

2008

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

UNIT TITLES AMENDMENT BILL 2008

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Andrew Barr MLA

Unit Titles Amendment Bill 2008

Overview

The *Unit Titles Amendment Bill 2008* (the Bill) responds to concerns and issues raised through community consultation and seeks to strengthen the provisions of the *Unit Titles Act 2001*. The Bill has been developed in consultation with community, industry and owners corporations.

Key elements of the Bill include:

- a clear and timely dispute resolution mechanism;
- the creation of an communications officer to assist an owners corporation to manage communications within the unit complex;
- greater protection for buyers through the provision and access to information at the contract for sale stage;
- greater understanding of the operation of the unit complex by clearly defining the role and responsibilities of the executive committee, executive committee members and owners corporation managers;
- the requirement to establish and maintain a sinking fund 10-year plan and the review of the sinking fund plan;
- how contracts for the servicing and maintenance of a unit complex can be managed; and
- how legal matters are to be conducted.

Clause Notes

Clauses 1 – Name of Act –states the name of the Act, which is the *Unit Titles Amendment Act 2008*.

Clause 2 – Commencement –states that, except for those sections that deal with the ACT Civil and Administrative Tribunal (section 1 (a) –(j)), the Act commences on the day fixed by written notice of the Minister. Section 1 (a) –(j) commences either when the *ACT Civil and Administrative Tribunal Act 2008*, section 6 commences 1 year following its notification.

The provision provides that the *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Clause 3 – Legislation amended – states that the Act amends the *Unit Titles Act 2001*, the *Agents Act 2003*, the *Planning and Development Act 2007*, and the *Unit Titles Regulation 2001*.

Clause 4 – Unit title applications– general requirements Section 17 (2) (a) –substitutes a new section 17 (2) (a) and provides that an application for unit title must be for no fewer than 2 units if one of the units is partly or wholly superimposed on another unit otherwise an application must be for at least 3 units.

Previously the subdivision of a parcel of land into at least 2 units could be the subject of a unit title application.

Clause 48 New Part 20 Transition section 251 Transitional –unit title application for 2-unit units plan relates to this.

Clause 5 – Amendment of development statements after registration

Section 30 (4) (a) – the provision changes the type of resolution the owners corporation requires to act from a unanimous resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that an application to amend the development statement requires a special resolution of the owners corporation. A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an amendment to a development statement required a unanimous vote. For an owners corporation of 2 or more members a unanimous vote required that each person eligible to vote be at the meeting or has given another person a proxy and that no votes are cast against the resolution and that at least one vote is cast in favour of the resolution. For a 1 or 2 member owners corporation a unanimous resolution required that no votes be cast against and at least one vote was cast in favour of the resolution.

The provision provides an easier mechanism to change a development statement that will not unjustly affect an uncompleted stage of a staged development.

Clause 6 – New division 3.4 - Developer disclosure – creates a new division that provides for what documents a developer must include in a contract for sale of a unit in a units plan before the units plan is registered at the Registrar-General’s Office.

These include the proposed articles of the owners corporation; details of any contract that the developer intends the owners corporation to enter into including the amount of the buyer’s contribution to the corporations general funds that will be used to service the contract, and any personal or business relationship with another party to the contract; an estimate, calculated by the developer, of the buyer’s contribution to the owners corporations general funds for 2 years after the units plan is registered; if the right to the keeping of animals has been reserved by the developer – details of that reservation including the kind and number of animals; and if there is a staged development – the proposed development statement.

The provision provides that by entering into a contract for sale the developer warrants the information being disclosed as accurate. Before the contract is completed the buyer may cancel the contract for sale, by written notice to the developer, if the developer’s disclosure is incomplete or inaccurate and the buyer is significantly prejudiced because of this.

New Part 7A Implied Warranties provides similar rights and protection for buyers of a unit in a unit's plan that has already been registered.

Clause 12 New sections 51A to 51C relates to this clause in that it provides that an owners corporation must not unreasonably withhold consent to keep an animal.

Clause 7 – New section 46A - Restriction on owners corporation during developer control period – creates a new section 46A that deals with restrictions on an owners corporation during a developer control period.

The developer control period starts on the day that the units plan is registered and ends on the day when at least one third of the units in the registered units plan are owned by persons other than the developer.

The provision provides that an owners corporation must not enter into any form of contract unless that contract is disclosed in each contract for sale of a unit in the registered units plan and that either the contract is for less than 2 years or is authorised by the ACT Civil and Administrative Tribunal (ACAT). The developer or the owners corporation, if established, can apply to ACAT for permission to enter into a contract.

The ACAT can only authorise an owners corporation entering into a contract if satisfied that the terms of the contract are reasonable in all circumstances.

The provision also provides that the articles of the owners corporation can not be changed during the developer control period. Section 126 of the *Unit Titles Act 2001* provides that an owners corporation must have articles (default articles) and that the default articles are those prescribed by regulation. Section 127 further provides that the owners corporation, its members and an occupier of a unit are bound by the articles.

During the developer control period an owners corporation can not approve the keeping of an animal, by a unit owner in his or her unit, unless that right was reserved in the contract to sell a unit. The capacity of an owners corporation to approve the keeping of an animal in a unit after the developer control period ends is provided for at clause 12 New Sections 51A to 51C, in particularly s51A.

Clause 8 – Dealings in property Section 48 (1) – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation can deal in property if authorised by an ordinary resolution of that owners corporation.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation required approval by special resolution of the members to deal in property. The provision provides greater opportunity for an owners corporation to deal in property, where that dealing is in accordance with its functions, and to dispose of property.

Clause 9 - Dealings in property Section 48 (2) – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation can grant, vary, take or release an easement over any part of the common property if authorised by a special resolution of that owners corporation.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation required approval by an unopposed resolution to deal with easements. An unopposed resolution required that no votes be cast against the resolution and that at least 1 vote be cast in favour of the resolution.

Clause 10 – Exemptions for units plans with 4 or fewer units Section 50 (1) – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation may by special resolution exempt itself from the requirements prescribed by regulation under the *Unit Titles Act 2001*.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than third of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation could only exempt itself from these requirements if agreed to by an unopposed resolution of unit members. An unopposed resolution required that no votes be cast against the resolution and that at least 1 vote be cast in favour of the resolution.

Clause 11 – General duties Section 51 (6) – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation may on certain conditions and agreed to by special resolution exempt itself from its maintenance obligations under section 51(3) of the *Unit Titles Act 2001*.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation could only exempt itself from these requirements if agreed to by an unopposed resolution of unit members. An unopposed resolution required that no votes be cast against the resolution and that at least 1 vote be cast in favour of the resolution.

Clause 12 – New sections 51A to 51C – creates sections 51A, 51B and 51C.

Section 51A Animals - owners corporation's consent the provision provides that an owners corporation must not unreasonably withhold consent for the keeping of an animal by the unit owner or occupier. An owners corporation can impose conditions on the consent.

The provision was previously provided for in the default articles in the Unit Titles regulations however the provisions have been moved into the Act to ensure the rights of a unit owner, to keep animals or allow animals to be kept in a unit, are protected. The Unit Titles regulation provided that an owners corporation could amend its articles to preclude any right of any unit owner to keep an animal.

The unit owner can apply to the ACAT if a dispute arises about the keeping of an animal.

Section 51B Structural defects - owners corporation may represent members – provides that an owners corporation may, if agreed to by ordinary resolution, take legal action for the rectification of a structural defect to a building or the site of a building that is part of the units or common property of the units plan, if a member of the corporation could take legal action in regards to the structural defects but has not done so within a reasonable time after the defect becomes known. Consequently the owners corporation, and not the member, would be liable for any legal costs incurred and can benefit from any order for costs in the corporation’s favour.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Section 51C Owners corporation – entry to units – provides that an owners corporation may enter a unit in the units plan without notice to the unit owner in the event of an emergency. An example of an emergency would be if water was leaking from one unit and entering another unit or common property.

The section also provides for the executive committee to authorise, by resolution a person acting on behalf of the owners corporation, entry to a unit if entry is required to inspect or maintain the common property of the units plan. The executive committee is required to give the owner or occupier written notice that the entry must be allowed on a stated day. This notice must be given to the owner or occupier not less than 7 days before the relevant entry. Otherwise entry to a unit without consent of the owner or occupier of the unit is prohibited.

A resolution of the executive committee requires a majority decision of those members present and voting and in the case of a tied vote the Chairperson can exercise a casting vote. If the executive committee only has 2 members the decision must be unanimous.

Clause 13 – Work on behalf of particular unit owners or occupiers Section 52 – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation may, enter into and carry out an agreement with an owner or occupier of a unit for the maintenance of a unit or provision of amenities or services to a unit (or its owner or occupier). An owners corporation can not undertake the work unless agreed to by ordinary resolution of the owners corporation.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation required approval by special resolution to undertake the maintenance or provision of amenities or services to a unit. The provision provides unit owners with the opportunity to access service contractors engaged by an owners corporation to undertake other work in the unit complex.

Clause 14 – Magistrates Court orders against executive committee or owners corporation Section 55 – is deleted as the Bill responds to the creation of the ACAT with the functions dealt with by the Magistrates Court now covered by ACAT.

Clause 38 Division 6.5 provides information on those matters that may be dealt with by the ACAT and who may apply to the ACAT.

Clause 15 - New division 5.3A

Division 5.3A people appointed by an owners corporation to help run the owners corporation.

The sections in the division strengthen the accountability and code of conduct of an owners corporation manager by clearly defining their function and delegations, terms of appointment, how an appointment may end and public liability insurance needs. The provisions provide clear mechanisms to govern the interactions of the owners corporation and the manager.

Section 55 Manager appointment – provides the type of person an owners corporation may appoint as an owners corporations manager. These include a licensed real estate agent, a person who acts, or intends to act only as an owners corporation manager under a conditional real estate licence, a member of the owners corporation; or someone else who is not a manager of another owners corporation and whose income as an owners corporation manager would not be their primary source of income. The appointment of an owners corporation manager requires an ordinary resolution of the owners corporation.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously the executive committee could engage any person it considered appropriate to assist in the exercise of its functions. The provision provides that where a professional person is appointed that that person is a licensed real estate agent under the *Agents Act 2003*. As such the provision provides a regulatory framework for a licensed real estate agent owners corporation manager.

Section 55A Manager - conditions of appointment – provides that an owners corporation manager can not be appointed for a term longer than 3 years and that the conditions of

appointment must include information about remuneration, functions to be exercised on behalf of the owners corporation and any other conditions agreed to.

Section 55B Manager – function – provides that the functions of the owners corporation manager are those that are stated in the managers conditions of appointment. An owners corporation manager can be delegated additional functions under section 55G Manager-delegated functions.

Section 55C Manager - ending appointment – provides those circumstances in which an owners corporation can end the appointment of an owners corporation manager. An owners corporation may end a managers appointment for a remedial breach under section 55D or for misbehaviour, bankruptcy, or a conviction that would result in imprisonment of at least 1 year. However, before ending a manager’s appointment because of a conviction, the owners corporation must be satisfied that the conviction affects the manager’s suitability as a manager of the corporation.

Further, a manager who is absent for any period not allowed under the manager’s conditions of appointment, or whose physical or mental incapacity substantially affects the exercise of the manager’s functions may have their service contract terminated.

Section 55D Manager - remedial breach – specifies the circumstances in which an owners corporation manager commits a remedial breach of the owners corporation manager’s appointment. These circumstances can include a failure to exercise the manager’s functions, contravention of the code of conduct or gross negligence/misconduct in carrying out the manager’s functions.

If an owners corporation believes that there are reasonable grounds that an owners corporation manager has committed a remedial breach, it may give written notice to the manager stating that it believes that the manager has committed a remedial breach. The notice must include details of the remedial breach committed, sufficient for the manager to identify the function the manager failed to exercise or the contravention of the code of conduct or gross negligence or misconduct action. Within 14 days after the notice is given to the manager, the manager must either give the owners corporation written representation explaining why the manager’s actions do not amount to a remedial breach or remedy the breach.

An owners corporation may end the managers appointment if the manager does not comply with the notice or if it does not accept the manager’s representation.

Section 55E Manager - code of conduct – provides that the owners corporation manager must comply with the code of conduct prescribed by regulation.

Schedule 1 Consequential amendments Part 1.3 Unit Titles Regulation 2001 [1.15] Code of conduct for managers provides that the code of conduct is prescribed in schedule 2 of the regulation.

Section 55F Manager - public liability insurance – provides that a manager must take out and maintain public liability insurance for all of the following events happening because of any act or omission in the management of the owners corporation by the owners corporation manager: death, bodily injury or illness to anyone; and loss of, or damage to,

the property of anyone. Public liability insurance must be for a total amount of liability as prescribed by regulation.

In the event that a manager is appointed to manage 2 or more owners corporations, that manager may take out and maintain a single insurance policy only if this is disclosed to the manager's insurer and the insurance policy covers the risk in relation to each owners corporation managed by the owners corporation manager.

Section 55G Manager - delegated function – provides that the owners corporation or the executive committee may in writing delegate to the owners corporation manager any of its functions under the *Unit Titles Act 2001* or another territory law.

Section 55H Communications officer - appointment – provides that for a unit plan with at least 7 units, the appointment of a communication officer. The person appointed as communications officer need not be a member of the owners corporation. The appointment may be a voluntary appointment or paid appointment.

The appointment requires an ordinary resolution of the owners corporation. An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Section 55I Communications officer-function – provides that the communications officer may assist the owners corporation by improving communication through monitoring and advising on communication techniques and procedures, identify ways in which internal communication could be improved, and alerting the executive committee or members of possible conflict and strategies on how to reduce the risk of conflict.

A communications officer can be an owner or occupier or an outside professional and they can be paid. Preventing disputes is preferable to having resolve them. This provision is intended to focus attention on the importance of quality communication.

The provision provides that the communications officer can not mediate or directly resolve a dispute. This is because ACAT provides a formal dispute mechanism.

Clause 16 - New division 5.3B

Division 5.3B - Service Contractors

Subdivision 5.3B.1 Service contractor - contract and functions

Section 55J Definitions - div 5.3B – provides definitions for “service contract”, “service contractor” and “service contractor services”.

Section 55K Service contractor-contract – provides that an owners corporation may, by ordinary resolution, enter into a service contract with a person.

However, an owners corporation cannot enter into a service contract for a period greater than 3 years during the developer control period unless ACAT is satisfied that the contract is reasonably required for the purpose for which the units plan is intended and authorises the contract before any unit is sold and the contract is disclosed by the developer in any contract for sale.

An owners corporation may enter into a service contract for a period longer than 3 years, after the end of the developer control period, if the contract is approved by special resolution of the owners corporation.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

The provision provides that a service contract entered into in breach of the provisions is void.

Section 55K(5) specifies the factors that ACAT must take into consideration in deciding whether or not a contract is reasonably required for the purpose for which the units plan is intended.

Section 55L Service contractor not to be contracted for longer than 25 years – provides that an owners corporation cannot enter into a service contract with a service contractor for a period longer than 25 years. If a contract is entered into for longer than 25 years then the contract is taken, for all purposes, to be a contract for 25 years.

However the provision does not apply to contracts entered before commencement of the provision.

Section 55M Service contractor-functions – specifies that the functions of a service contractor are to assist an owners corporation in the exercise of 1 or more of its functions in relation to common property or part of the common property. A service contractor can

manage, supervise or maintain and repair common property or part of the common property.

The general duties of an owners corporation are provided for at section 15 of the *Unit Tiles Act 2001*.

Section 55N Service contractor-transfer – provides that a service contractor’s may apply to an owners corporation to seek approval to transfer the service contract. An owners corporation may by an ordinary resolution agree to the transfer of the service contract. An owners corporation must decide the application within 30 days of receipt of the application and can not unreasonably withhold approval or require a fee or other consideration for approving the transfer. However, an owners corporation may seek reimbursement of reasonable legal and administrative expenses incurred in considering the approval.

The provision provides for the things that the owners corporation may consider in deciding an application to transfer a service contract.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Section 55O Service contractor - ending contract – provides the circumstances in which an owners corporation may end a service contract. An owners corporation may end a service contract for a remedial breach under section 55P, or misbehaviour, or the service contractor becomes bankrupt or executes a personal insolvency agreement or otherwise agrees to take the benefit of any law for the relief of bankrupt or insolvent debtors, or the service contractor is convicted in the ACT of an offence punishable by imprisonment for at least 1 year. However, before ending a service contractors appointment, because of a conviction, the owners corporation must be satisfied that the conviction affects the services contractor’s capacity to exercise their functions under the service contract.

Further, the owners corporation must end a service contract 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 for physical or mental incapacity that substantially affects them from carrying out the functions of the service contract.

Section 55P Service contractor - remedial breaches – specifies the circumstances in which a service contractor commits a remedial breach of the service contract. These circumstances can include a failure to exercise the service contractor’s functions, contravention of the code of conduct or the gross negligence/misconduct in carrying out the service contractors functions.

If an owners corporation believes that there are reasonable grounds that an owners corporation manager has committed a remedial breach, it may give written notice to the manager stating that it believes that the manager has committed a remedial breach. The

notice must include details of the remedial breach committed, sufficient for the manager to identify the function the manager failed to exercise or the contravention of the code of conduct or gross negligence or misconduct action. Within 14 days after the notice is given to the manager, the manager must either give the owners corporation written representation explaining why the service contractor's actions do not amount to a remedial breach or remedy the breach.

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

Section 55Q Meaning of *financed service contract* and *financier*-subdiv 5.3B.2 – provides definitions for “financed service contract” and “financier”.

Section 55R Who is the financier for the service contract? – specifies who is the financier for a service contract.

Section 55S Financed service contract - notice of change – provides that an owners corporation must give the financier of a financed service contract notice of any change made to the contract by the corporation and the service contractor, or any agreement entered into by the corporation and the service contractor that affects the contract.

Section 55T Financed service contract - limitation on ending – provides the circumstances in which an owners corporation may terminate a financed service contract. To do this, the owners corporation must give the financier written notice that the corporation has the right to end the contract and when the written notice is given to the financier, the corporation has the right to end the contract, and the corporation must give notice to the financier not less than 21 days before the contract is ended,

However, an owners corporation may not give notice to end the financed service contract if the financier has given notice under section 55U of an agreement between the service contractor and the financier.

Section 55U Financed service contract - person authorised to act for financier – specifies that a financier for a financed service contract can act under the contract in place of the contractor (or appoint an agent for this purpose), or appoint a receiver, or a receiver and manager for the contract. The financier can only take the action specified above if the financier has given written notice to the owners corporation of the intent to act, and at the time that the notice is given to the owners corporation, the corporation has not given a notice to the financier under section 55T (or has given and withdrawn that notice). Section 55T requires the owners corporation to give notice to the financier of the intent to end a financed service contract.

The provision provides that if the financier authorises a person to act for the financier, that that person cannot be the service contractor or an associate of the service contractor and must seek the approval of the person from the owners corporation. The owners corporation may only consider the person's character, competence, qualifications and experience and must act reasonably in the circumstances and must decide as soon as practicable.

An owners corporation must not unreasonably withhold the person's approval or require a fee or other consideration for approving the person. However, an owners corporation may seek reimbursement of reasonable legal and administrative expenses incurred in considering the approval.

Section 55V Financed service contract-agreement between owners corporation and financier prohibited – provides that a financier for a financed service contract, must not enter into an agreement or other arrangement with the owners corporation under a financed service contract for a matter relating to the financier’s role in the financed service contract, or arrangements between the financier and service contractor under which the contractor is acting, or may act, under the contract in the contractor’s place, or the operation of subdivision 5.3B.2. The provision protects an owners corporation from a possible conflict of interest in the financiers operations or agreements with a service contractor.

Any agreement or arrangement to which this section applies is void to the extent it contradicts the section.

Clause 17 - new section 55W – creates definitions for division 5.4 Finances of owners corporation. The provision provides definitions of “initial sinking fund plan”, “sinking fund expenditure” and “sinking fund plan”.

Clause 18 - Borrowing powers Section 58 – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation may, if authorised by a special resolution, may either borrow amounts required for the exercise of its functions or secure the repayment of amounts borrowed by it (including interest on such borrowings).

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously an owners corporation required an unopposed resolution to borrow money or secure repayments. An unopposed resolution required that no votes be cast against the resolution and that at least 1 vote be cast in favour of the resolution.

Clause 19 - Sinking funds Section 61 (1) and (2) Section 61 (1) – the provision removes the obligation to establish and maintain a sinking fund for unit plans with less than 3 units and imposes that obligation on unit plans with 4 or more units.

In addition, payments into the sinking fund may only be made directly from contributions from sinking fund contributions or by transfer from an administrative fund (by ordinary resolution) or by transfer from a special purpose fund (by special resolution).

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 20 - Sinking funds – deletes section 61 (4). The function of 61 (4) is superseded by amendments to the Bill.

Clause 21 Sections 62 and 63 relates to this clause in that it amends s62 (4). Section 61 (4) provided that an owners corporation could only transfer funds from its sinking fund to a general fund if section 62 (4) applied.

Clause 21 - Sections 62 and 63

Section 62 Sinking funds - owners corporation to prepare initial 10-year plan – this section only applies if an owners corporation is required to establish and maintain a sinking fund and had not had its 2nd annual general meeting.

In such circumstances, an owners corporation must prepare an initial sinking fund plan that anticipates expenditure for 10 years starting on the day of the first annual general meeting after registration of the units plan.

An owners corporation must, by ordinary resolution, approve the initial sinking fund plan not later than the day of the second annual general meeting of the owners corporation. An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

The provision further provides for the transitional arrangements, that expire 2 years after commencement, for owners corporation that have had its 2nd annual general meeting before the provisions commencement.

Section 63 - Sinking funds - review of initial sinking fund plan –requires an owners corporation to review and amend if necessary, the initial sinking fund plan not later than 4 years after the plan is approved.

Section 63A Sinking funds-owners corporation to prepare subsequent 10-year plan – provides that an owners corporation that has, or had, an initial sinking fund plan must prepare a sinking fund plan every 10 years from the day the initial sinking fund plan was prepared.

An owners corporation must, by ordinary resolution, approve the sinking fund plan not later than the day of the annual general meeting after the start of each 10 year period. An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Section 63B Sinking funds - review of sinking fund plan – provides that an owners corporation must review and amend if necessary, the sinking fund plan not later than 5 years after the sinking fund plan is approved.

Clause 22 - Discounts and interest - amounts owing Section 65 (1) – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation may by ordinary resolution decide when a stated discount amount applies to an amount owing to the owners corporation by a unit owner.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 23 - Section 65 (2) – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that the interest rates chargeable on amounts owing to an owners corporation are as specified at section 65 (2) (a) to (c) unless otherwise decided by ordinary resolution.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 24 – Section 75 – provides that an owners corporation must, within 14 days of a request provide a certificate under the seal of the corporation that provides prescribed information.

This is largely the same as the previous section 75, the only substantive change is to the nature and extent of information that the owners corporation must now provide under a section 75 certificate to an eligible person.

The provision now specifies the information that must be provided on the certificate and includes the name and contact details of each member of the corporations executive committee and owners corporation manager; where records can be inspected; the insurance policies held by the corporation; and details of the general and sinking fund current contribution rate.

The provision also provides that an owners corporation must, within 14 days, make available for inspection the corporate register and any records held by the corporation.

An owners corporation may fix a fee of not more than the amount prescribed by regulation. Schedule 1 Consequential amendments Part 1.3 *Unit Titles Regulation 2001* [1.11] Section 12 Fees for requests for unit title certificates and access to owners corporation records-Act, s75 (4) provides that the fee for a certificate and or inspection of an owners corporations records must not be more than \$80 not including GST if applicable. The fee for only inspecting owners corporations records must not be more than \$80 not including GST if applicable.

Clause 25 – Executive committee - functions Section 82 (1) – inserts a new section 82(1A) which specifies the functions of the executive committee.

Clause 26 – Executive committee - before the first annual general meeting Section 83 (2) – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that 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 of that owners corporation.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 27 - Executive committee - after the first annual general meeting

Section 84 (4) (b) – amends section 84 (4) (b) to identify when members of an executive committee hold office.

The effect is that a member holds office until the earlier of the next annual general meeting and the member ceasing to be a member of the owners corporation, i.e. ceasing to be a unit owner.

Clause 28 – Section 84 (5) – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that an executive member of an owners corporation may now be removed by an ordinary resolution and provides for the appointment of another member to replace the removed member until the next annual general meeting.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 29 – Section 87 – substitutes a new section 87 and creates new sections 87A to 87C these sections deal with the functions of executive committee members.

Section 87 Executive committee-office holders – the provision provides that at the first meeting of the executive committee, the committee must elect a chairperson, a secretary and a treasurer. A person can be elected to 2 or more positions. Previously the section only dealt with the appointment of a chairperson.

The benefit of specifying the functions of each office holder in the Executive Committee is that it identifies those functions that could be delegated to the owners corporation manager if such a manager is appointed.

Section 87A Executive committee - chairperson's functions – specifies that the chairperson is the chair for executive and owner corporation meetings, is to set the agenda, and to liaise with the treasurer, secretary and manager about the performance of their functions.

If the chairperson leaves a meeting the remaining executive committee members must elect a chair to conduct the meeting.

Section 87B Executive committee - secretary's functions – specifies that the function of the secretary is to, on behalf of the executive committee give notice of meeting, prepare and distribute minutes, and maintain other records as required under the Act.

The secretary has a reporting function for those matters required under the Act including certificates.

Section 87C Executive committee - treasurer's functions – specifies that the function of the treasurer is to, on behalf of the owners corporation provide information to unit owners on the determination of general contributions to the general fund and sinking fund contributions and to manage receipts, deposits and payments. On behalf of the executive committee the treasurer is to maintain records of receipts, deposits and payments, provide a financial report to the executive committee and to prepare and certify the annual financial statements.

Clause 30 - new sections 88B to 88D.

Section 88B Decisions about common property – deals with circumstances when the executive committee of the owners corporation may consent to an application by a member of the owners corporation to use the common property of the units plan.

Section 88C Decisions about taking legal action – sets out the situations when an executive committee can take legal action on behalf of the owners corporation. The executive committee must not take legal action on behalf of the owners corporation if the costs, estimated by the corporation's legal representative, of taking the legal action are more than the amount prescribed by regulation.

The regulations made under the *Unit Titles Act 2001*, (refer to Item 1.12 section 13 Costs of taking legal action of the amendment Bill) relates to this clause.

Section 88D Taking urgent legal action – provides that when an executive committee is satisfied on reasonable grounds that that it is necessary to take urgent legal action and the urgency precludes them gaining consent of an owners corporation then they may take the urgent legal action.

The executive committee must seek the consent of the owners corporation as soon as practicable after beginning the legal action and if consent is not given cease the legal action.

Clause 31 – Section 90 Section 90 Contractors and employees – the provision changes the type of resolution the owners corporation requires to act from a special resolution to an ordinary resolution.

The function of the provision is otherwise unchanged and provides that an owners corporation by ordinary resolution may impose conditions or restrictions on its executive committee's power to engage or employ people.

An ordinary resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution exceeds the number cast against it. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it.

For an owners corporation with 1 or 2 members the requirements for passing a ordinary resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Clause 32 First annual general meeting Section 95 (1) – substitutes “3 months” for “6 months” at section 95 (1). The provision provides for when an owners corporation must conduct the first annual general meeting of the corporation post registration of the units plan at the Registrar-General's Office. The meeting must be held within 3 months of registration.

Clause 33 – New sections 95 (3) to (5)

Section 95 (3) First annual general meeting – provides that if the units plan is registered not more than 6 months before the commencement of the Bill, then the first annual general meeting of the owners corporation must be held within 6 months after the registration of the units plan.

Section 95 (4) provides that subsection 95 (3) is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end effect of transitional laws etc) applies.

Section 95 (5) provides that subsections (3) and (4) cease 6 months from commencement.

Clause 34 – New section 95A First annual general meeting-developer to deliver records – the provision provides that the developer must deliver to the owners corporation information relevant and pertinent to it for function of its functions. The provision specifies the records that the developer must give to the owners corporation at the first annual general meeting of that owners corporation. The records include the statutory books and records of the corporation up to the date of the meeting, any insurance policy, any plans, specifications, diagrams etc that relate to the units or common property, a copy of any contract entered into, any warranty that relates to common property, the corporations seal, and other document that relates to the units or common property.

Clause 35 – Quorum at a general meeting-owners corporation with 2 members

Section 102 (3) – deletes section 102 (3) as units plans comprised of 2 units are not captured by these amendments.

Clause 40 Section 126 relates to this amendment.

Clause 36 – Proxy votes New section 115 (3) – creates a new section 115(3).

The provision now specifies that a person entitled to vote at a general meeting of an owners corporation must not appoint a proxy for more than 1 year after the day that the

appointment is made and that an owners corporation manager or service contractor can not be appointed as a proxy.

Clause 37 – New section 115A – creates a new section 115A.

Section 115A Proxy votes-limit on developer – applies to a developer of a units plan who is appointed as a proxy under a contract for sale of a unit in that units plan. The provision requires a proxy disclosure statement that includes the name of the person appointed or the position of the person appointed, the length of appointment and sufficient information on the development matter, in each contract for sale of a unit in the units plan.

The provision imposes restrictions on the developer's use of proxy votes and states that a developer must not exercise 3 or more proxy votes on a matter, which is consistent with the proxy disclosure statement, at a general meeting of an owners corporation for the units plan. The developer must act consistently with the proxy disclosure statement and can not use the proxy for a matter other than a development matter. A contravention of the provision by the developer voids the proxy.

Clause 38 – Section 119 – deletes section 119 as units plans comprised of 2 units are not captured by these amendments. Section 119 provided for the circumstance where a vote of a 2 member owners corporation was divided.

Clause 39 – Division 6.5 – substitutes new sections under Division 6.5, including sections 123, 124 and 125.

Section 123 What is an ACAT dispute? – defines what is an ACAT dispute.

The provision defines that a dispute must relate to either an owners corporation or something stated in column 4 of table 123 and include a dispute that relates to the consent to keep an animal and the return of owners corporation property. Table 123 provides for those matters and those persons who can bring a matter to the ACAT.

Section 124 Who may apply to the ACAT? – defines who can apply to the ACAT. The information is set out in Table 123.

The table provides that a person mentioned column 2 can apply to the ACAT for an order in regards to the person mentioned column 3 and visa-versa. Further in either person mentioned in column 2 or 3 can apply to the ACAT for a declaration in relation to an owners corporation.

Section 125 Kinds of ACAT orders – specifies the types of orders that the ACAT can make.

The provision further provides that the ACAT can make any other order it considers necessary or convenient to resolve an ACAT dispute but does not limit the orders that the ACAT can make in relation to an ACAT dispute.

Clause 40 – Section 126 – substitutes a new section 126. Section 126 provides that the requirements of articles (default articles) are those prescribed by regulation as amended by the owners corporation under section 128.

Clause 12 new sections 51A to 51C relates to this amendment. Section 51A removes those matters concerning the keeping of animals in a unit from the default articles in schedule 1 of the regulation into the *Unit Titles Act 2001*. This provides greater assurance for unit owners of their right to decide to keep or allowed to be kept an animal in a unit. A dispute about keeping animals may be taken to the ACAT (refer to clause 38 Division 6.5 Dispute resolution)

Clause 41 - Amendment of articles Section 128 (2) – deletes section 128(2). The effect is to remove the restriction on an owners corporation with 3 or less members from amending their articles.

Previously an owners corporation, with 3 members could not amend articles that dealt with voting procedures or conciliation of disputes. An owners corporation with 2 members could not amend articles that dealt with a failure to obtain a quorum at a general meeting or the conciliation of disputes.

Clause 42 – Section 129 – substitutes section 129, 129A and 129B.

Section 129 Breach of articles-article infringement notice – provides that the section applies if the executive committee of an owners corporation reasonably believes that an owner or occupier has contravened the corporation's articles and that the contravention is likely to continue or be repeated.

The owners corporation, if authorised by an ordinary resolution of the executive committee, may give a notice to the person contravening the corporation's articles. The notice must include information about why the executive committee considers the person is in contravention of the corporation's articles and details about the period available to the person to remedy the contravention.

A person commits an offence if they do not comply with a notice and the owners corporation can, without further notice to the person, apply to the ACAT for an order.

If the owners corporation is acting in response to a request from another units plan owner or occupier the owners corporation must advise that person within 14 days that a notice has been given.

An ordinary resolution of the executive committee means that all matters must be decided by a majority of votes of executive committee members present and voting.

Section 129A Breach of articles - failure to comply with article infringement notice – provides that a person commits an offence if the person is given an article infringement notice under section 129 and does not comply with it. The maximum penalty points for the offence are 5 penalty units. Penalty units are defined in the *Legislation Act 2001* and are currently \$100 for a person and \$500 for a corporation.

However, a person does not commit an offence under section 129A if at the time of getting the article infringement notice, that person is not or has not contravened the provision mentioned in the notice.

Section 129B Breach of articles - request for article infringement notice – specifies the circumstances when the owner or occupier of a unit in a units plan (complainant) can, where they reasonably believe that a contravention of the owners corporation’s articles has occurred and that the contravention is likely to be repeated, ask the owners corporation to serve an article infringement notice, under section 129, on the person in contravention of the articles.

Clause 43 – New Part 7A

Part 7A consists of new sections 130A to 130F.

Part 7A Implied warranties

Section 130A Meaning of *implied warranties* - pt 7A – provides that a definition of implied warranties is at section 130D.

Section 130B Purpose - pt 7A – provides that implied warranties are taken to be part of a contract for the sale of a unit and provides a right to cancel the contract.

New division 3.4 Developer Discloser, section 31A Contract for sale of unit before registration of units plan provides that the developer must disclose certain information and provide that that information provided under section 31A (2) (a) – (e) is accurate. A buyer of a unit may cancel the contract if they believe that the developer disclosure is incomplete or inaccurate and that this will significantly prejudice them. Part 7A Implied Warranties provides similar rights and protection to a buyer of a unit in a units plan that is registered.

Section 130C Implied warranties and right to cancel - effect – specifies that the implied warranties and right to cancel a contract for sale have effect despite anything to the contrary in the contract for sale or any other contract or arrangement. This means the seller cannot contract out of the statutory implied warranties.

Section 130D Implied warranties – states that the implied warranties are taken to be part of a contract for sale of a unit and that the seller warrants the information provided under this section.

The provision provides that the seller must provide information that is to the best of their knowledge accurate at the date of the contract. This includes the seller’s warranty against any latent or patent defects in the common property or the owners corporation assets other than those arising through fair wear and tear or those defects disclosed in the contract for sale.

The seller warrants that at the completion of the contract for sale there are no circumstances (other than those disclosed in the contract for sale) in relation to the affairs of the owners corporation that are likely to materially prejudice the buyer.

The seller warrants that there are no actual, contingent or unfunded liabilities of the owners corporation that are not part of the owners corporation’s normal operating expenses (other than those disclosed in the contract for sale).

Section 130E Cancellation of contract – provides that the buyer, by written notice to the seller, can cancel the contract for sale if the seller breaches any implied warranty (and that

breach was not disclosed in the contract for sale). The seller must repay any amounts paid towards the purchase of the unit.

The provision provides that notice must be given not later than 3 days before the buyer is required to complete the contract for a unit in a units plan that has not been registered, or in any other case, within 14 days after the buyer and seller exchange contracts or another period agreed to by the buyer and seller.

Section 130F Claim for compensation – provides that a buyer who decides to complete a contract for sale where they reasonably believe that a breach of the warranty has occurred may seek, by written notice to the seller, compensation for a breach of warranties. Notice must be given not later than 3 days before the buyer is required to complete the contract for a unit in a units plan that has not been registered, or in any other case, within 14 days after the buyer and seller exchange contracts or another period agreed to by the buyer and seller.

Clause 44 – Unit entitlement authority - grant Section 146 (2) (a) – the provision changes the type of resolution the owners corporation requires to act from an unopposed resolution to a special resolution.

The function of the provision is otherwise unchanged and provides that the ACT Planning and Land Authority may by written notice to the owners corporation, grant a unit entitlement authority (for the amendment of the schedule of unit entitlements). The Authority must be satisfied, relevantly for this amendment, that the application is authorised by a special resolution of the owners corporation made within 3 months before the owners corporation’s application to the Authority for a unit entitlement authority.

A special resolution requires that for an owners corporation with more than 2 members that, unless a poll is taken, the number of votes cast in favour of the resolution must exceed the number cast against it and that the number of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting. If a poll is taken then the voting value cast in favour of the resolution must exceed the voting value of the votes cast against it and that the voting value of votes cast against it must be less than 1/3 of the total number of votes, including any proxy votes, that could be cast by those present at the meeting.

For an owners corporation with 1 or 2 members the requirements for passing a special resolution are that no votes are cast against the resolution and that at least 1 vote is cast in favour of the resolution.

Previously the ACT Planning and Land Authority could only grant a unit entitlement authority if agreed to by an unopposed resolution of the owners corporation. An unopposed resolution required that no votes be cast against the resolution and that at least 1 vote be cast in favour of the resolution.

Clause 45 – Provisional building damage order - period of effect Section 156 (b) – substitutes “ACAT” for “Magistrates Court” at section 156(b) as the Bill responds to the creation of the new ACAT with the functions dealt with by the Magistrates Court now covered by ACAT.

Clause 38 Division 6.5 provides information on those matters that may be dealt with by the ACAT and who may apply to the ACAT.

Clause 46 – Final building damage order - period of effect Section 158 (b) – substitutes “ACAT” for “Magistrates Court” at section 158 (b) as the Bill responds to the creation of the new ACAT with the functions dealt with by the Magistrates Court now covered by ACAT.

Clause 38 Division 6.5 provides information on those matters that may be dealt with by the ACAT and who may apply to the ACAT.

Clause 47 – New part 11A

Part 11A Changing 2-unit units plans to subdivisions – creates new Part 11A. Part 11A includes new sections 165A and 165B.

Section 165A Application - pt 11A – states that this part only deals with units plans consisting of 2 units.

Section 165B Subdivision of units plan - application – provides an option for an existing owners corporation comprised of only two units to lodge a Development Application under the *Planning and Development Act 2007* with the ACT Planning and Land Authority for a subdivision of the parcel of land covered by the registered units plan. Such application will be assessed against the Territory Plan.

An owners corporation may lodge a development application with the Authority for a subdivision as if it were the Crown lessee.

Any approval will be conditional upon the units plan being cancelled.

Clause 48 – New part 20

Part 20 Transitional

Section 250 Definitions - pt 20 defines *commencement day* and *pre-amendment Act* for this part.

Section 251 Transitional - unit title application for 2-unit units plan – provides that the section applies to an application, not decided immediately before the commencement day, for the subdivision of a parcel of land into 2 units where 1 unit would be wholly or partly superimposed on the other unit. The application would be decided under the pre-amendment Act.

Section 252 Transitional regulations – provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Unit Titles Amendment Act 2008*.

Subclause (2) provides that a regulation may modify this part to make provision in relation to anything that in the Executive’s opinion is not, or is not adequately or appropriately,

dealt with in this part. A regulation under subclause (2) has effect despite anything elsewhere in the proposed Act.

Section 253 Transitional effect - Legislation Act, s 88 – provides that this part is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end effect of transitional laws etc.) applies.

Section 254 Expiry - part 20 – provides that part 20 expires 5 years after commencement day.

Clause 49 – Dictionary, note 2, new dot point – creates a new dot point in the dictionary for “ACAT”.

Clause 50 – Dictionary, new definitions – creates new definitions in the Dictionary for “ACAT dispute”, “appoint” and “communications officer”.

Clause 51 – Dictionary, definition of default articles – substitutes “126” for “126 (1) (a)” in the definition for “default articles” in the Dictionary.

Clause 52 – Dictionary, new definitions – creates new definitions for “developer”, “developer control period”, “financier”, “implied warranties”, “initial sinking fund plan”, “manager”, “secretary”, “service contract”, “service contractor”, “sinking fund expenditure”, “sinking fund plan” and “treasurer” in the Dictionary.

Clause 53 – Further amendments, mentions of Magistrates Court substitutes “ACAT” for “Magistrates Court” at sections 137 (2), example, 140 to 144, 153 (4), 154 (2), 155, 157, and 178 as the Bill responds to the creation of the new ACAT with the functions dealt with by the Magistrates Court now covered by ACAT.

Clause 38 Division 6.5 provides information on those matters that may be dealt with by the ACAT and who may apply to the ACAT.

Schedule 1 – Consequential Amendments

Part 1.1 – Agents Act 2003

Item 1.1 – creates new section 8 (2) (da). Section 8 Carrying on business as a real estate agent specifies those activities that are defined as the business of a real estate agent. New section 8 (2) (da) provides that a person who is an owners corporation manager is defined as carrying on business as a real estate agent for the purposes of the Act.

Under the *Agents Act 2003* a person who carries on the business of a real estate agent must be licensed under the Act.

Item 1.2 – creates new section 8A.

Section 8A People not to carry on business as real estate agent – specifies those persons who would not be taken as carrying on business as a real estate agent. A person who is appointed as an owners corporation manager and is also the treasurer of the owners corporation, a member of the owners corporation appointed as an owners corporation

manager or a person who manages only 1 owners corporation and whose primary income is not derived from the position are not considered, for the purposes of the Act, to be carrying on the business of a real estate agent. These persons do not need to be licensed under the Act.

Item 1.3 Section 43 (2) – The ACAT may cancel or suspend any other licence held by the Agent or prohibit the Agent administering an administrative or special purpose fund under the *Unit Titles Act 2001*.

Item 1.4 New section 109A – creates a new section 109A Change of owners corporation managing agent-former agent to give statement and records and provides that an owners corporation manager who stops being the owners corporation manager must within 14 days give the owners corporation a certified true copy of the owners corporation accounts and the records about the management of the owners corporation.

Item 1.5 New section 149 (2A) and (2B) – creates new sections 149 (2A) and 149 (2B). Section 149 deals with an entitlement, by a person who suffers financial loss because of a failure to account by a licence agent is entitled to claim compensation from the compensation fund for the loss.

Section 149 (2A) –provides that the amount, a person can seek to claim for compensation, is limited to \$50 000 for a single claim.

Section 149(2B) – provides that the limit provided by section 124 (2A), on the amount that can be sought for a single claim, is only applicable for an action that arose after commencement of the subsection. Therefore, a claim that arose as a result of an action before commencement of subsection (2A) is not limited by subsection (2A).

Item 1.6 new Part 20

Part 20 Transitional

Section 220 Transitional regulations – provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Unit Titles Amendment Act 2008*.

Subclause (2) provides that a regulation may modify this part to make provision in relation to anything that in the Executive’s opinion is not, or is not adequately or appropriately, dealt with in this part. A regulation under subclause (2) has effect despite anything elsewhere in the proposed Act.

Section 221 Transitional effect - Legislation Act, s 88 – provides that this part is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end effect of transitional laws etc.) applies.

Section 222 Expiry-part 20 – provides that part 20 expires 1 year after commencement day.

Item 1.7 Dictionary, new definition of owners corporation managing agent –inserts a definition of an owners corporation managing agent.

Part 1.2 – Planning and Development Act 2007

Item 1.8 New section 139 (2) (l) – If the owners corporation lodges a Development Application to subdivide the units plan under the *Planning and Development Act 2007*, this application must be accompanied by the resolution of the owners corporation under the UTA to cancel the units plan.

Item 1.9 New section 165 (2) (aa) – provides that the ACT Planning and Land Authority when considering the application for subdivision, under section 165B (Subdivision of units plan-application) of the *Unit Titles Act 2001*, must condition the approval to require that the owners corporation also applies to the Authority to cancel the units plan.

Clause 47 New part 11A section 165B (2) relates to this item.

Part 1.3 – Unit Titles Regulation 2001

Item 1.10 Section 10 Code of conduct for managers-Act, s 55E – introduces a code of conduct.

Clause 15 section 55E provides that a regulation may prescribe the code of conduct for a manager.

Section 10A Manager - insurance-Act, s 55F (2) – substitutes existing section 10 with a new section 10A that provides that an owners corporation manager must take out and maintain public liability insurance for a total liability amount of not less than ten million dollars.

Previously insurance was provided for at section 13 Agent insurance-Act, s90 (4). The amount of insurance required to be taken out remains the same i.e. ten million dollars.

Item 1.11 Section 12 Fees for requests for unit title certificates and access to owners corporation records - Act, s 75 (4) – provides that an owners corporation can not charge more than \$80 (exclusive of GST) for a unit title certificate (a section 75 certificate) request and that if the person is also making an application to access an owners corporations information, documents or records that no additional fee can be charged.

If the person applies only to access owners corporations information, documents or records, and does not apply for a unit title certificate at the same time, then the fee is \$80.

The stated fee is not inclusive of any GST that may be payable. An owners corporation may charge any GST that is payable in relation to fulfilling the request.

Clause 24 Section 75 Unit Title certificate and access to owners corporation records relates to this item.

Item 1.12 Section 13

Section 13 Costs of taking legal action - Act, s 88C (2) (b) – replaces existing section 13 with a new section 13 that deals with the costs of taking legal action. The provision provides that the amount prescribed is the lesser of \$750 for each unit in the units plan or

\$10 000. If the amount, estimated by the corporation's legal representative is more than the amount prescribed than the executive committee must not, under section 88C (2) take legal action on behalf of the owners corporation.

Clause 30 New sections 88B to 88D, in particular section 88C Decisions about taking legal action relates to this item.

Item 1.13 Divisions 4.2 and 4.3 – deletes Division 4.2 3-member owners corporations and Division 4.3 2-member owners corporations. Other amendments to the *Unit Titles Act 2001* supersede the need for these divisions.

Item 1.14 Schedule 1, section 9 Animals – is deleted. The provisions that provide for the consideration about whether or not a unit owner can keep, or permit an animal to be kept in a unit have been moved out of the regulation and into the *Unit Titles Act 2001* at new section 51A.

Clause 12 New sections 51A to 51C deals with to this item.

Item 1.15 Schedules 2 and 3 – deletes Schedules 2 and 3 (which dealt with conciliator articles for 3-member owners corporations and 2-member owners corporations respectively).