

2019

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

UNIT TITLES LEGISLATION AMENDMENT BILL 2019

EXPLANATORY STATEMENT

Presented by
Mick Gentleman MLA
Minister for Planning and Land Management

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Unit Titles Legislation Amendment Bill 2019* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Terms used

Unless otherwise indicated, in this explanatory statement the following terms have the following meaning:

ACAT means the ACT Civil and Administrative Tribunal

Bill means the *Unit Titles Legislation Amendment Bill 2019* that is the subject of this explanatory statement

BMS means a Building Management Statement established under section 123D of the *Land Titles Act 1925*

CLPA means the *Civil Law (Property) Act 2006*

CLSRPA means the *Civil Law (Sale of Residential Property) Act 2003*

Commencement means commencement date for this Bill

CTA means *Community Titles Act 2001*

EC means the Executive Committee for a units plan established under section 34 of the UTMA

HRA means *Human Rights Act 2004*

OC means the owners corporation for a units plan

PDA means the *Planning and Development Act 2007*

Registrar-General means the Registrar-General of Land Titles appointed under section 4 of the *Registrar-General Act 1993*

RTA means *Residential Tenancies Act 1997*

Units plan means a units plan (e.g. for apartment building) established under section 34 of the UTMA

UTA means *Unit Titles Act 2001*

UTMA means *Unit Titles (Management) Act 2011*

UTMR means *Unit Titles (Management) Regulation 2011*

Background

This explanatory statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

Since the commencement of the *Unit Titles (Management) Act 2011* (UTMA), the ACT has seen a substantial growth in the development of mixed-use units plans. These developments involve the combination of both residential and commercial use units within the same units plan complex. The current requirements under the UTMA were designed for

single use units plans and do not adequately provide for the needs relating to the governance and management of mixed-use developments. To address this, in 2015 the Government commenced a targeted review of legislation associated to the development, governance and administration of units plans to examine what changes were necessary to better support mixed-use developments.

Consultation commenced in 2016 with a range of key industry stakeholders to identify the issues affecting mixed-use units plans. The governance and administrative arrangements for unit plans as well as the inequitable division of costs between residential and commercial unit owners were identified as common recurring matters requiring improvements. Concerns related to information disclosed to potential buyers and insufficient notification when changes to units plans occur during development were also raised.

It was apparent from the issues affecting units plans, especially mixed-use developments, that the complex nature and interconnectivity with other legislation would need solutions to be achieved from not just changes to laws associated to the development and management of units plans, but also through further review and refinement of planning requirements and other administrative processes. This included a range of measures involving actions like variations to relevant Territory Plan codes, variations to the Building Code under the Building Act, interaction with the full review of the Territory Plan as well as with other projects currently underway and also ongoing review of administration and development assessment practices.

A formal Consultative Group, consisting of ten key industry organisations was convened in early 2019. This group contributed to refining the issues and developing the legislative reforms needed to deliver immediate solutions to new and existing units plans.

This Bill delivers the first stage of reforms to create fairer and more equitable arrangements for mixed-use developments, as well as improvements to the overall governance and management for all units plans in the ACT.

Overview of the Bill

This Bill makes a range of amendments to improve the operation of legislation associated to the development, governance and administration of units plans in the ACT. The below table sets out the key reforms being undertaken. Details of these key reforms are set out further in this explanatory statement.

Name of Legislation	Effect of Key Reforms
<i>Civil Law (Property) Act 2006</i>	<ul style="list-style-type: none"> • Requirements for disclosure statements • Requirements for developers to notify of changes or inaccuracies in disclosure statements • Ability to rescind contracts
<i>Civil Law (Sale of Residential Property) Act 2003</i>	<ul style="list-style-type: none"> • Requirement for inclusion of disclosure statements in required documents for contract for sale
<i>Community Titles Act 2001</i>	<ul style="list-style-type: none"> • Ability for planning and land authority to refuse approval of community title scheme

<i>Land Titles Act 1925</i>	<ul style="list-style-type: none"> • Requirement to register a Building Management Statement (BMS) • Effect of a BMS • Formal requirements for a BMS • Procedures of the Building Management Committee • Amending a BMS
<i>Land Titles (Unit Titles) Act 1970</i>	<ul style="list-style-type: none"> • Requirements for registration of rules, including alternative rules
<i>Land Titles Regulation 2015</i>	<ul style="list-style-type: none"> • BMS insurance requirements
<i>Legislation Act 2001</i>	<ul style="list-style-type: none"> • Definition of lease for units plans
<i>Planning and Development Act 2007</i>	<ul style="list-style-type: none"> • Approval of development applications for buildings subject to a BMS
<i>Residential Tenancies Act 1997</i>	<ul style="list-style-type: none"> • Effect of owners corporation rules for tenants
<i>Unit Titles Act 2001</i>	<ul style="list-style-type: none"> • Compulsory requirement for a BMS in multi-lease buildings that includes one or more units plans
<i>Unit Titles (Management) Act 2011</i>	<ul style="list-style-type: none"> • Requirement for developer to prepare maintenance schedule for common property • New special resolution threshold • Changes to determining contribution methods • Amendments relating to the keeping of animals • Amendments to decision making processes • Amendments to administrative requirements
<i>Unit Titles (Management) Regulation 2011</i>	<ul style="list-style-type: none"> • Inclusions for developer’s maintenance schedule • Default Rules

Additional disclosure requirements and related processes

Under existing legislation and contractual arrangements it is possible and not unusual for a purchaser to enter into a contract of sale for the sale of a unit in a proposed units plan before the units plan is registered or the relevant building built. This is often referred to as an “off the plan” purchase. This type of purchase presents advantages for buyers and sellers who wish to plan ahead and lock in a purchase/sale of a particular unit and at a specified price. This involves a commitment to purchase a property before it physically exists and in some cases before the relevant development approval is obtained. This inevitably involves a number of complexities and potential uncertainty. This is in addition to the complexity involved in the fact that the purchase of a unit also involves acquiring membership of a units plan community with all of the rights and responsibilities this involves in terms of compliance with the owners corporation rules and procedures in relation to for example the maintenance of common property.

In this scenario of an off the plan purchase it is important for the purchaser to have sufficient information about the proposed nature of the unit and its situation in the context of other units as well as proposed owners corporation rules to be able to buy with confidence. Ensuring that buyers are sufficiently informed is also important for a property functioning market.

Existing legislation goes some way to recognising the need for particular information in this context. Part 2.9 of the *Civil Law (Property) Act 2006* require disclosure of specified information on the sale of a unit in a units plan that has yet to be registered under the Unit Titles Act. This includes information about the owners corporation rules, estimates of contributions to the general fund, and details of proposed contracts. Section 9 of the *Civil Law (Sale of Residential Property) Act* requires the disclosure of a plan showing the proposed location and dimensions of the unit in relation to other units and the common property.

Review of this legislation in consultation with stakeholders and with the Consultative Strata Reform Group indicates that this legislation is not sufficient to ensure the buyer is sufficiently informed at the time of entering into the contract of sale and is not sufficient to ensure that the buyer is sufficiently informed of changes that may occur after entering the contract of sale and prior to settlement after registration of the units plan. This bill makes a number of changes with the aim of making sure that the information provided to the buyer is sufficient but also with the aim of making sure that the changes are practical and do not impose an undue burden on the seller or undue complexity on the sale process.

The Bill includes a number of measures with the goal of making sure that purchasers of units are informed of the key features of units when entering into a contract of sale. The measures are to require purchasers to be informed of changes to those details should circumstances change after the signing of the contract.

These measures chiefly involve amendments to the *Civil Law (Property) Act 2006* (CLPA) with related amendments to the *Civil Law (Sale of Residential Property) Act 2003* (CLSRPA).

The CLPA provides for the rights and responsibilities of sellers and purchasers of any property in the ACT. Among other things, the Act provides for the contractual obligations of the parties to a sale, including the right to rescind or seek compensation when there is a error or inaccuracy during the sale process. A typical occurrence of this in the sale of a units plan often relates to changes to the building or design, or in other circumstances, changes to information regarding the ongoing management, maintenance and costs for the building. Current provisions do not require a developer to provide substantial information about the development approval, amended plans, or provide requirements to notify a buyer when this or other information is altered or becomes inaccurate.

Amendments to the Act as proposed in this Bill include the introduction of new disclosure requirements for persons who are selling units within a units plan prior to registration, otherwise known as an “off the plan” purchase.

The amendments fall into three main areas:

- The requirements for disclosure of information at the time of contract of sale
- Requirements for updates on matters that amount to a change in a “material particular”
- Transitional arrangements.

Disclosure statement that must be provided in the contract of sale

New section 260 of the *Civil Law (Property) Act 2006* sets out certain matters that must be included in a “disclosure statement” which is a written statement that must be included in the contract of sale. These requirements set out certain fundamental matters that it is considered important and necessary for the buyer to know when considering signing a contract of sale. In summary, the requirements include the following:

- Requirement of additional information in the form of a disclosure statement that must be included in or with the contract of sale;
- Plans setting out the location and dimensions of the unit including internal floor plans
- Statement setting out the potential uses to which each unit can be put;
- The proposed schedule of unit entitlement for the units plan;
- If the proposed units plan is to be a part of a building management statement, the statement
- Statement about the potential for and type of easements that may be required for the units plan;
- The proposed owners corporation rules;
- Details of any contract the owners corporation proposes to enter;
- The developer estimate of the buyers general fund contribution for the two years after the units plan is registered; and
- Method proposed for working out contributions payable to the general and sinking fund of the unit.

Existing disclosure requirements

The new disclosure requirements build on existing disclosure requirements under the Civil Law (Property) Act (section 260(2)). The existing requirements relate to information related to the default rules to apply, certain details as to any contract the developer intends the owners corporation to enter; an estimate of the buyers general fund contribution for the first two years of operation of the units plan; any prior permissions to the keeping of animals; and if a staged development is proposed the development statement and any amendments to the statement.

The new disclosure requirements also build on existing disclosure requirements under the *Civil Law (Sale of Residential Property) Act 2003* (existing section 9(1)(g)(ii)). The existing requirement includes the requirement to provide a plan showing the proposed location and dimensions of the unit in relation to other units and the common property.

Disclosure requirements regarding plans of the unit

The above requirements have been extended with the addition of a number of elements as noted below. In addition, the new provisions require the information to be provided in the form of a “disclosure statement”. The required “disclosure statement” can be provided with the contract of sale or alternatively the statement or elements of the statement can be incorporated into the contract itself (new sections 260(1) and 260(2), clause 7).

Plans for the unit

New section 260(1)(a) (clause 7) requires the disclosure statement to include both the location and dimensions of the unit, as currently required under existing section 9(1)(g)(ii) of the Civil Law (Sale of Residential Property) Act, but also requires plans showing the internal floor plan of the unit. The addition of this requirement is considered necessary given the importance of the internal layout to the nature of the unit itself and as such its likely importance to the buyer.

The Bill includes a capacity to add to the matters that must be included in the plan provided as part of the disclosure statement (new section 260(1)(a)(iii)). This is to provide a measure of flexibility to address information issues that may become apparent in the future. In addition, new section 503(2) of the Civil Law (Property) Act (clause 19) creates the capacity for future regulations to prescribe particular requirements as to the manner in which plans must be prepared and also to prescribe format requirements, for example the regulations could set out the required scale, orientation for the plans and could also set out prescribed qualifications of the person who is to prepare the plans. Again this is to provide the flexibility to prescribe further matters as may be considered necessary in the future to ensure that the information provided to the buyer is sufficient to provide a clear understanding of the layout and features of the proposed unit. This flexibility will also permit changes to requirements as may become necessary in the light of changes in technology and industry practice.

Requirement for building management statement

The Bill includes new requirements to apply in the situation when a units plan or proposed units plan is to be located within a building that is to include multiple leases, for example one lease for levels 1-4 and a separate lease for levels 4-8. These leases are sometimes referred to as stratum leases. In this situation, the Bill requires the building as a whole to be subject to the operation of a *building management statement* in order for the new units plan to be registered and take effect (new section 17B(2) of the UTA, clause 45 and also new section 123D of the *Land Titles Act 1925*, clause 29). The main provisions on building management statements are in new Part 11A of the Land Titles Act (clause 29), refer below. In this situation, the owners corporation is a party to and is bound by the building management statement (new section 123E(1) of the Land Titles Act (clause 29), further any alternative rules that the owners corporation may wish to pursue must not be inconsistent with the building management statement (new section 108(3)(b) of the UTMA, clause 93).

In light of the importance of the building management statement, new section 260(1)(b) (clause 7) requires the disclosure statement to include a copy of the building management statement. This requirement can be met by attaching the proposed building management statement as the definition of building management statement for new section 260 in new section 260(4) which refers to new section 123D of the Land Titles Act (clause 29) includes building management statements that have not yet been registered in the land titles register.

Requirement for statement about the proposed use of units in the units plan

The uses that an owner can undertake in their unit in a units plan is determined by the registered units plan. The uses made available to a unit in a units plan is currently determined by the relevant underlying lease that applied to the land prior to registration of the units plan. The underlying leases are typically granted with a prescribed list of potential uses consistent with all of the uses permitted under the Territory Plan. This means that when a units plan is registered the owner of a particular unit is able to use the unit for an often extensive range of commercial uses as well as residential uses. Given the range of uses potentially available to each unit there is the potential for an off the plan purchaser of a unit to be surprised with an unanticipated change of use in a nearby unit sometime after the units plan is registered and concerned with the consequent noise or other impacts of that change of use. For example, a nearby office may change to a gym or restaurant.

In light of the potential for different uses to be implemented in different units it is important that a buyer have a clear understanding of the potential uses available for each unit in the proposed units plan. This is obviously of particular relevance in a proposed mixed use complex. The requirements in new section 260(1)(c) (clause 7) are intended to require this information to be provided in a clear manner to the buyer through a specific list of all such uses. New section 260(1)(c) (clause 7) will require the seller to clearly set out all of the potential uses available to each unit under the relevant lease for the land.

New section 260(1)(c) will also permit the developer, should the developer wish to do so, to set out any proposed restrictions on the potential uses of a specified unit(s). Such a restriction is entirely at the option of the developer. The developer may elect to do so if they consider it necessary to provide a level of reassurance to potential buyers who may be concerned with noise, traffic, long operating hours or other impacts that certain units will be restricted to residential or office use or similar. This will in effect permit a developer to customise the potential uses of parts of the building and provide a level of certainty to buyers as to any such use restrictions. The developer will be able to implement any such proposed restrictions through the unit title registration process as set out below. This measure is considered necessary to permit the developer to address concerns or perceived concerns as to the potential for different uses to apply in different units.

New section 17(5A) of the Unit Titles Act (clause 44) requires the unit title application to include a statement about the proposed use of the units including the full list of potential uses under the lease for the unit and any proposed restrictions related to use for any of the units. New section 23(1)(b) (clause 48) of the Unit Titles Act requires the notice of approval for a unit titling application to indicate any restrictions on the use of specified units. This will permit the approval to reflect any restrictions proposed by the developer under new section 17(5A) of the Unit Titles Act (clause 44). These restrictions, if any, must in turn be reflected in the final registered units plan consistent with the following legislation. This overall process then creates an ability for the developer, should the developer elect to do so, to guarantee use restrictions for specified units.

The units plan as endorsed by the planning and land authority under existing section 27 of the Unit Titles Act must include any such restrictions (refer existing section 27(1)(d)). These

restrictions then form part of the units plan as defined section by 7(1) of the Unit Titles Act. The units plan as endorsed including these restrictions must then be part of the units plan lodged for registration in the register of land titles as required by new section 6 of the *Land Titles (Unit Titles) Act 1970*, clause 33. Once the units plan is registered the units plan consists of the registered documents as amended from time to time under existing section 7(2) of the Unit Titles Act.

Disclosure of proposed schedule of unit entitlement for the units plan

New section 260(1)(d) (clause 7) requires the disclosure statement to set out the proposed schedule of unit entitlement for the units plan. *Schedule of unit entitlement* is defined in the Dictionary to the UTA by reference to section 8 of the UTA. Section 8 of the UTA defines this as “... a schedule indicating (by numbers assigned to each unit) the improved value of each unit relative to each other unit (the unit’s unit entitlement).” In summary, this is a statement indicating the value of a unit as built relative to the value of other units. The value of a unit relative to other unit or the unit entitlement for the unit is important in a number of ways. For example, it determines the contribution levies payable by the unit owner to the general and sinking funds under the default methodology for the payment of such levies and also determines the value of the underlying lease accruing to the unit owner in the event that the units plan is cancelled.

Given the importance of the unit entitlement value to the nature and value of the proposed unit being purchased a statement about the proposed unit entitlement schedule is required. The requirement is for the proposed schedule. Should changes to the likely schedule of unit entitlement become apparent during or after the construction of the relevant building then this will need to be updated to the buyer, refer below.

Disclosure of information regarding unit subsidiaries

New section 260(1)(e) (clause 7) requires the disclosure statement to include information about each proposed unit subsidiary (such as a car park, storage area or courtyard area) and the potential uses for each subsidiary. This requirement is included as it is important for the buyer to be aware of the general nature of the proposed subsidiary areas. The precise location and area of the subsidiary is not required to be disclosed at this stage as this may not become fully apparent until the relevant building is fully constructed.

Disclosure statement about the potential for and type of easements that may be required for the units plan

New section 260(1)(f) (clause 7) will require the disclosure statement to include general information about easements that may apply in the relevant building for the units plan. This provision is intended to ensure that the buyer is alerted to the possibility of easements applying. The requirement does not require all of the easements to be spelled out in detail at the disclosure statement stage as it is not always practical to predict what easements and what locations may be required for the proposed building for the units plan. It is anticipated such a statement will make clear the statutory easements regarding physical support, shelter and protection and utility services that apply as a result of the operation of Division 4.2 of the Unit Titles Act and the potential for other specific easements to apply.

Disclosure statement about the proposed rules for the units plan

The existing Civil Law (Property) Act requires disclosure of the owners corporation rules that will apply (existing section 260(2)(a) of the Civil Law (Property) Act). Under the existing UTMA these rules must be the default rules as set out in schedule 4 to the UTMA (existing section 106 of the UTMA).

New section 7(1)(f) of the Land Titles (Unit Titles) Act 1970 (clause 34) will permit a developer to progress and register alternative rules, that is rules that are in addition to the default rules. Consistent with this, new section 260(2)(g) requires the rules whether default or alternative rules to be included in the disclosure statement. This recognises, as the current legislation recognises, that it is essential for the buyer to be aware of the owners corporation rules that are to apply on establishment of the new owners corporation. This is because the owners corporation rules set out key ongoing rights and obligations of the unit owner and occupier and can have an effect on the use of the unit and the common property.

The requirement for disclosure of the proposed rules is also important for the following reason. New section 112A of the UTMA (clause 94) requires any “special privilege” of three months or more in duration to be implemented through an owners corporation rule. A special privilege is a right of access or use of common property by a unit owner that are in addition to the rights applying to other unit owners. As a result if the developer proposes ongoing special privileges to apply in the new units plan this would need to be reflected in the proposed rules. The requirement for disclosure of the rules will include any such special privilege.

Also under the Bill the alternative rules must include any methodology for the calculation of unit owner contribution levies that differ from the default methodology based on unit entitlements. The importance of the owners corporation rules as currently used and their expanded role under the Bill make it essential for the rules whether default or alternative to be included in the mandatory disclosure statement.

Disclosure of methods for working out contribution levies

New sections 260(1)(j), (k) of the Civil Law (Property) Act (clause 7) require the disclosure statement to include a description of the proposed method for working out the contributions to be paid by unit owners to the operating funds of the owners corporation, that is, the general fund and the sinking fund. This requirement recognises that there is capacity for the owners corporation rules to vary the default methodology for determining contributions payable. The default methodology for determining contributions payable to these funds is set out in existing sections 78 and 89 of the UTMA. It is important for the buyer to be aware of any proposed alternative methodology for contribution levies.

Disclosure of additional matters as may be prescribed in the regulation

New section 260(1)(m) (clause 7) permits the regulation to prescribe additional matters as matters required to be included in the disclosure statement. This includes additional matters related to:

- The development approval for the relevant building;

- Design and construction (including the identity of the developer, licensed builder or design architect);
- Sustainability infrastructure; and
- The provision of utility services.

Schedule 1 to the Bill sets out the initial regulation under new section 260(1)(m), that is the *Civil Law (Property) Regulation 2019*.

New section 2 of the Civil Law (Property) Regulation requires the disclosure statement to also identify:

- The development approval for the relevant building (if this exists);
- Otherwise confirm the development approval status for the building including an identification of any lodged application for development approval for the building;
- A statement about where the buyer may find further information about the relevant development approval for the relevant building.

The above information is important for the buyer to understand the development approval status of the relevant building. This is important as the nature of the building itself and the proposed units plan may change as a result of the development approval or amendments to the development approval.

New section 3 of the Civil Law (Property) Regulation requires the disclosure statement to include information as to whether the relevant units are individually metered for the purpose of water supply and what facilities if any will be provided for the charging of electric vehicles.

If the seller fails to provide the required disclosure statement

New section 260(1) of the Civil Law (Property) Act (clause 7) requires the disclosure statement to be provided to the buyer before the buyer and seller enter an off the plan contract. New section 260A of the Civil Law (Property) Act (clause 8) addresses the circumstance where the seller fails to provide the required disclosure statement at the time required or provides the disclosure statement late, that is some time after the parties enter into the contract of sale.

New section 260A(2)(a) (clause 8) applies if the seller does not provide the disclosure statement at all. In this circumstance the buyer may rescind the contract at any time prior to completion of the contract (eg settlement).

New section 260A(2)(b) (clause 8) applies if the seller does provide the disclosure statement but does so late. In this circumstance the buyer may rescind the contract but can only do so within the specified period. If the buyer wishes to rescind the contract in this circumstance, the buyer must do so within 21 days of receipt of the late disclosure statement.

These provisions reflect the importance of the information required to be conveyed in the disclosure statement and that the buyer be aware of the matters in the statement before committing to a purchase of the proposed unit.

Requirements for updates on matters that amount to a change in a “material particular”

General requirements

New sections 260B to 260G (clause 8) apply during the period after the parties enter into a contract of sale and completion of the contract. This is the period after the seller has provided the original disclosure statement with the contract of sale as required under new s260(1) (clause 7). The provisions set out certain requirements and procedures that apply in the event that circumstances, changes arise with the result that a description in the disclosure statement ceases to be accurate. New sections 260B to 260G relate to the requirement of the seller to update the buyer of certain changes and set out what actions the buyer can take in response.

The requirement to provide updates applies to what the amended Civil Law (Property) Act refers to as a *material change*. New section 259 of the CLPA (clause 5) in association with new section 259A defines this term as a change to a matter in a disclosure statement that is a “type 1 matter” or a “type 2 matter”. New section 259A defines these terms as follows. It is important to note that this list includes a change to the provided plans that will or is likely to affect the use or enjoyment of the proposed unit.

A Type 1 matter – means a material change that is:

- A decrease in overall floor area of unit (excluding subsidiary) of 5% or more
- A decrease or increase in the unit entitlement estimate of 5% or more
- A decrease of 10% or more of a courtyard area or balcony area for the unit
- Any other prescribed matter

A Type 2 matter – means a material change that that will or is likely to affect the use or enjoyment of the unit or the common property, including but not limited to the following:

- Change to plans in disclosure statement that will or are likely to affect the use or enjoyment of the unit or common property
- Change to the proposed rules of the owners corporation
- Change to the developer’s estimate of the buyer’s contribution to the general fund if the change is more than the prescribed amount
- A new easement or easement location not anticipated in the disclosure statement other than the statutorily implied easements
- A change to development statement that will or is likely to affect the use or enjoyment of the unit or the common property

New section 260B applies if the seller of an off the plan contract becomes aware of a material change to a matter set out in the original disclosure statement. The seller must give the buyer a notice (a disclosure update notice) within a specified period of becoming aware of the material change. The update notice must be provided no later than 10 working days after the end of the calendar quarter in which the seller first becomes aware of the material change and in any case at least 21 days prior to completion. The notice must contain sufficient information for the buyer to assess whether the buyer will suffer significant prejudice as a result of the change.

The remedies or responses available to a buyer depend on whether the material change update is provided to the buyer on time and whether the update relates to a type 1 matter or a type 2 matter.

Disclosure updates in relation to type 1 matters

In the event that a type 1 matter material change occurs and the seller provides the required disclosure update notice to the buyer on time then the following applies. The buyer is able to rescind the contract but only if the buyer suffers significant prejudice. If the buyer elects to rescind the contract the buyer must provide written notice to the seller within a specified time frame. The notice must be provided within 21 days of the receipt of the update (new section 260C(2) of the Civil Law (Property) Act). The notice must include a summary of the significant prejudice suffered by the buyer because of the material change. If the buyer does not provide the notice within the required time frame the buyer is taken to have agreed to the change and cannot later elect to rescind on the basis of that change (new section 260C(4) of the Civil Law (Property) Act, clause 8).

In the event that the seller provides the required update for a type 1 matter but does so late then the following applies as set out in new section 260D of the Civil Law (Property) Act, clause 8. The buyer can elect to rescind the contract but must do so by written notice to the seller within 21 days of receipt of the late disclosure update notice (new section 260D(3)). In this circumstance, in connection with a type 1 matter, there is no requirement for the buyer to demonstrate significant prejudice. If the buyer does not provide the notice to the seller within the required time frame the buyer is taken to have agreed to the change and cannot later elect to rescind on the basis of that change (new section 260D(3) of the Civil Law (Property) Act, clause 8).

In the event that the seller fails to provide the required update for a type 1 matter material change at all, and the buyer finds out about the change by alternative means then the buyer can rescind the contract by written notice at any time prior to completion (new section 260F(2) of the Civil Law (Property) Act, clause 8).

The right of the buyer to rescind the contract if the buyer is not alerted to a type 1 matter material change or is alerted to the change late is consistent with the significance of type 1 matters. The material changes identified as type 1 matters are considered to be of particular importance in that they present a particularly significant risk of amounting to a change that results in significant prejudice. Whether this is actually the case in a specific instance will depend on the circumstances of the buyer including the nature of the proposed unit and the contract of sale. It is important that the buyer be informed of such a change in a type 1 matter in order to be able to make an assessment as to whether the change will cause the buyer to suffer significant prejudice. If the buyer is not made aware of such an important change, this lost opportunity to review the matter is in itself a significant impost. For these reasons a failure to provide an update on time for a type 1 matter results in the right of the buyer to rescind the contract.

Disclosure updates in type 2 matters

In the event that a type 2 matter material change occurs and the seller provides the required disclosure update notice to the buyer then the following applies as set out in new section 260E of the Civil Law (Property) Act (clause 8). The buyer is able to rescind the contract but only if the buyer suffers significant prejudice. If the buyer elects to rescind the contract the buyer must provide written notice to the seller within a specified time frame. The notice must be provided within 21 days of the receipt of the update (new section 260E(2) of the Civil Law (Property) Act). The notice must include a summary of the significant prejudice suffered by the buyer because of the material change. If the buyer does not provide the notice within the required time frame the buyer is taken to have agreed to the change and cannot later elect to rescind on the basis of that change (new section 260E(4) of the Civil Law (Property) Act, clause 8).

The above applies irrespective of whether the disclosure update notice is provided within the time frame required or is provided late. If no update is provided at all then the buyer can rescind the contract at any time.

Seller must notify the buyer of the registration of the units plan

New section 260G(1) (clause 8) requires the seller to provide the buyer with a copy of the registered units plan and if alternative rules were registered, a copy of the alternative rules. New section 260G(2) provides that the buyer is not required to complete the contract until 21 days after receipt of the registered units plan and alternative rules. The provision of this information to the buyer is necessary to permit the buyer to assess whether there have been any material changes in relation to these matters that the buyer has not been alerted to as required by new section 260B (clause 8). This information is necessary for the buyer to be able to exercise a right of rescission should this become apparent.

Evidentiary burden

New section 260H (clause 8) applies in any legal proceedings related to an off the plan contract. In any such proceedings the onus of proving that the disclosure statement and required updates were provided on time rest with the seller.

Transitional provisions for disclosure statements

New Part 5.6 of the Civil Law (Property) Act (clause 20) sets out transitional provisions in relation to the new disclosure statement requirements. New section 511 applies in connection to:

- (a) off the plan contracts entered into before 1 July 2021
- (b) off the plan contracts entered into after 1 July 2021 but in relation to a proposed units plan that is subject to another separate contract with another buyer and that separate contract was entered into prior to 1 July 2021.

In the above cases, the new disclosure statement requirements do not apply to the contract, subject to the following exceptions. In the above cases, the existing division 2.9.2 applies as in force before the commencement day applies. The commencement day is the day that section 20 (clause 20) of the Amendment Act commences.

The first exception to the above transitional rule is as follows. New section 260G (clause 8) will apply to all existing contracts on and from commencement day. New section 260G requires the seller to provide to the buyer a copy of the registered units plan and if any alternative rules are to apply a copy of the registered alternative rules. New section 260G applies with the effect that the buyer is not required to complete the contract until 21 days after receipt of the registered units plan and alternative rules.

It is important for new section 260G to apply to existing contracts from commencement as the information required to be conveyed under new section 260G is necessary to provide formal confirmation that the correct legislative regime (the existing legislation or the Civil Law (Property) Act as amended) has been complied with. It is also important this be confirmed to the buyer prior to completion. For example, if a mistake has been made and the seller has registered alternative rules contrary to the transitional provisions then the buyer should be made aware of this. In this event, the registration of the alternative rules will constitute a change and the buyer may be able to rescind the contract if the change results in significant prejudice to the buyer under the provisions of the existing section 260(4) of the Civil Law (Property) Act.

The second exception to the above transitional provisions is as follows. New section 511(3) (clause 20) provides that the new disclosure statement provisions apply to an existing contract in the event that the seller gives the buyer a disclosure statement consistent with the requirements of new section 260(1) (clause 7). In this event, the new disclosure statement laws apply to the contract. Importantly, in this situation the disclosure statement provided by the seller would have been provided late, that is, contrary to the requirement in new section 260(1) that the disclosure statement be provided before the contract of sale is entered into and not after. As a result of the late provision of the disclosure statement, new section 260A(2) applies (clause 8) with the effect that the buyer will have the right to rescind the contract within 21 days of receipt of the disclosure statement.

Regulatory impacts on sellers

The new requirements related to disclosure statements and requirements for updates as to material changes represent additional requirements that are imposed on sellers. This includes the additional content required to be disclosed prior to entering into a contract for sale and new specific time frames for providing updates. There are also new rights of the buyer to rescind the contract irrespective of significant prejudice in cases where the required disclosure statement is not provided or provided late or in relation to type 1 matter material changes where the required update is not provided or provided late.

To the extent that these measures involve an additional impost, the impost is considered reasonable and reasonably necessary to ensure that buyers are sufficiently informed and able to consider their position should the nature of the proposed unit significantly change from the initial description in the disclosure statement. In this context it is relevant to note that the CLPA already requires the disclosure of prescribed information and already includes ability for the buyer to take action if the disclosed information is departed from and the buyer is significantly prejudiced. In addition, the required information is information of a type that could reasonably be expected to be typically provided by the seller in any event to

ensure that the buyer is aware of the key features of the proposed unit. To the extent that the new requirements result in improved information and improved timeliness in the provision of information, this is to the effective operation of the overall market including both buyers and sellers.

Alternative owners corporation rules

The Bill includes additional flexibility in the development and amendment of owners corporation rules. Existing legislation requires new units plans to adopt a standard one size fits all set of owners corporation rules. The default rules are set out in Schedule 4 of the UTMA and applied under existing section 106 of the UTMA. Under existing section 260(2)(a) of the Civil Law (Property) Act the default rules must be attached to a contract of sale for an off the plan purchase.

This one size fits all approach presents practical challenges. The proposed units plan and relevant building may have particular features that point to a need for particular non-standard rules. There may be a wish for example to distribute ongoing building operation costs in a particular manner. For example it may be considered appropriate for the cost of commercial waste collection that can be separately identified to be made payable by commercial unit owners only. There may be a need for particular rules as to the use of common property such as a swimming pool or barbecue area. Under the current legislation it is not possible for the seller to put forward particular rules to address such matters in the contract of sale and the units plan must be registered with the default rules which cannot be changed during the development control period.

The Bill will permit the developer to adopt alternative owners corporation rules that are tailored to the particular requirements and features of the new site and building. Any such alternative rules will need to be included in the required disclosure statement to be provided to the buyer prior to entering into a contract of sale for the purchase of a proposed unit (new section 260(1)(g), clause 7). The rules including the alternative rules will be able to be registered in the land titles register at the time of registration of the units plan (new sections 6(2)(f), 27 of the *Land Titles (Unit Titles) Act 1970*).

Buyers will receive information about any proposed alternative rules as a part of the disclosure statement the developer has prepared and provided in the contract for sale. The ability to adopt alternative rules is consistent with NSW legislation under the *Strata Schemes Management Act 2015*.

As a consequence of this new measure, a number of related new provisions are to apply to set out the key requirements or parameters for alternative rules. The related measures are as follows. The alternative rules must meet all of the requirements set out in new section 108(3) of the UTMA (clause 93). This includes the requirement that the rules, among other requirements:

- be not inconsistent with the UTMA or another Territory law;
- be not harsh, unconscionable or oppressive;
- be not incompatible with a human right under the *Human Rights Act 2004*;

- be not inconsistent with the other requirements set out in new section 108(3) of the UTMA.

Further, the rules must not be inconsistent with any requirements as prescribed in the *Unit Titles (Management) Regulation 2011* (new section 108(6) of the UTMA, clause 93). The bill includes an initial regulation provision in this respect.

New section 7B of the UTMR (clause 135) provides that the alternative rules may only amend rule 1.4, 1.5, 1.6 of the default rules, in other words the rules of the owners corporation must include without change all of the default rules other than rule 1.4, 1.5, 1.6. The balance of the default rules that are required to apply are considered to be rules that should apply at the start of a units plan irrespective of the nature of the proposed units plan. This is because the balance of the default rules deal with core matters such as the requirement to not unreasonably interfere with the use or enjoyment of a unit or common property.

The Bill also includes a provision that will permit the rules of an owners corporation to be amended in certain circumstances during the developer control period after registration of the units plan. The existing legislation prohibits changes to the rules during the developer control period (section 33(1)(b) of the UTMA). *Developer control period* is the period commencing on the establishment of the units plan and ending on the day people other than the developer hold one third or more of the units in the units plan (Dictionary to the UTMA). New section 33A of the UTMA (clause 69) will permit the owners corporation during the developer control period to apply to ACAT for authorisation of a change to the rules of the owners corporation. ACAT may authorise a change to the rules during this period if satisfied that the proposed change is fair in the circumstances (new section 33A(5) of the UTMA, clause 69). This new flexibility will permit an owners corporation to revisit an alternative rule if the rule results in unforeseen difficulties. The revisiting of the rule will only be possible with the authorisation of ACAT. It is anticipated that in assessing whether the change is fair that ACAT will take account of the nature of the difficulty and the interests of all unit owners.

The default rules under the existing UTMA are set out in schedule 4 of the UTMA. The Bill relocates the default rules to the UTMR (new section 106, clause 90 and definition of *default rules* in the UTMA Dictionary, clause 126). This is intended to provide the flexibility to readily adjust the required default rules consistent with changing community needs and industry practices. This relocation is also consistent with new ability for a new owners corporation to adopt alternative rules.

Transitional provisions apply in relation to the ability to make alternative rules. New section 511(1) of the Civil Law (Property) Act (clause 20) provides that the new disclosure statement provisions including the ability to set out alternative rules with the contract of sale do not apply contracts of sale entered into prior to the transition date of 1 July 2021 subject to the following. In the event that the seller gives the buyer a disclosure statement consistent with the requirements of new section 260(1) of the Civil Law (Property) Act (clause 7). In this event, the new disclosure statement laws apply to the contract including the ability to set

out proposed alternative rules. Importantly, in this situation the disclosure statement provided by the seller would have been provided late, that is, contrary to the requirement in new section 260(1) that the disclosure statement be provided before the contract of sale is entered into and not after. As a result of the late provision of the disclosure statement, new section 260A(2) applies (clause 8) with the effect that the buyer will have the right to rescind the contract within 21 days of receipt of the disclosure statement.

Building management statements and building management committees

This proposed measure applies to the scenario where there are a number of leases (stratum leases) in the one building, for example a building with five levels and a separate lease for each level. Currently, there is no statutory provision setting out governance requirements for the building as a whole. There is the *Community Title Act 2001*, however this legislation is designed for the governance of a broad estate with a number of buildings and significant shared open spaces and facilities rather than the governance of a single building or building complex. This situation contrasts with legislation in NSW where there is specific provision for the governance of such buildings in the form of building management statements and building management committees. The lack of a statutory mechanism means that such matters as access to and maintenance of common property, maintenance of the building as a whole (e.g. painting, lifts etc.) must be left to contractual arrangements and easements. These arrangements can be difficult to administer and complications arise when leases are sold as contracts need to be renegotiated with new owners, leading to potential conflict and uncertainty regarding responsibilities for the management and maintenance of the building. The proposed measures are to adopt building management statements and related provisions similar to NSW legislation under the *Strata Schemes Development Act 2015* (refer Division 1, sections 99 to 105). These reforms chiefly involve amendments to the *Land Titles Act 1925* with related amendments to the *Planning and Development Act 2007* and *Unit Titles Act 2001*.

The *Land Titles Act 1925* provides for the registration of title to land in the ACT including other purposes for dealing with titles of land in the ACT. The Bill includes key amendments which include the introduction of Building Management Statements (BMS). The purpose of a BMS is to provide an overarching statement setting out the binding governance and management arrangements for the building and will operate in perpetuity throughout the life of the building. This will provide for improved governance and certainty for the whole of the building in the context of multi-level buildings. A BMS may apply where there is more than one Crown lease issued for the building, however they will be compulsory if at least one of the leases within the building will be a registered units plan under the *Unit Titles Act 2001* (new section 17B, clause 45).

To facilitate the introduction of the BMS, the *Land Titles Act 1925* will adopt new Part 11A, clause 29). These provisions set out the registration and effect of the BMS, formal requirements the statement must include, requirement to form a building management committee and ability for the amendment of a BMS.

If a BMS applies to a building, new section 123D (clause 29) will require the registration of the BMS on all applicable leases and effectively forms part of the conditions of the lease.

Each lessee is a party to the BMS, including the owners corporation for any units plan in the building (new section 123E(1)). While not compulsory if there is no units plan within the building, existing multi lease buildings can opt in to adopting a BMS should all lessees unanimously agree to do so.

Methodology for contribution levies

The Bill will introduce reforms to allow better flexibility for owners corporation to determine contributions paid by owners to apportion costs more equitably on use. Levies paid by owners are determined using their unit entitlement (market share) to calculate their share of the contributions required to finance the funds of the owners corporation. This is an effective method for single use multi-residential complexes, but may not suit mixed-use complexes due to the often varied use of common facilities in these developments. To change the method of contribution, an unopposed resolution is currently required. This means that a single vote can effectively veto a proposal for change. This can prevent agreement on the changes necessary to apportion cost more equitably on use.

In conjunction with amendments to how contributions methods can be determined, the Bill will also amend the threshold for special resolutions. Special resolutions are currently required for relatively more significant matters, such as changes to the rules of the owners corporation. Distinct from the ACT, other jurisdictions typically require 75% of owners to agree for a special resolution to pass. The current requirement in the ACT to pass a special resolution is for less than one-third of the total number of votes (including proxies) can be cast against the motion. The Bill will amend this requirement to bring the ACT into alignment with NSW, QLD and Victoria, with a higher threshold to permit certain resolutions that currently require an unopposed vote to be addressed through a special resolution.

Reforms in this area chiefly involve amendments to the *Unit Titles (Management) Act 2011*, which provides for the governance, management and administration of units plans in the ACT.

The Bill will amend the voting threshold for special resolution from less than one-third to not more than one-quarter of votes can be cast against the resolution (amended schedule 3, part 3.2, section 3.16(1), clause 117). To avoid voting irregularity, this new provision will only apply to a units plan with more than three members (amended schedule 3, part 3.2, section 3.16(1), clause 117). In the circumstance of a units plan with 2 or 3 members, the special resolution requirements will remain unchanged at no more than one-third (amended schedule 3, part 3.2, new section 3.16(1A), clause 117).

In accordance with the changes to the special resolution voting thresholds, the Bill changes the resolution required to determine a new method for the calculation of contributions for the general and sinking funds from unopposed to special (amended section 78(2)(b) (clause 80) and amended section 89(2)(b), clause 83). If an owners corporation changes the method of contributions via a special resolution, it is taken to be an amendment of the rules and must be registered (new section 108(5), clause 93).

In connection with the new voting thresholds for determining new methods, the Bill requires that the methodology determined under the resolution to be just and equitable

and take into account several key elements to justify its use . This includes the structure of the units plan, the nature of the buildings (including features and characteristics of the units and common property), what the units are used for and how any burden on a unit reflects with the use of that unit (amended section 78(3)(a) of UTMA (clause 81) and amended section 89(3)(a) and (b) of UTMA (clause 84)).

The Bill also provides for the ability to seek ACAT review if a dispute arises relating changes to the method of contribution (new section 128(1)(d)). To provide a measure of certainty in the ongoing operation of contribution levies, the Bill requires that an application to ACAT to review a rule changing the method of contributions must be made within three months of the day the resolution was passed (new section 127(2), clause 99). ACAT will have the ability to determine if the methodology is not just and equitable (amended section 129(1)(e)(iv), clause 100) and declare the rule invalid (new section 129(2A), clause 102).

The keeping of pets in a units plan

There are a number of measures in connection with the keeping of animals in a unit in a units plan. These measures are intended to make it easier to keep pets in a unit in a units plan and make the rules around the processes for obtaining permission to keep a pet simpler and more practical. These measures are supportive of the direction of recent amendments to the *Residential Tenancies Act 1997* through the *Residential Tenancies Amendment Act 2019*.

The reforms in this area chiefly involve amendments to the *Unit Titles (Management) Act 2011* as well as related amendments to the *Unit Titles (Management) Regulation 2011* and the *Residential Tenancies Act 1997*.

The current requirements as to the keeping of an animal in a unit are set out in existing section 32 of the UTMA. Under this section a unit owner or occupier must seek and obtain the prior consent of the owners corporation before keeping an animal in a unit. This requirement for prior consent cannot be removed by the making of an owners corporation rule. This presents difficulties for an owners corporation who may wish to adopt a more “pet friendly” approach and have a standing arrangement where pets are permitted without the need for individual, case by case consent.

New section 32 of the Bill addresses this difficulty by permitting the owners corporation rules to determine whether individual consent is required. The owners corporation will be able to adopt a “pet friendly rule” to the effect that pets can be kept without prior permission. If such a rule is adopted then the pet can be so kept provided any applicable conditions are complied with (new section 32(1)(b) of the UTMA (clause 63).

The new provisions do not compel an owners corporation to have a “pet friendly rule” as described above. The owners corporation may elect to retain the current approach which is to require the prior permission of the owners corporation for the keeping of a pet. The existing requirement that the owners corporation not unreasonably withhold consent and not impose unreasonable conditions is retained (new section 32(3A) of the UTMA, clause 64). The Bill makes a number of reforms to improve the practical operation of this requirement and to ensure that the occupier is fully informed as to the reasons for decisions

made. These measures as set out in new section 32(3) of the UTMA (clause 64) include the requirement for consent decisions to be in writing including, if the decision is to refuse, consent the reasons for refusal. The consent decision must also set out any conditions applying. The owners corporation is able to delegate this decision making role to the executive committee (new section 32(3)(b), clause 64) if considered necessary to make the decision making process more practical, efficient. If no decision is provided to the owner/occupier within three weeks of application, then consent is deemed to have been granted (new section 32(3)(c) of the UTMA, clause 64).

In addition, the Bill makes it clear that a prospective occupier is able to seek and obtain the prior consent of the owners corporation. This means that a person who has signed a residential tenancy agreement but has yet to commence the tenancy or move into the unit can still seek the required permission of the owners corporation to keep a pet in the unit. This will assist a prospective tenant to plan ahead and determine whether consent is granted prior to moving in.

Transitional provisions apply in the case of keeping pets in a unit. New section 170 of the UTMA (clause 104) effectively provides that the existing position in connection with the keeping of an animal applies during a transition period after commencement of the amendment Act. The transition period lasts until the day after the second annual general meeting following commencement. After this transition period a new default pet friendly rule will apply which permits the keeping of pets subject to conditions and without the need to obtain prior consent. This rule is rule 1.5 of the default rules set out in new schedule 1 to the UTMR (clause 137). If the owners corporation does not wish to take up the default rule on pets at the conclusion of the transition period, the owners corporation may elect to make a new rule by special resolution during the transition period to the effect that the rule 1.5 does not apply and as a result the consent process in new section 32(1)(b) of the UTMA (clause 63) will apply.

The Bill also makes provision in connection with *assistance animal*. The term *assistance animal* is defined in a new definition in the Dictionary to the UTMA (clause 125) by reference to section 5AA of the *Discrimination Act 1991*. New section 32(1)(a) of the UTMA (clause 63) makes it immediately clear that prior permission is not required for an assistance animal. This provision is consistent with the operation of the Discrimination Act. The rules of the owners corporation will be able to provide that the owners corporation may request evidence confirming the status of the relevant animal as an assistance animal. New default rule 1.6 of the default rules set out in new schedule 1 to the UTMR (clause 137) is to this effect.

New requirements regarding physical integrity and maintenance of buildings

When a new development is completed, the developer has specific knowledge and information regarding the capital items and construction of the building. While there are current obligations for developers to deliver information to the owners corporations at the first AGM, this is limited and may not provide the necessary information to owners to help with the long term maintenance of the building. The Bill will introduce improved provisions to help owners have a better understanding of what equipment, systems and items have

been used in the building through the new requirements for a maintenance schedule. This schedule will outline information, warranties and as well as relevant documentation to help owners corporation be aware of and understand the maintenance requirements in the building to ensure safe and long term operation of these items.

Reforms in this area chiefly involve amendments to the *Unit Titles (Management) Act 2011* and *Unit Titles (Management) Regulation 2011*.

The Bill will introduce new requirements under the *Unit Titles (Management) Act 2011* for a developer to prepare a maintenance schedule for the common property (new section 24(1)). The maintenance schedule must be given to owners corporation at the first annual general meeting (AGM) of the owners corporation after (schedule 3, part 3.1 new section 3.4(ca)).

The maintenance schedule is not binding on the owners corporation, but it puts them on notice of the maintenance requirements for common property so they are aware of and maintain capital items. The things that must be included in a maintenance schedule include items such as fire safety systems, security access systems, air conditioning, heating and ventilation as well as amenities such as swimming pool. These are set out in Section 4A of the UTMR.

The Bill also requires existing unit plans to develop a maintenance schedule following a transitional period, that is from commencement to the day after the second annual general meeting of owners corporation (new section 168, clause 104). New section 24A of the UTMA introduces the requirement for existing unit plans to implement a maintenance plan for their owners corporation. While existing buildings already have a working knowledge of what items in their building require regular maintenance or repair, the requirement to create a maintenance schedule for existing units plans will provide an additional measure for units plans to track and deal with ongoing maintenance requirements.

Proposed reforms will apply in relation to an owners corporation voting on a motion related to defective building work. New section 3.21A of schedule 3 to the UTMA (clause 119) means that the developer for the units plan will not be able to vote on such a motion other than with the approval of a special resolution or authorisation by ACAT. This measure is intended to reduce the potential for a vote on this matter to be compromised due to a conflict of interest and as such is supportive of the right to a fair trial (section 21 HRA). This measure does impact on the right of the developer to vote in this situation but this impact is reduced to an extent by the fact that the developer can apply to ACAT for an authorisation to permit the developer to vote on the matter and ACAT can so authorise if satisfied that the developer was not responsible for the defect or that barring the developer would otherwise be unreasonable taking into account the interests of the unit owners and the developer. This measure will permit the developer to vote on matters of building defects, for example, if able to demonstrate they were not responsible for the defective work and want to join the owners corporation in seeking a remedy from the responsible party. For example, if the defect relates to waterproofing undertaken by a third party that affects all

units, the developer/builder may want to be a party to proceedings with the owners corporation in seeking a remedy against the third party.

Amendments and new requirements for special privileges for use of common property

The common property is an important element of all units plan in the ACT. Its use and access to the amenities are often a key feature that attract buyers and occupiers to live or work within a particular building.

The owners corporation is responsible for the management of the common property, and from time to time, may need to grant a special privilege to a unit owner or occupier to use the common property for a specific function sometimes in connection with outdoor eating and drinking establishments.

Under existing section 22 of the UTMA, the owners corporation can grant a special privilege to a unit owner or occupier to allow the use of the common property for a particular purpose. However, current provisions do not expressly provide for the special privileges to be subject to conditions or limitations on any approvals granted. Further, there are no current requirements to have these approvals recorded other than in the meeting minutes, meaning that evidence of any special privileges granted some years ago may no longer be readily available if the records have been misplaced or otherwise lost. For these reasons it is sometimes difficult for a buyer to establish whether a special privilege exists, where it is in use and how it may affect them. New sections 22, 112A and 112B of the include a number of measures to establish a more practical process for the granting, management and recording of special privileges within units plan as well as how they are disclosed.

New section 112B of the UTMA (clause 94) now requires the granting of a special privilege to be approved by a special resolution of the owners corporation and registered as a rule (a *special privilege rule*). The owners corporation must include any maintenance requirements as a part of the special privilege rule to ensure the area of the common property is properly maintained (new section 112A(2) and (3), and can also specify a period for which the special privilege rule will have effect (new section 112A(4)). A special privilege rule must be granted in writing and must be registered as a rule in the land titles register in order for it to take effect as required by section 108A of the UTMA (clause 93), unless the special privilege is for a period of less than 3 months (new sections 22, 112A of the UTMA clauses 59, 94).

As a special privilege may involve ongoing maintenance obligations on the grantee unit owner, the special privilege requires the consent of both the owners corporation and the grantee (new section 112B(5), clause 94). Registration of a special privilege rule in the land titles register guarantees an ongoing record of the special privilege is maintained for future reference and will also mean prospective buyers will be informed in their contract for sale of what special privileges have been registered in the units plan.

The new provisions permit a developer to create a proposed special privilege rule prior to registration of the units plan if required. Any such proposal will need to be disclosed in the set of proposed rules that must be disclosed to the buyer with the required disclosure statement consistent with new section 260(1)(g) of the *Civil Law (Property) Act 2006* (clause

7). Prospective buyers will then be aware of any special privileges that will exist in the units plan once it is registered.

Consistent with these measures, the amendments to the UTMA include:

- ability for the owners corporation to apply to ACAT for relevant orders to enable the owners corporation to proceed if a grantee unreasonably withholds consent for making a special privilege (amended section 128(1), clause 99); and
- ability for a grantee to apply to ACAT if the owners corporation has unreasonably withheld consent to grant a special privilege, imposed unreasonable maintenance requirements (amended section 128(2), clause 99).

Transitional provisions have been provided in the Bill to assist in owners corporations with adapting to the new requirements for special privileges as well as ensure a consistent approach for applying any alternative rules that include a special privilege rule in new developments. New section 167 (clause 104) of the UTMA is a transitional provision that preserves existing special privileges already made under existing section 22 of the UTMA. Under new section 167 existing special privileges are preserved until the transition date of 1 July 2021. In order for an existing special privilege to continue beyond this date, it will need to be made again and consistent with the requirements of new section 112A including registration of the special privilege as a rule of the owners corporation.

Administrative reforms relating to voting and owners corporation procedures

The *Unit Titles (Management) Act 2011* provides for the legislative requirements for managing a registered units plan in the ACT. It outlines the governance, management and administrative obligations as well as the rights and responsibilities of the owners corporation, executive committee, owners and occupiers. The Bill includes a number of amendments and new requirements to improve the equity and efficient management of units plans.

These reforms in this area chiefly involve amendments to the *Unit Titles (Management) Act 2011* with supporting amendments to the *Land Titles (Unit Titles) Act 1970*. The Bill includes a number of amendments to administrative procedures. These include in summary the following changes.

There are certain measures in connection with proxy votes. The allocation of proxy votes will be restricted to avoid voting outcomes being unfairly influenced, and prevent “vote-stacking”, where one owner accrues multiple proxy votes to pass or oppose a motion for their own benefit. Proxy votes will now be restricted to only 1 proxy vote per person in a units plan of up to 20 units, or no more than 5% of the total number of units in a units plan of more than 20 units (Schedule 3, part 3.3, new section 3.26(4), clause 121). The intention is for this measure to be supported by a new approved form will also be created to provide owners corporation with a document that contains clear instructions on the appointment and validity of proxy votes.

The Bill introduces the ability for the owners corporation and executive committee to hold and permit attendance at meetings other than in person. This amendment provides a

measure of flexibility for attendees who wish to participate in meetings but are unable to be physically present. The Bill will permit meetings to be conducted via methods such as phone or internet, with users of this method being considered present for the purpose of the meeting and establishing quorum (new section 2.8(3) and (4), clause 111 and Schedule 3, part 3.1, new section 3.1 (2) and (3), clause 112). The Bill will also permit online voting or voting by email for a meeting of the owners corporation if authorised by the owners corporation (new section 3.31A(1) of schedule 3 to the UTMA, clause 122). Any such method for voting must be consistent with requirements set out in the relevant regulations (new section 10 of the UTMR, clause 136).

To improve transparency and record keeping, the Bill includes changes to what information must be recorded in the minutes of the meetings held by the executive committee and owners corporation (Schedule 2, part 2.1, section 2.1(1)(c), clause 105). The minutes must now record further information such as attendance, proxies and absentee votes as well as details of the resolutions. The executive committee will be required to distribute, or make available, copies of the minutes to owners within 14 days after the meeting (Schedule 2, part 2.1, new section 2.1 (1)(g), clause 106). The Bill also amends the period that records must be kept by the owners corporation from 5 years to 7 years (Schedule 2, part 2.1, section 2.1(2), clause 108). This extended period is commensurate with the importance of such records to unit owners and prospective purchasers of units.

Where a units plan has more than 100 units, or an annual budget of more than \$250,000, the owners corporation will be required to complete an audit prior to each annual general meeting (Schedule 2 part 2.1, new section 2.1(1)(g), clause 106). The audit must be presented at the AGM (Schedule 2, part 2.1, section 2.2(1), clause 110). The purpose of this is to provide surety to owners corporations that the finances are being managed in accordance with decisions and minimise the risk or perceived risk for the mismanagement of funds.

The amendments to the UTMA remove the need for the execution of documents by the owners corporation to be evidenced through a common seal. New sections 9(2)(b) and 9A of the UTMA (clauses 55, 56) permit an owners corporation the option of making use of a common seal or alternatively by signature of two members of the executive committee. This option is consistent with the requirements for companies under the Corporations Law.

Offence and compliance provisions in the Bill generally

The Bill has no impact on current offence provisions, including strict liability offences. Amendments which impose additional compliance requirements on owners corporations or developers are administrative in nature, intended to improve the governance and management of units plans in general.

Human rights

The Bill supports several human rights under the *Human Rights Act 2004* (HRA). To the extent that any provision of this Bill limits human rights, the limitation is reasonable and justified.

A number of measures in the Bill potentially engage or possibly engage right to privacy and reputation (section 12 HRA). This right includes, among other things, the right of a person to not have their home interfered with unlawfully or arbitrarily.

Voting on contribution levies - right to privacy and reputation (section 12 HRA) and right to a fair hearing (section 21 HRA)

Existing sections 78(2), 89(4) of the UTMA sets out the default methodology for determining the general fund and sinking fund levy contributions that are payable by each unit owner. These are funds used for the overall operation and maintenance of the relevant buildings and funds required for necessary major renovations. In practice, owners corporations levies are typically paid on a quarterly basis but could be paid, for example, on an annual basis.

The default methodology for determining contribution levies is to determine the amount payable for each unit as a “proportional share” of the total general fund contribution. The term “proportional share” is defined in the Dictionary to the UTMA. The Dictionary indicates that the proportional share corresponds to the unit entitlement of the relevant unit relative to all unit entitlements.

Existing sections 78(2)(b), 89(2)(b) permits the default methodology for determining contributions payable to be modified. Under this legislation, the modification can only be made by an unopposed resolution. The modification once made can only be amended by an unopposed resolution and can only be revoked by a special resolution (existing sections 78(4), 89(4)). This requirement has the effect that a single vote, a single unit owner can veto any and every proposal to alter the methodology for determining contribution levies.

New sections 78(2)(b) and 89(2)(b) of the UTMA (clauses 80, 83) have the effect that the default methodology can be modified by the passing of a special resolution (rather than the existing requirement for an unopposed resolution).

The new voting requirements for a special resolution are set out in amended section 3.16(1) of schedule 3 of the UTMA (clause 116). For an owners corporation with four or more members a special resolution is a vote of owners corporation members that is a majority with no more than one quarter of the votes cast opposing the resolution.

A number of requirements apply to changes to the contribution levy methodology. A special resolution to change the methodology for determining contribution levies must be fair taking into account the matters listed in new sections 78(3)(a) (clause 81), 89(3)(a) (clause 84). The factors that must be taken into account include:

- The structure of the unit plan;
- Nature of the unit plan building;
- Purpose for which units are used including likely impact on common property;
- Extent to which the change imposes a burden on a unit commensurate with the use of the unit.

A special resolution to modify the default methodology for determining contributions payable to the general fund is taken to be an amendment of the owners corporation rules (new section 108(5) clause 93). Under new section 108A (clause 93) an amendment of the

owners corporation rules takes effect from the date that it is registered in the land titles register or such later date as may be specified in the amendment.

A unit owner can apply to the ACAT for review of a special resolution that modifies the default methodology for determining contributions (new section 127(1)(d) (clause 99). Following such an application ACAT can declare that the modification is invalid on the basis that it is not fair (new section 129(1)(e)(iv) clause 100).

It is arguable that the above changes to voting requirements for altering the methodology for contribution levies impacts on the right to privacy and reputation (section 12 HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily. This right is arguably impacted on as it could mean that a unit owner whose unit is their home will cease to have a veto say over proposed changes to the methodology for determining contribution levies. The unit owner may as a consequence be required to pay an increased contribution levy that could impact on the ongoing enjoyment of a home and conceivably impact on the financial ability to remain in the home.

It is also arguable that this change could impact on the right of the unit owner to take part in public life (section 17 of the HRA). This is because the change alters voting requirements and effectively removes the ability of a single unit owner to veto a proposed resolution to change the methodology for determining contribution levies.

To the extent that it could be said that these measures do impact on these two human rights, the measures are reasonable and proportionate taking into account the following factors.

This measure is reasonable in part given the nature of the right affected. The right affected is the ability of a single unit owner to veto a proposal for a new methodology for determining contribution levies. This voting power is significant for individual unit owners. However it is not a right without negative consequences. The existing right means that the wishes of a 75% or more majority of unit owners may not be able to be realised if such a veto right is exercised.

This measure is reasonable given the importance of the purpose of the limitation. The measures will remove the ability of a single or small minority of unit owners to veto proposals to change the methodology for determining contribution levies. Under existing legislation such a veto vote can prevent a new methodology irrespective notwithstanding it is widely supported as fair and equitable. This is in itself an inequitable situation. The amendments will permit an owners corporation to adopt what is perceived as a more equitable approach to the determination of contribution levies, where such an outcome is sought by 75% or more of unit owners.

The measure is also reasonable and proportionate given the nature and extent of the limitation. The proposed amendments will not remove the ability of a unit owner to vote on a resolution proposing a new contribution levy methodology. The amendments will still not permit a change unless the proposal is approved by 75% or more of unit owners who vote on the resolution. The amendments will also be accompanied by a number of requirements

and checks reflecting the need for any new methodology to be equitable. As noted above, the new methodology must be fair taking into account the prescribed matters. Further, a unit owner will be able to apply to ACAT for review of the new methodology. In making this assessment, it is anticipated that ACAT will consider the requirement for the resolution to be fair taking into account the factors listed in section 78(3)(a) (clause 81) or as listed in section 89(3)(a) (clause 84) as applicable. Further any such amendment would also be able to be challenged in ACAT on other bases as set out in new section 127(1)(d), (e) clause 99. These other bases include the ability to challenge the amendment on the basis that the outcome:

- is harsh, unconscionable or oppressive (new section 127(1)(b) clause 99, new section 108(3) clause 93)
- Incompatible with a human right (new section 127(1)(b), new section 108(3))
- Inconsistent with the UTMA or another Territory Law (new section 108(3)(a)).

The measure is also reasonable and proportionate given the relationship between the limitation and its purpose. The intent is to remove the existing ability of a single unit owner to veto all proposals for a new methodology for determining contribution levies but to retain requirements so that any new methodology is supported by a clear majority of unit owners. The proposed amendments achieve this purpose. This purpose could not be achieved without legislative amendment, there are no less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

In light of the outcome achieved and the accompanying requirements and rights of ACAT merit review, it is considered that this measure is reasonable and proportionate.

The keeping of assistance animals in a unit - right to equality before the law (section 8 HRA)

The existing UTMA requires a unit owner or occupier to obtain the permission of the owners corporation prior to keeping an animal in the unit (section 32 of the UTMA). The consent of the owners corporation cannot be unreasonably withheld (section 32(3) of the UTMA). The consent may be subject to conditions (section 32(2) of the UTMA). For the purpose of section 32 the term *animal* includes an amphibian, bird, fish, mammal (e.g. dog or cat), reptile.

These existing provisions in the UTMA apply to all animals as defined without exception. This means that this existing requirement for specific owners corporation consent also applies if the owner/occupier of the unit wishes to keep an “assistance animal” (for example guide dog) in the unit.

This existing legislation arguably engages the human right to recognition and equality before the law (section 8 of the HRA). This is because section 32 of the Act requires a unit owner/occupier who seeks to keep an assistance animal to first obtain the consent of the owners corporation and the consent of the corporation could be withheld or subject to conditions. This process would seem to potentially have a discriminatory, disproportionately burdensome effect on persons with a disability who require an assistance animal to be kept in the unit. The process of having to apply for consent, the uncertainty as to the outcome and the potential for consent to be refused or subject to

significant conditions point to this discriminatory or potentially discriminatory effect. These issues remain notwithstanding that in practice consent is typically granted or would be granted under an application to ACAT.

It is also worth noting that an owners corporation is subject to the requirements of the *Discrimination Act 1991* which requirements apply to accommodation (section 21 of the Discrimination Act). There is then a degree of tension between the existing requirement in the UTMA for owners corporation consent to the keeping of assistance animals and the requirement in the Discrimination Act to not discriminate in the terms or conditions on which accommodation is offered (section 21(1)(b) of the Discrimination Act).

New section 32(1)(a) (clause 63) is intended to address these matters. New section 32(1)(a) of the UTMA permits a unit owner/occupier to keep an assistance animal in the unit and to do so without needing to seek the consent of the owners corporation. This right is to apply universally under the amended UTMA. The right cannot be removed or diluted by a new owners corporation rule.

For the purpose of new section 32(1)(a) the meaning of *assistance animal* is as defined in the *Discrimination Act 1991* (new Dictionary definition of assistance animal, clause 125). Section 5AA(3) of the Discrimination Act defines the term *assistance animal* as:

“an assistance animal trained to assist a person with disability to alleviate the effect of the disability, that satisfies any requirements prescribed by regulation.”

The *Discrimination Regulation 2016* (section 2) includes additional requirements determinative of whether an animal is an assistance animal for the purpose of the Discrimination Act. The Discrimination Regulation (section 2) requires an assistance animal to be either:

- accredited as an assistance animal under a law of a State or Territory or by an organisation that trains animals to assist a person with disability to alleviate the effect of the disability; or
- trained to (a) assist a person with disability to alleviate the effect of the disability; and (b) meet the standards of hygiene and behaviour that are appropriate for an animal in a public place.

Further to this, the new Default Rule for pets in units (new schedule 1, section 1.5 of the UTMR, clause 137) includes the ability for an owners corporation to require a person who keeps an assistance animal to produce evidence that the animal is an assistance animal. The purpose of this is to allow the owners corporation the ability to seek confirmation that the animal holds proper accreditation and meets the definition of an assistance animal as prescribed under the Discrimination Act and Discrimination Regulation. By doing so, the owners corporation can be satisfied that the assistance animal is properly trained and has met behavioural and hygiene requirements to ensure that there is no risk to health or safety to other unit owners, occupiers or visitors.

Existing section 7 of the UTMA requires a unit owner/occupier to not use a unit in a way that causes nuisance or substantial annoyance. A unit owner may apply to ACAT to seek an

order that an animal be removed on the basis that it is causing a nuisance (section 129(1)(l) of the UTMA). These provisions will continue to apply to all animals including assistance animals.

It is possible that this amendment engages the right to recognition and equality before the law (section 8 of the HRA) and also the right to privacy and reputation (section 12 of the HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily.

The amendment has a positive effect on the right to recognition and equality before the law (section 8 of the HRA) as it removes the arguably discriminatory effect of the existing provisions and permits the keeping of an assistance animal as of right.

The amendment possibly raises the issue of the right to privacy and reputation (section 12 of the HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily in this sense. The amendment removes the ability of the owners corporation to consider a proposal of a unit owner/occupier to keep an assistance animal and vote on whether to refuse, accept or accept subject to conditions. One effect of this is that a near neighbour who may have concerns in relation to the keeping of the assistance animal will no longer have the ability to express these concerns within the owners corporation and have this taken into consideration in the deliberations of the corporation on the matter. A person may have concerns about noise, cleanliness or allergy impacts for example which concerns may impact on the use or enjoyment of the person's home.

The provisions do not amount to an unlawful or arbitrary interference with privacy, family or home for the following reasons. Further, the amendment does not permit in practice an unlawful or arbitrary interference with privacy, family or home. The amendment clearly does not permit or facilitate unlawful interference. The amendment also does not amount to or permit arbitrary interference. There is no arbitrary interference:

- in the amendment itself because the amendment is a reasonable measure to effect a circumscribed policy aim, that is the removal of a potential for discrimination; and
- as the amendment does not permit actions on the ground that would amount to arbitrary interference. This is because the amendment will not permit arbitrary interference but will only apply to the keeping of animals and will only apply to the keeping of animals in a particular limited circumstance. Specifically, the amendment will only apply to the keeping of "assistance animals" and the range of animals that can constitute an assistance animal is prescribed by the new definition of assistance animal (new UTMA dictionary definition in clause 125).

For these reasons the measure does not impact on human right 12 because it does not amount to and nor does it open the door to unlawful or arbitrary interference in the family or home.

A possible counter argument to the above view is that the amendments could result in arbitrary interference in the home because it removes the existing requirement for consent of the owners corporation and by extension neighbouring unit owners for the keeping of

such animals in units. Whether an animal is kept on the premises could be said to be now more arbitrary in the sense that the owners corporation will no longer have any decision making role in such an action. To the extent that the amendment could be said to be a limitation on the right to privacy and reputation (section 12 of the HRA) in this sense it is reasonable for the following reasons.

The limitation is reasonable in part because the existing right to participate in an owners corporation review of an application to keep an assistance animal is of limited utility to a concerned neighbour in any event. Under the existing legislation an owners corporation cannot unreasonably refuse an application. In considering its response the owners corporation would need to take account of obligations under the Discrimination Act noted above. In practice, then there is limited scope to refuse such an application. The limitation is also reasonable in part because the extent of the limitation is limited in the sense that the right of a neighbour to apply to an owners corporation and if necessary to ACAT for the removal of an animal that is causing a nuisance remains in place.

The limitation is also reasonable in part because the measure is important to modify existing legislation that potentially has a discriminatory effect and there is no other means to achieve the purpose the limitation seeks to achieve.

The keeping of pets in a unit

The existing UTMA requires a unit owner or occupier to obtain the permission of the owners corporation prior to keeping an animal in the unit (section 32 of the UTMA). The consent of the owners corporation cannot be unreasonably withheld (section 32(3) of the UTMA). The consent may be subject to conditions (section 32(2) of the UTMA). For the purpose of section 32 the term *animal* includes an amphibian, bird, fish, mammal (eg dog or cat), reptile. An owner or occupier may apply to ACAT to resolve a dispute about the keeping of an animal if the owners corporation does not give its consent (section 126(1)(a) of the UTMA). Existing section 7 of the UTMA requires a unit owner/occupier to not use a unit in a way that causes nuisance or substantial annoyance. A unit owner may apply to ACAT to seek an order that an animal be removed on the basis that it is causing a nuisance (s129(1)(l) of the UTMA). These provisions will continue to apply to all animals including assistance animals.

It is not possible for an owners corporation to make an owners corporation rule that permits the keeping of an animal without owners corporation permission. This existing position has a number of disadvantages as it is inflexible. The existing section 32 requirement does not permit an owners corporation should it wish to do so, to establish a set of owners corporation rules to achieve one or more of the following objectives:

- permit the keeping of pets as of right without the need to obtain consent for each animal, that is, to adopt a “pet friendly” approach and make it easier for an owner/occupier to have a pet in the unit;
- put in place a more efficient framework that does not require owners corporation assessment and prior consent in each and every individual case; and

- establish a framework that is potentially more helpful to prospective tenants by removing the need for owners corporation prior consent in each individual case with the effect that the tenant need only obtain landlord permission.

New section 32(1) (clause 63) is to address this issue of inflexibility and in particular to enable an owners corporation to adopt an approach that makes it easier for an owner/occupier to have a pet. The aim is to address this issue in a way that will still permit an owners corporation to retain the existing decision making framework (requiring prior consent in every case) should it elect to do so.

New section 32(1) will in effect permit an owners corporation to choose to continue to require individual assessment and owners corporation consent to the keeping of an animal in a unit or alternatively adopt a rule, “a pet friendly rule” to the effect that the animal can be kept without the need to obtain consent provided the keeping of the animal meets any conditions for this set out in the pet friendly rule. The amendments therefore provide a measure of flexibility for owners corporations in this area. In addition, to the extent that an owners corporation has a pet friendly rule, this will be to the benefit of unit owners and tenants who wish to have a pet as an integral feature of their home. It will be to the benefit of such owners/tenants in this situation because it will remove the need to obtain prior consent of the owners corporation and so in effect make it easier to have a pet in the home.

Specifically, new section 112C (clause 94) will permit an owners corporation by special resolution to make a rule that allows an owner or occupier to keep an animal, or allow an animal to be kept, within a unit or the common property without the consent of the owners corporation. Any such rule will be able to include conditions about the number and type of animals that may be kept, cleaning and maintenance, written notice to the owners corporation, supervision, security of the animal, other matters to ensure animal is not a risk of nuisance or risk to health or safety (new s112C(2)). A rule made under new section 112C is a “pet friendly rule” (clause 131 new dictionary definition and new s112C).

New section 32(1) (clause 63) provides that an animal can be kept in the unit if:

- the keeping of the animal is permitted under the owners corporation rules (a “pet friendly rule”) and the keeping is consistent with any conditions in the rules; or
- the owners corporation specifically consents to the keeping of the animal.

These amendments possibly raise the issue of the right to privacy and reputation (section 12 of the HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily. This is because the amendment alters the decision making framework around the keeping of animals, that is pets, in a unit. The ability to keep a pet in a unit can be of importance to the enjoyment of the home where the pet lives. The keeping of pets can also be a matter of importance to neighbours who may have concerns about the keeping of a pet in a nearby unit.

The amendments are supportive of the section 12 human right in this sense. The amendments will permit owners corporations to have in place a “pet friendly rule”. This will

make the process for determining whether a pet can be kept more efficient by removing the need to obtain consent. The amendment will also make the process more transparent and consistent by giving owners corporations the ability to set out the conditions for keeping pets in the owners corporation rules. The amendments will in effect make it easier for owners/occupiers to keep a pet in a unit.

The amendments could also arguably be said to impact on the section 12 human right in this sense. Under the existing legislation there is a requirement for the owners corporation to assess each individual request for the keeping of an animal and if agreed give its consent. This requirement for individual consent means that a member of the owners corporation, a unit owner will have an opportunity to participate in such an assessment decision and an opportunity to indicate any concerns the owner may have regarding noise, cleanliness, allergy or other impacts. The amendments will permit an owners corporation to make a rule which removes the requirement for individual consideration and permits the keeping of animals subject to conditions. If such a rule is made, an individual unit owner will no longer have any input into the keeping of pets where the presence of the pet is consistent with relevant conditions. One effect of this is that a near neighbour who may have concerns in relation to the keeping of the assistance animal will no longer have the ability to express these concerns within the owners corporation and have this taken into consideration in the deliberations of the corporation on the matter. A person may have concerns about noise, cleanliness or allergy impacts for example.

The more compelling view is that the amendments do not in themselves amount to *an unlawful or arbitrary interference* with privacy, family or home. Further, the amendment does not permit in practice an unlawful or arbitrary interference with privacy, family or home. The amendments clearly do not permit or facilitate unlawful interference. The amendments also does not amount to or permit arbitrary interference. There is no arbitrary interference:

- in the amendments themselves because the amendment is a reasonable measure to effect a circumscribed policy aim, that is the flexibility to create a rule that permits the keeping of animals subject to conditions; and
- as the amendments do not permit actions that would amount to arbitrary interference. This is because the pet friendly rule that would permit the keeping of animals is a rule that is open to owners corporation assessment itself and deliberation;
- the keeping of an animal pursuant to an owners corporation rule will not amount to an arbitrary interference because it would be for the purpose of keeping a pet and the consequent benefits to the owner/occupier of this and also the keeping of the animal would be subject to any conditions indicated in the owners corporation rule itself. If these conditions are breached then owners corporation assessment and consent would be required. If the animal causes a nuisance then the owners corporation can seek to have the animal removed or application can be made to ACAT for a removal order on this basis.

For these reasons the better view is that the measure does not impact on human right 12 because it does not amount to and nor does it open the door to unlawful or arbitrary interference in the family or home.

A possible counter argument to the above view is that the amendments could result in arbitrary interference in the home because in the event a pet friendly rule subsists it would remove the existing requirement for consent of the owners corporation and by extension neighbouring unit owners for the keeping of such animals in units. Whether a particular animal is kept on the premises could be said to be now more arbitrary in the sense that the owners corporation will no longer have any decision making role in such an action. To the extent that the amendment could be said to be a limitation on the right to privacy and reputation (section 12 of the HRA) in this sense it is reasonable for the following reasons.

The limitation is reasonable in part because the existing right to participate in an owners corporation review of an application to keep an animal is of limited utility to a concerned neighbour in any event. Under the existing legislation an owners corporation cannot unreasonably refuse an application. In practice, then there is limited scope to refuse such an application. The limitation is also reasonable in part because the extent of the limitation is limited in the sense that the right of a neighbour to apply to an owners corporation and if necessary to ACAT for the removal of an animal that is causing a nuisance remains in place. The limitation is also reasonable in part because the measure is important to modify existing legislation that is inflexible and there is no other means to achieve the purpose the limitation seeks to achieve.

Online attendance of owners corporation and executive committee meetings

Schedule 3 of the UTMA sets out a number of requirements and procedures for the conduct of general meetings of the owners corporation and voting at general meetings including requirements for attendance and quorum. Part 2.2 of schedule 2 of the UTMA sets out procedures for meeting and voting at an executive committee meeting.

The existing provisions require persons to be physically present at a meeting in order to participate and vote. There are exceptions to this including provision for proxy attendees and absentee voting. Requirements for proxy voting at general meetings are in item 3.26 of schedule 3 of the UTMA. Absentee voting is provided for in item 3.31. Voting as a representative of multiple unit owners is provided for in item 3.20.

This requirement to be physically present can operate to the disadvantage of persons who may wish to attend but are unable due for example to work or caring commitments, mobility or transport difficulties, disability, or absence from home. This requirement can also result in a relatively inefficient process which requires these difficulties to be addressed through proxy attendees and absentee voting forms. The intention is to address this difficulty by permitting members to attend a meeting online for example by skype, video link or similar means.

New section 3.1(2) and (3) (clause 112) permits an owners corporation to authorise a meeting to be held in a way that will permit a member to attend the meeting online or by phone. A person who attends a meeting online is taken to be present at the meeting (new

section 3.1(3)). Similar provisions apply to the holding of executive committee meetings (new section 2.8(3) and (4) (clause 111)).

This measure is relevant to the human right to privacy and reputation (section 12 of the HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily and potentially also the human right to recognition and equality before the law (section 8 of the HRA). This measure supports this right as it will increase avenues for and opportunity for unit owners/occupiers to participate in owners corporation or executive committee deliberations and decision making. This is important because these decisions may impact on the enjoyment or use of the home of the unit owner/occupier.

Online voting on proposed measures

Schedule 3 of the UTMA sets out a number of requirements and procedures for the conduct of general meetings of the owners corporation and voting at general meetings including requirements for attendance and quorum. Part 2.2 of schedule 2 of the UTMA sets out procedures for meeting and voting at an executive committee meeting.

New section 3.31A(1) of schedule 3 to the UTMA (clause 122) permits an owners corporation by resolution passed at a general meeting to agree to a method of voting on a particular matter or class of matters. For example, the corporation may agree on voting on a matter by email prior to a general meeting or voting on a matter online. New section 3.31A(2) provides that the method of voting cannot have any effect on who is entitled to vote. New section 147(1A)(b) of the UTMA (clause 103) provides that the regulations may prescribe or prohibit a method for voting on a matter. In other words any resolution under new section 3.31A(1) must be consistent with any relevant regulation. New section 10 of the *Unit Titles (Management) Regulation 2011* (clause 136) sets out certain requirements applying to the potential adoption of alternative ways of voting. These requirements include a requirement that the owners corporation provide reasonable access to online facilities in the event that such a measure is adopted and provide information to unit owners about such facilities in the event a motion is to be voted on by electronic means.

This measure is intended to permit the owners corporation to adopt a methodology for voting on specified resolutions that may be considered to be more efficient than by voting through physical attendance or through absentee voting mechanisms and that may be more user friendly for unit owners that have difficulty in attending the relevant meeting or arranging for absentee voting.

This measure may have relevance to the method available to unit owners for voting and so participating in decision making. As such this measure is relevant to the human right to privacy and reputation (section 12 of the HRA) including the right of a person to not have their home interfered with unlawfully or arbitrarily and potentially also the human right to recognition and equality before the law (section 8 of the HRA). This is because the adopted voting method may assist unit owners but may also impact on unit owners who do not have ready access to online facilities. To the extent that these measures could be said to be a limitation on the abovementioned human rights the measures are reasonable taking into

account the benefits and the requirements to make online facilities readily available to unit owners and also the existing mechanisms for absentee and proxy voting which are retained.

Voting on special resolutions - right to privacy and home (section 12 HRA) and right to a fair hearing (section 21 HRA)

A number of measures in the existing legislation require the support of a special resolution by the owners corporation, for example voting on changes to owners corporation rules or voting on granting a unit owner special access to common property. A special resolution currently requires the majority support of persons attending the relevant meeting, with no more than 33% opposing. New section 3.16(1) of the UTMA (clause 116) to amend this threshold to 25%, ensuring consistency with voting requirements on contribution levy matters noted above and consistency with NSW and overall simplicity. This supports right to fair hearing by requiring relevant changes to be more extensively supported. This also arguably impacts on right to fair hearing as a group representing only 67% will no longer be sufficient to effect change. This restriction is reasonable given that 75% will ensure the measure is supported by a sizable majority.

Expanding grounds for ACAT merit review - Right to fair hearing (section 21 HRA)

The proposed reforms will support the right to fair hearing through expanding the range of disputes matters that can be the subject of an application to ACAT for an ACAT order to resolve the dispute (new section 125 of the UTMA, clause 98). New section 125 will permit applications in relation to disputes that do not involve the owners corporation as a party, for example, a dispute between the owners corporation executive committee or committee member and an owner. This will address the situation where a unit owner considers they are not supported by an executive committee member and is not successful in having the matter considered by an owners corporation in a timely fashion. The proposed amendments will also permit application for review of dispute between a units manager and a unit owner for similar reasons.

Governance reforms – right to privacy and reputation (section 12 HRA)

The proposed reforms will adopt a new method for the governance of a multi-level building that includes several separate crown leases in the building (new Part 11A of *Land Titles Act 1925*, clause 29). For example a development where floors 3 to 7 are unit titled but the ground floor and floors two to three consist of separate leases external to the units plan. The proposals will permit the overall building in such a development to be governed by “a building management statement”. Each lessee will be deemed to be subject to the building management statement covering such matters as easements between leases, access of common property, payment of building maintenance and insurance costs. Each lessee will also be deemed to be a member of the building management committee responsible for overseeing the implementation of the management statement. This approach, similar to strata management statements in NSW, will take the place of governance through ad hoc contractual arrangements between lessees. The statement will be registered on the land titles register against each relevant lease. This reform supports the right to privacy and home by making the overall governance of such buildings of which a units plan could be a component simpler, more effective and transparent.

Tailored owners corporation rules – right to privacy and reputation (section 12 HRA)

Existing legislation requires all new units plan schemes to adopt the template owners corporation rules set out in schedule 4 of the *Unit Titles (Management) Act 2011*. The reforms introduce an ability for a developer to propose tailored alternative rules to off the plan purchasers for a new development and for these rules to be registered with the initial registration of the units plan (section 7(1)(f) of *Land Titles (Unit Titles) Act 1970*, clause 34). This will permit rules to take account of particular features of an individual site and proposed building for example particular rules regarding access to commercial/residential areas. With this ability to elect to have tailored rules, comes the potential for rules that some may consider overly restrictive and impacting potentially on right to privacy and reputation. The potential for this is minimised by the following requirements for alternative rules, the rules (new section 108(3), clause 93):

- Must include the existing current template rules but may add to these;
- Must not be unjust, harsh or oppressive and must not be incompatible with a human right;
- Must not breach the Unit Titles (Management) Act or any other Territory Law

A new unit owner who considers that a new alternative rule does not meet the above requirements will be able to challenge the rule in ACAT on the basis that it contravenes an abovementioned requirement (section 127(1)(b) of UTMA, clause 99). In this context, the additional flexibility supports the right to privacy and reputation and that the potential for negative impacts is addressed through the above limitations and rights of review and as such the proposal is reasonable.

Existing legislation does not permit the owners corporation rules to be changed during the “control period” this is the period when the original developer still owns more than two thirds of units in the units plan. This restriction is to ensure that rules are not changed in ways that may be, or be perceived to be, more to the benefit of the developer rather than resident owners.

New section 33A(1)(b) of the UTMA (clause 69) will permit owners corporation rules to be changed during the control period where this is necessary because of unforeseen consequences from the adoption of tailored rules. However, before such a change can be made, the owners corporation must obtain a declaration from the ACT Civil and Administrative Tribunal in accordance with new section 33A(5) that the proposed change is reasonable and equitable in the circumstances. Interested persons including resident owners, mortgagees are entitled to be heard at such an application. This new provision is necessary to permit a new owners corporation to address any unforeseen difficulties that may arise in relation to alternative rules adopted at the start of the units plan.

The ability to have tailored rules may impact on the right to privacy and reputation (section 12 HRA) in the following ways. The new ability for the developer to put forward tailored owners corporation rules will assist with ensuring that the proposed rules for a units plan are suited to the particular requirements of the relevant building. To the extent that this added flexibility risks resulting in rules that present difficulties for some unit owners, this

risk is managed through the measures noted above including the right to challenge the new rules in ACAT.

Disclosure requirements for purchasers - right to privacy and reputation (section 12 HRA) and the right to participate in public life (section 17 HRA)

The proposed amendments include a number of reforms that improve transparency through augmenting disclosure requirements as set out above.

The proposed reforms also provide for a purchaser of an existing unit to be entitled to an updated statement as to the current assets and liabilities of the owners corporation at the point of settlement on a purchase in addition to receiving information on these and other matters at the time of the original contract (section 119 of UTMA, clause 96). The reforms also require any owners corporation decision to grant special privileges with special access rights to common property or facilities of a duration of more than three months to be written into the owners corporation rules which must be registered on the land title register (section 112A of UTMA (clause 94), new section 108A of UTMA (clause 93)). Currently such privileges which can impact on residents use of common property can be a matter recorded in meeting minutes only.

These and similar measures together improve the availability of information to prospective and existing residents in a multi-residential complex which measures support the right to privacy and reputation (section 12 HRA).

Administrative reforms – right to privacy and reputation (section 12 HRA) and right to fair trial (section 21 HRA)

The proposed reforms include a number of measures to improve the ongoing administration of owners corporations. These measures include additional requirements to ensure annual general meetings of the owners corporation consider essential matters such as building physical integrity issues, the proper recording and distribution of minutes, permitting the creation of sub-committees to an executive committee, limitations on excessive use of proxy voting including prohibition on requiring proxy voting rights as a condition of sale, ability for owners corporation to make decisions online and give notice to unit owners by email provided persons with limited access to the internet are not disadvantaged. These reforms will support the good governance of a units plan and so support privacy and reputation (section 12 HRA). These reforms will assist in giving owners the opportunity to more meaningfully participate in owners corporation discussions and decision making and so support both section 12 of the HRA and also the right to fair trial (section 21 HRA).

The proposed reforms include measures to facilitate the consideration of physical integrity and building maintenance issues. These include a new requirement for the developer to provide a “maintenance schedule” to the new owners corporation setting out all maintenance requirements for the building and facilities including provision of relevant manuals, manufacturer contact details and similar (new section 25 of the UTMA, clause 61). The reforms also require the owners corporation at each annual general meeting to consider any issues or updated information on physical building structural defects, maintenance schedules, and fire safety (new section 24(1A), (1B) of the UTMA, clause 60).

These measures will mean that the owners corporation is better informed of these matters and better able to take timely action if required. These measures support the right to privacy and reputation (section 12 HRA).

Proposed reforms will apply in relation to an owners corporation voting on a motion related to defective building work. New section 3.21A of schedule 3 to the UTMA (clause 119) means that the developer for the units plan will not be able to vote on such a motion other than with the approval of a special resolution or authorisation by ACAT. This measure is intended to reduce the potential for a vote on this matter to be compromised due to a conflict of interest and as such is supportive of the right to a fair trial (section 21 HRA). This measure does impact on the right of the developer to vote in this situation but this is reduced by the fact that the developer can apply to ACAT for authorisation and ACAT can so authorise if satisfied that the developer was not responsible for the defect or that barring the developer would otherwise be unreasonable taking into account the interests of the unit owners and the developer. In this respect, it is also noted that the Human Rights Act does not apply to corporations.

Application of the Human Rights Act to owners corporation rules

New section 108(3)(c) (clause 93) requires that alternative rules for an owners corporation must not be harsh, unconscionable or oppressive and must not be incompatible with a human right under the HRA. While a number of human rights under the HRA are not likely to be relevant in this context such as rights related to criminal proceedings (HRA sections 18-25) there are some circumstances where a human right in practice may be engaged by a proposed owners corporation alternative rule.

This could be the case, for example, in connection with the human right under s8 of the HRA – Recognition and equality before the law. This right includes the right of “everyone to enjoy his or her human rights without distinction or discrimination of any kind”. This could also be the case in connection with the human right under section 12 of the HRA - Privacy and reputation. This human right includes the right to not to have a person’s “privacy, family, home or correspondence interfered with unlawfully or arbitrarily”.

In connection with the requirement in new section 108(3)(c) that an alternative rule be not incompatible with a human right under the HRA does not mean that a rule cannot affect or engage a human right. Section 28(1) of the HRA provides that human rights may be subject to “reasonable limits set by laws that can be demonstrably justified in a free and democratic society”. Section 28(2) of the HRA sets out the factors that must be considered in deciding whether a limit is reasonable including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

For example, an alternative rule that limits access to a swimming pool in the common property by unsupervised children could be considered to affect or engage the human right 8 in the HRA in relation to the right to be equal before the law and be protected against discrimination on any ground. In this case the rule might reasonably be considered to be not incompatible with the human right 8 as it is reasonably necessary for the protection of the lives and safety of children.

Another scenario is where an alternative rule restricts residents to persons over 55 may reside in a unit. Such a rule could also be contrary to HRA section 8 (and the Discrimination Act). If such a rule reflects a restriction in the underlying crown lease then it would be permissible as the corporation has no power to permit otherwise.

Another example could be a rule (e.g. a special privilege rule) that restricts access to common property as necessary for repairs or renovations. Such a rule could impact on the ability of a family to use the common property and possibly make access to their own unit more difficult. This could arguably enliven HRA section 12 right to privacy and protection which includes the right to not have your home interfered with unlawfully or arbitrarily. Again an owners corporation could reasonably address this issue by deciding whether the measure is reasonably necessary.

This application of the HRA to alternative rules is in itself a new measure that extends to some extent the effect of the HRA. This extension is limited in the following sense. This is because owners' corporations are already required to comply with the *Discrimination Act 1991* (see sections 21, 26, 33A). Further in practice a number of human rights such as rights related to criminal proceedings (HRA sections 18-25) will in practice not be relevant. There are some circumstances where a human right may be engaged. This reform is also of limited significance because ACAT (unlike a court) is a public authority for the purpose of the HRA and so in assessing applications for the resolution of owners corporation disputes ACAT must already interpret legislation in a manner that is compatible with a human right (section 30 of the HRA), give proper consideration to a human right (section 40B(1)(b) of the HRA) and not act in a way that is incompatible with a human right (section 40B(1)(a)). In these respects, the HRA already has a significant presence in the adjudication and determination of the rights and obligations of owners corporations and unit owners. As a result in assessing a proposed rule amendment an owners corporation should arguably already consider the potential for the rule to be challenged and assessed by ACAT in a human rights context.

Scrutiny of bills terms of reference

The Bill has been assessed against the terms of reference of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), which ask whether any clause of the Bill:

- unduly trespasses on personal rights and liberties
- makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers

- makes rights, liberties and/or obligations unduly dependent upon nonreviewable decisions
- inappropriately delegates legislative powers, or
- insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

The Bill does not unduly trespass on personal rights and liberties. In particular, the Bill does not include any offence provisions.

The Bill does not make rights, liberties and/or obligations unduly dependant upon insufficiently defined administrative powers.

The Bill does not make rights, liberties and/or obligations unduly dependant upon nonreviewable decisions.

The Bill does not inappropriately delegate legislative powers.

The Bill does not insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Outline of Provisions

Part 1 Preliminary

Clause 1 Name of Act

This clause states the title of the Act as the *Unit Titles Legislation Amendment Act 2019*.

Clause 2 Commencement

This clause provides for the commencement for the Act on a day fixed by the Minister by written notice. The Act will automatically commence on 1 July 2021 if it has not commenced earlier.

Clause 3 Legislation amended

This clause indicates that this Act amends the following legislation:

- *Civil Law (Property) Act 2006*;
- *Civil Law (Sale of Residential Property) Act 2003*;
- *Community Title Act 2001*;
- *Land Titles Act 1925*;
- *Land Titles Regulation 2015*;
- *Land Titles (Unit Titles) Act 1970*;
- *Legislation Act 2001*;
- *Planning and Development Act 2007*;
- *Residential Tenancies Act 1997*;
- *Unit Titles Act 2001*;
- *Unit Titles (Management) Act 2011*; and
- *Unit Titles (Management) Regulation 2011*.

Clause 4 Civil Law (Property) Regulation 2019-sch 1

This clause should be read in conjunction with Schedule 1 of the Bill.

This clause relates to and gives effect to schedule 1 of the Bill. This clause deems the contents of schedule 1 to be a regulation made under new section 503 of the *Civil (Property) Act 2006* (CLPA) (clause 19).

Part 2 Civil Law (Property) Act 2006

Clause 5 Division 2.9.1

Clause 5 omits existing Division 2.9.1 of the *Civil Law (Property) Act 2006* (CLPA) and substitutes new Division 2.9.1. New division 2.9.1 includes new sections 259, 259A.

New Division 2.9.1 includes definitions of terms related to the requirements for disclosure statements and update notices for contracts of sale for a unit in a proposed units plan in the circumstance where the units plan has yet to be registered. The definitions include a definition of *off-the-plan contract* as a contract for the sale of a unit in a units plan before the units plan is registered.

New section 259 Definitions-pt 2.9

New section 259 in new division 2.9.1 includes definitions of the following terms for the purpose of Part 2.9 of the CLPA.

- Buyer action period;
- Common property;
- developer;
- disclosure statement;
- disclosure update notice;
- material change;
- off-the-plan contract
- owners corporation
- registered
- unit
- units plan

New section 259A Meaning of type 1 matter and type 2 matter

New section 259A(1)(a) defines material change that is a type 1 matter. A type 1 matter is a change to a matter in a disclosure statement that is any of the following, subject to the exception below:

- A decrease in overall floor area of unit (excluding subsidiary) of 5% or more
- A decrease or increase in the unit entitlement estimate of 5% or more
- A decrease of 10% or more of a courtyard area or balcony area for the unit
- Any other prescribed matter (refer also below).

A type 1 matter does not include an *excluded change* as defined in new section 259A(3). An excluded change is a change to the development statement that the buyer has already agreed to under existing section 30 of the UTMA. This is because the buyer is aware of and has agreed to the change.

New section 259A(1)(b) defines material change that is a type 2 matter and this includes the following matters subject to the below exception. A type 2 matter is a change to a matter in

a disclosure statement that will or is likely to affect the use or enjoyment of the unit and this includes but is not limited to the following:

- Change to plans in the disclosure statement that will or are likely to affect the use or enjoyment of the unit or the common property
- Change to the proposed rules of the owners corporation
- Change to the developer's estimate of the buyer's contribution to the general fund if the change is more than the prescribed amount
- A new easement or easement location not anticipated in the disclosure statement other than the statutorily implied easements
- A change to development statement that will or is likely to affect the use or enjoyment of the unit or the common property
- Any matter that is prescribed

However, a type 2 matter does not include an *excluded change* as defined in new section 259A(3).

New section 259A(2) prescribes particular commencement requirements for a regulation that prescribes an additional type 1 matter. In summary, such a regulation will not commence operation until after the relevant disallowance period for the regulation. This delayed commencement is necessary given the significance of type 1 matters in relation to the disclosure update notice requirements of new section 260B of the Civil Law (Property) Act (clause 8) and the right of the buyer to rescind the contract in the event that required disclosure update for a type 1 matter material change is not provided within the prescribed time frame (new sections 260D(2), (3) of the Civil Law (Property) Act, clause 8).

Clause 6 Division 2.9.2 heading

Clause 6 omits the existing heading to Division 2.9.2 of the Civil Law (Property) Act and substitutes a new heading: – Division 2.9.2 Off-the-plan contracts-disclosure.

Clause 7 Section 260

Clause 7 omits section 260 of the CLPA and substitutes new sections 260.

New section 260(1) provides that section 260 applies to a an off-the-plan contract. An *off the plan contract* is defined in new section 259 of the CLPA (clause 5) and means a contract for the sale of a unit in a units plan before the units plan is registered.

New section 260 requires the seller to provide a disclosure statement with the an off the plan contract. The required information includes the information required in the existing section 260 of the CPLA and additional matters. New section 260(1) requires the information to take the form of a “disclosure statement” that must be included with the contract. If more practical the disclosure statement can also be included in the contract itself (new section 260(2)).

The following requirements in relation to disclosure statements and following requirements in relation to the provision of updates for disclosure statements apply to the seller of the prospective unit. This means that the requirements apply to the developer if the developer

is the seller or to a person who is not the developer. For example a developer may sell the proposed unit to buyer A and buyer A may then onsell the proposed unit to buyer B. In this example the requirements under the CLPA apply to the developer and the on-seller buyer A. This is in contrast to existing section 260(3) of the CLPA which applies to the developer only. This extension is considered necessary to ensure that relevant protections and procedures apply to all purchasers of a prospective unit.

The disclosure statement required under new section 260(1) must include the following:

- A plan that shows the proposed location and dimensions of the unit within the units plan, internal floor plans and anything else prescribed by the regulations;
- A copy of the building management statement, if applicable;
- A statement about the use of each unit including a full list of potential uses under the lease for the unit and if the developer is proposing to restrict uses, what those restrictions are and which units they apply to (as well as conditions, if any);
- The proposed schedule of unit entitlements for the units plan;
- Details of each proposed unit subsidiary including the potential uses of the subsidiary;
- A statement about potential easements and what type they are;
- The proposed rules of the owners corporation including any proposed special privilege rules;
- details of any contract the developer intends the owners corporation to enter into including costs and whether there is any personal or business relationship between the developer and another party to the contract;
- the developers reasonable estimate of the buyers contribution to the general fund for 2 years after registration of the units plan;
- what methods will be used to calculate the contributions paid into the general and sinking funds;
- If a staged development is proposed, the proposed development statements and any amendment to the statement; and
- Any other matter prescribed by regulation relating to:
 - The development approval for the relevant building;
 - Design and construction;
 - Identity of the developer, licensed builder or design architect;
 - Sustainability infrastructure;
 - Provision of utility services.

New section 260(1)(m) permits the regulations to set out additional matters that must be included in a disclosure statement where those matters relate to the development approval for the building, design and construction, the identity of the developer, licensed builder or design architect, sustainability infrastructure or the provision of utility services. Schedule 1 to the Bill contains an initial *Civil Law (Property) Regulation 2019*. The regulation is made for the purpose of new section 260(1)(m). Sections 2, 3 of the regulation sets out additional matters that a disclosure statement for the sale of a unit must include when the unit is sold

prior to registration of the units plan. The additional matters in section 2 are about the development approval status of the relevant building for the proposed units plan including information about:

- The identity of the development approval for the proposed building if development approval has been granted;
- If the development approval has not been granted confirmation of this and identification of the relevant development application if lodged
- A statement as to how the buyer may find further information about the development approval including information as to how to find out about publicly notified development approval amendments.

New section 3 of the *Civil Law (Property) Regulation 2019* requires the disclosure statement to include information about:

- which units in the units plan will be individually metered for the purpose of cold water supply; and
- any facilities that will be provided for charging electric vehicles.

The information required to be included in the disclosure statement under new section 260(1) of the CLPA is to provide buyers with a measure of certainty about what they are buying in the circumstance of an off the plan sale. Sellers will also be required to provide updates to buyers regarding any departures from the information provided in the disclosure statement that arise during construction and prior to settlement or completion of the contract (new section 260B of the CLPA (clause 8)).

The requirement to provide a disclosure statement is not contravened merely because the disclosure statement is inaccurate or incomplete (new section 260(3) of the CLPA (clause 7)).

New section 260 omits existing sections 260(3) and (4) of the CLPA. These matters are now covered by new section 264(2A) (clause 13) and amended section 265(1) (clause 15) of the CLPA.

The omission of existing section 260(3) is due to new section 264(2A) (clause 13) now providing for the seller to warrant that the information provided in the disclosure statement, including any matter incorporated in the disclosure statement by a disclosure update notice, is accurate. This is now included as an implied warranty as referred to in clause 16.

The omission of existing section 260(4) is due to new section 265(1) (clause 15) now providing for the ability for a buyer to rescind the contract, or alternatively, proceed with the contract and claim compensation from the seller.

Clause 8 New sections 260A to 260H

Clause 8 inserts new sections 260A to 260H into division 2.9.2 of the CLPA.

New section 260A Disclosure statement provided late or not at all

New section 260A applies in the circumstance where the seller fails to provide a disclosure statement with the contract of sale at all or does so but does so late that is some time after the execution of the contract of sale (new section 260A(1)). If the seller does not give the buyer the required disclosure statement at all, then the buyer has a right to rescind the contract at any time prior to completion (settlement) (new section 260A(2)(a)).

If the seller provides the disclosure statement but does so late, then the buyer can rescind the contract but must do so within 21 days of receipt of the late disclosure statement (new section 260A(2)(b)). If the buyer does not rescind the contract within this 21 day period then contract of sale remains alive and the buyer cannot later rescind as a result of the late disclosure statement.

The requirement to provide a disclosure statement is not contravened merely because the disclosure statement is inaccurate or incomplete (new section 260(3) of the CLPA).

New section 268 (clause 18) provides that if the buyer rescinds the contract the seller must repay any deposit or other sum already paid by the buyer.

New sections 260B to 260H apply during the period after the seller and buyer execute a contract of sale for a unit prior to registration of a units plan and before completion of the contract (settlement). This is the period after the seller has provided the original disclosure statement with the contract of sale as required under new s260(1) (clause 7).

New sections 260B to 260G relate to the requirement of the seller to update the buyer of any material changes that arise during this period, that is a requirement to update the buyer of any changes in circumstances (material change) from the description in the original disclosure statement that occur post the contract of sale. The remedies or responses available to a buyer depend on whether the material change update is provided to the buyer on time and whether the update relates to a type 1 matter or a type 2 matter.

Material change is defined as a change to a matter that was disclosed in the disclosure statement provided with the contract of sale. A material change is either a type 1 matter or a type 2 matter, refer to the new definition of *material change* inserted into amended section 259 of the CLPA, clause 5. The key terms *type 1 matter* and *type 2 matter* are defined in new section 259A of the CLPA.

New section 260B

New section 260B of the CLPA in clause 8 applies where a seller has provided a disclosure statement with an off-the-plan contract and the seller later becomes aware of a material change to a matter set out in the disclosure statement (new section 260B(1)). A seller is deemed to become aware of a material change if the seller has actual knowledge or ought reasonably to have knowledge of the change (new section 260B(4)). For example if the seller is the developer and the developer instructs the contracted licensed builder to construct a wall that differs from the description set out in plans that formed part of the disclosure statement in a way that amounts to a material change then the seller would be obliged to inform the buyer of this determined material change.

In this circumstance, the seller must give the buyer a notice setting out the details of the material change, a “disclosure update notice”. The notice must contain information reasonably sufficient to enable the buyer to work out whether the buyer will suffer significant prejudice as a result of the change (new section 260B(3)). The options available to a buyer who receives a disclosure update notice are set out in new sections 260C to 260E of the CLPA (clause 8).

The seller must provide the disclosure update notice within the required time frame set out in new section 260B(2), that is within 10 calendar days of the end of the calendar quarter when the seller becomes aware of the change and in any case 21 days prior to completion of the contract. This is in effect a requirement for the seller to provide quarterly updates to the buyer as to any material changes in the preceding quarter. If the seller does not become aware of any material change there is no requirement to provide an update.

This requirement to provide an update only applies if a material change does in fact eventuate. There is no requirement in these provisions to provide an update on a material change that is being considered and which may or may not eventuate. For example, a developer may consider changes to relevant plans but does not make a final decision. In this case there is no obligation to update. A developer may consider a change to relevant plans but this change may require development approval under the Planning and Development Act. The change is contingent on the development approval and as such there is no obligation to notify of the change until the development approval is granted.

Equally this legislation does not prevent the seller from providing information about a possible but not yet realised material change should the seller wish to do so.

There may be situations where the seller does not become aware of the change until 20 days or less prior to the completion of the contract. In this scenario the seller is not able to comply with the time frames set out in new section 260B(2) however the seller can still provide a late update notice when the seller does become aware of the matter.

The requirement to provide an update notice does not apply to an *excluded change* as defined in new section 259A(3) of the CLPA (clause 5).

New section 260B(5) defines *calendar quarter*.

New section 260C Effect of disclosure update provided in time-type 1 matter

New section 260C sets out the consequences of the seller providing to the buyer an update of a material change that is a type 1 matter.

New section 260C applies if the seller provides a disclosure update notice with information of a type 1 matter material change to the buyer and does so within the required time frames set out in new section 260B(2) (clause 7). In this case, the buyer has the option of rescinding the contract but only if the buyer is significantly prejudiced as a result of the material change (new section 260B(3)(a)). The buyer may alternatively elect to complete the contract and not provide any rescission notice to the seller in which case the contract is maintained. The buyer may also elect to notify the seller that the buyer will complete the contract and claim compensation for the change (new section 260C(2)(b)).

If the buyer elects to rescind the contract following receipt of the disclosure update notice the buyer must do so in the manner set out in new section 260B(2)(b), that is by written notice to the seller which notice must include a summary of the prejudice to the buyer resulting from the material change. The buyer must provide this notice within the *buyer action period*. The *buyer action period* is set out in amended section 259 (clause 5). The period is 21 days from the date of receipt of the disclosure update notice.

The required summary of the significant prejudice to the buyer is important to inform the seller and provide the seller with an opportunity to review whether the seller agrees that the conclusion of significant prejudice is validly based. If the seller concludes that the rescission is not valid then the seller could take legal action to contest the rescission sought by the buyer.

If the buyer rescinds the contract following receipt of a disclosure update notice related to a type 1 matter material change, the seller must repay any amount paid to the seller towards the purchase of the unit (new section 268 of the CLPA clause 18).

New section 260D Effect of disclosure update provided out of time-type 1 matter

New section 260D sets out the consequences of the seller providing to the buyer an update of a material change that is a type 1 matter but does so late. In other words the seller provides the notice some time after the expiry of the relevant time frame set out in new section 260B(2) (clause 8).

In this case, the buyer has the option of rescinding the contract by written notice to the seller (New section 260D(2)). In order to do so the buyer must provide written notice of rescission within the *buyer action period*. The *buyer action period* is set out in amended section 259 (clause 5). The period is 21 days from the date of receipt of the disclosure update notice. The buyer may elect to continue the contract by not providing this notice. If no rescission notice is provided during the buyer action period the disclosure statement is taken to be amended by agreement to incorporate the material change. In this case the buyer will no longer have a right to rescind the contract on the basis of the material change. If the buyer considers that they have suffered a loss due to the material change that gives rise to a claim for damages and the buyer still wishes to continue the contract the buyer can provide a notice to the seller that the buyer wishes to complete the contract and claim compensation for the change.

Importantly in the above case where the seller provides the required disclosure update notice but does so late, there is no obligation on the buyer to demonstrate or point to any significant prejudice in order to rescind the contract (new sections 260D(2), 260D(3)). The absence of a requirement to demonstrate significant prejudice in this instance is for the following reasons. All of the type 1 matters are considered to be matters that have a significant potential to cause significant prejudice irrespective of their precise nature, whether this turns out to be the actual case will depend also on the actual circumstances of the buyer. Given this potential, it is important that the buyer receive timely notice of any such type 1 matter material change. Given this significance, it is appropriate that the buyer

have the right to rescind following failure to provide the update and to be able to do so irrespective of significant prejudice.

If the buyer rescinds the contract following receipt of a disclosure update notice related to a type 1 matter material change, the seller must repay any amount paid to the seller towards the purchase of the unit (new section 268 of the CLPA, clause 18).

New section 260E Effect of disclosure update-type 2 matter

The following applies if the seller provides a disclosure update notice with information of a type 2 matter material change to the buyer. In this case, the buyer has the option of rescinding the contract but only if the buyer is significantly prejudiced as a result of the material change (new section 260E(1)(c)). The buyer may alternatively elect to complete the contract and not provide any rescission notice to the seller in which case the contract is maintained. The buyer may also elect to notify the seller that the buyer will complete the contract and claim compensation for the change (new section 260E(2)(b)).

If the buyer elects to rescind the contract following receipt of the disclosure update notice the buyer must do so in the manner set out in new section 260E(3), that is by written notice to the seller which notice must include a summary of the prejudice to the buyer resulting from the material change. The buyer must provide this notice within the *buyer action period* (new section 260E(4)). The *buyer action period* is set out in amended section 259 (clause 5). The period is 21 days from the date of receipt of the disclosure update notice.

The required summary of the significant prejudice to the buyer is important to inform the seller and provide the seller with an opportunity to review whether the seller agrees that the conclusion of significant prejudice is validly based. If the seller concludes that the rescission is not valid then the seller could take legal action to contest the rescission sought by the buyer.

If the buyer rescinds the contract following receipt of a disclosure update notice related to a type 2 matter material change, the seller must repay any amount paid to the seller towards the purchase of the unit (new section 268 of the CLPA, clause 18).

New section 260F Buyer action if no disclosure update notice

New section 260F applies if the seller fails to provide the required disclosure update notice (new section 260F(1)).

In this circumstance, the buyer can rescind the contract at any time before completion. If the relevant material change is a type 1 matter, the buyer can rescind by written notice and is not required to demonstrate material prejudice (new s260F(2)). This is consistent with the approach taken in relation to a late disclosure update notice for a type 1 matter under new section 260D(2).

If the relevant material change is a type 2 matter, the buyer can rescind only if the buyer is significantly prejudiced (new s260F(3)). In this case, the written notice to the seller must include a summary of the prejudice suffered by the buyer because of the material change.

If the buyer rescinds the contract under this provision, the seller must repay any amount paid to the seller towards the purchase of the unit (new section 268 of the CLPA, clause 18).

New section 260G Seller to notify buyer of registration of units plan

This section applies to all contracts for the sale of a unit in a units plan where the units plan has not yet been registered (new section 260G(1)).

The seller must give the buyer of the unit a copy of the units plan and the registered alternative rules for the units plan prior to completion (new section 260G(1)).

New section 260G(2) provides that the buyer is not required to complete the contract earlier than 21 days after the day the seller provides the copies to the buyer as required under this section.

New section 260H Evidentiary burden-notices

New section 260H applies to any legal proceeding related to a dispute as to whether the seller provided the required disclosure update notice as required under division 2.9.2 of the CLPA. In this circumstance section 260H makes it clear that the seller bears the onus of proof of establishing that the notice was provided as required.

**Clause 9 Meaning of *implied warranties*-div 2.9.3
Section 261, definition of implied warranties**

Clause 9 amends existing section 261 of the CLPA. Existing section 261 incorrectly refers to former section 130D. Clause 9 corrects this issue.

**Clause 10 Purpose-div 2.9.3
Section 262(a)**

Clause 9 amends the existing wording of section 262(a) from 'division of a contract' and substitutes with new section 262(a) to now state 'part of a contract'. This amendment is made for clarity.

Clause 11 Section 262(b)

Clause 11 amends existing section 262(b) by omitting the word "cancel" and substituting the word "rescind". The new disclosure statement requirements use the term "rescission" rather than the term "cancellation". This is a term that is more typically used in contracts and more widely understood, the term "rescission" is also consistent with the current use of the word "rescission" in the existing *Civil Law (Sale of Residential Property) Act 2003*, for example refer to section 11(1)(b). The effect of the term rescission is to achieve a situation to the effect that the rights of the parties are as though the contract was never entered into. This amendment and related provisions should be read in conjunction with new section 268 (clause 18) which sets out certain consequences of rescission.

**Clause 12 Implied warranties and right to cancel-effect
Section 263**

Clause 12 omits existing section 263. Existing section 263 sets out the effect of the right to cancel including confirmation that the right to cancel has effect despite anything in the relevant contract and the fact that the right to cancel does not limit any other remedy

available to the buyer for a breach of warranty established under the CLPA. This section is omitted because the function of this section is now served by new section 267 of the CLPA (clause 18).

Clause 13 Implied warranties
New Section 264(2A)

Clause 13 inserts the new section 264(2A) to include additional definition of an implied warranty incorporating the disclosure statement.

New section 264(2A) includes the new implied warranty that in the circumstance the contract for sale is for a unit within a units plan that is not registered, the seller warrants that the information in the disclosure statement, and any matter incorporated in the disclosure statement by a disclosure update notice, is accurate. This establishes the grounds where in the circumstances that the information provided by the seller in the disclosure statement is not accurate, a buyer may seek to rescind the contract in accordance with new section 265(1) (clause 15).

Clause 14 Section 264(3)

Clause 14 amends existing section 264(3) by omitting the word “materially” and substitute the term “significantly”. This amendment is consistent with the fact that the new disclosure statement requirements refer to rights to rescind in certain circumstances where the buyer suffers significant prejudice. The use of the term “significant prejudice” is consistent with the use of the term in existing section 260(4) of the CLPA.

To the extent that there is a practical difference between the existing term “material” and the new term “significant” it is suggested that the term “significant” may arguably be broader in scope in that it implies a need to assess the extent to which the change is reasonably significant to the buyer rather than simply a need to assess the extent to which the change departs from the terms of the original contract.

Clause 15 Section 265

Clause 15 omits existing section 265 and substitutes new section 265.

New section 265 includes inaccurate disclosure statements under section 264(2A) (clause 13) as a ground for cancellation of a contract under section 265.

New section 265(1)(b) retains the right of the buyer to rescind a contract for the sale of a unit for breach of any other implied warranty under section 264. In respect to this matter, the right to cancel is replaced with the right to “rescind” consistent with the terminology used in connection with disclosure statements.

New section 265(2) sets out the time frames for the buyer to provide a notice of rescission to the seller under this section. The time frames in connection with matters other than the disclosure statement matters are unchanged. New section 265(2)(a)(i) provides that in relation to a breach of warranty related to a disclosure statement the notice of rescission to the seller can be provided at any time before completion.

The time frame in new section 265(2)(a)(i) needs to be read in the context of the time frames applying in relation to the buyer responding to a late disclosure statement or a disclosure update notice, referred to in new sections 260C(4), 260D(3), 260E(4) as the “buyer action period”. If the buyer does not provide a notice of rescission within the buyer action period (21 days following receipt of notice from the seller) then the disclosure statement is taken to be amended by agreement to incorporate the material change that was the subject of the relevant disclosure update notice.

New section 265(3) provides that the buyer cannot rescind on the basis of a breach of implied warranty related to an excluded change. *Excluded change* is defined in new section 259A(3) of the CLPA (clause 5).

Amended section 265 omits existing section 265(3) as this section is replaced by new section 268 of the CLPA (clause 18).

Clause 16 Claim for compensation
Section 266(1)

Clause 16 deletes existing section 266(1) of the CLPA and substitutes with amended section 266(1).

Amended section 266(1) does not make a substantive change to this section but makes a correction. The amended section 266(1) replaces the term “warranty” with “implied warranty” consistent with the approach in the rest of division 2.9.3 of the CLPA.

Clause 17 New section 266(4)

Clause 17 inserts new section 266(4) to the CLPA regarding an exception to when a buyer can claim compensation.

New section 266(4) makes it clear that the buyer cannot claim compensation on the basis of a breach of implied warranty related to an excluded change. *Excluded change* is defined in new section 259A(3) of the CLPA (clause 5).

Clause 18 New division 2.9.4

Clause 18 inserts new Division 2.9.4 Miscellaneous into the CLPA with new sections 267, 268.

New section 267 Operation of part cannot be excluded etc

New section 267(1) provides that a provision of a contract for the sale of a unit or any other agreement or arrangement is void if it would have the effect of excluding, changing or restricting the operation of Part 2.9 of the CLPA.

New section 267(2) provides that Part 2.9 of the CLPA does not affect any right or remedy available otherwise than under this part. This provision should be read in the context of new section 267(1) and is subject to the operation of the specific requirement in new section 267(1).

New section 267 takes the place of existing section 263 and is a clarification of existing section 263.

New section 268 Rescission-effect

New section 268 provides that if a buyer rescinds a contract under Part 2.9 of the CLPA the seller must repay any amount paid by the buyer to the seller under the contract. New section 268 replaces existing section 265(3) of the CLPA. New section 268 is broader than existing section 265(3) in that it requires the repayment of any money already paid under the contract. Existing section 265(3) applies only to money paid towards the purchase under existing section 265(3). This is consistent with the approach that if the buyer has a right to rescind the contract the buyer should not suffer significant financial cost because of the rescission which results from the breach of warranty by the seller.

Clause 19 Regulation-making power New section 503(2)

Clause 19 inserts new section 503(2) in to the CLPA.

New section 503(2) establishes the ability for a regulation to make provisions for the plans included in the disclosure statement in relation to amended section 260(1)(a) (clause 7). This clause includes the requirements about the manner in which plans are prepared and well as the format requirements for plans provided to a buyer in the disclosure statement.

Clause 20 New part 5.6

Clause 20 inserts new part 5.6 to the CLPA.

New section 510 includes the definition of *commencement day* for the purposes of this new Part 5.6. The *commencement day* is the day section 17 of the *Unit Titles Amendment Act 2019* commences.

New section 511 inserts the transitional provisions relating to when a disclosure statement will apply to a contract for sale of a unit in a units plan that is not registered. The provision provides that a disclosure statement is not required if the contract was entered into prior to 1 July 2021 and has not been completed. Existing provisions under amended part 2.9, including the rights and obligations of the parties under the contract will continue to apply to a contract that was entered into prior to this date. For example, where a units plan that is under development already has buyers who have entered into contracts with the seller to purchase a unit within the units plan, any new buyers after 1 July 2021 will be subject to the same contract as those who purchased prior. The purpose of this provision is to avoid the situation of dual contracts occurring post commencement. This will ensure no buyer within the development is unfairly prejudiced by receiving different information in their contract for sale to buyers who purchase at a later time.

New section 512 provides that new Part 5.6 Transitional-Unit Titles Legislation Amendment Act 2019 expires 12 months after the day new Part 5.6 commences

Clause 21 Dictionary, new definitions

Clause 21 inserts new definitions into the Dictionary of the CLPA. This includes new definitions of:

- Buyer action period
- Developer

- Disclosure statement
- Disclosure update notice
- Implied warranties
- Material change
- Off-the-plan contract

Part 3 Civil Law (Sale of Residential Property)

Act 2003

Clause 22 Meaning of *required documents*

Section 9(1)(g)(i)(C)

Clause 19 inserts new section 9(1)(g)(i)(C) into the *Civil Law (Sale of Residential Property) Act 2003* (CLSRPA).

Existing section 9 of the CLSRPA sets out the documents, the “required documents” that must be provided with the contract of sale of a residential property. This includes such matters as the crown lease, a copy of the deposited plan, a copy of the certificate of title and any encumbrance on the title and other matters.

New section 9(1)(g)(i)(C) adds to this existing list of required documents. New section 9(1)(g)(i)(C) applies where the owners corporation is a party to a building management statement under new s123E (1)(a) of the *Land Titles Act 1925* (clause 29). In this circumstance, new section 9(1)(g)(i)(C) makes the building management statement a “required document” with the effect that the seller must provide a copy of the statement to the purchaser at the time of signing the contract of sale.

Clause 23 Section 9(1) (g)(ii)

Clause 23 deletes existing section 9(1)(g)(ii) of the CLSRPA and substitutes new section 9(1)(g)(ii).

Existing section 9 of the CLSRPA sets out the documents, the “required documents” that must be provided with the contract of sale of a residential property. This includes such matters as the crown lease, a copy of the deposited plan, a copy of the certificate of title and any encumbrance on the title and other matters.

Existing section 9(1)(g)(ii) applied where the relevant contract of sale is entered into before the proposed units plan is registered under the Land Titles Act. In this circumstance, the existing section required the seller to provide a copy of “a plan showing the proposed location and dimensions of the unit in relation to other units and the common property”.

New section 9(1)(g)(ii) expands on this requirement as a consequence of the expanded information that is required to be provided to the buyer in the form of a “disclosure statement” under new section 260 of the *Civil Law (Property Act) 2006* (CLPA) (clause 7). New section 9(1)(g)(ii) also applies where the relevant contract of sale is entered into before the proposed units plan is registered under the Land Titles Act. In this circumstance, new section 9(1)(g)(ii) requires a copy of the section 260 disclosure statement to be provided to the buyer.

Clause 24 Section 9(1)(h)(v)

Clause 24 omits the words ‘class A’ in existing section 9(1)(h)(v) of the CLSRPA.

Existing section 9(1)(h)(v) requires the minutes of the meetings of the owners corporation and the executive committee for the unit plan held in the 2 years before the property was

first advertised for sale to be included in the contract for only units that were a residence in a Class A units plan. This clause has been amended to now require these documents to be provided in the contract of sale for units in both Class A and Class B units plans.

Clause 25 Certain conditions to be included in contract
New section 11(2A)

Clause 25 inserts a new section 11(2A) to the CLSRPA.

New section 11(2A) exempts certain documents from being included in contract for sale for a unit in a units plan that is not yet registered.

Clause 25 should be read in conjunction with Division 2.9.2 of the CLPA (clause 7) where the contract for sale relates to the purchase of a unit within a units plan that is not yet registered (also known as an “off the plan” purchase).

If the units plan is not registered, new section 11(2A) provides that the conditions under section 11(1)(h) of the CLSRPA are not applicable. This is due to the introduction of the new disclosure statements under the CLPA which provides a number of implied warranties for buyers who purchase a unit prior to the registration of the units plan. Section 11(1)(h) will still apply in the circumstance of a contract for sale for a unit in an already registered units plan.

Clause 26 Dictionary, new definition of *building management statement*

Clause 26 inserts the new definition in the CLSRPA for a *building management statement* as defined under section 123D of the *Land Titles Act 1925* (clause 29).

Part 4 Community Title Act 2001

Clause 27 Section 9, heading

Clause 27 amends the heading for section 9 from Power of Minister to require changes to scheme proposal to Power of authority to require changes to scheme proposal.

Clause 28 Community Title Scheme-approval New section 10(1A) and (1B)

Clause 28 inserts new section 10(1A) giving the ability for the planning and land authority to refuse a proposal to develop a community title scheme.

Community title schemes provide for the ability to create a development of individual lots with common property that includes the roads, infrastructure and amenities, such as open shared spaces. Community titles differ from units plans as a community title scheme can be registered over several blocks of land, where a units plan can only be registered over one block. Community title schemes can also contain one or more units plans on blocks within the scheme. The scheme is managed by a body corporate in accordance with the terms of the management statement for the scheme. Lot owners within a community title scheme are similar to unit owners within a units plan in that they must comply with rules and pay contributions for the repair and maintenance of common property, however lot owners in a community title share and are responsible for common facilities or amenities that can be located within the community title scheme. For example, a community title may include a common open area with a children's playground, barbeques and picnic facilities that are accessible by the public as well as roads, street lighting and pathways. The body corporate of the community title scheme is responsible for the maintenance and repair of all these common facilities, which all lot owners must contribute to.

New section 10(1A) introduces the ability to allow the planning and land authority to assess the suitability of the proposed development to be registered as a community title scheme. If the proposal is for a single building, or single set of buildings that are physically interconnected with little to no open space, the planning and land authority may determine that the proposal to register the development as a community title scheme is not appropriate and refuse the application. The purpose of this is to ensure that new developments are subject to the most appropriate governance structure for the ongoing management of the development. This distinction and process recognises that the Community Title Act is essentially designed to apply to areas with multiple separate building and exclusive opens spaces and not to a single building or single set of physically integrated buildings.

New section 10(1B) sets out the matters the planning and land authority must take into account to determine whether to refuse the approval of a community titles scheme on the grounds that the application relates to a single building or single set of physically related buildings with no or limited external open space. In assessing this, the planning and land authority must take into account whether:

- a) the proposed lots correspond to the attached or semi-attached buildings; and

- b) the proposed lots are limited wholly or partly by height or depth; and
- c) the common property is on above or below another proposed lot; and
- d) the buildings are physically integrated through an underground car parking or physical overpasses or similar building structures; and
- e) the buildings make use of physically integrated common facilities such as lust and underground car parking; and
- f) the amount of open space such as lawns and gardens or roads is limited relative to the buildings in the community title scheme proposal.

If the proposed community title scheme includes the matters as set out in section 10(1B), the planning and land authority may refuse to approve the community title scheme proposal.

Part 5 Land Titles Act 1925

Clause 29 New part 11A

Clause 29 inserts new *Part 11A – Building Management Statements* into the *Land Titles Act 1925* with the following new sections.

Clause 29 and new Part 11A-Building Management Statements in the Land Titles Act should be read in conjunction with clauses 45 and 47 in new Part 11 of the *Unit Titles Act 2001*.

Clause 45 amends the UTA by inserting new section 17B that applies to applications under sections 17, 17A of the UTA for the unit titling of a land parcel where only a part of the building is to be unit titled and other parts of the building are to be held under separate leases separate to the proposed units plan. Clause 45 has the effect that such an application must include a building management statement.

Clause 47 amends the UTA by the insertion of new section 20(1)(e). New section 20(1)(e) applies where the unit titling application included a building management statement. New section 20(1)(e) provides that in this case the documentation approved by the planning and land authority prior to registration of a new units plan must include a building management statement that complies with the requirements set out in new Part 11A Building Management Statements set out in clause 29.

Clauses 29, 45, 47 have the combined effect that a new units plan that occupies only some of several leases existing in a building, then the units plan cannot be registered until a building management statement has been prepared for the scheme and has been approved by the planning and land authority as complying with the requirements of new Part 11A Building Management Statements.

New Part 11A Building Management Statements [BMS]

New section 123C Definitions-pt 11A

New section 123C defines the terms *approved*, *building management committee*, *building management statement (BMS)*, *parties*, *registered building management statement*.

New section 123D Building management statement may be registered

New section 123D provides for the registration of a BMS for a building by the registrar-general of land titles. The provision also provides for the registration of amendments to BMSs.

The registrar-general may register a statement if the statement applies to a building that includes multiple crown leases and the statement is approved by the planning and land authority as including the required content as per section 123F and as applying to a single building or building complex (refer new sections 123C, 123D, 123F).

The BMS must be registered against each relevant crown lease (new section 123D(4)). Once registered the BMS has the effect as set out in new section 123E.

New section 123E Effect of building management statement

New section 123E sets out the effect of a registered BMS.

New section 123E(1) provides that a BMS has the effect of a binding agreement (agreement under seal) between the parties to the BMS including the lessees of each lease, the owners corporation if a part of the building is unit titled and a mortgagee in possession or sublessee of a part of the building.

The binding agreement is to the effect that the parties to the statement are jointly and severally bound to carry out their obligations under the BMS and to permit the carrying out of those obligations (new sections 123E(1), (2)).

The above has the effect that any owner of the crown lease for the time being (or mortgagee in possession, or sublessee) is automatically bound by the terms of the BMS as soon as they acquire the lease. When the person ceases to own the crown lease then the statement is no longer binding on that person. Obligations incurred by the person while the person was a party to the statement that are unmet continue to apply (new sections 123E(3) and (4)).

On registration of the BMS each owner of a lease automatically acquires against the owner of another lease specified easement rights necessary for the use and enjoyment of the lease (new section 123D(5)). These easements rights are similar to the easement rights applying to units in a units plan under Division 4.2 of the Unit Titles Act. These include rights of support, shelter and protection, rights to utility services and to their provision by any reasonable form of utility conduit and ancillary rights to make these deemed rights effective including rights of entry at reasonable times for inspection and maintenance.

A BMS has no effect to the extent that it is inconsistent with a development approval under the *Planning and Development Act 2007* or an environmental authorisation or environmental protection order under the Environment Protection Act 1997 or any other Territory law (new section 123E(5)).

New section 123F Formal requirements for building management statement

New section 123F sets out the required content for a BMS. The BMS must include the:

- required content includes the establishment of a building management committee, appointment of office holders, and the functions of the committee, officers (sections 123F(1)(a), (b), (c)).
- a process for resolving disputes and for amending the statement (new section 123F(1)(d), (e)).
- the proposed scheme for the sharing of costs and the review of this process (new s123F(f)(g))
- an arrangement to insure the building in accordance with the requirements prescribed by regulation (new s123F(1)(h))
- an address and process for serving documents on the building management committee; and
- any other matter as may be required by regulation (section 123F(1)(j)).

The BMS may include other optional elements as set out in new section 123F(2). These possible additional elements relate to safety and security measures; appointment of a managing agent for building; measures for control of noise; contracts for waste and other services; maintenance codes for the appearance of the building; easements; operation, maintenance or renovation of the building structure including lift wells and utility conduits; common facilities of the building, access to common facilities. The additional matters can include any other matter related to the management of the building. It is important to note that a BMS has no effect to the extent that it is inconsistent with a condition of a development approval under the Planning and Development Act, an environmental authorisation under the Environment Protection Act 1997 or any other Territory Law including the Land Titles Act.

New section 123G Building management committee—procedure

New section 123G sets out the default procedures for the operation of a building management committee. The default procedures can be altered by explicit provision to the contrary in the BMS. New section 123G(e) provides that the set of default procedures can be added to by regulation.

New section 123H Amendment of building management statement

New section 123H sets out the circumstances in which a BMS can be amended. Importantly any amendment must be agreed and supported by the parties to the statement (section 123H(1)) unless made by order of a court or tribunal.

New section 123I Planning and Land Authority approval of building management statement

New section 123I sets out the process for applying for approval of a BMS.

A BMS cannot be registered in the land titles register by the Registrar-General of Land Titles under new section 123D unless and until the statement is approved by the planning and land authority (new section 123D(3) and new section 123C definition of approved). New section 123I provides for an application for this approval to be made by the parties to a BMS, that is, the parties to a statement that has yet to be registered.

A refusal of an application for approval of a BMS is subject an application to ACAT for merit review (new Part 18 of the Land Titles Act, clause 30).

Clause 30 New part 18

Part 18 Notification of review of decisions

Clause 30 inserts new Part 18 Notification and review of decisions into the Land Titles Act.

New part 18 applies in the circumstance where an application is made to the planning and land authority for approval of a proposed BMS and the application is refused by the planning and land authority. A BMS takes effect when it is registered in the land titles register under new s123D of the Land Titles Act (clause 29), refer also to new sections 123D(5), 123E(1) (clause 29). The Registrar-General can only register the BMS if it is first approved by the planning and land authority under new s123I (clause 29). The planning and land authority can only approve the BMS if satisfied that the BMS meets the requirements

of new Part 11A Building management statements and that the application relates to a single building or single set of physically related buildings (new section 123I(2) clause 29).

New part 18 by the sets out the right of an applicant for approval of a BMS to seek merit review of a decision to refuse the application.

New section 163 Definitions-pt18

New section 163 defines terms for new Part 18, including definitions of *applicant* and *reviewable decision*.

New section 163A Reviewable decision notices

New section 163A requires the authority to give a reviewable decision notice to the applicant in relation to the decision. Note 1 under this section refers to the fact that under section 67A of the *ACT Civil and Administrative Tribunal Act 2008*, the planning and land authority must also take reasonable steps to give a reviewable decision notice to other persons whose interests may be affected by the decision.

New section 164 Applications for review

New section 164 sets out who may apply to ACAT for merit review of a decision to refuse an application for approval of a BMS. These persons include the applicant and any other person whose interests may be affected by the decision.

Clause 31 Dictionary, new definitions

Clause 31 defines certain terms used in new Part 11A set out in clause 29. This includes the terms:

- *Applicant*
- *Approved*
- *Building management committee*
- *Building management statement*
- *Parties*
- *Registered building management statement*
- *Reviewable decision*

Part 6 Land Titles Regulation 2015

Clause 32 New section 2A

Clause 32 inserts new section 2A into the *Land Titles Regulation 2015*.

New section 123F(1)(h) of the *Land Titles Act 1925* (clause 29) requires a BMS to include arrangements for insurance if one of the parties to the BMS is an owners corporation, the arrangements must be consistent with any prescribed requirements.

New section 2A of the Land Titles Regulation sets out the required content for arrangements for insurance that must be included in a BMS under new section 123F(1)(h). Under new section 2A(a) the requirements include insurance for the replacement value of the building against the risk of events such as fire, earthquakes, explosions, malicious damage, bursting of water pipes. The insurance must also cover costs incidental to the reinstatement or replacement of the insured building.

Under new section 2A(2) the arrangement must set out a method for allocating the costs of the insurance premiums between the parties.

Part 7 Land Titles (Unit Titles) Act 1970

Clause 33 Section 6

Clause 33 deletes existing section 6 of the *Land Titles (Unit Titles) Act 1970* (LTUTA) and substitutes new section 6.

New section 6 makes it expressly clear what steps must be undertaken before a units plan can be registered by the Registrar-General of land titles. New section 6(2) makes it clear that the units plan must be prepared in accordance with the requirements of schedule 1 of the LTUTA and must be endorsed by the planning and land authority under section 27 of the UTA. These requirements are consistent with the practical effect of the existing provisions of the UTA and the LTUTA but makes these requirements expressly, immediately clear (refer also to existing sections 17, 17A, 20, 27 of the UTA and section 7 of the LTUTA).

In this context under the existing law it should be noted that the documentation endorsed by the planning and land authority must be lodged with the Registrar-General within 3 months of the endorsement. If the plans are not lodged in this time the endorsement lapses (existing section 28 of the UTA).

Clause 34 Registration of units plan New section 7(1)(f)

Clause 34 inserts new section 7(1)(f) into the *Land Titles (Unit Titles) Act 1970*.

Existing section 7(1) sets out the documents that are part of the proposed units plan following planning and land authority endorsement. New section 7(1)(f) applies if a developer seeks to have a set of owners corporation rules that are in addition to or differ from the default rules (refer below) apply to a proposed units plan. In this case the documentation included in the list of documents that are to be a part of the units plan includes the alternative rules.

New section 106 (clause 90) sets out what are the rules of the owners corporation. The rules are the default rules or the amended by the alternative rules, if any, registered under the Land Titles (Unit Titles) Act, section 27 (clause 37). New section 108(3) (clause 93) sets out the requirements for alternative rules. New section 108(6) (clause 93) provides for additional requirements to be set by regulation. New section 7B (clause 135) sets out a number of such requirements.

Clause 35 Registration of charge to secure unpaid amounts Section 13(b)

Clause 32 amends section 13(b) of the Land Titles (Unit Titles) Act by omitting the words “under the corporation seal” and replacing with the words “by the executive committee”.

Clause 32 amends section 13(b) of the Land Titles (Unit Titles) Act as a consequence of the additional options for executing documents introduced in new section 9A (clause 56), refer also to new section 9(2)(b) (clause 55).

Clause 36 Registration of discharge

Section 14(b)

Clause 36 amends section 14(b) of the Land Titles (Unit Titles) Act by omitting the words “under the corporation’s seal” and replacing with the words “by the executive committee”.

Clause 36 amends section 14(b) of the Land Titles (Unit Titles) Act as a consequence of the additional options for executing documents introduced in new section 9A (clause 56), refer also to new section 9(2)(b) (clause 55).

Clause 37 Section 27

Clause 37 omits existing section 27 of the Land Titles (Unit Titles) Act and substitutes new section 27.

Existing section 27 of the Land Titles (Unit Titles) Act requires the Registrar-General to register an amendment of the rules of an owners corporation in certain circumstances. The amendment must be registered if a certificate is lodged about the special resolution authorising the amendment.

New section 27 retains this existing requirement but extends it to new circumstances established in the Bill in which rules can be created or amended. These additional circumstances include the lodgement of alternative rules with the registration of the original units plan (new s7(1)(f) of the Land Titles (Unit Titles) Act, clause 34) and also include amendment through a declaration of ACAT under new s129(2A) of the Unit Titles (Management) Act (clause 102).

Clause 38 Dictionary, new note

Clause 38 inserts a new note to the Dictionary of the Land Titles (Unit Titles) Act to the effect that terms defined in the UTMA have the same meaning as in the Land Titles (Unit Titles) Act.

Clause 39 Dictionary, definition of *owners corporation*

Clause 39 omits from the Dictionary of the Land Titles (Unit Titles) Act, the definition of *owners corporation*. This definition is not required given the operation of existing section 3A of the Land Titles (Unit Titles) Act (refer also to clause 38).

Part 8 Legislation Act 2001

Clause 40 Meaning of commonly-used terms Dictionary, part 1, definition of *territory lease*, Paragraph (a) (ii)

Clause 40 amends the definition of *territory lease* in the *Legislation Act 2001* by omitting paragraph (a)(ii) and substituting new paragraph (a)(ii).

The amendment to the definition of *territory lease* is a correction. The existing paragraph (a)(ii) in the definition provides that a territory lease includes a lease under the *Unit Titles Act 2001* (UTA). This description is in error as the definition of the term “lease” in the Dictionary to the UTA includes “declared land subleases”. As a result existing paragraph (a)(ii) refers to a type of sublease. This reference to subleases in (a)(ii) is inconsistent with paragraph (b) of the definition of territory lease which expressly excludes subleases from the concept of territory lease. This inconsistency is resolved by new paragraph (a)(ii) which references a lease that is a lease that under the terms of the UTA is taken to be a lease granted under the *Planning and Development Act 2007*.

This amendment should also be read in conjunction with new section 163(1)(d) of the UTA (Clause 52). New section 163(1)(d) provides that the new lease arising over the relevant parcel of land upon the cancellation of a units plan under existing section 162 is deemed to be a lease granted by the Territory under the *Planning and Development Act 2007*. This is an amendment to make the status of this new lease immediately clear. This amendment puts it beyond doubt that this is a *territory lease* as defined in the amended definition of *territory lease*.

Part 9 Planning and Development Act 2007

Clause 41 Form of development applications New section 139(2)(ca)

Clause 41 inserts new section 139(2)(ca) in relation to development applications.

New section 139(2)(ca) provides for where the planning and land authority receives a development application and the application relates to a building that is subject to a building management statement. In addition to the other relevant requirements in section 139, the application must be signed by 2 members of the building management committee who are authorised to sign the application on behalf of the committee.

Clause 42 Section 139 (8), new definitions

Clause 42 inserts new definitions for *building management committee* and *building management statement* in accordance with sections 123F(1) and 123D(2) of the Land Titles Act 1925 (refer Clause 29).

Part 10 Residential Tenancies Act 1997

Clause 43 Standard residential tenancy terms Schedule 1, clause 66

This clause amends Schedule 1, clause 66 of the *Residential Tenancies Act 1997* (RTA).

Schedule 1 of the RTA sets out the standard residential tenancy terms which apply to all residential tenancy agreements in the ACT. Clause 66 under the RTA deemed that a tenant must comply with the rules of the owners corporation in so far as they were consistent with the standard terms of the residential tenancy agreement.

The *Residential Tenancies Amendment Bill 2018* (effective 1 November 2019) amended the *Residential Tenancies Act 1997* (RTA) in part through the introduction of new standard clauses in a residential tenancy agreement allowing a tenant to keep an animal on the premises with the consent of the landlord. Landlords wanting to refuse consent for the keeping of an animal must now seek an order from the ACT Civil and Administrative Tribunal to prohibit the keeping of the animal on the premises.

In accordance with amendments to section 32 of the UTMA (clause 63), clause 66 of the standard residential tenancy terms in schedule 1 of the RTA has been amended to ensure consistency with new pet rules adopted by owners corporations. These amendments retain the requirement that a tenant must comply with rules of the owners corporation unless they are inconsistent with their tenancy agreement, with the exception of any pet friendly rule in force. For example, if the landlord consents to the tenant keeping four pets, but the rule of the owners corporation only permits three, the rule will prevail. The purpose of this is to ensure that the standard clause in a residential tenancy agreement permitting a tenant to keep an animal, or animals, does not conflict with any pet friendly rule or consent process imposed by the owner corporations.

Part 11 Unit Titles Act 2001

Clause 44 Unit title applications-general requirements

New section 17 (5A)

Clause 44 inserts new section 17(5A) into the UTA.

Existing section 17 of the UTA provides that a lessee of a parcel of land can apply to the planning and land authority for the approval of the subdivision of the land under the UTA. The subdivision of the land under the UTA is in effect the conversion of the land into a units plan. The existing requirements for such an application are set out in sections 17(3)-17(7). An application under section 17 is referred to in the UTA as a unit title application (refer section 6 of the UTA and the Dictionary definition of *unit title application*).

New section 17(5A) of the UTA adds to the matters that are required to be included in application for subdivision of the land under existing section 17 of the UTA. New section 17(5A)(a) requires the application to include the full list of potential uses of the unit available for the owner/occupier of each unit under the proposed units plan. New section 17(5A)(b) requires the application to state if there are any proposed restrictions on the uses available for a unit and if there are what is the restricted uses still available to the unit and the conditions, if any, to be imposed on any available use of the unit.

Clause 45 New section 17B

New section 17B applies in the circumstance where the application involves a parcel of land located in a building or proposed building and other leases also apply in the relevant building and those other leases are not involved in the application. For example, the building may have multiple levels (eg 10) and the proposal is to convert levels 8-10 to a units plan but leave levels 1-8 as covered by an entirely separate lease or leases (sometimes referred to as “stratum leases”).

In this circumstance, the application for subdivision under new section 17 or 17A must include a registered building management statement (BMS) (refer to new Part 11A of the Land Titles Act clause 29) or a proposed BMS for the approval of the planning and land authority. A proposed BMS cannot be registered unless approved by the planning and land authority as complying with Part 11A of the Land Titles Act and relates to a single building or set of physically related buildings (new sections 123D(3), 123I of the Land Titles Act, clause 29).

Clause 46 Unit title applications-approval

Section 20 (1) (b)

Clause 46 omits existing section 20(1)(b) of the UTA and substitutes new sections 20(1)(b) and 20(1)(ba).

Existing section 20 of the UTA provides that the planning and land authority must not grant a unit title application (that is an application under section 17 of the UTA (refer also to section 6 of the UTA) unless satisfied of specified matters. The matters that the planning and land authority must satisfy itself about are set out primarily in existing section 20(1) and also in sections 20(2) to 20(10).

New section 20(1)(b) reproduces the requirement in existing section 20(1)(b) that each unit be suitable for separate occupation.

New section 20(1)(ba)(i) requires that the proposed use for each unit be permitted by the lease for the relevant parcel of land. This is similar to the requirement in existing section 20(1)(ba) that the use of each unit be “not inconsistent with the lease of the parcel.”

New section 20(1)(ba)(ii) is a new provision to make it clear that any proposed use must be consistent with the relevant development approval or condition of a development approval granted under the Planning and Development Act. This clarification is consistent with the fact that a development approval can include conditions as to ongoing use as indicated in the new Note 1 under this new section.

Clause 47 New section 20(1)(e)

Clause 47 inserts new section 20(1)(e) into the UTA.

New section 20(1)(e) applies in the circumstance when the unit title application includes a not yet registered building management statement. This new section makes it clear that the unit title application cannot be granted unless the statement complies with the requirements for such a statement in new part 11A of the Land Titles Act (clause 29).

**Clause 48 Notice of approval of unit title applications
New section 23(1)(b)**

Clause 48 omits existing section 23(1)(b) of the UTA and substitutes new section 23(1)(b).

Existing section 23 of the UTA requires the planning and land authority to give the lessee of the relevant parcel written notice of the approval of the unit title application if it is approved. The written notice must include the content set out in sections 23(1)(a), (b), (c). Existing section 23(1)(b) requires the notice to set out “a schedule setting out the rent to be reserved under the lease of each unit and the provisions subject to which the lease of the unit is to be held”.

New section 23(1)(b) includes the existing requirements in existing section 23(1)(b) and adds the following. New section 23(1)(b)(ii) makes it clear that the provisions subject to which the lease of each unit is to be held must state the permitted uses for the unit including whether the unit is restricted to residential use only and if not the range of potential uses for the unit. In connection with this section it is important to note that new section 17(5A) of the UTA (clause 44) requires the unit title application to include a statement of the proposed uses for each unit and any proposed restrictions on the use of a unit. It is also important to note that new section 260(2)(c) of the Civil Law (Property) Act requires the mandatory disclosure statement that must accompany a contract of sale for a unit in a proposed units plan to indicate the proposed uses for each unit.

The anticipation is that the set of proposed uses in the unit title application will be consistent with the uses indicated in the disclosure statement. If the proposed uses are not consistent with the disclosure statement and the variation has not been updated to the buyer, then the buyer will have a right to rescind the contract if the change results in significant prejudice to the buyer. It is also relevant to note that the proposed uses cannot

be approved if they contradict a condition of a development approval (refer new section 20(1)(ba) of the UTA, clause 46).

Clause 49 Leases of units and common property
Sections 33(2) and (3) and note

Clause 49 omits existing sections 33(2), 33(3) and substitutes new sections 33(2), 33(3).

New sections 33(2), 33(3) are the same in substance as the existing with rewording for clarification. New Notes 1, 2 also inserted to assist with understanding of the context for section 33.

New section 33(2) omits a reference to “estate in leasehold” as this status is implicit in the fact that under new section 33(3)(b) the relevant lease is taken to be a lease granted under the *Planning and Development Act 2007*.

Clause 50 Section 33(4)

Clause 50 amends existing section 33(4).

Amended section 33(4) of the UTA is necessary as a consequence of new sections 33(2), 33(3) of the UTA (clause 49).

Clause 51 Section 33(6)

Clause 51 amends existing section 33(6) by omitting the word *estate* and replacing with *lease*. This amendment is consequential to the amendments in clause 49.

Clause 52 Cancellation of units plan-new lease over parcel
New section 163(1)(d)

Clause 52 inserts new section 163(1)(d) into the UTA.

New section 163(1)(d) provides that the new lease arising over the relevant parcel of land upon the cancellation of a units plan under section 162 is deemed to be a lease granted by the Territory under the *Planning and Development Act 2007*. This is an amendment to make the status of the new lease immediately clear. This amendment also puts it beyond doubt that this is a *territory lease* as defined in the amended definition of *territory lease* in the Legislation Act (clause 40).

Clause 53 New part 26

Clause 53 inserts new *Part 26-Transitional-Unit Titles Legislation Amendment Act 2019* into the UTA consisting of new sections 305, 306. New sections 305, 306 are transitional provisions.

New section 305 applies to an application for a unit titling of a parcel of land under existing sections 17, 17A of the UTA in the following circumstance. New section 305 applies where the application relates to a part of a building and other leases not involved in the application relates to other parts of the building. This is a scenario where new section 17B (clause 45) applies including new section 17B(2). New section 17B(2) requires the application to include a building management statement in this scenario. The nature and requirements for a building management statement are set out in new *Part 11A Building Management Statements* in the amended *Land Titles Act 1925* (clause 29).

In the above circumstance, new section 305 provides that if the unit titling application under existing sections 17, 17A of the UTA is made before 1 July 2021, the application may but need not include a building management statement as otherwise required by section 17B(2).

New section 306 provides that the transitional provision new section 305 expires 12 months after the provision commences. The following note confirms that the transitional provisions continues to have legal effect after this repeal as per section 88 of the Legislation Act.

Clause 54 Dictionary, new definitions

Clause 54 inserts new definitions into the UTA dictionary for a *building management statement* and *schedules of rent and lease provisions*.

Part 12 Unit Titles (Management) Act 2011

Clause 55 Owners corporation-legal status

Section 9(2)(b)

Clause 55 omits section 9(2)(b) and substitutes new section 9(2)(b). New section 9(2)(b) provides that an owners corporation may, but need not, have a common seal.

Existing section 9 of the UTMA sets out the legal status of an owners corporation, that is, that it is a corporate entity and among other things may sue and be sued in its corporation name. Existing section 9(2)(b) requires the owners corporation to have a common seal. This existing requirement reflects the fact that various sections in the UTMA require the corporation to execute documents through the common seal of the corporation refer for example to sections 15, 96, 108, 119. Section 3.4 of schedule 3 on the conduct of meetings requires the developer to provide the corporation's seal at the first AGM of the owners corporation.

New section 9A (clause 56) provides for the use of the common seal to be optional and provides for an alternative mechanism for the execution of documents, that is signature by two members of the executive committee.

In light of the fact that the use of a common seal will be optional, new section 9(2)(b) provides that an owners corporation may [but need not] have a common seal.

Clause 56 New section 9A

Clause 56 inserts new section 9A in division 2.2. New section 9A sets out two methods for the owners corporation to execute documents. The corporation can elect to use either method.

The method for the execution of documents set out in new section 9A(a) involves the use of a common seal. This method requires the attaching of a common seal as witnessed by two members of the executive committee.

The alternative method for the execution of documents set out in new section 9A(b) does not involve the use of a common seal. This method involves the signing of the relevant document by either:

- (a) two members of the executive committee who are authorised to do so by a resolution of the owners corporation;
- (b) the owners corporation manager, if the manager is delegated this function and as authorised by a resolution of the owners corporation.

Clause 57 Evidence of representative status

Section 15

Clause 57 amends section 15 of the UTMA. The amendment is to omit the words "certificate sealed with the owners corporation's seal" and substitute the words "certificate executed by the executive committee".

This amendment to section 15 of the UTMA is made as a consequence of the additional options for executing documents introduced in new section 9A (clause 56).

Clause 58 Exemptions for units plans with 4 or fewer units
Section 18

Clause 58 omits section 18 of the UTMA.

Existing section 18, while less than immediately clear, arguably permits an owners corporation with 4 or fewer units to exempt itself from the operation of requirements of the Act subject to the regulations. No regulation has been made to guide the exercise of this power to date.

Clause 58 omits existing section 18 as it is replaced in the Bill by new section 147(1A) (clause 103). New section 147(1A) permits the making of a regulation to the effect that a specified units plan or class of units plan is exempted from the operation of specified provisions of the Act. This provision will, for example, permit specified classes of units plans (e.g. units plans with 4 units or less) to be exempted from specified provisions if the Territory Executive considers that a requirement is too onerous for a units plan of the specified size. Any such regulation will, like other regulations, be subject to the requirements for regulatory impact statements (Part 5.2 of the Legislation Act) and will be disallowable in the Legislative Assembly.

Clause 59 Section 22

Clause 59 omits section 22 of the UTMA and substitutes new section 22.

New section 22 like the existing section 22 relates to “special privileges”. This term is defined in a new Dictionary definition in the UTMA (clause 133) essentially as a special right to use the common property of a units plan in a way that is additional to, or restrictive of, the rights of other people.

Existing section 22(1) of the UTMA provides that an owners corporation can grant a special privilege for the use of common property by an unopposed resolution. The special privilege can be granted to a unit owner or someone else with an interest in a unit.

New section 22 permits the granting of the special privilege through a special resolution. The ability to make a special privilege by a special resolution will give the owners corporation a measure of flexibility, noting that the voting threshold for the making of a special resolution has been raised (new section 3.16(1) (clause 116) of the UTMA). New section 22 also restricts the operation of section 22 to special privileges that are for a period of less than three months (new section 22(1)).

New sections 112A, 112B of the UTMA (clause 94) apply to the granting of a special privilege that is to last for a period of three months or more. In this case the special privilege must be granted in the form a rule of the owners corporation that takes effect on registration under section 27 of the *Land Titles (Unit Titles) Act 1970* (clause 37), refer also to new section 108A of the UTMA (clause 93).

Clause 60 Maintenance obligations
New section 24(1A) and (1B)

Clause 60 inserts new section 24(1A).

Existing section 24 of the UTMA requires an owners corporation to maintain the common property and specified features of the relevant building with class A units such as walls, beams, slabs etc and also features for the provision of utility services.

New section 24(1A) requires the owners corporation to also prepare a maintenance plan containing the matters prescribed in the UTMR. This requirement is to be a part of the obligation of the owners corporation to maintain common property etc. under existing section 24(1). In preparing the maintenance schedule, the owners corporation must take account of the developer's maintenance schedule, if any, provided to the owners corporation at the start of the units plan. The requirement for a developer's maintenance schedule is set out in new section 25 (clause 61).

New section 4A of the UTMR (clause 148) sets out the matters that must be covered in the maintenance schedule. The matters required to be covered under new section 4A of the UTMR include a schedule for the maintenance of systems, equipment and other structures on the common property including among other things exterior walls gutting and roof, air conditioning, heating and ventilation systems, fire protection equipment, sprinkler systems.

Clause 61 Section 25

Clause 61 omits existing section 25 of the UTMA and substitutes new section 25.

New section 25 requires the developer of a units plan to prepare a schedule for the maintenance of the common property. The schedule must address the matters set out in the UTMA (new section 25(2), clause 61). The prescribed matters are set out in new section 4B of the UTMR (clause 134). The matters required to be covered under new section 4A of the UTMR include a schedule for the maintenance of systems, equipment and other structures on the common property including among other things exterior walls gutting and roof, air conditioning, heating and ventilation systems, fire protection equipment, sprinkler systems.

The developer must provide the developer's maintenance schedule to the owners corporation at the first annual general meeting of the corporation. This requirement is set out in new section 3.4(ca) of schedule 3 of the UTMA (clause 113). Existing section 3.4 of schedule 3 lists the records (documents) that the developer must provide to the owners corporation at the first annual general meeting. The developer's maintenance schedule is an addition to the set of required documents.

New sections 25(3), (4) set out the effect of the developer's maintenance schedule. New section 25(3) provides that the owners corporation is not required to comply with the developer's maintenance schedule. In other words the schedule itself does not alter the maintenance obligations of the owners corporation as set out in section 24 of the UTMA. The owners corporation may review the schedule and determine a different schedule if it considers the different schedule would be more effective in guiding its maintenance actions

under section 24. It should be noted that the owners corporation must nonetheless determine its own maintenance schedule and in doing so must take account of the developer's maintenance schedule (new section 24(1A) clause 60).

New section 25(4)(a) provides that the developer's maintenance schedule may be relevant in any court proceedings in determining whether building damage or building defects could have been avoided. It is conceivable that the maintenance schedule may be relevant because it included recommended actions that were not taken by the owners corporation or it may be relevant because it did not include information with the result that reasonably required action was not taken by the owners corporation as it was not aware of the need to do so.

New section 25(4) makes it clear that the providing of the required developer's maintenance schedule does not have any affect on the obligations of the developer in relation to structural defects, warranties or similar matters.

Clause 62 Section 32 heading

Clause 62 omits the existing heading to section 32 of the UTMA and inserts a new heading.

Clause 63 Section 32(1)

Clause 63 omits existing section 32(1) of the UTMA and inserts new section 32(1).

New section 32(1) sets out the circumstances in which an animal may be kept by an owner or occupier of a unit in a units plan.

New section 32(1)(a) provides that an animal may be kept if the animal is an assistance animal. The term *assistance animal* is defined in new definition in the Dictionary to the UTMA (clause 125). This means that in the case of an assistance animal, the permission of the owners corporation cannot be required for the keeping of the animal.

New section 32(1)(b) sets out the circumstances in which an animal that is not an assistance animal can be kept.

New section 32(1)(b)(i) provides that an animal (that is not an assistance animal) can be kept if it is kept in accordance with a "pet friendly rule" in the rules of the owners corporation. In this case, the consent of the owners corporation is not required. The ability to make such a rule represents a change from the existing approach in existing section 32 of the UTMA which prohibits the keeping of an animal without the consent of the owners corporation and does not permit the rules of the corporation to provide otherwise.

The meaning of *pet friendly rule* is set out in a new entry in the dictionary to the UTMA (clause 131). The new dictionary definition refers to new section 112C (clause 94). New section 112C provides that the owners corporation may by special resolution make a rule that permits an owner or occupier to keep an animal in a unit or common property and to do so without the need to obtain prior consent of the owners corporation. Such a rule is a *pet friendly rule* (new section 112C(1), clause 94). The rule may be subject to conditions of the type set out in new section 112C(2) such as the number and type of animal, giving notice

of the keeping of the animal to the owners corporation, security of the animal, cleaning after the animal and other matters.

New schedule 1 to the UTMR (clause 137) sets out the default rules that are to apply to a new units plan if the units plan does not adopt alternative rules. Section 1.5 of the default rules relate to pets. Section 1.5 is a “pet friendly rule” as it permits the keeping of pets subject to conditions without the need to obtain the prior consent of the owners corporation. A particular transition provision applies to this rule. This section 1.5 pet friendly rule will apply to existing owners corporations on and after a transition period. The transition period ends the day after the second AGM of the owners corporation following commencement (new section 170, clause 104), unless the owners corporation makes an alternative rule during this transition period (new section 170 UTMA, clause 104).

New section 32(1)(b)(ii) provides that if there is no pet friendly rule, then an animal can be kept but only if the prior consent of the owners corporation has been provided. This would apply if there is no rule on pets or if the rule is to the effect that the prior consent of the owners corporation is required. In the case where prior consent is required, the owners corporation must respond to any request in writing and the documentation must set out the reasons for refusal if consent is refused and must set out any conditions to which the consent is subject new section 32(3) (clause 64). Failure to respond to a request within three weeks of the making of the request is deemed to constitute consent of the owners corporation (new section 32(3)(c) clause 64).

If the consent of the owners corporation is required, the consent can be withheld. However, the consent of the owners corporation can be withheld only on reasonable grounds (new section 32(3A) clause 64). This principle reflects the existing requirement in section 32(3) of the UTMA. New section 32(3A) includes examples of what may constitute a reasonable ground for withholding consent. The examples include unacceptable risk to health and safety of other unit occupiers or owners, unacceptable risk of damage to property and unacceptable risk of escape or nuisance.

If the consent of the owners corporation is required, the consent of the owners corporation may be given subject to conditions but any such conditions must be reasonable (new section 32(3A)(b) clause 64). New section 32(3A) includes examples of what may constitute a reasonable condition for granting consent. The examples include conditions as to the security of the animal, cleaning and supervision.

Clause 64 Section 32(3) and note

Clause 64 omits existing section 32(3) and substitutes new section 32(3) and 32(3A) and note to new section 32(3).

New section 32(3) provides that the owners corporation must respond to any request to keep an animal in writing setting out the reasons for refusal if consent is refused and any conditions to which the consent is subject (new section 32(3)(a)). Failure to respond to a request within three weeks of the making of the request is deemed to constitute consent of the owners corporation (new section 32(3)(c)). The owners corporation may delegate its power under amended section 32 to the executive committee (new section 32(3)(b)).

New section 32(3A) provides that if the consent of the owners corporation is required, the consent can be withheld but only on reasonable grounds (new section 32(3A)). This principle reflects the existing requirement in section 32(3) of the UTMA. New section 32(3A) includes examples of what may constitute a reasonable ground for withholding consent. The examples include unacceptable risk to health and safety of other unit occupiers or owners, unacceptable risk of damage to property and unacceptable risk of escape or nuisance.

New section 32(3A) also provides that if the consent of the owners corporation is required, the consent of the owners corporation may be given subject to conditions but any such conditions must be reasonable (new section 32(3A)(b)). New section 32(3A) includes examples of what may constitute a reasonable condition for granting consent. The examples include conditions as to the security of the animal, cleaning and supervision.

Clause 65 Section 32 (4), new definition of occupier

Clause 65 inserts a new definition of *occupier* into existing section 32(4) of the UTMA.

Under existing section 32 of the UTMA a unit owner or *occupier* can apply for the consent of the owners corporation. There is no definition of occupier for the purpose of existing section 32. This means that there is some doubt as to whether a prospective tenant who has not yet taken possession of the relevant unit can apply to the owners corporation to keep their pet in the unit. This may create difficulties for a new tenant who has entered into a residential tenancy agreement with the landlord but has yet to move into the premises or the tenancy period has yet to commence. In this situation it is not clear that the prospective tenant can obtain consent in advance of physically moving into the premises. This can create significant uncertainty for the tenant.

The new definition of *occupier* in amended section 32(4) effectively provides that an “occupier” includes a person who has entered into a residential tenancy agreement notwithstanding that the person has yet to occupy the relevant unit or that the term of the tenancy agreement has yet to start or that the person has yet to obtain consent from the lessor to the keeping of an animal under the *Residential Tenancies Act 1997*.

This provision has particular significance in the case where an owners corporation requires prior consent of the corporation to the keeping of an animal in a unit. This is the requirement that applies in the event that the owners corporation does not have a “pet friendly rule” (new section 32(1)(b) of the UTMA, clause 63). This definition for the purpose of amended section 32 has the effect that if a person who is a party to a residential tenancy agreement (e.g. a new tenant), that person can seek owners corporation consent to the keeping of an animal in the relevant unit even if the person has yet to move into the unit and become an occupier in the typical sense of the term.

Existing section 32(4) continues to define *animal* for the purpose of amended section 32.

Clause 66 Restriction on owners corporation during developer control period
Section 33(1)(a)(ii)(B)

Clause 66 omits the words “subsection (3)” from section 33(1)(a)(ii)(B) and substitutes the words “section 33A”. Clause 61 is an amendment made as a consequence of new section 33A (clause 69). New section 33A provides for the entering into contracts during the developer control period with the approval of ACAT.

Clause 67 Section 33(1)(b)

Clause 67 omits existing section 33(1)(b) and substitutes new section 33(1)(b).

Clause 67 is an amendment made as a consequence of new section 33A (clause 84). New section 33A provides for the entering into contracts and the changing of rules during the developer control period with the approval of ACAT.

Clause 68 Section 33(2), (3) and (4) and examples

Clause 68 omits section 33(2), (3) and (4) and examples.

Clause 68 is an amendment made as a consequence of new section 33A (clause 69). New section 33A provides for the entering into contracts and the changing of rules during the developer control period with the approval of ACAT.

Clause 69 New section 33A

Clause 69 inserts new section 33A into division 3.4 of the UTMA.

New section 33A sets out the circumstances in which an owners corporation can enter into a contract or change the owners corporation rules notwithstanding that this action is otherwise prohibited under amended section 33.

Existing section 33 of the UTMA sets out certain restrictions on the entering into of contracts, changing rules or approving the keeping of animals during the “developer control period”. The developer control period is defined in the dictionary to the UTMA as the period that “starts on the day the owners corporation for the units plan is established; and ends on the day people other than the developer hold 1/3 or more of the unit entitlements for the units plan”. New section 33A does not affect the definition of developer control period.

New section 33A and entering into contracts

In connection with the entering into of contracts, a contract cannot be entered into unless the contract is disclosed in each contract of sale for a unit and is either for a period of 2 years or less or is approved by ACAT (existing section 33(1) of the UTMA). ACAT can approve a contract in this circumstance if it considers the contract reasonable in all the circumstances taking into account any matters it considers relevant and that may be prescribed in the UTMR (existing sections 33(3), (4) of the UTMA). No matters are currently prescribed in the UTMR for the purpose of section 33(4) of the UTMA. Note also section 51 of the UTMA that prohibits an owners corporation from entering into a contract for the management of a units plan for a period exceeding 3 years.

This general approach to contracts has been retained in new section 33A, refer to new sections 33A(1), (4). There is a new requirement that written notice of an application to

ACAT for approval to enter into a contract must be provided to every unit owner and, if applicable, each mortgagee or registered interest holder (new section 33A(2)). These persons to whom notice must be given are parties to the ACAT application (new section 33A(2)). In light of this new process requirement and to simplify the section, the ability to prescribe matters that must be considered by ACAT in an application in this context under existing section 33(4) has been removed. Also the associated requirement that ACAT can consider all matters that it considers relevant (section 33(4)) has been removed as this they are an inherent requirement in any event. The examples in section 33(4) have also been omitted as of limited utility given the requirement is for ACAT to consider whether the contract is reasonable in all of the circumstances. New section 33A(6) makes it clear that this requirement does not apply if the developer has not entered into a contract for the sale of any of the units in a units plan.

New section 33A and changing owners corporation rules

Existing section 33 prohibits the owners corporation from changing the rules during the developer control period. There are currently no exceptions to this requirement. This restriction is considered to be too inflexible generally. It is also considered to be too inflexible given the new ability for a developer to put forward an alternative set of rules prior to registration of a units plan and for these rules to become the rules of the new owners corporation (new section 7(1)(f) and 27 of the Land Titles (Unit Titles) Act (clauses 34 and 37); sections 106, 106A (clause 90)). It is important for there to be a process to address an unanticipated practical difficulty that may arise with the adoption of an alternative rule.

New section 33A(1) permits the owners corporation to apply to ACAT for authorisation to change the rules during a developer control period. New section 33A(5) provides that ACAT may authorise the proposed change to a rule if satisfied that the change is fair in the circumstances. New section 33A(2) requires notice of any such application to be given to all unit owners, mortgagees and persons with an interest in the units plan. Such persons are parties to the application. New section 33(6) makes it clear that this requirement does not apply if the developer has not entered into a contract for the sale of any of the units in a units plan. If the developer still owns all of the units, then a future buyer will be informed of the rules as changed prior to the purchase.

New section 33A and owners corporation approval of the right to keep an animal

Existing section 33(1)(c) prohibits the owners corporation from consenting to the keeping of an animal during the developer control period unless the right to keep an animal was set out in earlier contracts of sale. This provision is omitted as the approach to the keeping of animals can now be addressed through the owners corporation rules (refer to new section 32(1) clause 63).

**Clause 70 Executive committee-at and from the first annual general meeting
Section 39(4)**

Clause 70 omits existing section 39(4) and substitutes new section 39(4).

Division 4.1 of Part 4 of the UTMA sets out requirements in relation to the establishment and operation of executive committees of an owners corporation. Existing section 39(4) provides for the election of members of an executive committee by ordinary resolution at an owners corporation annual general meeting. This requirement for election does not apply for units plans with 3 or less units (existing section 39(2)(a) of the UTMA). Also if the number of executive committee members is equal to or less than the number of members of the owners corporation then in this case the executive committee consists of all members of the owners corporation (existing section 39(3) of the UTMA).

New section 39(4) includes a new requirement in connection with the election of a member of the executive committee. The new requirement is for a member of an executive committee to be a “qualified person”. *Qualified person* is defined in new section 39(7) (clause 73). New section 39(7) defines *qualified person* for the purpose of amended section 39 as a unit owner (or if owner is a company or unit is owned by multiple persons – a representative of the company or owners), however the person cannot be the units plan manager.

This restriction is to require a degree of independence of the decisions of the executive committee from the position of the manager. This is considered necessary given the different functions of the executive committee and the manager. The manager of a units plan is as defined in existing sections 49, 50 of the UTMA. The functions of the manager are set out in section 52 of the UTMA. For similar reasons this restriction also applies to an associate of the manager. *Associate* [of a manager] is defined in new section 39(7) (clause 73). This restriction does not apply when a person becomes a member of an executive committee by operation of sections 39(2)(a), 39(3) of the UTMA) as the limited numbers involved means that it would be impractical to impose this requirement in this case.

Clause 71 Section 39(5)

Clause 71 omits “another member of the corporation” and substitutes “a qualified person”. This amendment is made as a consequence of new section 39(4) (clause 70).

Clause 72 Section 39(6)

Clause 72 omits “another member of the corporation” and substitutes “a qualified person”. This amendment is made as a consequence of new section 39(4) (clause 70).

Clause 73 New section 39(7)

Clause 73 inserts new section 39(7) into section 39 of the UTMA.

New section 39(7) defines the terms *associate*, *qualified person*, *manager* for the purpose of amended section 39 (refer especially new section 39(4), clause 70).

Clause 74 New section 39A

Clause 74 inserts new section 39A into the UTMA.

Existing section 39 provides for the establishment and election of executive committees. New section 39A sets out a new requirement in connection with the composition of an executive committee. New section 39A applies where the units plan lease provides for at least one residential only unit and one unit that is for a non-residential use (new section

39A(1)). New section 39A(2) requires the executive committee, if feasible, to include a unit owner from the group of units that are residential only and from the group of units that are for a non-residential use. An owner or member of the executive committee can apply to ACAT for an order requiring an election to be held to satisfy this requirement (new section 39A(3)).

Clause 75 Executive committee-chairperson’s functions
Section 41(b)

Clause 75 amends section 41(b).

This amendment is a consequence to new section 41(2) (clause 76). New section 41(2) provides that the Minister may make guidelines about the items that the chairperson must include on an agenda for an owners corporation meeting or executive committee meeting.

Clause 76 New section 41(2) and (3)

Clause 76 inserts new sections 41(2) and (3) into the UTMA.

New section 41(2) provides that the Minister can make guidelines about the items that the chairperson must include on an agenda for an owners corporation meeting or executive committee meeting. The Minister for example could require an annual general meeting to include consideration of issues about the physical integrity of a building. The guidelines are a notifiable instrument (new section 41(3)).

Clause 77 Executive committee-delegation
Section 44(1), except note

Clause 77 omits section 44(1) of the UTMA and substitutes new section 44(1).

New section 44(1) makes it immediately clear that the executive committee can delegate its functions to a sub-committee as well as to one or more executive committee members. The note to this section is unchanged.

Clause 78 Manager-code of conduct
Section 56, new note

Clause 78 inserts a new note in association with section 56 of the UTMA. The new note emphasises that other laws may apply to the work of a units plan manager. The note includes an example to the effect that a units plan manager who is required to be licensed as a real estate agent under the *Agents Act 2003* must comply with the rules of conduct for real estate agents under the *Agents Regulation 2003*.

Clause 79 General fund-budget
Section 75(2)(a)

Clause 79 omits section 75(2)(a) of the UTMA and substitutes new section 75(2)(a).

New section 75(2)(a) continues to require the general fund budget to state for the financial year in which the annual general meeting is to be held the estimate of total contributions to be paid into the general fund by owners corporation members (new section 75(2)(a)(i)).

New section 75(2)(a)(ii) includes a new requirement for the general fund budget to include an estimate of the amounts payable by unit owners or unit owners in a particular class in

the case that the default methodology has been modified as a result of a special resolution under new section 78(3)(b) (clause 81). The intention is that the general fund budget is to include an estimate of the funds likely to be payable by each unit owner under the altered methodology.

Clause 80 General fund-contributions
Section 78(2)(b)

Clause 80 amends section 78(2)(b) of the UTMA. The amendment is omit the words “in an unopposed resolution” and substitute the words “by special resolution”.

Existing section 78(2)(a) sets out the default methodology for determining the general fund contribution payable by each unit. The default methodology is that the amount payable for each unit is the “proportional share” for the unit of the total general fund contribution. The term “proportional share” is defined in the Dictionary to the UTMA. The Dictionary indicates that the proportional share corresponds to the unit entitlement of the relevant unit relative to all unit entitlements.

Existing section 78(2)(b) permits the default methodology for determining the general fund contribution payable for each unit to be modified. The modification can only be made by an unopposed resolution. The modification can only be amended by an unopposed resolution and can only be revoked by a special resolution.

Amended section 78(2)(b) permits the default methodology to be modified by the passing of a special resolution (rather than the existing requirement for an unopposed resolution). The result of the modification must be fair taking into account the factors identified in new section 78(3)(a)(i)-(iv) (clause 81). In addition, new section 78(4) (clause 81) permits a modified methodology to be amended by special resolution (rather than the existing requirement for an unopposed resolution).

The voting requirements for a special resolution are set out in amended section 3.16 of schedule 3 of the UTMA (clauses 115-117). For an owners corporation with four or more members a special resolution is a vote of owners corporation members that is a majority with no more than one quarter of the votes cast opposing the resolution.

A special resolution to modify the default methodology for determining contributions payable to the general fund is taken to be an amendment of the owners corporation rules (new section 108(5) clause 93). Under existing section 108(2) an amendment of the owners corporation rules takes effect from the date that it is registered in the land titles register or such later date as may be specified in the amendment.

A unit owner can apply to the ACAT for review of a special resolution under amended section 78(2)(b) that modifies the default methodology for determining contributions (new section 127(1)(d) (clause 99)). Following such an application ACAT can declare that the modification is invalid on the basis that it is not fair (new section 129(1)(e)(iv) clause 100). In assessing whether the new methodology is fair it is anticipated that the ACAT Tribunal will consider the matters set out in new section 78(3)(a) (clause 81).

Clause 81 Section 78(3) and (4)

Clause 81 omits existing sections 78(3) and (4) of the UTMA and substitutes new sections 78(3) and (4).

Amended section 78(2)(b) (clause 80) permits the default methodology for determining the general fund contribution payable for each unit to be modified. New section 78(3)(a) requires the new methodology to be fair taking into account specified factors (section 78(3)(a)(i)-(iv)). New section 78(3)(b) is consistent with existing section 78(3) and continues to provide that a new methodology may require a specified unit owner or class of unit owners to pay a particular contribution, that is a contribution that differs from the standard contribution that would otherwise be payable.

Existing section 78(4) provides that a modified methodology for determining contributions payable to the general fund can be amended or revoked by unopposed resolution. New section 78(4) changes this so that the modified methodology can be amended by special resolution. The voting requirements for a special resolution are set out in amended section 3.16 of schedule 3 of the UTMA (clauses 115-117). For an owners corporation with four or more members a special resolution is a vote of owners corporation members that is a majority with no more than one quarter of the votes cast opposing the resolution.

New section 78(4) also provides that the methodology can be amended or revoked by an ACAT order following application for ACAT merit review. A unit owner can apply to the ACAT for review of a special resolution under amended section 78(2)(b) that modifies the default methodology for determining contributions (new section 127 (clause 99)). Following such an application ACAT can declare that the modification is invalid on the basis that it is not fair (new section 129(1)(e)(iv) clause 100). In assessing whether the new methodology is fair it is anticipated that the ACAT Tribunal will consider the matters set out in new section 78(3)(a) (clause 81).

Clause 82 Sinking fund plan New section 82(3)(c)

Clause 82 inserts new section 82(3)(c).

Existing section 82(3)(a) is retained and it requires the sinking fund to state the expected sinking fund expenditure for at least the 10 year period of the sinking fund plan. Section 82(3)(b) of the UTMA is retained and it requires the sinking fund plan to state for each financial year of the plan the total contributions required from members of the owners corporation to meet the expected sinking fund contribution for the financial year as well as the amounts required to reserve an amount necessary to be accumulated to meet expected expenditures over the remaining years of the plan.

New section 82(3)(c) includes a new requirement for the sinking fund plan to state the amounts payable by unit owners or unit owners in a particular class in the case that the default methodology has been modified as a result of a special resolution under amended section 89(2)(b) (clause 83). The intention is that the sinking fund budget is to include an estimate of the funds likely to be payable by each unit owner under the altered methodology.

Clause 83 Sinking fund-contributions

Section 89(2)(b)

Clause 83 amends section 89(2)(b) of the UTMA. The amendment is to omit the words “in an unopposed resolution” and substitute the words “by special resolution”.

Existing section 89(2)(a) sets out the default methodology for determining the sinking fund contribution payable by each unit. The default methodology is that the amount payable for each unit is the “proportional share” for the unit of the total sinking fund contribution. The term “proportional share” is defined in the Dictionary to the UTMA. The Dictionary indicates that the proportional share corresponds to the unit entitlement of the relevant unit relative to all unit entitlements.

Existing section 89(2)(b) permits the default methodology for determining the sinking fund contribution payable for each unit to be modified. The modification can only be made by an unopposed resolution. The modification can only be amended by an unopposed resolution and can only be revoked by a special resolution.

Amended section 89(2)(b) permits the default methodology to be modified by the passing of a special resolution (rather than the existing requirement for an unopposed resolution). The result of the modification must be fair taking into account the factors identified in new section 89(3)(a)(i)-(iv) (clause 84). In addition, new section 89(4) (clause 84) permits a modified methodology to be amended by special resolution (rather than the existing requirement for an unopposed resolution).

The voting requirements for a special resolution are set out in amended section 3.16 of schedule 3 of the UTMA (clauses 115-117). For an owners corporation with four or more members a special resolution is a vote of owners corporation members that is a majority with no more than one quarter of the votes cast opposing the resolution.

A special resolution to modify the default methodology for determining contributions payable to the sinking fund is taken to be an amendment of the owners corporation rules (new section 108(5) clause 93). Under existing section 108(2) an amendment of the owners corporation rules takes effect from the date that it is registered in the land titles register or such later date as may be specified in the amendment.

A unit owner can apply to the ACAT for review of a special resolution under amended section 89(2)(b) that modifies the default methodology for determining contributions (new section 127(1)(d) (clause 99)). Following such an application ACAT can declare that the modification is invalid on the basis that it is not fair (new section 129(1)(e)(iv) clause 100). In assessing whether the new methodology is fair it is anticipated that the ACAT Tribunal will consider the matters set out in new section 89(3)(a) (clause 84).

Clause 84 Section 89(3) and (4)

Clause 84 omits existing sections 89(3) and (4) of the UTMA and substitute new sections 89(3) and (4).

Amended section 89(2)(b) (clause 83) permits the default methodology for determining the sinking fund contribution payable for each unit to be modified. New section 89(3)(a)

requires the new methodology to be fair taking into account specified factors (section 89(3)(a)(i)-(iv)). New section 89(3)(b) is consistent with existing section 89(3)(b) and continues to provide that a new methodology may require a specified unit owner or class of unit owners to pay a particular contribution, that is a contribution that differs from the standard contribution that would otherwise be payable.

Existing section 89(4) provides that a modified methodology for determining contributions payable to the sinking fund can be amended or revoked by unopposed resolution. New section 89(4)(a) changes this so that the modified methodology can be amended by special resolution. The voting requirements for a special resolution are set out in amended section 3.16 of schedule 3 of the UTMA (clauses 115-116). For an owners corporation with four or more members a special resolution is a vote of owners corporation members that is a majority with no more than one quarter of the votes cast opposing the resolution.

New section 89(4)(b) also provides that the methodology can be amended or revoked by an ACAT order following application for ACAT merit review. A unit owner can apply to the ACAT for review of a special resolution under amended section 89(2)(b) (clause 83) that modifies the default methodology for determining sinking fund contributions (new section 127 (clause 99). Following such an application ACAT can declare that the modification is invalid on the basis that it is not fair (new section 129(1)(e)(iv) clause 100). In assessing whether the new methodology is fair it is anticipated that the ACAT Tribunal will consider the matters set out in new section 89(3)(a).

Clause 85 Security for unpaid amounts-declaration of charge
Section 96(3)(a)

Clause 85 amends section 96(3)(a) of the UTMA by omitting the words “under the seal of the corporation” and replacing with the words “by the executive committee”.

Clause 85 amends section 96(3)(a) as a consequence of the additional options for executing documents introduced in new section 9A (clause 56), refer also to new section 9(2)(b) (clause 55).

Clause 86 Security for unpaid amounts-discharge
Section 97(2)(b)

Clause 86 amends section 97(2)(b) of the UTMA by omitting the words “under the seal of the corporation” and replacing with the words “by the executive committee”.

Clause 86 amends section 97(2)(b) as a consequence of the additional options for executing documents introduced in new section 9A (clause 56), refer also to new section 9(2)(b) (clause 55).

Clause 87 Section 100

Clause 87 omits existing section 100 of the UTMA and substitutes new section 100.

Existing section 100 requires the owner corporation for a units plan to insure and keep insured all buildings on the land for their replacement value and to do so against the risks set out in sections 100(1)(a)-(f). Section 100(2) requires the owners corporation to take out

an insurance policy that covers the risks set out in sections 100(1)(a)-(f) including against incidental costs.

New section 100 is in the same terms as existing section 100 except the application of this section is extended to the circumstance where the relevant units plan is part of a building that is the subject of a building management statement.

New section 100 applies the obligation to take out the required insurance to the “responsible entity”. New section 100(5) defines the “responsible entity” for this purpose as the owners corporation or if the units plan is part of a building that is the subject of a building management statement, the building management committee established under the building management statement.

The building management committee consists of each party to the building management statement (new section 123F(1)(a) of the *Land Titles Act 1925* (clause 29). The parties to a building management statement are set out in new section 123E(1) of the Land Titles Act (clause 29). Under new section 123E(1) the parties include the owners corporation, other lessees or sublessees of other parts of the building and any mortgagee in possession.

The above requirements are supported by new section 123F(1)(h) of the Land Titles Act (clause 29) which requires a building management statement, to which an owners corporation is a party, to set out an arrangement for the insurance of the relevant building covered by the building management statement in accordance with requirements prescribed by regulation. The regulation for the purpose of new section 123F(1)(h) is set out in new section 2A of the *Land Titles Regulation 2015* (clause 32). The arrangement must be to insure and keep insured the relevant building to the greatest practical extent for the replacement value of the building against all of the risks set out in new section 2A(1)(a)(i)-(v) of the Land Titles Regulation and also for incidental costs as per new section 2A(1)(b).

Other requirements in connection with the approval and registration of building management statements are set out in:

- new section 9(1A) of the *Community Title Act 2001* (clause 28);
- new Part 11A in the Land Titles Act, new sections 123C-123I (clause 29);
- new section 123E of the Land Titles Act on the effect of a building management statement;
- new section 123F of the Land Titles Act on the content requirements for a building management statement;
- new section 2A of the *Land Titles Regulation 2015* (clause 32);
- new section 17B of the UTA (clause 45); and
- new section 20(1)(e) of the UTA (clause 47).

Clause 88 Public liability insurance by owners corporation
New subsection 102(3)

Clause 88 inserts new section 102(3) into the UTMA.

New section 102(3) has the effect that the owners corporation is not required to take out public liability insurance as required under section 102 if this requirement has in effect been satisfied by insurance taken out under a building management statement.

The key requirements in connection with building management statements are set out in:

- new section 10(1A) of the *Community Title Act 2001* (clause 28);
- new Part 11A in the *Land Titles Act 1925*, new sections 123C-123I (clause 29); noting especially new section 123E on the effect of a building management statement and new section 123F on the content requirements for a building management statement;
- new section 2A of the *Land Titles Regulation 2015* (clause 32);
- new section 17B of the UTA (clause 45); and
- new section 20(1)(e) of the UTA (clause 47).

Clause 89 New division 6.1 heading

Clause 89 inserts new heading *Division 6.1 Rules-generally* into the UTMA.

Clause 90 Section 106

Clause 90 omits section 106 of the UTMA and substitutes new section 106.

New section 106 sets out what the rules of an owners corporation are. Under section 106 the rules of an owners corporation are the default rules as amended by alternative rules, if any, that are registered under new section 27 of the *Land Titles (Unit Titles) Act 1970*.

In connection with this provision it is relevant to note that:

- the term *rules* of an owners corporation is defined in the new Dictionary definition of *rules* (clause 132) by reference to new section 106;
- the term *alternative rules* is defined in a new Dictionary definition to the UTMA as rules other than the *default rules* (clause 125);
- the term *default rules* is defined in a new Dictionary definition in the UTMA as the rules prescribed in the *Unit Titles (Management) Regulations 2011* (UTMR) (clause 126); and
- new section 7A and schedule 1 to the UTMR (clause 135) set out the new default rules.

The default rules can be amended by alternative rules either:

- a) as lodged at the time of registration of a new units plan (new sections 7(1)(f) and 27 of the *Land Titles (Unit Titles) Act 1970* (clauses 34, 37); or
- b) made by special resolution by the owners corporation under new section 108 of the UTMA (clause 93).

The alternative rules must meet the requirements for alternative rules as set out in new section 108 of the UTMA (clause 93) and new section 7B of the UTMR (clause 135) made under new section 108(6) of the UTMA.

Clause 91 Effect of rules

Section 107(2)

Clause 91 omits section 107(2) of the UTMA and substitutes new section 107(2).

Existing section 107(2) provides that the rules of the owners corporation apply to occupiers as well as unit owners. New section 107(2) continues this principle with one new exception. New section 107(2) provides that this does not apply to rules about contributions to the general fund or the sinking fund. It is the responsibility of the unit owner not a tenant to contribute to these funds.

Clause 92 Section 107(4)

Clause 92 omits section 107(4) from the UTMA and substitutes new section 107(4).

Existing section 107(4) indicates that a tenant occupying a unit under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1997* is not bound by an owners corporation rule to the extent the rule is inconsistent with the prescribed terms for such an agreement under section 8 of the Residential Tenancies Act. New section 107(4) maintains this principle except in relation to a *pet friendly rule*. This exception is to make it clear that a tenant must comply with any conditions of a pet friendly rule, for example conditions as to keeping the animal secure and not causing a nuisance.

New section 107(5) defines *residential tenancies agreement* and *standard residential tenancy terms* for the purpose of this section.

New section 32(1)(b)(i) (clause 63) provides that an animal can be kept if it is kept in accordance with a “pet friendly rule” in the rules of the owners corporation. In this case, the consent of the owners corporation is not required. The meaning of *Pet friendly rule* is set out in a new entry in the dictionary to the UTMA (clause 131). The new dictionary definition refers to new section 112C (clause 94). New section 112C provides that the owners corporation may by special resolution make a rule that permits an owner or occupier to keep an animal in a unit or common property and to do so without the need to obtain prior consent of the owners corporation. Such a rule is a *pet friendly rule* (new section 112C(1), clause 94). The rule may be subject to conditions of the type set out in new section 112C(2) such as the number and type of animal, giving notice of the keeping of the animal to the owners corporation, security of the animal, cleaning after the animal and other matters.

New schedule 1 to the UTMR sets out the default rules that are to apply to a new units plan if the units plan does not adopt alternative rules. Section 1.5 of the default rules relate to pets. Section 1.5 is a “pet friendly rule” as it permits the keeping of pets subject to conditions without the need to obtain the prior consent of the owners corporation.

Clause 93 Section 108

Clause 93 omits existing section 108 of the UTMA and inserts new sections 108 and 108A into the UTMA.

New section 108 Owners corporation may make alternative rules

Existing section 108 provides that an owners corporation may amend the rules of the corporation by special resolution (section 108(1)). The amendment of the rules takes effect

upon registration of a copy of the special resolution for the amendment in the register of land titles or from such later date as stated in the resolution (section 108(2)).

Existing section 108(1) provides that an owners corporation may by special resolution amend its rules. The substance of this section is retained in new section 108(1) with the following qualifications. The Bill refers to amending the default rules through “alternative rules” and new section 108(1) refers to the amendment of rules by the making of alternative rules. In connection with this reference it is relevant to note that the term:

- *rules* of an owners corporation is defined in the new Dictionary definition of *rules* (clause 132) by reference to new section 106;
- *alternative rules* is defined in a new Dictionary definition to the UTMA as rules other than the *default rules* (clause 125);
- *default rules* is defined in a new Dictionary definition in the UTMA as the rules prescribed in the *Unit Titles (Management) Regulations 2011* (UTMR) (clause 126); and
- new section 7A and schedule 1 to the UTMR (clause 135) set out the new default rules.

Also in connection with new section 108(1) the requirement for amending rules by a *special resolution* is retained. However, the voting requirement for a special resolution is changed under this Bill. New section 3.16(1) of schedule 3 to the UTMA (clause 117) provides that a special resolution is passed if the votes cast in favour exceed the votes against and no more than one quarter of persons voting on the resolution and present at the meeting are opposed (or if a poll is conducted no more than one quarter of the voting value of votes cast is opposed). This is a more restrictive threshold than the existing requirement in existing section 3.16(1) which requires that no more than one third of votes (or voting value) be opposed.

108(2) of the UTMA sets out when a rule amendment takes effect. This provision is replaced by new section 108A with some differences as noted below.

Existing section 108(3) of the UTMA sets out particular matters that the owners corporation of a retirement village may make provision for through a rule amendment. The substance of this provision is retained in new section 108(2).

Existing section 108(4) provides that an amendment to an owners corporation rule has no effect to the extent that it results in the rules doing any of the things set out in sections 108(4)(a)-(d) including contravening the UTMA or any other Territory law; giving a function to the owners corporation that is not incidental or ancillary to the functions of the corporation; prohibiting or restricting any dealing with an interest in the unit; prohibiting or restricting the installation, operation or maintenance of sustainability or utility infrastructure.

The requirement in existing section 108(4)(a) that the owners corporation rule amendments not contravene a territory law has among other things the following effect. A rule

amendment must not contravene the *Discrimination Act 1991* including in relation to accommodation (refer for example to sections 21, 33A of the *Discrimination Act*).

New section 108(3) provides that a rule amendment is not valid to the extent that it results in rules that have any of the effects set out in new sections 108(3)(a) to 108(3)(h). All of the requirements in existing section 108(4) are retained in substance in new sections 108(3)(a); 108(3)(d); 108(3)(e); 108(3)(f). New section 108(3) also includes certain additional requirements that must be met by an alternative rule amending the default rules.

New section 108(3)(b) provides that an amendment to a rule is invalid to the extent that it is inconsistent with a building management statement. The key requirements in connection with building management statements are set out in:

- new section 10(1A) of the *Community Title Act 2001* (clause 28);
- new Part 11A in the *Land Titles Act 1925*, new sections 123C-123I (clause 29); noting especially new section 123E on the effect of a building management statement and new section 123F on the content requirements for a building management statement;
- new section 2A of the *Land Titles Regulation 2015* (clause 32);
- new section 17B of the UTA (clause 45); and

New section 108(3)(c) requires that an amendment be not incompatible with a human right under the *Human Rights Act 2004* (HRA), that is, a human right set out in sections 8-27A of the HRA or otherwise be harsh, unconscionable or oppressive.

In connection with the requirement in new section 108(3)(c) that an alternative rule be not incompatible with a human right under the HRA does not mean that a rule cannot affect or engage a human right. Section 28(1) of the HRA provides that human rights may be subject to “reasonable limits set by laws that can be demonstrably justified in a free and democratic society”. Section 28(2) of the HRA sets out the factors that must be considered in deciding whether a limit is reasonable including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

For example, a rule that limits access to a swimming pool in the common property by unsupervised children could be considered to affect or engage the human right 8 in the HRA in relation to the right to be equal before the law and be protected against discrimination on any ground. In this case the rule might reasonably be considered to be not incompatible with the human right 8 as it is reasonably necessary for the protection of the lives and safety of children. Whether a matter is harsh, unconscionable or oppressive will depend on the circumstances involved taking into account the interests of unit owners.

New section 108(3)(g) applies in the situation where ACAT has made an order requiring the making or repealing an alternative rule. In this situation after the rule has been repealed or made as required the owners corporation cannot consider a new alternative rule that is contrary to the original ACAT requirement unless the alternative rule is passed by a unanimous resolution.

New section 108(3)(h) has the effect that a rule cannot be made if it would amount to an absolute prohibition on the keeping of an animal in any circumstances. This does not prevent an alternative rule that applies conditions to the keeping of animals. This also does not prevent an alternative rule that amends the existing “pet friendly rule” in default rule 1.5 of schedule 1 to the UTMR (clause 137). This also does not prevent an alternative rule to the effect that there is no pet friendly rule with the effect that new section 32(1)(b)(ii) of the UTMA (clause 63) applies and prior consent by the owners corporation for the keeping of an animal is required (new section 32(1)(b) of the UTMA, clause 63).

New section 108(4) provides that an alternative rule is not invalid as contravening new section 108(3)(a) only because it requires the production of evidence as to the status of an assistance animal. New default rule 1.6 of schedule 1 to the UTMR (clause 137) provides that the owners corporation may require a person who keeps an assistance animal to produce evidence to the effect that an animal is an assistance animal.

New sections 108(5) apply to special resolutions of the owners corporation with the effect of changing the default methodology for determining contributions to the general fund and the sinking fund under new sections 78 or 89 of the UTMA (clauses 80, 83). New section 108(5) deems such special resolutions to be the making of an alternative rule and as such must be written into the rules of the owners corporation. The requirement for rule amendments to be registered in the land titles register in section 108A of the UTMA applies to these matters. Under section 108A(1) the new methodology change will take effect when the alternative rule is registered or at such later date as may be provided in the relevant special resolution.

New section 108(6) provides that the UTMR may prescribe additional requirements for alternative rules. Such new requirements are set out in new section 7B of the UTMR (clause 135).

New section 108(7) provides that amendment of a rule (through an alternative rule) includes variation, rescission, substitution or addition. This section is similar to existing section 108(5) of the UTMA.

New section 108A Effect of registration of alternative rule

New section 108A replaces existing section 108(2) of the UTMA. Consistent in substance with existing section 108(2) new section 108A(1) provides that an alternative rule takes effect on registration in the land titles register or on such later date as indicated in the relevant special resolution. The procedures required in new section 108A(1) should be read in conjunction with the requirements relating to the action of registration of alternative rules in new section 27 of the *Land Titles (Unit Titles) Act 1970* (clause 37). New section

27(3)(a) of the Land Titles (Unit Titles) Act requires the lodgement of a certificate about the relevant special resolution under section 3.19 of schedule 3 of the UTMA.

New section 108A(2) is a new requirement. New section 108A(2) provides that an alternative rule must be registered within three months after the day that the relevant special resolution was passed. If the alternative rule is not registered by this date, the resolution is taken to have never been made. This is consistent with the need to ensure that the land titles register remains a relatively up to date record of all alternative consistent with the aim of transparency and accountability.

Clause 94 New division 6.2

Clause 94 inserts new *Division 6.2 Rules-particular matters* into the UTMA.

New Division 6.2 of the UTMA includes various matters including provisions relating to different types of owners corporation rules and applications to ACAT for resolution of disputes about the rules. The included matters relate to special privileges, rules about animals and insurance information. The new Division 6.2 also includes provisions related to unit title certificates under existing section 119 of the UTMA and a new regulation making power.

Division 6.2 Rules-particular matters

New subdivision 6.2.1 Special privileges in relation to common property

New section 112A Grant of special privileges in relation to common property

New section 112A relates to “special privileges”. The term *special privilege* is defined in a new definition in the Dictionary to the UTMA (clause 133) essentially as a special right to use the common property of a units plan in a way that is additional to, or restrictive of, the rights of other people. This description of the term special privilege is similar to its use in existing section 22 of the UTMA with additional detail for clarification.

Existing section 22 of the UTMA provides for the granting of a special privilege for the enjoyment of the common property to a unit owner or someone else with an interest in the unit. The grant must be made through an unopposed resolution of the owners corporation and can be terminated by special resolution of the corporation through written notice to the person who received the grant.

Clause 59 omits existing section 22 of the UTMA and replaces it with new section 22. New section 22 provides for the granting of special privileges that are for a period of less than three months.

New section 112A applies to special privileges lasting 3 months or more. In relation to these special privileges, new section 112A takes the place of the existing section 22 process. The new process requires a special privilege for a period of 3 months or more to take the form of an owners corporation rule, a special privilege rule (new section 112A(1)). The special privilege rule can be made by special resolution, that is, an unopposed resolution is no longer required.

The special privilege rule can only be made with the grantee's consent, the grantee must not unreasonably withhold consent (new sections 112A(2)(a), 112A(5)). Consent of the grantee is important because the special privilege rule may include obligations on the grantee in respect to maintenance. New section 128(1)(a) of the UTMA (clause 96) provides that an owners corporation may apply to ACAT for an order declaring that a grantee has unreasonably withheld consent to the making of a special privilege rule. For example, a commercial operator of a restaurant may make use of a part of the common property for the storage of restaurant cleaning facilities and the owners corporation may seek to formalise this arrangement through a special privilege requiring the operator to maintain the relevant area. If the commercial operator does not consent to the special privilege rule, the owners corporation can apply to ACAT for an order declaring the grantee has unreasonably withheld consent. In considering whether to make a declaration ACAT must have regard to the interests of all unit owners in the use and enjoyment of their unit and common property and also the interests of the grantee (new section 129(2B) of the UTMA, clause 102).

The special privilege rule must include certain matters. The rule must indicate who has responsibility for ongoing maintenance of the relevant area that is the owners corporation or the grantee. If the grantee is responsible for maintenance, the rule must state the type and frequency of the required maintenance (new section 112A(3)(a)). To the extent that maintenance becomes an obligation of the grantee, the owners corporation is relieved of its maintenance obligations under existing section 24 of the UTMA (new section 112A(3)(b)).

A special privilege rule may be made so that it applies for a specified period only (new section 112A(4)).

A new special privilege rule, is an "alternative rule" under the definition of "alternative rule" in the new definition in the Dictionary to the UTMA (clause 125). New section 108A of the UTMA (clause 93) provides that an alternative rule [including special privilege rules] take effect on registration under section 27 of the *Land Titles (Unit Titles) Act 1970* (clause 37). If the rule is not registered within 3 months of the relevant special resolution the special resolution is taken to have never been passed (new section 108A of the UTMA, clause 93).

New section 112A(6) provides that a special privilege rule that is registered [consistent with new section 108A of the UTMA] is taken to have been validly made after a period of two years despite any defect or irregularity in relation to the making of the rule. This provision is intended to provide a level of certainty to the grantee of the special privilege and the owners corporation.

New section 167 (clause 104) of the UTMA is a transitional provision that preserves existing special privileges already made under existing section 22 of the UTMA. Under new section 167 existing special privileges are preserved until the transition date of 1 July 2021. In order for an existing special privilege to continue beyond this date, it will need to be made again and consistent with the requirements of new section 112A including registration of the special privilege as a rule of the owners corporation.

New section 112B Amendment or revocation of special privilege rule

Existing section 22 of the UTMA provides that a special privilege can be terminated through a special resolution by notice to the grantee.

New section 112B provides for the amendment or revocation (termination) of a special privilege rule. New section 112B provides that the special privilege rule may only be amended or revoked by special resolution and only with the consent of the grantee which consent may not be unreasonably withheld.

New section 128(1)(b) of the UTMA (clause 99) provides that an owners corporation may apply to ACAT for an order declaring that a grantee has unreasonably withheld consent to the making of a special privilege rule. For example, the owners corporation may conclude that a grantee no longer has a practical need or use for a special privilege and therefore it should be revoked, or an owners corporation may consider that a grantee is not fulfilling their obligations for maintenance under a special privilege rule. New section 128(2)(c) (clause 99) provides that the grantee may apply to ACAT for a declaration that the owners corporation has unreasonably refused to amend or revoke a special privilege rule under new section 112B. For example, a grantee may no longer have the need to use the common property area and therefore seek revocation of a special privilege, and as a result, no longer be responsible for maintenance of the area. In considering whether to make a declaration ACAT must have regard to the interests of all unit owners in the use and enjoyment of their unit and common property and also the interests of the grantee (new section 129(2B) of the UTMA, clause 102).

New subdivision 6.2.2 Rules about animals

New section 112C Owners corporation may make pet friendly rule

New section 112C applies to the keeping of animals (eg pets) within a unit or the common property.

New section 112C(1) provides that an owners corporation may by special resolution make a rule permitting an owner or occupier to keep an animal without the specific consent of the owners corporation. Such a rule is a *pet friendly rule*. Clause 131 inserts a new definition in the Dictionary to the UTMA of a *pet friendly rule*. The dictionary definition refers to this new section 112C.

New section 112C(2) sets out the types of conditions that a pet friendly rule may include. The conditions can be about:

- The number and type of animals that can be kept;
- The giving of written notice to the owners corporation about the keeping of an animal;
- Supervision of the animal;
- Keeping the animal secure; and
- Any other matters reasonably necessary to ensure an animal does not cause a nuisance or risk to health or safety.

If there is no pet friendly rule in place for the owners corporation then the position as to the keeping of animals by the owner or occupier (other than an assistance animal) is as set out in new sections 32(1)-32(4) of the UTMA (clauses 63, 64, 65). This means that the owner/occupier must obtain the consent of the owners corporation which consent cannot be unreasonably withheld and which consent can be subject to reasonable conditions.

If the relevant animal is an *assistance animal* then the owner/occupier who is assisted by the assistance animal has the right to keep the animal, irrespective of the existence of a pet friendly rule and without the need for prior consent of the owners corporation. Clause 125 inserts a new definition of *assistance animal* in to the Dictionary to the UTMA, the definition refers to section 5AA(3) of the *Discrimination Act 1991*.

Clause 95 Insurance information
Section 118(a)

Clause 95 omits existing section 118(a) from the UTMA and substitutes new section 118(a).

Existing section 118 provides that requests can be made by an “eligible person” to inspect the documents set out in sections 108(a) to 108(c). Existing section 108(a) relates to current insurance policies taken out by the corporation. The term *eligible person* is defined in the Dictionary to the UTMA as:

- a) the owner, or another person with an interest in the unit, or in an easement over the common property;
- b) for a unit that is owned, or part-owned, by a company—the representative of the company;
- 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.

New section 118(a) also specifies insurance policies taken out by the owners corporation and adds to this. New section 118(a) requires the production of insurance policies taken out by the building management committee in the case where the relevant units plan is part of a building the subject of a building management statement. This amendment relates to the fact that in this case the relevant insurance requirements can be met by insurance taken out by the building management committee (refer new section 100, clause 87).

Clause 96 Unit title certificate and access to owners corporation records
Section 119(1) and (2) and note

Clause 96 omits existing sections 119(1) and (2) and accompanying note under section 119(2) from the UTMA and substitutes new sections 119(1) and (2).

Existing sections 119(1), 119(2) permit an “eligible person” to request of an owners corporation, a “unit title certificate”. The information that the owners corporation must provide in the requested unit title certificate is determined by the Minister. This unit title certificate is sometimes referred to as a “section 119 certificate”. The term *eligible person* is defined in the Dictionary to the UTMA as:

- e) the owner, or another person with an interest in the unit, or in an easement over the common property;
- f) for a unit that is owned, or part-owned, by a company—the representative of the company;
- g) anyone authorised in writing by a person mentioned in paragraph (a) or (b); or
- h) if access to the information is necessary or desirable for the administration of this Act—the planning and land authority

The current determination of the information that must be provided is the *Unit Titles (Management) Certificate Determination 2012* DI2012-31. The existing determination requires the following information to be provided:

- a) the name and contact details of each member of the corporation’s executive committee;
- b) the name and contact details of the corporation’s manager;
- c) the place where the corporation’s records can be inspected, and the name and contact details of the person to be contacted to arrange inspection;
- d) for each insurance policy held by the corporation—
 - (i) the type of insurance policy;
 - (ii) the name of the insurer that issued the policy; and
 - (iii) the amount of the liability covered by the policy;
- e) for the general fund and the sinking fund, at the date the certificate is signed—
 - (i) the amount of the current contribution to the fund for the unit;
 - (ii) the date the contribution for the unit is due;
 - (iii) the period the contribution for the unit is for;
 - (iv) whether the contribution for the unit is paid or unpaid; and
 - (v) the balance of the funds for the owners corporation.

A typical scenario is for a prospective purchaser of a unit (or purchaser’s solicitor) to seek a unit title certificate to assist in determining the current status of the unit and associated costs with purchase. The prospective purchaser obtains this information through obtaining written authorisation from the seller of the unit (that is through item (b) in the abovementioned definition of *eligible person*).

New sections 119(1) is to the same effect as existing section 119(1) but with the following addition. New section 119(1)(b) provides for an eligible person to request a *unit title update certificate*. A unit title update certificate may be sought, for example, in the circumstance where a person has already obtained an original unit title certificate (perhaps before signing a contract of sale) and some time later perhaps several months later (perhaps before completion of the contract) wishes to check if any circumstances have changed since the issuing of the original certificate. In this case, the person can request a unit title update certificate under new section 119(1)(b). The update certificate must update the original certificate to the extent that the original information is no longer up to date.

Clause 97 Section 119(6), except note

Clause 97 omits existing section 119(6) and substitutes new section 119(6).

New section 119(6) retains the approach that Minister determinations under section 119 are disallowable. The change is a wording change only consistent with amendments made in clause 96 which inserts new sections 119(1), (1A), (2).

Clause 98 Section 125

Clause 98 omits existing section 125 and substitutes new section 125.

Existing section 125 sets out the circumstances in which a party to a dispute involving an owners corporation may apply to ACAT for an ACAT order for the resolution of the dispute.

Existing section 125(1) provides that the jurisdiction of ACAT in this respect extends to a dispute between the corporation and any one 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.

New section 125(1) continues to identify the type of dispute that may be the subject of an application for an order to ACAT. New section 125(1) refers to the same entities as existing section 125(1) with the following difference. New section 125(1) departs from existing section 125(1) by removing the requirement that the dispute involve the owners corporation. New section 125(1) permits an application to ACAT when there is a dispute between two or more of the parties listed in section 125(1) but does not require that one of the parties be the owners corporation. For example, a dispute between a unit owner and an executive member may be the subject of an application to ACAT. In this way, new section 125 broadens the types of disputes that can be the subject of an application to ACAT.

New section 125(2) is in the same terms as existing section 125(2), that is, it provides that a party to the dispute can apply to ACAT for an order in relation to another party to the dispute. The scope of operation of new section 125(2) is more broad than existing section 125(2) due to the changes in existing section 125(1).

Clause 99 Sections 127 and 128

New section 127 Disputes about rules-general

Clause 99 omits existing sections 127, 128 of the UTMA and substitutes new sections 127, 128.

New section 128 provides that a unit owner may apply to ACAT for an order that an alternative rule is invalid and sets out the possible grounds on which such an application might be made. There are a number of key terms relevant to new section 127 including:

- *alternative rules* as defined in a new Dictionary definition in the UTMA Dictionary as rules other than the default rules (clause 125). Note the owners corporation may make alternative rules under section 108 of the UTMA (clause 93);
- *default rules* as defined in a new Dictionary definition in the UTMA as the default rules prescribed by regulation (clause 126). Note the Bill includes default rules in the amended UTMR (new section 7A, clause 135);

- *rule* as defined by an amended definition of rule in the UTMA dictionary as a rule of the owners corporation under new section 106 of the UTMA (clause 132).

New section 108(1) (clause 93) provides that an owners corporation may by special resolution make alternative rules amending its rules. In summary, new section 108(3) provides that an alternative rule is invalid to the extent that it results in the rules:

- a) being inconsistent with the UTMA or another territory law;
- b) being inconsistent with a building management statement
- c) being incompatible with the *Human Rights Act 2004*;
- d) being harsh, unconscionable or oppressive;
- e) giving a function to the corporation that is not incidental or ancillary to the exercise of its functions under the UTMA or a building management statement;
- f) prohibiting or restricting any dealing in an interest in the unit or equitable estate in the common property;
- g) prohibiting the keeping of an animal within the unit or the common property in any circumstances.

New section 127(1) sets out the grounds on which a unit owner may apply to ACAT for an order declaring an alternative rule to be invalid. This includes the following grounds:

- a) the owners corporation does not have the power to make the rule;
- b) there was irregularity in the process for making the rule;
- c) for an alternative rule about the method for determining the required contributions to the total general fund or total sinking fund – that the rule is not fair, or the rule has ceased to be fair due to a change in circumstances since the original making of the rule.

New section 127(2) provides that an application for a declaration in relation to new sections 127(1)(c) or 127(1)(d) must be made within 3 months after the day that the special resolution has been passed. This time limit is intended to provide a measure of certainty as far as practicable in relation to the making of certain new alternative rules.

New sections 129(1)(e)(iii), 129(1)(e)(iv) (clause 100) set out the powers that ACAT has to make an order in response to an application under new section 127. New section 129(2A) (clause 102) provides that a declaration by ACAT under new section 129(1)(e)(iii) or 129(1)(e)(iv) has effect as if the rule were repealed by a special resolution of the owners corporation on the day the ACAT declaration is made.

New section 128 Disputes about rules-special privilege rules

New section 128 applies to special privilege rules. A *special privilege* is defined in a new entry in the Dictionary to the UTMA (clause 133) as “a right, other than a sublease, granted to a person to use the common property of a units plan in a manner that is additional to, or restrictive of, the rights of other people (who are not granted the special privilege) to use the common property.

New sections 112A and 112B (clause 94) are about the granting of special privileges in relation to common property for periods of three months or more. New section 112A provides that such a privilege may be granted through the making of an owners corporation rule. New section 112A sets out certain requirements in relation to special privilege rules including that such a rule can only be granted with the grantee's written consent which consent must not be unreasonably withheld (new sections 112A(2)(a), 112A(5)).

New section 128(1) provides that an owners corporation may apply to ACAT for an order declaring that a grantee (or prospective grantee) has unreasonably withheld consent to the grant, amendment or revocation of a special privilege rule. New section 128(2) provides that a grantee may apply to ACAT for an order declaring that the relevant owners corporation has unreasonably withheld consent to the grant, amendment or revocation of a special privilege rule or has imposed unreasonable maintenance obligations on the grantee under new section 112A(3)(a) (clause 94). New section 129(2B) (clause 102) requires ACAT in considering an order with respect to a special privilege matter must have regard to:

- (a) the interests of all unit owners in the use and enjoyment of their unit and the common property; and
- (b) the rights and reasonable expectations of a person deriving or anticipating a benefit under a special privilege in relation to the common property.

New section 128(3) makes it clear that *grantee* includes a prospective grantee.

Clause 100 Kinds of ACAT orders

Section 129(1)(e)(iii)

Clause 100 omits existing section 129(1)(e)(iii) of the UTMA and substitutes new sections 129(1)(e)(iii) and 129(1)(e)(iv).

Existing section 129 of the UTMA sets out the kinds of orders that ACAT can make under the UTMA. Existing section 129(1)(e)(iii) provides that ACAT can make a declaration to the effect that a rule is invalid as a result of irregularity.

New sections 129(1)(e)(iii) and 129(1)(e)(iv) are made to recognise the additional grounds for applying for an ACAT order to the effect that an alternative rule is invalid as set out in new section 127 (clause 99).

Clause 101 Section 129(1)(l)

Clause 101 omits existing section 129(1)(l) of the UTMA and substitutes new section 129(1)(l).

Existing section 129(1)(l) applies in relation to disputes about the keeping of an animal on the premises of the units plan. The section gives ACAT the power to order the removal of an animal from the premises if the animal is causing a nuisance or there is an owners corporation condition that is not being complied with in relation to the animal.

New section 129(1)(l) makes it clear that the specific power to remove the relevant animal (pet) applies only if the animal is causing a nuisance or is unreasonably interfering with the

use or enjoyment of another unit or the common property. The new section also gives ACAT a specific option to make orders other than removal of the animal that it considers will end the nuisance or impact on use/enjoyment. ACAT may for example require the animal to be kept indoors at certain times or kept away from certain defined areas within the units plan.

New section 129(1)(l) does not include a power to order the removal of the animal on the sole basis that there has been a breach of a relevant condition in relation to the keeping of the animal. If the breach did not result in nuisance or other unreasonable impacts on use/enjoyment this does not seem a reasonably sufficient ground for removal of the animal. The owners corporation or unit owner or other party can still if necessary apply to ACAT for an order to enforce such a condition short of removal of the animal. Existing section 129(1)(a) permits ACAT, for example, to make an order requiring a person to do or refrain from doing a certain thing.

Clause 102 New section 129(2A) and (2B)

Clause 102 inserts new sections 129(2A) and 129(2B).

New section 129(2A)(a) provides that a declaration by ACAT under new section 129(1)(e)(iii) or 129(1)(e)(iv) (clause 100) has effect as if the rule were repealed by a special resolution of the owners corporation on the day the ACAT declaration is made. This provision is to clarify what is the effect of a declaration that a rule is invalid. This provision means that the rule becomes ineffective from the date of the ACAT declaration. It is important in this connection to note that section 84 of the Legislation Act sets out the effect of a repeal of a law, including the repeal of a statutory instrument. Section 84 of the Legislation Act applies to an owners corporation rule as it is a statutory instrument. Section 84 of the Legislation Act, among other things, confirms that the repeal of a law does not affect

“... the previous operation of the law or anything done, begun or suffered under the law; or affect an existing right, privilege or liability acquired, accrued or incurred under the law... ”

In summary this means that actions taken under the owners corporation rule by an ACAT declaration remain valid and do not become retrospectively invalid.

New section 129(2A)(b) requires the owners corporation to lodge with the Registrar-General the relevant ACAT declaration for registration under the *Land Titles (Unit Titles) Act 1970* section 27.

New section 129(2B) sets out the matters that ACAT must have regard to in considering whether to make an order in relation to a special privilege. ACAT must have regard to:

- (a) the interests of all unit owners in the use and enjoyment of their unit and the common property; and
- (b) the rights and reasonable expectations of a person deriving or anticipating a benefit under a special privilege in relation to the common property.

Clause 103 Regulation-making power

New section 147(1A)

Clause 103 inserts new section 147(1A) into the UTMA.

New section 147(1A) sets out additional specific areas in which regulations can be made under the UTMA.

New section 147(1A)(a) permits the making of a regulation to exempt a units plan from the application of a provision(s) of the UTMA. This new regulation power effectively replaces and departs from existing section 18 of the UTMA. Clause 58 omits existing section 18. Existing section 18 of the UTMA provided that a units plan with 4 or more units could exempt itself from any provision of the UTMA by special resolution. While it is not immediately clear it is arguable this self exemption power required first the making of a regulation to identify provisions that could be the subject of such a self exemption. Given the importance of the regulatory framework for units plans, the approach of section 18 is considered to be insufficiently clear and not appropriate in that it could result in a variety of regulatory regimes applying in different circumstances with inequitable and inconsistent outcomes. To the extent that a provision is considered to be too burdensome for a relatively small units plan, this new regulation power will permit an appropriate exemption to be made and will allow the exemption to apply consistently across units plans. The exemption would also as a regulation be a disallowable instrument permitting scrutiny by the legislative assembly.

New section 147(1A)(b) applies to new section 3.31A of schedule 3 (clause 123) which provision is about alternative voting mechanisms. New section 3.31A permits an owners corporation by an ordinary resolution to agree to a method for voting on a specified matter or matters. The owners corporation could, for example, authorise voting on a matter online through a website or by email. The new or changed method of voting cannot impact on who is entitled to vote (new section 3.31A(2) of schedule 3).

New section 147(1A)(b) permits the making of a regulation to require or prohibit a method or process that may be the subject of an agreement of the owners corporation in relation to voting on a matter. New section 10 of the amended UTMR (clause 136, Part 13) sets out certain requirements on these matters.

Clause 104 New part 13

Clause 104 inserts new Part 13 Transitional-Unit Titles Legislation Amendment Act 2019. New Part 13 includes several provisions of a transitional nature.

Part 13 Transitional-Unit Titles Legislation Amendment Act 2019

New section 166 Meaning of *commencement day*-pt 13

New section 166 defines *commencement day* for the purposes of new Part 13 Transitional-Unit Titles Legislation Amendment Act 2019. Under this section *commencement day* means the day that section 104 of the *Unit Titles Legislation Amendment Act 2019* (clause 104) commences.

New section 167 Special privileges relating to common property

New section 167 applies to existing special privileges granted under existing section 22 of the UTMA that are still existing at the time of commencement (new section 167(1)).

New section 167(2) provides that such an existing special privilege continues to apply according to the terms under which it was granted and may be terminated by written notice to the grantee following an authorising special resolution.

New section 167(2)(d) provides that the existing special privilege terminates on 1 July 2021 unless terminated earlier. This means that for the special privilege arrangement to continue post this date, the owners corporation will need to make a new special privilege consistent with new section 22 (clause 59) (special privileges for less than three months) or through the making of a new special privilege rule consistent with new section 112A (clause 94). This provision has the effect that all special privileges will be in accordance with the new requirements at the transition date of 1 July 2021.

New section 168 Obligations in relation to maintenance schedule

New section 25 of the UTMA (clause 61) requires the developer of a units plan to prepare a maintenance schedule covering the matters prescribed in the regulation. The developer must provide the maintenance schedule to the owners corporation for the first annual general meeting of the corporation (section 3.4 of schedule 3, clause 113). The matters prescribed in the regulation are set out in new section 4B of the amended UTMR (clause 134).

Existing section 24 of the UTMA sets out certain maintenance obligations of the owners corporation. New section 24(1A) of the UTMA (clause 60) requires the owners corporation as part of its maintenance obligations to prepare a maintenance plan taking into account the developer's maintenance schedule, if any. The maintenance plan must address the matters set out in the regulation. The matters prescribed in the regulation are set out in new section 4A of the amended UTMR (clause 134).

New section 168 applies to the abovementioned new requirements of the developer and the owners corporation in relation to maintenance schedules.

New sections 168(1), (2) have the effect that the requirements of the developer to prepare a maintenance schedule do not apply in relation to units plans registered before the transition date of 1 July 2021.

New section 168(3) provides that the requirement for an owners corporation to prepare a maintenance schedule does not apply until after the second annual general meeting of the owners corporation after the commencement day.

New section 169 Rules

New section 169 is a transitional provision applying to owners corporation rules as amended by the owners corporation and existing at the time of commencement (new section 169(1)).

New section 169(2) has the effect that the existing set of rules for the owners corporation as amended by the owners corporation and current at the commencement date, remain the rules of the corporation.

New section 169(3) has the effect that the existing rules of the owners corporation cannot be the subject of an application to ACAT for a declaration under new section 127(1) until after the second annual general meeting of the owners corporation following commencement.

New section 169(4) provides that this transitional provision applies even if the relevant amendment was registered under the *Land Titles (Unit Titles) Act 1970* before the commencement day.

New section 169(5) provides that this section is subject to new transitional section 170. New section 170 is about the keeping of animals in a unit.

New section 170 Rules-pets in units

New section 170 is a specific transitional provision applying to owners corporation rules relating to the keeping of animals.

New section 170(1) provides that this section applies to an owners corporation established before commencement day.

New section 170(2) provides that the existing owners corporation rules related to the keeping of animals continues to apply for a transition period. The *transition period* as defined in new section 170(3) is the period beginning on commencement day and ending on the day after the second annual general meeting of the owners corporation after the commencement day.

If during the transition period there is no rule applying to the keeping of animals then new section 32(1)(b)(ii) will apply (clause 63).

After the transition period, the default pet rule will apply, that is the rule set out in new rule 1.5 of schedule 1 of the amended UTMR subject to the following. Under new section 170(2)(c) if the owners corporation makes an alternative rule in relation to the keeping of an animal in a unit, then the alternative rule will apply from that point and will do so indefinitely.

In summary this means that the existing approach to the keeping of animals in a unit for an owners corporation will apply during the transitional period. If during the transitional period the owners corporation does not make a new rule relating to the keeping of an animal then after the default period ends, the default rule in item 1.5 of schedule 1 of the amended UTMR will apply at the end of the transitional period.

New section 171 Executive committee's audit obligations

New section 171 is a transitional provision about the new obligations of certain owners corporation to conduct a financial audit.

New section 2.1(1)(g) of schedule 2 of the UTMA (clause 106) requires the auditing of the financial records of the owners corporation before the annual general meeting. This requirement applies subject to certain thresholds. This requirement only applies if the number of units in the units plan exceeds 100 (or another number prescribed) or the annual budget of the owners corporation exceeds \$250,000 (or another number prescribed). New section 2.2(1)(b) of schedule 2 of the UTMA (clause 110) requires the executive committee to present any audit opinion on the annual financial statements at the annual general meeting.

New section 171 provides that the above obligations in relation to financial audits does not apply at the first annual general meeting of an owners corporation following commencement day.

New section 172 Expiry-pt 13

New section 172 provides that this new Part 13 expires 2 years after the day the Part commences. The new note below this section refers to the application of section 88 of the Legislation Act to the effect that a transitional provision is repealed on expiry but continues to have effect after its repeal.

Clause 105 Executive committee must keep minutes, and records and accounts Schedule 2, section 2.1(1)(c)

Clause 105 amends Schedule 2, section 2.1(1)(c) to require the executive committee ensure certain details are recorded in the minutes of general meetings.

Amended schedule 2, section 2.1(1)(c) introduces new information that the executive committee must include in the minutes for their executive committee meetings as well as the general meetings of the owners corporation (including annual general meeting). These changes are to ensure that minutes clearly record information important to identifying when and how decisions are being made by the owners corporation. Section 2.1(1)(c)(ii) also reflects the changes in the Bill to permitting attendance at meetings via an approved electronic method and helps identify all members participating.

Clause 106 Schedule 2, new section 2.1(1)(g) and (h)

Clause 106 inserts new section 2.1(1)(g) regarding new requirements for the executive committee to arrange audits for specified units plans.

New section 21.1(1)(g) provides for the new obligation for the executive committee to have the financial records of the owners corporation audited if, unless otherwise prescribed by the regulation, the units plan has either more than 100 units in the units plan, or if the annual budget of the owners corporation is more than \$250,000. If the units plan is required to undertake an audit, the audit must be completed prior to the annual general meeting and a copy of the audit opinion must be presented at the annual general meeting of the owners corporation (refer clause 110). This changes the previously voluntary approach to now require compulsory auditing for specified unit plans.

The UTMA defines an audit as being conducted by a person specified in clause 125. The purpose of this is to clearly define the audit must be conducted by person who is independent of the owners corporation or their management.

New section 21.1(1)(h) requires the executive committee to maintain an up to date consolidated version of the rules of the owners corporation.

Clause 107 Schedule 2, new section 2.1(1A)

Clause 107 inserts new section 2.1(1A) in relation to new requirements for the executive committee to give a copy of minutes for all executive committee and owners corporation meetings to members of the owners corporation within 14 days after the day the meeting was held.

Clause 108 Schedule 2, section 2.1(2)

Clause 108 amends section 2.1(2) relating to the keeping and accessing of records of the owners corporation.

Amended section 2.1(2) changes the requirements for the executive committee to keep the documents, records and books of the owners corporation for a period from 5 to 7 years. Section 2.1 also includes clarification to require the executive committee to make copies available for inspection in accordance with any request received from a member of the owners corporation.

Clause 109 Schedule 2, section 2.1(3)

Clause 109 amends schedule 2, section 2.1(3) to insert “and distribute” after the word “keep”.

Section 2.1(3) has been amended to make it clear that the the executive committee may distribute copies of the minutes, records or books in electronic form. This amendment also supports the changes to section 2.1(1A) (clause 107) to allow distribution of the minutes via email or another electronic format.

**Clause 110 Executive committee must present financial statements
at annual general meeting
Schedule 2, section 2.2(1)**

Clause 110 amends schedule 2, section 2.2(1).

Section 2.2(1) has been amended to incorporate the new audit requirements for specified units plans (clause 106). Section 2.2(1) provides that if the owners corporation are required to have their financial records audited, the executive committee must present a copy of the audit opinion at the annual general meeting of the owners corporation.

**Clause 111 Meetings of executive committee
Schedule 2, new section 2.8(3) and (4)**

Clause 111 inserts new sections 2.8(3) and (4) relating to meetings of the executive committee.

Section 2.8(3) introduces the ability for an executive committee to authorise a meeting of the executive committee to be held using electronic methods. This include methods such as conference a call via phone or mobile as well as video calling via the internet or an intranet link. The introduction of this allows meetings of the executive committee to take place with executive committee members not being in each other's presence and recognises the need for executive committee's to use technology to be able to convene an executive committee meeting in a timely manner.

Section 2.8(4) clarifies that if the executive committee authorises an electronic meeting to be held, executive committee members who take part in the meeting via these methods are deemed to be present for the purpose of the meeting and count towards a quorum.

Clause 112 Conduct of general meetings
Schedule 3, new section 3.1(2) and (3)

Clause 112 inserts new sections 3.1(2) and (3) relating to meetings of the owners corporations.

Section 3.1(2) introduces the ability for an owners corporation to authorise a meeting of the owners corporation to be held using electronic methods. This include methods such as a conference call via phone or mobile as well as video calling via the internet or an intranet link. The introduction of this will give the ability for those members who are unable to physically attend a meeting the ability to participate and exercise their vote. These changes are to facilitate greater member participation and allow members to partake in meetings when they not physically present.

Section 3.1(3) clarifies that if the owners corporation authorises an electronic meeting to be held, members who take part in the meeting via these methods are deemed to be present for the purpose of the meeting and count towards a quorum.

Clause 113 First annual general meeting-developer to deliver records
Schedule 3, new section 3.4(ca)

Clause 113 inserts the new section 3.4(ca) requiring the developer to deliver the maintenance schedule under section 25 of the UTMA (refer clause 76) at the first annual general meeting of the owners corporation.

Clause 114 Schedule 3, section 3.4(f)

Clause 114 amends section 3.4(f) to remove the requirements for the developer to provide a common seal as they are no longer compulsory. This amendment is made as a consequence of the additional options doe executing documents introduced in new section 9A (clause 56).

Clause 115 Special resolutions
Schedule 3, section 3.16(1)

Clause 115 amends section 3.16(1) to change "more than 2 members" to "more than 3 members".

Section 31.6(1) has been amended to change the voting requirements for a special resolution from 2 members to 3 due to the amendments to the voting threshold from 1/3 to

¼ made under clause 133. This change was required to ensure a fair voting process applies to units plan with 3 members. The process for a special resolution vote for a units plans with 3 members is outlined under new section 3.16(1A) (refer clause 118).

Clause 116 Schedule 3, section 3.16(1)

Clause 116 amends section 3.16(1) from “less than 1/3” to “not more than ¼”.

Amended section 3.16(1) provides for the new voting threshold to be applied to decisions made by a special resolution in owners corporations with more than 3 members. The new threshold will now see special resolutions determined by a majority of owners agreeing to the resolution, with not more than ¼ of the owners present at the meeting (including proxy votes) opposing the motion. This changes from the previous lower threshold of 1/3 and requires the passing of a special resolution to have greater level of member support.

Many decisions of the owners corporation are made by a special resolution such as rules, some financial matters and dealings with common property. These resolutions are intended to ensure a high majority of support is attained in order for the motion to be successful. There are some other decisions that are made by an unopposed resolution (at least one vote for and none against), such as contributions to funds and alterations made to units or the common property. However, unopposed resolutions fail with just one vote against, which may result in outcomes being unduly influenced by a single person. In circumstances such as these, sometimes the best interests of the owners corporation may be overlooked.

The purpose of changing the threshold from 1/3 to ¼ has been determined to provide a high level voting process is available to the owners corporation, without having the one vote veto issue. In consideration of this, some motions that have previously required an unopposed vote have been amended to now require a special resolution under the new voting threshold. These include matters related to special privileges (new section 22 (clause 59) of the UTMA), voting to adopt a new method of contribution (new section 78(2)(b) (clause 80) and section 89(2)(b) (clause 83) of the UTMA), and permitting an owner to erect or alter a structure in or on the common property (new default rule 1.4 (clause 137) of the UTMR) . This will ensure important decisions of the owners corporation still require a high level of member support in order to pass, but are not as prohibitive as an unopposed resolution.

Clause 117 Schedule 3, new section 3.16(1A)

Clause 117 inserts new section 3.16(1A) into schedule 3 of the UTMA.

New section 3.16(1A) sets out the special resolution voting requirements for a units plan with 3 members. The voting requirements in this case are the same as the voting requirements under existing section 3.16 of schedule 3 to the UTMA as applying to owners corporations with 2 members or more. New section 3.16(1A) is made as a consequence of new section 3.16(1) (clause 116).

New Section 3.16(1A) requires that in order to pass the resolution, the total number of votes cast against the resolution to number less than 1/3 of the total number of votes that

can be cast. This voting process has been retained for units plans with 3 members to ensure a mathematically fair voting process is applied in these circumstances.

Existing section 3.16(2) of schedule 3 of the UTMA sets out the voting requirements for owners corporations with one or two members. This section is retained.

Clause 118 Evidence of resolutions of owners corporation
Schedule 3, section 3.19

Clause 118 amends section 3.19 by removing the reference to a common seal. This amendment is made as a consequence of the additional options for executing documents introduced in new section 9A (clause 56).

Clause 119 Schedule 3, new section 3.21A

Clause 119 inserts new section 3.21A into schedule 3 of the UTMA.

New section 3.21A applies in relation to voting on a motion related to defective building work.

New section 3.21A(2) provides that the developer of a units plan is not entitled to vote or exercise a proxy vote in relation to the relevant motion unless with the approval of a special resolution passed by members of the owners corporation other than the developer or unless authorised by a declaration by ACAT under new section 3.21A(3).

This provision is intended to avoid the situation of a conflict of interest where a developer votes on a matter related to defective building work and the developer is responsible or is likely to be responsible for the quality of the work.

New section 3.21A(3) provides that on application ACAT may make a declaration that the developer may vote on a motion if ACAT is satisfied to the extent practicable that the developer is not likely to be responsible for the defective building work or if ACAT concludes that barring the developer from voting would be unreasonable taking into account the interests of all of the unit owners and of the developer. These exceptions recognise the circumstances where a developer may need to participate in any action, for example, if the developer wants to be a party to action to pursue a contracted builder for defective building work and seek the same remedy as all unit owners for the faulty work.

Section 3.21A(4) provides that these provisions do not apply in the circumstance the developer owns all the units. In this case, the interest of the unit owners and the developer are coextensive.

Clause 120 Evidence of mortgagee's entitlement to vote
Schedule 3, section 3.25

Clause 120 amends section 3.25 of schedule 3 to the UTMA to remove reference to the common seal. This amendment is made as a consequence of the additional options for executing documents introduced in new section 9A (clause 56).

Clause 121 Proxy votes
Schedule 3, new section 3.26(4)

Clause 121 inserts new section 3.26(4) in relation to limitations on proxy votes.

New section 3.26(4) restricts the number of proxy votes one person may exercise on a matter at a general meeting of the owners corporation. Proxy votes are limited in unit plans of more than 20 units to no more than 5% of the total number of units. In units plans with 20 or less units, a person must not exercise more than 1 proxy vote on a matter.

These restrictions are to prevent one person from accumulating an excessive number of proxy votes, which can result in unfair outcomes through a practice known as “vote-stacking”, where one person exercises multiple proxy votes to oppose or pass a motion to their benefit. Members will need to ensure that if they are assigning a proxy to vote on their behalf, that they discuss this with the intended nominee to ensure they are not acting as a proxy for another member.

There are a number of alternatives to proxy voting. Members can exercise an absentee vote (existing section 3.31 of schedule 3 of the UTMA), or if agreed by an owners corporation, voting by electronic means (new section 3.31A of schedule 3 to the UTMA, clause 122).

Clause 122 Schedule 3, new section 3.31A

Clause 122 inserts new section 3.31A into schedule 3 of the UTMA.

New section 3.31A(1) of schedule 3 to the UTMA permits an owners corporation by resolution passed at a general meeting to agree to a method of voting on a particular matter or class of matters. For example, the corporation may agree on voting on a matter by email prior to a general meeting or voting on a matter online. New section 3.31A(2) provides that the method of voting cannot have any effect on who is entitled to vote.

New section 147(1A)(b) of the UTMA (clause 103) provides that the regulations may prescribe or prohibit a method for voting on a matter. In other words any resolution under new section 3.31A(1) must be consistent with any relevant regulation.

New section 10 of the UTMR (clause 136) sets out certain requirements applying to the potential adoption of alternative ways of voting.

**Clause 123 Default rules
 Schedule 4**

Clause 123 omits Schedule 4 (Default Rules) as they have been relocated to Schedule 1 of the UTMR (refer new definition of default rules (clause 126) and the default rules as set out in clause 137).

Clause 124 Dictionary, note 2

Clause 124 inserts registrar-general in Note 2 as being defined under the *Legislation Act 2001*.

Clause 125 Dictionary, new definitions

Clause 125 inserts new definitions for *alternative rules*, *assistance animal*, *audit* and *building management statement* into the Dictionary to the UTMA.

The term *alternative rules* means rules other than the default rules. Default rules are defined in a new definition in the Dictionary to the UTMA as the rules set out in the UTMR

(refer clause 126). The term *rules* of an owners corporation is defined in the new Dictionary definition of *rules* (clause 132) by reference to new section 106 (clause 90).

The term *assistance animal* means as set out in section 5AA(3) of the *Discrimination Act 1991*. Section 5AA(3) of the *Discrimination Act* states that the term *assistance animal* means:

“an assistance animal trained to assist a person with disability to alleviate the effect of the disability, that satisfies any requirements prescribed by regulation”.

Section 2 of the *Discrimination Regulation 2016* sets out certain requirements that must be satisfied in order for an animal to be an assistance animal for the purpose of section 5AA(3) of the *Discrimination Act*. The requirements in section 2 of the *Discrimination Regulation* are that an assistance animal must be—

- (a) accredited as an assistance animal—
 - (i) under a law of a State or Territory; or
 - (ii) by an organisation that trains animals to assist a person with disability to alleviate the effect of the disability; or
- (b) trained to—
 - (i) assist a person with disability to alleviate the effect of the disability; and
 - (ii) meet the standards of hygiene and behaviour that are appropriate for an animal in a public place.

The term *audit* means an audit conducted by a person independent of the owners corporation or the managing agent and holds qualifications as prescribed in the definition. These audits are undertaken for the purpose of Schedule 2, new section 2.1(1)(g) (refer clause 106).

The term *building management statement* is prescribed under section 123D of the *Land Titles Act 1925* (refer clause 29).

Clause 126 Dictionary, definition of *default rules*

Clause 126 amends the definition of *default rules* to mean the default rules as prescribed by regulation. New section 7A and schedule 1 to the UTMR (clause 135) set out the new default rules. Note also that the term *rules* of an owners corporation is defined in the new Dictionary definition of *rules* (clause 132) by reference to new section 106 (clause 90).

Clause 127 Dictionary, new definition of *developer’s maintenance schedule*

Clause 127 inserts the definition of *developer’s maintenance schedule* as per new section 25 of the UTMA (refer clause 61).

Clause 128 Dictionary, definition of *executive committee representative*

Clause 128 omits the definition of *executive committee representative*.

Clause 129 Dictionary, new definitions

Clause 129 inserts the new definitions for *grantee* and *maintenance requirement* relevant to new section 112A of the UTMA (refer clause 94).

Clause 130 Dictionary, definition of *owner, occupier or user*

Clause 130 omits the definition of an *owner, occupier or user*. This definition is not required in the Dictionary to the UTMA because it is written into the default rules (default rule 1.1 in new schedule 1 to the UTMR, clause 137).

Clause 131 Dictionary, new definitions

Clause 131 inserts the new definition for *pet friendly rule* under section 112C of the UTMA (clause 94).

Clause 132 Dictionary, definition of *rule*

Clause 132 omits the definition of an *rule* and substitutes a new definition which refers to new section 106 (clause 90).

Clause 133 Dictionary, new definitions

Clause 133 inserts new definitions for:

- *special privilege*
- *special privilege rule* under section 112A(1) of the UTMA (clause 94).

Part 13 Unit Titles (Management) Regulation 2011

Clause 134 New section 4A and 4B

Clause 134 inserts new sections 4A, 4B into the *Unit Titles (Management) Regulation 2011* (UTMR).

New section 4A lists the items that must be included in a maintenance schedule prepared by a developer in accordance with new section 24(1B) of the UTMA (clause 60).

New section 4B sets out the items that must be included in the developer's maintenance schedule in accordance with new section 25(2) of the UTMA (clause 61). The developer must provide the maintenance schedule to the first annual general meeting of the owners corporation (section 3.4 of schedule 3 to the UTMA, clause 113).

Clause 135 New sections 7A and 7B

Clause 135 inserts new sections 7A and 7B into the UTMR.

New section 7A Default rules-Act, s106

New section 7A provides that for the purpose of the new definition of *default rules* in the Dictionary to the UTMA (clause 126), the default rules are the rules set out in new schedule 1 to the UTMR.

New section 7B Alternative rules requirements-Act, s108 (6)

New section 7B sets out requirements that must be met by any alternative rules for the purpose of new section 108(6) of the UTMA (clause 93). *Alternative rules* are defined in a new definition in the Dictionary to the UTMA as rules other than the default rules (clause 125).

New section 7B(1)(a) provides that the alternative rules may only amend or remove three default rules that is default rule 1.4, 1.5, 1.6. These three rules concern the erection/alteration of structures on the common property; the keeping of animals in a unit; and the rule that the owners corporation may require evidence of the status of an animal as an assistance animal respectively. This section should be read in the context of new section 7B(1)(c) which provides that the alternative rules can deal with any matter that is consistent with the Act and the core default rules (ie the default rules other than rules 1.4, 1.5, 1.6 as noted above).

New sections 78(2)(b) and 89(2)(b) of the UTMA (clauses 80, 83) permit the methodology for calculating contribution levies to be changed by special resolution. New section 108(5) (clause 93) provides that such a change is taken to be an alternative rule of the owners corporation.

New section 7B(1)(b)(i) of the UTMR applies in the circumstance that the general fund contribution payable for each unit is not worked out according to the proportional share for the unit of the total general fund contribution. In this case, new section 7B(1)(b)(i) requires the relevant alternative rule to set out both the new method for working out contributions

payable and the principle underlying the new method. New section 7B(2) of the UTMR requires the default rules to be fair taking into account the matters set out in new sections 7B(2)(a) to 7B(2)(d).

New section 7B(1)(b)(ii) is a similar requirement but applying to contributions to the sinking fund.

Clause 136 New section 10

Clause 136 inserts new section 10 into the UTMR.

New section 3.31A(1) of schedule 3 to the UTMA (clause 122) permits an owners corporation by resolution passed at a general meeting to agree to a method of voting on a particular matter or class of matters. For example, the corporation may agree on voting on a matter by email prior to a general meeting or voting on a matter online. New section 3.31A(2) provides that the method of voting cannot have any effect on who is entitled to vote. New section 147(1A)(b) of the UTMA (clause 103) provides that the regulations may prescribe or prohibit a method for voting on a matter. In other words any resolution under new section 3.31A(1) must be consistent with any relevant regulation.

New section 10 of the UTMR (clause 136) sets out certain requirements applying to the potential adoption of alternative ways of voting for the purpose of new section 147(1A)(b) of the UTMA (clause 103).

New section 10(1) permits an owners corporation to potentially adopt a means of voting at a meeting by teleconference, video-conference, email or other electronic means. This section also permits certain methods for voting prior to a meeting at which the matter is to be decided.

New section 10(2) applies in relation to the adoption of alternative means of voting on a matter prior to the meeting. In such a situation, the owners corporation must ensure that members have reasonable access to facilities to vote, for example access to computer facilities and the notice of the general meeting must include information about how members can access any such facilities.

New sections 10(3), (4), (5) of the UTMR reflect the principle that where a matter is to be decided wholly by a pre-meeting electronic vote then that matter cannot be subsequently amended at the relevant owners corporation meeting.

Clause 137 New schedule 1

Clause 137 inserts new schedule 1 to the UTMR. New schedule 1 sets out the default rules that apply to owners corporations.

The rules of an owners corporation are the default rules as amended by the alternative rules, if any (new Dictionary definition of *rules* (clause 132) and new section 106 (clause 90)). The term *alternative rules* is defined in a new Dictionary definition to the UTMA as rules other than the default rules (clause 125). The *Default rules* are defined in a new Dictionary definition in the UTMA as the rules prescribed in the UTMR (clause 126).

The default rules can be amended by alternative rules either:

- c) as lodged at the time of registration of a new units plan (new sections 7(1)(f) and 27 of the *Land Titles (Unit Titles) Act 1970* (clauses 34, 37); or
- d) made by special resolution by the owners corporation under new section 108 of the UTMA (clause 93).

New schedule 1 to the UTMR sets out the default rules applying to owners corporations. With the following exceptions, the default rules are the same as the default rules for owners corporations formerly set out in existing schedule 4 to the UTMA.

Existing rule 4 of the existing schedule 4 default rules in the UTMA relates to the erection/alterations of structures in units and the common property. New rule 1.4 in new schedule 1 to the UTMR is in the same terms as existing rule 4 except that the rule permits a unit owner to make erections/alterations with the permission of the owners corporation made through a special resolution as opposed to the existing rule 4 which requires the relevant resolution to be an unopposed resolution. The purpose of this amendment complements the changes being introduced under the Bill to improve the decision making processes of the owners corporation by using the new voting threshold for special resolutions for decision which previously required an unopposed resolution. This default approach gives the owners corporation the flexibility to permit an erection/alteration where there is a clear majority in favour of such. This approach in this default rule may be changed and made more or less restrictive by an alternative rule (new section 108 of the UTMA (clause 93); new section 7B of the UTMR (clause 135)).

New rule 1.5 in new schedule 1 to the UTMR relating to pets in units is a new default rule. This new default rule has the effect that a unit owner may keep a pet in the unit subject to the conditions set out in rule 1.5(1). New rule 1.5(2) requires the unit owner to inform the owners corporation in writing of the keeping of an animal and must do so within 14 days of the keeping of the animal. This default rule is a “pet friendly rule” for the purposes of new section 112C of the UTMA (clause 94). This default pet friendly rule may be changed or revoked entirely by an alternative rule (new section 108 of the UTMA (clause 93); new section 7B of the UTMR (clause 135)). In particular, a developer who elects to make alternative rules for the owners corporation prior to registration will be able to decide whether to retain the default pet rule, create an alternative pet friendly rule or make an alternative rule to the effect that there is no pet friendly rule and as a result require the prior consent of the owners corporation under new section 32(1) of the UTMA (clause 63).

In the event that the abovementioned new rule 1.5 is revoked then the position as to the keeping of animals by the owner or occupier (other than an assistance animal) would be as set out in new sections 32(1)(b)(ii) of the UTMA (clause 63). In this case the owner/occupier would need to obtain the consent of the owners corporation which consent cannot be unreasonably withheld and which consent can be subject to reasonable conditions (new section 32(3A) of the UTMA, clause 64).

New rule 1.6 in new schedule 1 to the UTMR applies to assistance animals. The meaning of *Assistance animal* is defined in a new definition in the Dictionary to the UTMA (clause 126)

with reference to section 5AA(3) of the *Discrimination Act 1991*. New rule 1.6 provides that the owners corporation may require a person who keeps an assistance animal to provide evidence of the status of the animal as an assistance animal. This default rule may be changed or revoked entirely by an alternative rule (new section 108 of the UTMA (clause 93); new section 7B of the UTMR (clause 135)).

Existing default rule 11 in schedule 4 of the UTMA is omitted from the new set of default rules. This is because this provision has been replaced by new section 9A(a) of the UTMA (clause 56).

Clause 138 Dictionary, note 3, new dot point

Clause 138 inserts a reference to the new term *assistance animal* in note 3 to the Dictionary to the UTMA.

Clause 139 Dictionary, new definitions

Clause 139 inserts new definitions into the Dictionary to the UTMR. The new definitions are of the terms:

- executive committee representative;
- owner, occupier or user.

Schedule 1 New Civil Law (Property) Regulation

Schedule 1 contains the initial new *Civil Law (Property) Regulation 2019* (CLPR).

The new CLPR includes two new sections made under new section 260(1)(m) of the *Civil Law (Property) Act 2006* (CLPA) (clause 7). The new CLPR is deemed to commence on commencement of section 4 of the amendment Act (clause 4).

New section 260(1) of the CLPA (clause 7) requires a contract for the sale of a unit before registration of the units plan to include a disclosure statement setting out specified matters. The matters that must be included in the disclosure statement are set out in new s260(1)(a)-(m).

New section 260(1)(m) of the CLPA (clause 7) permits the regulation to prescribe additional matters as matters required to be included in the disclosure statement. This includes additional matters related to:

- The development approval for the relevant building;
- Design and construction (including the identity of the developer, licensed builder or design architect);
- Sustainability infrastructure; and
- The provision of utility services.

New section 2 Disclosure requirements for development approval- Act, s 260(1)(m)(i)

New section 2 of the CLPR made for the purpose of new section 260(1)(m)(iv) of the CLPA (clause 7) requires the disclosure statement to also identify:

- The development approval for the relevant building (if this exists);
- Otherwise confirm the development approval status for the building including an identification of any lodged application for development approval for the building;
- A statement about where the buyer may find further information about the relevant development approval for the relevant building.

The above is important for the buyer to understand the development approval status of the relevant building. This is important as the nature of the building itself and the proposed units plan may change as a result of the development approval or amendments to the development approval.

New section 3 Disclosure requirements for utility services- Act, s 260(1)(m)(iv)

New section 3 of the CLPR made for the purpose of new section 260(1)(m)(iv) of the CLPA (clause 7) requires the disclosure statement to include information as to whether the relevant units are individually metered for the purpose of water supply (new section 3(a)) and what facilities if any will be provided for the charging of electric vehicles (new section 3(b)).