unit Titles Act 2001

substitute

Unit Titles (Management) Act 2011

Part 5.2 Civil Law (Property) Act 2006

[5.3] New part 2.9

insert

Part 2.9 Unit Titles

Division 2.9.1 Definitions—pt 2.9

259 Definitions—pt 2.9

In this part:

common property—see the *Unit Titles Act 2001*, section 13.

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

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

unit—see the *Unit Titles Act 2001*, section 9.

units plan—see the *Unit Titles Act 2001*, dictionary.

[5.4] Dictionary, new definitions

insert

common property, for part 2.9 (Unit Titles)—see the *Unit Titles Act 2001*, section 13.

owners corporation, for part 2.9 (Unit Titles)—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.5] Dictionary, definition of *registered*

substitute

registered means—

- (a) for this Act generally—registered in the appropriate register kept by the registrar-general; and
- (b) for part 2.9 (Unit Titles)—see section 259.

[5.6] Dictionary, new definitions

insert

unit, for part 2.9 (Unit Titles)—see the *Unit Titles Act 2001*, section 9.

units plan, for part 2.9 (Unit Titles)—see the *Unit Titles Act 2001*, dictionary.

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

[5.7] Dictionary, definition of *unit title certificate*

omit

Unit Titles Act 2001, section 75 (1)

substitute

Unit Titles (Management) Act 2011, section 119 (1).

Part 5.4 Heritage Act 2004

[5.8] Dictionary, definition of *owner*, paragraph (c)

omit

Unit Titles Act 2001

substitute

Unit Titles (Management) Act 2011

Part 5.5 Land Tax Act 2004

[5.9] Dictionary, definition of *owners corporation*

substitute

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

Part 5.6 Land Titles (Unit Titles) Act 1970

[5.10] Section 3A

substitute

3A Terms used in Unit Titles Act and Unit Titles (Management) Act

A term defined in the *Unit Titles Act 2001* or the *Unit Titles (Management) Act 2011* has the same meaning in this Act.

[5.11] Section 11 (2) (b)

omit

Unit Titles Act 2001, section 109

substitute

Unit Titles (Management) Act 2011, schedule 3, section 3.19

[5.12] Section 12 (2) (b)

omit

Unit Titles Act 2001, section 109

substitute

Unit Titles (Management) Act 2011, schedule 3, section 3.19

[5.13] Section 13

omit

Unit Titles Act 2001, section 67

substitute

Unit Titles (Management) Act 2011, section 96

[5.14] Section 14

omit

Unit Titles Act 2001, section 68

substitute

Unit Titles (Management) Act 2011, section 97

[5.15] Section 15 (1)

omit

Unit Titles Act 2001, section 67

substitute

Unit Titles (Management) Act 2011, section 96

[5.16] Section 15 (2), note

substitute

Note Because of this Act, s 13, s 14 and s 15, a charge over a unit declared under the *Unit Titles (Management) Act 2011*, s 96 is registrable in much the same way as a mortgage under the *Land Titles Act 1925*. However, unlike other mortgages, this registered charge does not give rise to any power of sale over the unit (see s (2) and *Unit Titles (Management) Act 2011*, s 96 (5)).

[5.17] Section 26

omit

Unit Titles Act 2001, section 78 (3)

substitute

Unit Titles (Management) Act 2011, section 122 (3)

[5.18] Section 27

substitute

27 Amendment of rules—registration

The registrar-general must register an amendment of the rules of an owners corporation on the lodgment of a certificate under the *Unit Titles (Management) Act 2011*, schedule 3, section 3.19 about the special resolution authorising the amendment.

[5.19] Section 28

omit

Unit Titles Act 2001, division 9.2

substitute

Unit Titles (Management) Act 2011, division 10.2

[5.20] Section 28, note

omit

Unit Titles Act 2001, ss 142-144

substitute

Unit Titles (Management) Act 2011, ss 138 to 140

[5.21] Dictionary, note 3

omit

- owners corporation

[5.22] Dictionary, new definition of *owners corporation*

insert

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

Part 5.7 Land Titles Act 1925

[5.23] Section 50 (4)

omit

section 49A

substitute

section 167A

[5.24] Section 86 (4)

omit

section 49A

substitute

section 167A

[5.25] Section 86 (4) (b)

omit

Unit Titles Act 2001, section 109

substitute

Unit Titles (Management) Act 2011, schedule 3, section 3.19

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

[5.26] Section 66 (4) (a) (iv)

omit

Unit Titles Act 1970, section 39

substitute

Unit Titles (Management) Act 2011, section 76 (General fund—contributions)

Part 5.9 **Planning and Development Regulation 2008**

[5.27] Section 150 (1) (c)

omit

Unit Titles Act 2001, section 109

substitute

Unit Titles (Management) Act 2011, schedule 3, section 3.19

[5.28] Section 150 (2), definitions of *ordinary resolution* and *owners corporation*

omit

Unit Titles Act 2001

substitute

Unit Titles (Management) Act 2011

Part 5.10 Rates Act 2004

[5.29] Dictionary, definition of *owners corporation*

substitute

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

Part 5.11 Residential Tenancies Act 1997

[5.30] Schedule 1, clause 13 (3)

omit

articles of the owners corporation

substitute

owners corporation's rules

[5.31] Schedule 1, clause 66

substitute

Tenant of unit to comply with owners corporation's rules

66 If the premises are a unit under the *Unit Titles Act 2001*, the tenant must comply with the owners corporation's rules, and with any notice served in accordance with the rules, to the extent that they are not inconsistent with the standard residential tenancy terms in this agreement.

Part 5.12 Unit Titles Act 2001

[5.32] Long title

omit

and the management of units plans by owners corporations

[5.33] Section 3, note 1

substitute

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

For example, the signpost definition '*owners corporation*—see the *Unit Titles (Management) Act 2011*, dictionary.' means that the term '*owners corporation*' is defined in that dictionary and the definition applies to this Act.

[5.34] Section 31A (2) (a)

substitute

(a) the default rules;

[5.35] Sections 31A (2) (b) (i) and (c)

omit

contribution to the corporation's general funds

substitute

general fund contribution

[5.36] Section 31A (3), note

omit

s 115A

insert

Unit Titles (Management) Act 2011, sch 3, s 3.27

[5.37] New section 31A (5)

insert

(5) In this section:

default rules—see the *Unit Titles (Management) Act 2011*, section 106.

developer—see the *Unit Titles Act 2001*, dictionary.

developer control period—see the *Unit Titles (Management) Act 2011*, dictionary.

development statement—see the *Unit Titles Act 2001*, dictionary.

general fund contribution—see the *Unit Titles (Management) Act 2011*, section 78 (1).

rule, of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

staged development—see the *Unit Titles Act 2001*, section 17 (3).

[5.38] Division 3.4 (as amended)

relocate to Civil Law (Property) Act 2006 as division 2.9.2

[5.39] Section 33 (3), new note

insert

Note On the registration of a units plan, an owners corporation for the units plan is established (see *Unit Titles (Management) Act 2011*, s 8).

[5.40] Section 37A (2)

after

This Act

insert

, the *Unit Titles (Management) Act 2011*

[5.41] Part 5 heading to section 49

omit

[5.42] Section 49A

relocate to part 12 as section 167A

[5.43] Sections 50 to 130

omit

[5.44] Sections 130A and 130B headings

omit

pt 7A

substitute

div 2.9.3

[5.45] Sections 130A to 130C

omit

part

substitute

division

[5.46] Section 130F (1)

omit

part

substitute

division

[5.47] Part 7A (as amended)

relocate to Civil Law (Property) Act 2006 as division 2.9.3

[5.48] Parts 8 and 9

omit

[5.49] Section 153 (1) (c)

omit

section 132

substitute

the *Unit Titles (Management) Act 2011*, section 100.

[5.50] Section 153 (2), note

omit

. See s 80.

substitute

, see the *Unit Titles (Management) Act 2011*, s 124.

[5.51] Section 161D (1) (d)

omit

section 132

substitute

the *Unit Titles (Management) Act 2011*, section 100.

[5.52] Section 161D (2), note

omit

. See s 80.

substitute

, see the *Unit Titles (Management) Act 2011*, s 124.

[5.53] Section 165 (3) (d)

omit

section 132

substitute

the *Unit Titles (Management) Act 2011*, section 100.

[5.54] Section 165 (4), note

omit

. See s 80.

substitute

, see the *Unit Titles (Management) Act 2011*, s 124.

[5.55] Part 12 heading

substitute

Part 12 Variation or surrender of leases

Division 12.1 Variation of leases

[5.56] New division 12.2 heading

after section 167, insert

Division 12.2 Surrender of leases in units

[5.57] Section 169 (3) (d)

omit

section 132

substitute

the *Unit Titles (Management) Act 2011*, section 100.

[5.58] Section 169 (4), note

omit

. See s 80.

substitute

, see the *Unit Titles (Management) Act 2011*, s 124.

[5.59] Section 178

omit

[5.60] Section 179 (1)

omit

(other than fees that this Act provides are to be fixed by owners corporations)

[5.61] Dictionary, note 2

omit

- bankrupt or personally insolvent
- contravene
- GST

[5.62] Dictionary, definition of *ACAT dispute*

omit

[5.63] Dictionary, definition of *address for correspondence*

substitute

address for correspondence—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.64] Dictionary, definitions of *administration order* and *administrative fund*

omit

[5.65] Dictionary, definition of *administrator*

substitute

administrator—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.66] Dictionary, definitions of *article* and *communications officer*

omit

[5.67] Dictionary, definition of *company*

substitute

company—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.68] Dictionary, definition of *contribution*

omit

[5.69] Dictionary, definition of *corporate register*

substitute

corporate register—see the *Unit Titles (Management) Act 2011*, section 113.

[5.70] Dictionary

omit the definitions of

deadlock order

default articles

developer control period

eligible person

[5.71] Dictionary, definition of *entitled to vote*

substitute

entitled to vote, in relation to a motion at a general meeting of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.72] Dictionary, definition of *executive committee*

omit

[5.73] Dictionary, definition of *executive member*

substitute

executive member, of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.74] Dictionary

omit the definitions of

financial year

financier

full name

general fund

general funds budget

implied warranties

initial sinking fund plan

[5.75] Dictionary, definition of *interested non-voter*, examples, except note

substitute

Examples—interested nonvoters

- 1 The proprietor of a property adjoining the parcel on which the units stand, if the property benefits from an easement over the common property, and the proprietor's easement interest is shown on the corporate register.
- 2 For par (b) (i), a part-owner of a unit that is owned by 2 or more people, if the part-owner was not the representative for the unit when the application was authorised at a general meeting. The part-owner would not have been 'entitled to vote' under the *Unit Titles (Management) Act 2011*, sch 3, s 3.20.
- 3 For par (b) (i), an owner of a unit for which a mortgagee has issued a mortgagee voting notice under the *Unit Titles (Management) Act 2011*, sch 3, s 3.23. The owner would not have been 'entitled to vote' under that Act, sch 3, s 3.20.

- 4 For par (b) (ii), the mortgagee of a unit who was not entitled to vote on the motion authorising the application because the mortgagee did not (or was not entitled to) issue a mortgagee voting notice under the *Unit Titles (Management) Act 2011*, sch 3, s 3.23.

[5.76] Dictionary, definitions of *interested party* and *manager*

omit

[5.77] Dictionary, new definition of *member*

insert

member, of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.78] Dictionary, definitions of *mortgage* and *mortgagee*

substitute

mortgage—see the *Unit Titles (Management) Act 2011*, dictionary.

mortgagee—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.79] Dictionary, definition of *mortgage insurance policy*

omit

[5.80] Dictionary, new definition of *mortgagee's representative*

insert

mortgagee's representative—see the *Unit Titles (Management) Act 2011*, schedule 3, section 3.23.

[5.81] Dictionary, definition of *mortgagee voting notice*

omit

[5.82] Dictionary, definitions of *ordinary resolution* and *owners corporation*

substitute

ordinary resolution—see the *Unit Titles (Management) Act 2011*, dictionary.

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.83] Dictionary, definition of *part owner*

substitute

part-owner, of a unit—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.84] Dictionary

omit the definitions of

proportional share

reduced quorum

reduced quorum decision

representative

secretary

service contract

service contractor

sinking fund

sinking fund expenditure

sinking fund plan

special purpose fund

[5.85] Dictionary, definition of *special resolution*

substitute

special resolution—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.86] Dictionary

omit the definitions of

standard quorum

total sinking fund amount

treasurer

[5.87] Dictionary, definition of *unanimous resolution*

substitute

unanimous resolution—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.88] Dictionary, definition of *unit title certificate*

omit

[5.89] Dictionary, definition of *unopposed resolution*

substitute

unopposed resolution—see the *Unit Titles (Management) Act 2011*, dictionary.

[5.90] Dictionary, definition of *utility services*, paragraph (f)

omit

and television

substitute

, television and internet

[5.91] Dictionary, definition of *voting value*

omit

Part 5.13 Unit Titles Regulation 2001

[5.92] Parts 3 and 4

omit

[5.93] Schedules 1 and 2

omit

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

(see s 163)



Australian Capital Territory

Unit Titles (Management) Regulation 2011

Subordinate Law SL2011-

made under the

Unit Titles (Management) Act 2011

1 Name of regulation

This regulation is the *Unit Titles (Management) Regulation 2011*.

2 Dictionary

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

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

For example, the signpost definition ‘*unit*—see the *Unit Titles Act 2001*, section 9.’ means that the term ‘*unit*’ is defined in that section and the definition applies to this regulation.

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

3 Notes

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

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

4 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Manager—minimum public liability insurance—Act, s 57 (2)

The amount prescribed is \$10 000 000.

6 Exemption from building insurance requirements—Act, s 101 (1)

The amount prescribed is \$10 000.

7 Minimum public liability insurance by owners corporation—Act, s 102 (2)

The amount prescribed is \$10 000 000.

8 Corporate register—maximum fee for access—Act, s 116 (3)

The amount prescribed is \$10 (plus any GST payable in relation to the amount).

9 Costs of taking legal action—Act, sch 2, s 2.5 (2)

The amount prescribed is the lesser of—

- (a) \$750 for each unit in the units plan; and
- (b) \$10 000.

Dictionary

(see s 2)

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

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

- GST
- in relation to.

Note 3 Terms used in this regulation have the same meaning that they have in the *Unit Titles (Management) Act 2011* (see Legislation Act, s 148.) For example, the following terms are defined in the *Unit Titles (Management) Act 2011*, dict:

- corporate register (see s 113)
- manager
- owners corporation.

unit—see the *Unit Titles Act 2001*, section 9.

units plan—see the *Unit Titles Act 2001*, dictionary.

Dictionary

(see s 3)

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

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

- ACAT
- appoint
- bankrupt or personally insolvent
- contravene
- director-general
- exercise
- function
- individual
- planning and land authority.

address for correspondence, of a company, means the address of the company's office, as registered under the law under which the company is incorporated (if provided by the law).

administration order—see section 136 (Who may apply for an administration order?).

administrative fund, for division 5.2 (Administrative, special purpose and sinking funds)—see section 73.

administrator, of an owners corporation, means a person who is appointed as the administrator of the corporation under part 10 (Administrators).

appoint includes engage.

building—

(a) for this Act generally—see the *Unit Titles Act 2001*, dictionary; and

(b) for division 5.4 (Insurance)—see section 99.

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

class A unit—see the *Unit Titles Act 2001*, section 10.

class B unit—see the *Unit Titles Act 2001*, section 11.

common property—see the *Unit Titles Act 2001*, section 13.

communications officer, for an owners corporation, means the owners corporation communications officer appointed by the owners corporation under section 66.

company means—

- (a) a company registered under the Corporations Act; and
- (b) includes a body corporate.

corporate register—see section 113.

court includes the ACAT.

default rules—see section 106.

developer—see the *Unit Titles Act 2001*, section 17.

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

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

development, of a unit or common property—see the *Unit Titles Act 2001*, dictionary.

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

- (a) the owner, or another person with an interest in the unit, or in an easement over the common property; or

-
- (b) for a unit that is owned, or part-owned, by a company—the representative of the company; or
 - (c) anyone authorised in writing by a person mentioned in paragraph (a) or (b); or
 - (d) if access to the information is necessary or desirable for the administration of this Act—the planning and land authority.

entitled to vote, in relation to a motion at a general meeting of an owners corporation, means a person who is entitled to vote on the motion under schedule 3, section 3.20.

executive committee, of an owners corporation, means the executive committee of the corporation established under section 34.

executive committee representative, for schedule 4 (Default rules)—see schedule 4, rule 1 (1).

executive member means a member of an executive committee.

expected sinking fund expenditure, for division 5.2 (Administrative, special purpose and sinking funds)—see section 83.

financed service contract, for part 9 (Protection of financiers for service contracts)—see section 130.

financial year, for an owners corporation, means—

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

financier, for part 9 (Protection of financiers for service contracts)—see section 131.

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

general fund, of an owners corporation, for division 5.2 (Administrative, special purpose and sinking funds)—see section 72.

general fund budget, for division 5.2 (Administrative, special purpose and sinking funds)—see section 75 (1).

general fund contribution—see section 78 (1).

install includes build, place, connect or erect.

interest—see the *Unit Titles Act 2001*, dictionary.

interested party, for an administration order—see section 136 (Who may apply for an administration order?).

land means—

- (a) for this Act generally—the land subdivided by the units plan; and
- (b) for division 5.4 (Insurance)—see section 99.

lease, of a unit or common property—see the *Unit Titles Act 2001*, dictionary.

lessee—see the *Unit Titles Act 2001*, dictionary.

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

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

management contract, for division 4.2 (Managers)—see section 49.

management services, for division 4.2 (Managers)—see section 49.

manager—see section 49.

member, of an owners corporation, are the members under section 10.

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

mortgagee means—

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

mortgagee voting notice—see schedule 3, section 3.23 (Voting by mortgagees).

mortgage insurance policy—see section 142.

ordinary resolution means a resolution of a general meeting passed as required by schedule 3, section 3.15.

owner means—

- (a) for a unit—the registered proprietor of the lease of the unit and includes a part-owner; or

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

- (b) for common property—the owners corporation.

owner, occupier or user, of a unit, for schedule 4 (Default rules)—see schedule 4, rule 1 (1).

owners corporation, for a units plan, means a corporation established under section 8.

part-owner, of a unit, means a person registered as a joint tenant or tenant in common in relation to the unit.

Note Joint proprietors of a unit must be registered as either joint tenants or tenants in common (see *Land Titles Act 1925*, s 54).

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

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

proprietor, of an interest in land—see the *Unit Titles Act 2001*, dictionary.

reduced quorum—see schedule 3, section 3.9 (Quorum at a general meeting—owners corporations with 3 or more members).

reduced quorum decision—see schedule 3, section 3.10 (Notice of reduced quorum decisions and adjournments).

registered—see the *Unit Titles Act 2001*, dictionary.

representative—

- (a) for the part-owners of a unit—see section 11 (Part-owners of units—authorisation of representatives); or
- (b) for a company that is the owner or a part-owner of a unit—see section 13 (Company-owned units—authorisation of representatives); or
- (c) for a mortgagee that has given a mortgagee voting notice to an owners corporation—see schedule 3, section 3.23 (Voting by mortgagees).

rule, for an owner corporation, means a rule of the corporation under section 106.

rule infringement notice—see section 109 (2).

secretary, for an owners corporation, means the secretary of the corporation elected under section 40.

service contract—see section 59.

service contractor—see section 59.

service contractor services, for division 4.3 (Service contractors)—see section 59.

sinking fund, for division 5.2 (Administrative, special purpose and sinking funds)—see section 81 (2).

sinking fund contribution—see section 89 (1).

sinking fund plan, for division 5.2 (Administrative, special purpose and sinking funds)—see section 82 (2).

special purpose fund, for division 5.2 (Administrative, special purpose and sinking funds)—see section 74 (1).

special resolution means a resolution of a general meeting passed as required by schedule 3, section 3.16.

staged development—see the *Unit Titles Act 2001*, section 17 (3) (Unit title applications—general requirements).

standard quorum—see schedule 3, section 3.9 (Quorum at a general meeting—owners corporations with 3 or more members).

sustainability infrastructure, installed in relation to a units plan—

- (a) means 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—par (a)

solar panels, clothes lines, rainwater tanks

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

total general fund contribution, for division 5.2 (Administrative, special purpose and sinking funds)—see section 75 (2) (a).

total sinking fund amount, for division 5.2 (Administrative, special purpose and sinking funds)—see section 72.

treasurer, for an owners corporation, means the treasurer of the corporation elected under section 40.

unanimous resolution means a resolution of a general meeting passed as required by schedule 3, section 3.18.

unit—see the *Unit Titles Act 2001*, section 9.

unit entitlement—see the *Unit Titles Act 2001*, section 8.

unit owner means the registered proprietor of the lease of the unit and includes a part-owner.

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

units plan—see the *Unit Titles Act 2001*, dictionary.

unit subsidiary—see the *Unit Titles Act 2001*, section 12.

unit title certificate—see section 119.

unopposed resolution means a resolution of a general meeting passed as required by schedule 3, section 3.17.

utility conduit—see the *Unit Titles Act 2001*, dictionary.

utility infrastructure means infrastructure and equipment necessary for, or related to, the provision of utility services.

utility services—see the *Unit Titles Act 2001*, dictionary.

voting value—see schedule 3, section 3.28 (2) (Value of votes).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 June 2011.

2 Notification

Notified under the Legislation Act on 3 November 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Unit Titles (Management) Bill 2011, which was passed by the Legislative Assembly on 20 October 2011.

Clerk of the Legislative Assembly

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