



# UNIT TITLES SCHEMES BILL 2009

## DISCUSSION DRAFT

### Summary of the Bill and its issues

January 2009



## 1. What are unit titles?

Unit titles are those titles where there is a sharing, between the owners of various parts (units) of the property, of common property and assets and of rights and responsibilities regarding the property as a whole. The common property is owned by a body corporate that is in turn owned by the proprietors of each of the units.

Around Australasia these titles are also called by names such as “community” or “group” or “strata titles” or “cluster titles”. “Unit titles” is the name currently used in the Northern Territory, ACT and New Zealand for most kinds of communal titles. The intention is to retain that usage in the new Northern Territory legislation.

## 2. What legislation will make up the new scheme for unit titles?

*Unit Titles Scheme Act*  
*Unit Titles Act*  
*Real Property (Unit Titles) Act*  
*Planning Act*  
*Land Title Act*  
*Registration Act*

An electronic copy of the proposed legislation and this discussion paper can be found on the Department of Justice Website:

<http://www.nt.gov.au/justice/policycoord/lawmake/reports.shtml>

This website also contains unofficial consolidations of the *Unit Titles Act*, *Real Property (Unit Titles) Act*, *Planning Act* and *Land Title Act* as they would read if the *Unit Titles Scheme Bill 2009* is enacted in its present form.

Appendix 1 to this document contains a clause by clause summary of each of the provisions in the *Unit Titles Scheme Bill 2009*.

The Minister for Justice and Attorney-General, the Hon Dr Chris Burns, released the Bill for consultation on 29 November 2008. The Minister’s press release can be found at:

<http://newsroom.nt.gov.au>

## 3. When is the new scheme for unit titles expected to commence operation?

The current aim is that the new legislation be enacted and commenced as soon as is practical – by the end of April or May 2009. It is also anticipated that the 2008 amending legislation (*Land Title and Related Legislation Amendment Act 2008*) will commence immediately before the proposed *Unit Titles Schemes Act*.

However, this timing is subject to the outcome of this consultation on the *Unit Titles Schemes Bill 2009* and to other Parliamentary priorities.

#### **4. What is the relationship between the Unit Titles Schemes Bill 2009 and the *Land Titles and Related Legislation Amendment Act 2008*?**

The *Land Titles and Related Legislation Amendment Act 2008* was enacted for the purpose of, amongst other things, making various interim changes to the current legislation – in particular:

- providing for management modules that are suited to the various types of unit developments; and
- providing that the subdivision principles and processes of the *Planning Act* and associated legislation apply to all unit titles developments rather than only the land use provisions for basic developments.

It had been intended to, in effect, have a staged implementation of these reforms. However, the current intent is these major changes now be implemented at the same time as those proposed for all new developments.

#### **5. What will be the coverage of the Unit Title Schemes Bill (and what is the relationship between the Unit Titles Schemes Bill 2009 and the current legislation)?**

In general terms the new legislation will cover new titles and land developments commencing in the future.

The current legislation will remain in force for current unit titles and for land developments on foot at the time of commencement.

The major exceptions to this general principle are that:

- (1) the new management modules will apply to bodies corporate created before or after the commencement of the new legislation;
- (2) unit plans will be able to move from being under the old legislation to being regulated by the new legislation.

The current legislation will apply to developments that have not been completed at the time of the commencement of the new legislation. However, developers may apply to be covered by the new legislation. Such applications may be subject to transitional arrangements in the Unit Titles Schemes Bill 2009 or in regulations to be made under that Act.

These general principles along with the various exceptions and qualifications are broadly summarised in the following tables:

Legislation	Coverage	Notes
Unit Titles Schemes Act 2009	<p>The new legislation will cover developments that start after its commencement (expected to occur about 1 May 2009).</p> <p>The proposed legislation will also provide for unit titles under current legislation to convert into titles under it.</p> <p>The proposed legislation will also contain transitional provisions concerning land developments that started prior to its commencement but which are not finished by the time of the commencement</p>	See clauses 110, 111, 112.

Legislation	Coverage	Notes
Unit Titles Act	<p>This Act, as amended by the <i>Land Title and Related Legislation Amendment Act 2008</i>, will continue to apply to titles issued prior to commencement of the <i>Unit Titles Schemes Act 2009</i> (but subject to the transitional and conversion provisions in that Act).</p> <p>The new requirements for subdivisional approvals will not apply if there is in force at the time of commencement either a development permit or a building permit.</p> <p>For cases where there is, at the time of commencement, an application for such a permit, the developer may seek to amend the application so as to come within the scope of the new legislation.</p>	See section 112 of the <i>Unit Titles Act</i> (as proposed to be amended by clause 129 of the <i>Unit Titles Schemes Act 2009</i> and section 47 of the <i>Land Title and Related Legislation Amendment Act 2008</i> ).

Legislation	Coverage	Notes
Planning Act	<p>The subdivisional requirements of this Act will not apply to land developments for which at the time of commencement of the new legislation either a development permit or a building permit has been issued.</p> <p>As mentioned above, for cases where there</p>	See section 200 of the <i>Planning Act</i> (as proposed to be amended by clause 122 of the <i>Unit Titles Schemes Act 2009</i> and section 53 of the

	is, at the time of commencement, an application for such a permit, the developer may seek to amend the planning application so as to come within the scope of the new legislation.	<i>Land Title and Related Legislation Amendment Act 2008</i> ).
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Legislation	Coverage	Notes
Land Title Act	This Act will provide the registration requirements for titles issued under the <i>Unit Titles Schemes Bill 2009</i> . The <i>Real Property (Unit Titles) Act</i> (see below) will continue to apply to titles issued for the purposes of the <i>Unit Titles Act</i> .	See clauses 115-118 of the <i>Unit Titles Schemes Bill 2009</i> .

Legislation	Coverage	Notes
<i>Real Property (Unit Titles) Act</i>	This Act, as amended by the <i>Land Title and Related Legislation Amendment Act 2008</i> , will continue to apply to registration requirements for developments that are subject to the <i>Unit Titles Act</i> (but subject to the transitional and conversion provisions in that Act).	See section 24 of the <i>Real Property (Unit Titles) Act</i> (as proposed to be amended by clause 127 of the <i>Unit Titles Schemes Act 2009</i> and section 24 of the <i>Land Title and Related Legislation Amendment Act 2008</i> ).

Legislation	Coverage	Notes
<i>Registration Act</i>	Regulations under this Act will provide for the fees.	Clause 107 of the <i>Unit Titles Schemes Bill 2009</i> .

## 6. What are the key elements of the proposed legislation?

- The main purpose of the Bill is the establishment of a new scheme for the issue of communal/unit titles.
- The Bill also deals with transitional arrangements concerning current unit titles and land developments that are already underway.
- There will be a single conceptual basis for all new unit titles, regardless of the scale of the proposed development. Schemes will be able to be arranged in layers and hierarchies depending on the nature of the scheme (eg is it covering a suburb, a group of town houses or strata apartments).
- Large developments will resemble a group of companies where there is an ultimate holding or parent company at the top of the pyramid and various subsidiaries and subsidiaries of subsidiaries beneath it. However, the significant difference is that the body corporate at the top does not own the property of each subsidiary body corporate. It is the converse – the various subsidiary bodies corporate share the ownership of the property of the parent body corporate.
- The new legislation proposes no limit on the number of levels of unit schemes that can be created, but it is unlikely that there will be any more than three or four.
- The new legislation will permit the amalgamation of schemes (eg so as to form a new scheme or so as to form a layered scheme).
- The new legislation will provide for schemes to contain provisions setting out ways and means for a 90% majority of owners to terminate a scheme in specified circumstances. Currently unit titles schemes can only be terminated where there is unanimous agreement of the owners or where there is a court order. The Bill (in clause 15(3)) will permit developers to include in the original body corporate management rules provisions that set out what happens when the scheme becomes old. The Bill provides that the scheme must be at least 20 years old before these termination provisions can be applied. These provisions will not apply to unit titles developments in place under the *Unit Titles Act*. That is, current unit title developments will remain subject to the regime in the *Unit Titles Act* concerning terminations by either 100% agreement or by court order.
- The new legislation provides that a seller of a proposed unit must provide a disclosure statement at the time when the contract is made. A copy of the disclosure statement must be registered against the title for the land. The content of disclosure statements is set out in clause 45(2). They must deal with matters such as expected annual contributions, any proposed authorisations for letting agents, details of scheme statements, details of management modules and methods for adjudicating any disputes that may arise from matters dealt with in the disclosure statement.
- The new legislation, for new schemes, retains the same dispute resolution process as provided for in the *Unit Titles Act* – that is, disputes will continue to be dealt with by the Local Court. At this time, the Government does not see the need to establish

specialist tribunals and adjudicators along the lines of those that exist in Queensland and New South Wales.

- The Bill does provide for a statutory officer who will have certain powers to protect the interests of individuals. This person, to be known as the Schemes Supervisor, can be called on to provide advice to the Court when it is considering terminations. The Schemes Supervisor may also have a role in determining whether or not there is a need for a security deposit for developments that are occurring progressively. The position is also expected to perform the non-statutory role of being the Department of Justice's point of contact concerning the overall operation of the legislation. Over time the legislation may also be amended so as to expand the role of the Schemes Supervisor.
- The Bill also amends the *Land Title Act* so that registration requirements for new schemes are contained in that Act. This replaces the current structure under which registration requirements are contained in a variety of Acts and Regulations.
- The Bill also makes consequential amendments to the *Planning Act*. That Act will establish the processes through which to create the scheme statement and survey plan for unit scheme developments.
- For developments currently in place, the Bill also provides for the *Unit Titles Act* to remain in operation so as to permit titles to be issued in accordance with its provisions if the land concerned has already been developed in accordance with its provisions. It will also remain in place to govern the ongoing management of existing unit developments, and corporations.
- Transitional provisions will give the developers of projects underway before the commencement of the new legislation the option of having titles issued under the new legislation or under the *Unit Titles Act*. The new legislation will facilitate the application of modern unit titles law to large scale current projects.
- The new legislation will give bodies corporate established under the *Unit Titles Act* the option of converting to a unit scheme under the new legislation. Regulations can also be made to deal with transitional issues.
- The Bill provides for the regulation of body corporate managers, caretaking service contractors, letting agents and service contractors. The new legislation sets out principles that seek to ensure that the original owners of unit titles in schemes do not impose onerous arrangements (concerning body corporate management and letting) on future owners. The legislation does not affect licensing requirements in the *Agents Licensing Act* concerning the licensing of body corporate managers.
- The Bill provides that management modules for different bodies corporate may be prescribed. It is intended that these modules will contain the rules governing the management of bodies corporate, including:
  - constitution of the body corporate committee;
  - meetings of the body corporate committee, including voting, quorum and procedures;



- meetings of the corporation, including annual general meetings, quorum, voting and proxies, notice procedures and financial and record management; and
- administrative matters, such as the appointment of body corporate managers and delegation of powers from the corporation and the committee.

## **7. What are the main differences between the current legislation and the new legislation?**

The main differences are as follows:

- subdivision controls will apply to all unit titles developments, including re-subdivisions of unit titles issued under Part IIIA of the *Unit Titles Act*.
- formalisation of the principle that the Department of Planning and Infrastructure (through the Planning Branch, the Surveyor-General and the Development Consent Authority) is responsible for subdivision processes with the Department of Justice being responsible for the registration of documents, the issuing of titles and for consumer protection aspects of the legislation.
- provision of a single set of principles that will govern the issue of all new unit titles.
- provision of a new basis on which post-commencement unit titles schemes can be terminated in accordance with principles (if any) set out in the scheme statement at the time when the unit's scheme is first registered. The current provisions (100% agreement and court orders) will apply to new developments unless the scheme statement provides for an alternative. The alternatives are expected to be required to comply with controls to be contained in regulations.
- provision of core principles under which developers may enter into contracts with body corporate managers and letting agents prior to the time when the developer has sold units.
- provision of a range of different management modules for bodies corporate depending on their size and the different types of land use allowed within the scheme.
- provision for exclusive use bylaws.

## **8. What are the key concepts and processes of the new scheme?**

Leaving aside transitional issues, the key concepts and processes are as follows<sup>1</sup>:

- An application is made under section 46 of the *Planning Act*. Section 46(3) sets out what is required to be in the application. The requirements are the same as for any other application that deals with the development and subdivision of land. There must be plan (in a form approved by the Minister responsible for the *Planning Act*)

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<sup>1</sup> References in this list are to sections of the various Acts as they will be following the commencement of the new legislation.

which sets out any part of the development that may be permitted to be changed in accordance with regulations made under the *Planning Act*. Additionally, the *Planning Regulations* may prescribe other requirements. These other requirements are expected to relate to the “scheme statement”.

- If the application is successful, a development permit will be issued under section 54 of the *Planning Act*. As with all other development permits it can be subject to conditions (including conditions about stages). The conditions may be the subject of variations on application to the development consent authority.
- When the development is completed in accordance with the development permit, the processes in place under the *Planning Act* for subdivisions come into operation. Thus, there must be an approved plan of survey as referred to in sections 61 and 62 of the *Planning Act* and section 49(3) of the *Licensed Surveyors Act*. This means that in addition to development approval for construction (and possibly the proposed future use of the land) the developer will also have to seek approval for the proposed subdivision of the land and buildings into unit titles.
- A scheme is created upon the registration of a scheme statement in conjunction with the approved plan of subdivision, but before that statement can be lodged with the Registrar-General, it must first be endorsed by the Development Consent Authority.

## 9. What is the background to this proposed legislation

- The *Unit Titles Act* was originally designed in 1974 for single stage single use developments, like the construction of a block of flats. Its “one size fits all” approach has struggled to cope with more complex developments, and as a result, over the years it has been amended numerous times.
- The first major amendment in 1983 allowed developments to be completed in stages provided that the developer set out in a disclosure statement exactly when and how the future stages would be completed.
- Cullen Bay had to be developed in 1990 under its own special legislation that created a body corporate structure for the management of communal assets in a development that created only vacant lots. The need for special legislation arose because it was always a requirement of the *Unit Titles Act* that there be a building.
- In 1993 the *Unit Titles Act* was amended so as to allow for “estate developments” so that in future, any development like Cullen Bay would not require its own special legislation.
- The most recent significant amendment made in early 2001 (but which commenced operation in 2002) saw the creation of the concept of a building lot. This concept allows further subdivisions within buildings. Building lot titles can be issued for different parts of a building or different buildings on a single parcel of land, and those titles can then be further subdivided into unit titles.
- There is no apparent need for substantial variations in land development processes or in land titles arrangements between the various types of communal land

developments. The current variations add considerable complexity to these matters. Additionally there are gaps in the legislation that adversely affect both developers and owners. There is room for reducing the complexity, improving consumer protection and reducing regulatory burden.

- In broad terms, the development of the legislation has been based around the concepts contained in Queensland's *Body Corporate and Community Management Act 1997* but it has a significantly different structure, and there are many differences in the detail due to Northern Territory drafting practices as well as the way some things are currently done in the Territory.

## **10. What are the main issues on which comment is sought**

- Are there any problems with the principle of the layered schemes (with no limitation on the number of layers)?
- Are there any problems with the detail of the provisions relating to the layered developments?
- Are there any problems with the proposals concerning the termination of schemes – for example, Should the percentage approval be greater or less than 90%? Should the period before which such terminations can occur be longer or shorter than the proposed 20 years? Should the legislation make it clearer that these termination provisions are designed to deal with the decisions that need to be made when a building or a subdivision area reach the end of their economic life? Should the legislation spell out matters that must be included in any scheme statement that deals with this issue (eg such as right to compensation based on market or other value, accommodation during a development period, security deposits by the developer)? Does current section 15(3)(d) (consent from all mortgagees and registered lessees unduly weaken the operation of the provisions)?
- Are the transitional provisions sufficient?
- Are there any provisions in the new legislation that should also apply to current titles (eg the right to make exclusive use by laws)?
- Are the proposals concerning management modules adequate?

## **11. By when are comments sought?**

Comments are sought by 27 January 2009. Follow up consultations will also take place.

Over the period to 31 January 2009, the Department of Justice will engage in a consultative process. The outcome of this will be a report to Government identifying any issues that need to be resolved prior to any legislation being formally introduced. The outcomes of the consultation will also determine the timing and speed of introduction and debate on any introduced Bill.

Consultation will also occur in the period between the introduction into Parliament of any legislation and the debate on the Bill.

## **12. Contact points for making comments/obtaining information**

### **Receipt of comments/copies of documents/registration for seminars**

Belinda Whitty  
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GPO Box 1722  
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### **Queries about land development issues**

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### **Queries about management modules issues**

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## **Appendix 1 – Summary of each of the clauses in the Unit Titles Scheme Bill 2009**

### **Chapter 1                    Introduction**

#### **Part 1.1                    Preliminary matters**

##### **Clause 1.                    Short title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Unit Titles Schemes Act 2008*.

##### **Clause 2.                    Commencement**

This clause, read with section 6A of the *Interpretation Act*, means that the provisions of the Bill may be commenced on such day or days as are determined by the Administrator by notice in the Gazette.

#### **Part 1.2                    What this Act is about**

##### **Clause 3.                    Objects**

This clause sets out the objects of the Bill. They are to permit the creation of unit titles schemes and to regulate those schemes.

##### **Clause 4.                    Overview of Act**

This clause summarises how the new legislative scheme (comprising this Bill, the *Planning Act*, and the *Land Title Act*) for unit titles is to operate.

The starting point is a development permit (for a subdivision) under the *Planning Act* with the end point being titles issued for the purposes of the *Land Title Act*.

This Bill provides for the creation, alteration and termination of unit titles schemes [Parts 2.2 and 2.4], the key aspects of them [Part 2.3], and for their management [Chapter 3]. It also deals with disputes [Part 3.3].

Chapter 4 (Parts 4.1 and 4.2) provides for the administration of the Act. Chapter 4 (Parts 4.3 and 4.4) provides for transitional arrangements and consequential amendments.

#### **Part 1.3                    Interpretation**

##### **Clause 5.                    Definitions**

This clause sets out the definitions necessary for the operation of the Bill.

##### **Clause 6.                    References about scheme**

This interpretative provision provides that references in the legislation to scheme matters are taken to be references to scheme matters of the scheme.

**Part 1.4                      Other matters**

**Clause 7.                      Act binds Crown**

This clause provides that the Act binds the Crown.

**Clause 8.                      Declared offences for Criminal Code**

This clause sets out that the criminal responsibility provisions of Part IIAA of the Criminal Code are to apply to offences.

**Chapter 2                      Basic operation of a scheme**

**Part 2.1                      Introduction**

**Clause 9.                      Overview of Chapter**

This clause contains a summary of what Parts 2.2, 2.3 and 2.4 cover.

**Part 2.2                      Life of a scheme**

**Division 1                      Forming a scheme**

**Clause 10.                      Formation of scheme**

Subclause 10(1) describes *unit titles scheme* as something set out in a *scheme statement* (see clause 18) that provides for two or more units and common property. It may come from a subdivision or from a changed unit titles scheme. It must also provide for the incorporation for the unit owners and common property.

Subclause 10(2) provides that the scheme is formed when its first scheme statement is registered.

Subclause 10(3) provides for the naming of schemes. Names may be reserved in accordance with (proposed) section 54C of the *Land Title Act* [see clause 117]. Schemes will be known by their name and the number allocated by the Registrar-General upon the registration of the first scheme statement.

**Clause 11.                      Effect of formation of scheme**

On the “formation” of a scheme (i.e. when it is registered under the *Land Title Act*) a body corporate is created which owns and controls the common property. The original owner of the land becomes the owner of the units created.

**Division 2                      Changing a scheme**

**Clause 12.                      Changes of scheme statement**

In order for a scheme to be changed, a new scheme statement must be registered. Subclause 12(2) sets out examples of changes to scheme statements, including the completion of further stages in a progressive development, additional subdivisions (to create new units or to create a layered scheme), consolidation of units or on amalgamation of a scheme with some other scheme, and the transformation of a scheme into a layered scheme.

The new scheme statement replaces the former document – which will then become an historical matter recorded by the Registrar-General.

### **Division 3                    Terminating a scheme**

#### **Clause 13.                    General rules**

Clause 13 states that a scheme may only be terminated in accordance with clause 14, 15 or clause 72.

Subclause 13(2) makes it clear that a higher scheme cannot be terminated unless all of the lower level schemes are also being terminated.

#### **Clause 14.                    Termination by court order**

This clause provides that the Local Court may terminate a scheme if it decides that it just and equitable to do so [subclause 14(3)]. An application for an order terminating a scheme can be made to the Local Court by the body corporate or a unit owner of the scheme or a subsidiary scheme.

Subclause 14(4) sets out who can be heard by the Court in considering such an application. The list includes the body corporate, unit owners and registered lessees and mortgagees of units in the scheme or any higher or lower schemes, the schemes supervisor, the development consent authority (under the *Planning Act*) and any affected local government authority.

#### **Clause 15.                    Termination by agreement**

This clause provides that a basic scheme may be terminated by either:

- the bodies corporate, each by a unanimous resolution; or
- if the management module so permits [see clause 94(2)(b)] - if there is support from 90% of the interest entitlements [see subclause 39(4) regarding interest entitlements]. This can occur once the scheme has existed for 20 years after the commencement of the Act.

Consent is also required from mortgagees and registered lessees.

The clause also recognises that management modules may make provision for issues arising upon termination of schemes such as compensation and accommodation for unit occupiers.

**Clause 16.                    When termination takes effect**

This clause provides that a termination takes effect when the required documents are lodged in accordance with (proposed) section 54E of the *Land Title Act* and the Registrar-General cancels the scheme statement in accordance with proposed section 54E.

**Clause 17.                    Effect of termination**

On the termination of a scheme, the body corporate is dissolved. Clause 17 also sets out the consequences of dissolution in respect of matter such as liabilities and the role of the Court.

This clause sets out that the owners of the former units become the owners of the assets following the termination. Additionally, a Court may make orders about the control, management and distribution of the assets.

This clause operates subject to clauses 14 (Termination by court order) and 15 (Termination by agreement).



**Part 2.3                      Key elements of a scheme**

**Division 1                    Scheme statement**

**Clause 18.                    Requirements about scheme statement**

This clause sets out what the scheme statement must contain. These matters include:

- the identification of the land that the scheme relates to;
- the scheme name and body corporate name;
- the units and common property;
- the entitlement schedules;
- the basis of any inequality between the various unit entitlements. Generally, interest entitlements will differ according to the values of the units, but contribution entitlements are supposed to be equal to the extent that it is fair and equitable to do so. (see clause 39(5));
- service location diagrams for service easements;
- for progressive schemes, the statement must contain a statement that it is intended that the development be done in stages, and any information that may be prescribed by regulation about nature of the development, the various stages and their order of implementation; and
- for layered schemes the statement must contain any information prescribed about the structure of the layered scheme.

In addition, a scheme statement may also identify a management module and any by-laws that will apply.

**Clause 19.                    Effect of scheme statement**

Scheme statements operate as agreements between the body corporate and each unit owner and each unit occupier.

A statement takes effect on registration and cannot operate retrospectively.

## **Clause 20. Responsibilities relating to registration of scheme statement**

This clause sets out who is responsible for preparing (sponsoring) scheme statements at the various times when one is required – for example:

- at the beginning – it is the original owner of the land;
- upon completion of a stage in a progressive development – the developer;
- where there is agreement to change entitlements – the parties to the agreement;
- where there is a compulsory acquisition – the acquisition authority; and
- where there is an amalgamation – the respective bodies corporate;
- and otherwise, the body corporate.

The clause sets out that the sponsor must bear the costs and obtain the relevant endorsements [consent authority, and the body corporate where it is a subsequent scheme statement and the body corporate is not the sponsor] and also lodge the document.

It is strict liability offence (maximum penalty of \$11,000) for a developer who fails to provide a copy of the first scheme statement to the body corporate within a month and for a body corporate that, after endorsing a scheme statement, fails to lodge it within three months.

## **Clause 21. Decision of body corporate to endorse statement**

This clause provides that the need for the unanimous agreement (as a general rule) of the members of the body corporate in giving consent to a new statement before the registration of the statement. However:

- a special resolution is required where the changes only relate to the management module or the by-laws;
- only an ordinary resolution is required for matters such as reinstatements, allocation of special rights, implementation of stages and certain re-subdivisions that have no impact upon unit entitlements and do not create subsidiary schemes; and
- for the lodgement of documents, clause 21(4) provides that the body corporate may chose how it makes its decision.

## **Clause 22. Endorsement of consent authority**

This clause sets out the duties of the consent authority (under the *Planning Act*) when asked to endorse a new scheme statement under clause 20(2)(a). It must not endorse a statement if it is inconsistent with a development permit, a plan of subdivision or a plan of consolidation.

**Clause 23. Provision of copies of statement**

This clause requires the Registrar-General to provide a copy of the scheme statement to each affected local government authority and anyone else who may be prescribed by regulation. These documents may be provided electronically.

**Division 2 Body corporate**

**Clause 24. Body corporate membership**

The owner (or joint owners) of a unit in a scheme is a member of the body corporate.

**Clause 25. Name of body corporate**

A body corporate will be identified by its name and scheme registration number.

**Clause 26. Seal of body corporate**

The body corporate must have a seal for official purposes in accordance with the management module.

**Clause 27. Functions of body corporate**

The functions of bodies corporate include managing the common property and body corporate assets for the unit owners and unit occupiers, engaging in any activities that may affect the interest of their schemes, and any other functions in relation to the scheme that may be given under this legislation or any other law of the Territory [subclause 27(1)].

There is an obligation on bodies corporate to act reasonably in exercising their functions [subclause 27(2)].

**Clause 28. Powers of body corporate**

This clause sets out the powers of the body corporate for each scheme.

Essentially they are given powers necessary to carry out their functions [subclause 28(1)(a)] and for that purpose they can:

- acquire, hold and dispose of property;
- take legal action;
- employ people;
- invest money;
- carry on a business;
- create an interest relating to the common property;

- supply a utility service for the scheme land; and
- carry on any activity jointly with another person.

The ability to deal with an interest in real property is limited by the requirement that there be a unanimous resolution and that all other relevant requirements of the legislation be met [subclause 28(3)].

#### **Clause 29.                    Body corporate assets**

Assets acquired by a body corporate cannot be used as security except in accordance with the management module (see clause 94) [clause 29(5)].

A body corporate cannot hold property as a body corporate asset as a joint tenant with the body corporate of another scheme, but two or more bodies corporate can hold separate shares in property as tenants in common [clauses 29(3) and (4)].

The right of body corporate to use a body corporate asset is subject to the scheme statement of any higher scheme for which it is a subsidiary scheme [clause 29(6)].

#### **Clause 30.                    Delegation of functions and powers of body corporate**

This clause provides for delegations by the body corporate to either the body corporate manager or to a committee member. Unlike the current Northern Territory provision, there is no statutory restriction on the powers that can be delegated.

Delegations must be in writing and approved by the committee in accordance with the management module.

#### **Clause 31.                    Corporations Act not apply to body corporate**

This clause, for the purposes of the *Corporations Act* and the Corporations Agreement, provides that a body corporate established under this legislation is not subject to the *Corporations Act*. This provision is in the *Unit Titles Act* and is standard for these kinds of State and Territory Acts.

### **Division 3                    Scheme land**

#### **Subdivision 1                General rules**

#### **Clause 32.                    Scheme land generally**

This clause defines ***scheme land*** as the common property and units of the scheme including any scheme building erected on the scheme land.

***scheme building*** is defined as fixed structures but excludes various owners and tenants fixtures and fittings.

#### **Subdivision 2                Common property**

**Clause 33. Common property**

*common property* is defined by reference to the scheme statement. Units and body corporate assets are not common property and a lot cannot be the common property of two schemes.

**Clause 34. Rights and responsibilities relating to common property**

This clause states the respective rights and responsibilities of the body corporate and the owners in respect of common property.

This clause sets out that the body corporate may act in relation to the common property as if it is the owner of the property.

Owners and occupiers of a subsidiary scheme will have the right to use the common property of the scheme and of any higher scheme.

**Clause 35. Creating new common property**

This clause provides that a body corporate may acquire property to become part of the common property of the scheme. Such property may be land outside the scheme land or may be a unit.

This clause also provides that such an incorporation of new common property can only occur if the body corporate by way of unanimous resolution (see clause 28(3)) approves it, and if there has been compliance with the provisions of the *Planning Act* and the *Land Title Act*. The new common property must also be consistent with the requirements of the scheme.

**Clause 36. Pre-existing rights**

This clause provides that a body corporate takes on the rights of the developer following the issue of title.

**Subdivision 3 Units**

**Clause 37. Unit**

This clause defines the term “unit” by reference to land marked on the plan of subdivision and/or a cubic space. It also contemplates that a unit might be created before it is developed (i.e. it might represent a future stage of a progressive development).

The boundaries of units will be determined in accordance with the survey plan approved by the Surveyor-General in respect of the unit.

The word “lot” is used in the definition of “unit” with the meaning it has in the *Land Title Act* – that is, as identifying an area of land for which a separate title may be issued.

**Clause 38. Unit owner and unit occupier**

This clause defines ***unit owner*** as a registered owner or where it is the scheme land of a subsidiary scheme, the body corporate of that scheme.

This clause also defines a ***unit occupier*** as a resident owner or lessee of a unit, or a person who otherwise occupies the unit as a resident or for business purposes.

**Clause 39.                    Unit entitlements**

This clause defines *contribution schedule*, *interest schedule* and *unit entitlement*. It also (in effect) defines *contribution entitlement* and *interest entitlement*.

These definitions provide, respectively, for:

- the basis for working out shares of costs in running the scheme; and
- the basis for working out respective shares in the event that the scheme is dissolved (and like matters).

**Clause 40. Adjusting unit entitlements under Court order**

This clause allows for a unit owner to seek a court order for the adjustment of unit entitlements. In making an order the Court must have regard to the principles set out in subclauses 39(5), (6) and (7) – i.e. that the contribution entitlements should be equal and the interest entitlement of a unit should reflect the ratio of the market value of the unit to the market value of all units in the scheme.

Upon the making of such an order, the body corporate is required to lodge a new scheme statement.

**Clause 41. Adjusting unit entitlements under agreement**

This clause provides that owners may agree amongst themselves to adjust unit entitlements as between their own units. They must obtain the agreement of registered mortgagees and lessees and must advise the body corporate. The body corporate must register a new scheme statement reflecting the change.

**Clause 42. Adjusting unit entitlement because of land acquisition**

This clause deals with the situation where a Government authority acquires part of the scheme's land. When this happens the body corporate is under a duty to obtain professional advice as to the impact on unit entitlements. The Government authority is responsible for the costs of such advice.

**Subdivision 4 Sale of proposed units**

**Clause 43. Application**

This clause outlines that Subdivision 4 applies to contracts for the sale of units that will come into existence when a scheme is established or changed.



**Clause 44. Completion of contract**

This clause provides that, for unit sales off the plan (before a title has issued for the unit being sold), the contract must allow 10 working days for the completion of the contract after the day on which the seller advises the buyer that the unit has come into existence. Any contract that contains a shorter period will be read as requiring settlement in 10 working days.

**Clause 45. Obligations of seller**

Before entering into a contract for the sale of a proposed unit the seller must provide a disclosure statement. The statement must deal with matters such as anticipated annual contributions, the letting agent, body corporate assets, the proposed scheme statement, an outline of the proposed plan of subdivision, the proposed regulation module, any proposed by-laws, and details of any proposed development application.

The disclosure statement must provide for a method of adjudicating of disputes arising from the disclosure statement and must be signed by the seller and lodged with the Registrar-General.

There is also a requirement to provide an information sheet to buyers.

A failure to provide a disclosure statement or information sheet exposes the seller to a fine of up to 100 penalty units (currently \$11,000).

**Clause 46. Replacement of disclosure statement**

If the seller becomes aware of misinformation in the disclosure statement before the contract is completed, the seller is obliged to give an amended statement to the buyer. A failure to do so exposes the seller to a fine of up to 100 penalty units (currently \$11,000).

The seller cannot be compelled to complete the contract within 10 working days of being given an amended disclosure statement. This allows the buyer to consider the impact of the changes and the options available to the buyer.

**Clause 47. Implied warranty**

This clause sets out some warranties that are implied into contracts for the sale of proposed units. The most important is that the information in the disclosure statement is accurate and that at the time of the contract, the seller has told the buyer everything known to the seller regarding defects and liabilities or any other circumstances relating to the scheme that might prejudice the buyer.

Subclause 47(2) limits the exposure of the seller by providing that the warranty takes effect to the extent to which the seller knew or ought reasonably to have known of the matters to which the warranty relates.

**Clause 48. Cancellation of contract**

This clause sets out the circumstances in which a buyer can cancel a contract. Essentially, the buyer has to be “substantially prejudiced” by:

- a failure to provide a disclosure statement or information sheet;
- a failure to include all the information required in the disclosure statement under subclause 45(2); or
- a disclosure statement that contains information that is inaccurate or out of date.

**Clause 49.                    Restriction of power of attorney**

A power of attorney to the seller from the buyer can only be exercised in accordance with a written statement provided to the seller by the buyer before the power was given. The power must expire no later than a year after the scheme is established or changed.

**Subdivision 5            Easement**

**Clause 50.                Easement**

This clause provides that rights under an easement must not be such as to unreasonably interfere with the use and enjoyment of the scheme land [subclause 50(1)].

The clause implies that an easement conveys whatever rights are necessary for its effective operation, but the conditions of the scheme statement override those implied rights where there is any inconsistency between the rights and the scheme statement [subclauses 50(2) and (3)].

The clause also provides for the need for a unit owner to give reasonable notice (except for emergencies) before entering another unit or the common area under an easement right [subclauses 50(4), (5) and (6)].

**Clause 51. Service location diagram**

If there is a change of location of service easements or if a new service easement is established, the body corporate must prepare a new services location diagram and seek registration of a new scheme statement (showing the changes) within a year of the easement coming into existence.

**Subdivision 6 Insurance of scheme land**

**Clause 52. Body corporate policy and owner policy**

This clause sets out that the body corporate has an insurable interest and the obligations of the body corporate in respect of that insurable interest but that does not prevent a unit owner from taking out their own insurance.

The body corporate's obligation is to ensure that the scheme property is insured and this can be done in more than one contract which would allow for separate insurance for individual units.

Unit owners and higher scheme bodies corporate may also take out insurance for scheme land.

**Clause 53. Body corporate policy must provide for reinstatement**

This clause sets out the requirement for the insurance policy to:

- cover the reinstatement of any damaged scheme land;
- record the interests of unit mortgagees;
- prohibit cancellation for breach by anyone other than the body corporate; and
- require notice of cancellation to be given to any mortgagee.

**Clause 54.                    Body corporate policy must provide for public liability**

This clause sets out that, for personal injury and illness liabilities, the coverage must be not less than \$10,000,000 or the amount specified in the Regulations.

**Clause 55.                    Additional insurance**

This clause makes it plain that the body corporate has the power to take out additional insurance to cover its own liabilities as a legal entity.

**Clause 56.                    Amount payable under policy**

This clause states that amounts payable under an owner's insurance are to be disregarded in calculating the amount payable upon a claim under the body corporate policy.

**Clause 57.                    Insurance for mortgaged unit**

A mortgagee can only demand that a unit owner separately insure their unit for a shortfall between the amount owing under the mortgage and the amount covered under the body corporate's insurance.

**Subdivision 7                Reinstating damaged scheme land**

**Clause 58.                    Approved reinstatement process**

This clause provides for the reinstatement of damaged scheme land under an approved reinstatement process that outlines the steps to be taken.

**Clause 59.                    Reinstatement with Court approval**

This clause provides a process for the Local Court to approve the reinstatement of damaged structures. The body corporate, any unit holder or any mortgagee can apply to the Court for approval of a reinstatement process.

Notice of the application has to be given to all bodies corporate involved where the scheme is part of a layered scheme, and to each insurer of the scheme land.

**Clause 60. Reinstatement with body corporate approval**

This clause allows a body corporate to arrange for reinstatement by way of a unanimous resolution (a resolution passed without dissent) without the need to obtain the approval of the Court. Where more than one body corporate is involved, each body corporate must pass a unanimous resolution to approve the reinstatement process.

The approval has effect only in relation to so much of the scheme land as is insured and to the extent agreed to by the insurer.

**Clause 61. Variation of process**

This clause provides a process for the Local Court to vary an approved reinstatement process whether that process was first approved by the Court or by the relevant bodies corporate.

Alternatively, the relevant bodies corporate may each, by unanimous resolution, agree to a variation.

**Part 2.4 Development of schemes**

**Division 1 Preliminary matters**

**Clause 62. Overview**

This clause contains a summary of what Part 2.4 is trying to cover – namely:

- progressive developments;
- the formation of layered schemes; and
- scheme amalgamations.

**Clause 63. Subsidiary scheme, higher scheme and basic scheme**

This clause contains key definitions:

- *first scheme*;
- *subsidiary scheme*;
- *higher scheme*; and
- *basic scheme*.

**Division 2 Progressive development of a scheme**

**Clause 64. Scheme intended to be developed progressively**

Sub-clause (1) provides that *a scheme is intended to be developed progressively* if:

- it is intended that all or part of the scheme land will be further developed;
- the implementation of a further stage of the development (whether or not the stage is specified in the scheme statement) will require a development permit; and
- at least 1 stage of the development is yet to be completed.

Subclause (2) gives various examples, and subclause (3) makes it clear that the definition on subclause (1) does not prevent a scheme that was not originally intended to be progressively developed from being progressively developed.

**Clause 65.                    Implantation of stage of development otherwise than as indicated in scheme statement**

The developer of a progressive development must give written notice of changes to the scheme that affect the progressive development or which would be inconsistent with the last development permit.

Such notices must be given, at least a month before applying for a development permit for the implementation of the stage, to the body corporate and to any person who has entered into a contract with the developer to buy a unit.

The penalty for breach is 100 penalty units and is an offence of strict liability.

**Clause 66.                    Subsequent scheme statement for implementation**

This clause imposes an obligation upon the body corporate to lodge a subsequent scheme statement when requested to do so by the developer upon the completion of a stage in a progressive development.

The timing for the lodgment of an amended scheme statement depends upon whether the stage has been completed as originally outlined in the current scheme statement or if changes have been made and clause 65 applies.

**Clause 67.                    Requirements relating to scheme**

This clause provides a power to make regulations to impose obligations on developers who are progressively developing schemes. Those regulations might require a security deposit to be lodged, or may set out who, other than the original owner of the scheme land, may exercise the rights of the developer in relation to the development.

**Division 3                    Layered scheme**

**Clause 68.                    Layered schemes**

This clause defines a **layered scheme** as one which is not a subsidiary of another but which is higher than one or more others [subclause (1)].

The concept of ***member schemes*** of a layered scheme covers both the layered scheme and its subsidiaries [subclause (2)].

Subclause (3) provides that member schemes must operate independently of one another, except as may otherwise be provided under this legislation.

**Clause 69.                    How layered schemes are formed**

This clause states how a layered scheme may be the result of the progressive development of a basic scheme, or the amalgamation of two or more basic schemes (see clause 71) and provides examples and a diagram of the formation of a layered scheme when a unit in one scheme is subdivided to form a subsidiary scheme.

**Division 4                    Amalgamation of schemes**

**Clause 70.                    General rule**

Schemes can only be amalgamated under the provisions in clauses 71 and 72.

**Clause 71. Amalgamating schemes to form layered scheme**

Amalgamation to form a layered scheme can occur by an order of the Local Court or by each body corporate unanimously agreeing to amalgamate.

The Court order or agreement must provide for:

- the first scheme statement of the layered scheme;
- a subsequent scheme statement of each of the basic schemes reflecting the order or agreement;
- any provision relating to any rights or liabilities accrued in relation to the basic schemes; and
- any other matter that may be prescribed by regulation.

The amalgamation has no effect on the accrued liabilities of the basic schemes.

At the same time as the amalgamation takes place, changes can also be made to the basic schemes.

**Clause 72. Amalgamating schemes to form new scheme**

Amalgamation to form a single scheme can occur by an order of the Local Court or by each body corporate unanimously agreeing.

The Court order or agreement must provide for:

- the first scheme statement of the new scheme;
- any provision relating to any rights or liabilities accrued in relation to the basic schemes; and
- any other matter that may be prescribed by regulation.

On the registration of a new scheme statement, the old schemes cease to exist and the assets and liabilities of the original schemes accrue or are novated to the new scheme.



**Chapter 3 Administration of a scheme**

**Part 3.1 Introduction**

**Clause 73. Overview of Chapter**

This clause contains a summary of the coverage of Chapter 3, including:

- the administration of bodies corporate [Part 3.2];
- the resolution of disputes arising from the operation of a scheme [Part 3.3];
- the rules governing body corporate managers, service contractors, caretaking service contractors and letting agents [Part 3.4];
- the management modules setting out the procedure for the management of bodies corporate [Part 3.5]; and
- the by-laws setting out the rights and obligations of the body corporate, unit owners and unit occupiers, [Part 3.5].

**Part 3.2 Administration of body corporate**

**Division 1 Committee of body corporate**

**Clause 74. Committee**

This clause provides that there must be a committee with the size, membership, functions and procedural matters for each committee to be determined on accordance with the management module for that committee.

This clause provides that the procedures and powers of the committee are as contained in the relevant management module.

**Clause 75. Committee must act for body corporate**

This clause makes it clear that the Committee acts for the body corporate.

The committee must act reasonably in exercising its powers and performing its functions.

**Clause 76.                    Protection of committee member**

This clause provides certain legal protections for actions done in good faith and without negligence.

**Clause 77.                    Code of conduct for committee members**

This clause provides for a code of conduct for committee members. The code is set out in Part 1 of Schedule 1 to the Bill.

A person who breaches the Code can be removed as a committee member in accordance with the management module.

**Division 2                    Meeting and voting**

**Clause 78.                    Requirements about meeting and voting**

This clause provides that a body corporate must hold meetings as required under its management module and otherwise as it decides.

It also sets out matters that can be governed by a management module, such as the counting of votes and the appointments of proxies.

**Clause 79.                    Methods of voting**

This clause provides for the various types of voting:

- Unanimous resolution - passed with no dissent
- Majority resolution - a majority of the votes (with each unit having one vote)
- Ordinary resolution – based of votes representing a majority of contribution entitlements, so ,for example if the title for a supermarket represented 50% of the contribution entitlements for a shopping centre, the vote of that owner would represent 50%
- Special resolution – the winning vote must represent at least 2/3 of the votes cast, the opposition vote must not exceed 1/4 of the number of units or represent more than 1/4 of the contribution entitlements.

**Clause 80. Evidence of resolutions**

A document is evidence of a resolution passed if:

- the body corporate's seal is affixed; and
- it specifies the date of the meeting, the terms of the resolution and the type of resolution (ordinary, majority, special or unanimous).

**Division 3 Records and notices**

**Clause 81. Records required by management module**

This clause provides for record keeping and access to records. The management module may prescribe requirements about maintaining records and providing access to records.

Unit owners, prospective purchasers of units and anyone who the body corporate reasonably considers has a proper interest in the body corporate's records can apply to access the records or specified information contained in the records.

The body corporate must permit access or provide information within five working days of receiving the request.

**Clause 82. Notices required by management module**

The management module may set out the information that the body corporate may insist on being provided to it. Examples cited are information about the transfer of a unit, and the happening of a specified event about a unit.

**Clause 83. Service of documents**

This clause sets out the duties of the body corporate regarding facilities for the service of documents. A notice of the scheme name has to be displayed in a conspicuous place and a letter box for the body corporate has to be provided.

A document can be served upon a body corporate either by prepaid post addressed to its address specified in the scheme statement, or by placing it in its letterbox.

### **Part 3.3                      Dispute resolution**

#### **Clause 84.                      What is a dispute**

This clause defines what a *dispute* is and sets out how the Local Court handles disputes.

A dispute arises if:

- the body corporate, a unit owner or the mortgagee of a unit claims there is, or has been, a breach of the law in relation to the scheme; or
- a unit owner claims to have been wrongfully treated by the body corporate, the committee or another unit owner; or
- a unit owner claims a decision of the body corporate or committee is unreasonable, oppressive or unjust; or
- a dispute relating to a unit or the common property has arisen:
  - between a unit owner and the body corporate or committee; or
  - between 2 or more unit owners.

#### **Clause 85.                      Application for adjudication of dispute**

A person involved in a dispute listed in the previous clause has the right to apply to the Court for the adjudication of the dispute.

A body corporate can appoint a unit owner to be its representative in any proceedings.

The Court exercises its powers under the *Small Claims Act* and the *Local Court Act* to resolve the dispute

#### **Clause 86.                      Powers of Court**

The Local Court is given the power under this clause to:

- make an interim order;
- settle the dispute through mediation and arbitration; or
- require a party to give to the Court a report or specified information about the dispute; or
- give judgment on a monetary claim; or
- order a party to take or refrain from a specified action; or

- order a change to be made to a by-law; or
- confirm or change a decision of the body corporate or committee; or
- order the body corporate to refund or pay an amount to a unit owner; or
- make any other order for the resolution of the dispute as it thinks fit.

Sub-clause (2) restricts the Court's power to alter a by-law unless it is satisfied that:

- if the body corporate was not a party to the proceedings – the body corporate has had a reasonable opportunity to do so;
- a unit owner who might be adversely affected by the change has had an opportunity to make a submission to the Court about the change; and
- the order is necessary for an equitable resolution of the dispute.

If the court makes an order altering a by-law, the body corporate is obliged to lodge a new scheme statement reflecting the change.

### **Part 3.4                      Body corporate manager, service contractor, caretaking service contractor and letting agent**

#### **Clause 87.                      Key terms for Part**

This clause sets out the key definitions for the purposes of Part 3.4.

#### **Clause 88.                      Original owner's obligations**

This clause sets out the original owners' obligations regarding arrangements made by it for the engagement of a body corporate manager, service contractors and letting agents, where those arrangements will be binding on the body corporate once titles are issued.

Any arrangement must be appropriate for the scheme, must be fair and reasonable, and must not adversely affect the ability of the body corporate to carry out its functions.

If the original owner breaches the duties imposed under this clause the body corporate or an owner may take action to recover losses arising out of the contravention.

#### **Clause 89.                      No consideration for arrangement**

This clause sets out the circumstances in which a body corporate may seek benefits for arrangements concerning body corporate managers, service contractors or letting agents.

The body corporate is not entitled to accept a payment or benefit for an arrangement unless the arrangement relates to the first appointment of a letting agent after the initial owner control period (and there was no appointment made during that period) and the payment or benefit is a fair market value for the authorisation and if the authorisation is not made during the original owner control period.

**Clause 90. Letting agent’s obligations**

This clause provides a letting agents business can only be conducted from a unit if the agent is the owner or a lessee of the unit.

**Clause 91. Combined arrangement**

A person may provide the various agency services (body corporate managers, service contractors or letting agents) for two or more schemes.

This clause provides that a contract is not void merely because it deals with two or more of the engagements of a body corporate manager, service contractor or authorisation of letting agent.

**Clause 92. Code of conduct for body corporate manager and caretaking service contractor**

This clause provides for a code of conduct for body corporate managers and for caretaking service contractors – the code is set out in Part 2 of Schedule 1.

The code applies as part of the terms of engagement between the body corporate and the body corporate manager or caretaking service contractor and prevails over any express terms to the extent to which it is inconsistent with those terms.

**Clause 93. Code of conduct for letting agents**

This clause provides for the code of conduct for letting agents authorised by the body corporate to conduct a business for the leasing of units in the scheme. It does not apply to a letting agent who is not authorised by the body corporate but who might be engaged by an individual unit owner to lease or manage the leasing of the owner’s unit, unless the body corporate.

The Code is set out in Part 3 of Schedule 1.

The code applies as a term of the authorisation to act given by the body corporate, and prevails to the extent to which it is inconsistent with any other terms of the body corporate’s authorisation.

**Part 3.5 Other rules governing scheme administration**

**Division 1 Management modules**

**Clause 94. Management module of a scheme**

The legislation provides for a range of management models (“management modules”) for the various types of developments. This Part sets out how the regulation module for each scheme is decided.

This clause sets out that the regulations may prescribe different modules for different schemes. The scheme statement for each scheme will identify the regulation module that is to apply to the scheme.

Management modules will cover the administration of a scheme, including the ability of a body corporate to levy unit owners for the cost of administering the scheme.

**Division 2                      By-laws**

**Clause 95.                      By-laws of a scheme**

This clause provides that the by-laws that are to apply are those identified in the scheme statement or, if none are identified, the by-laws set out in Schedule 2.

The by-laws govern the use of the scheme land and body corporate assets although they cannot unlawfully restrict the use of a unit.

**Clause 96.                      Contravention notice**

This clause deals with contraventions of by-laws. If there is a current contravention that is likely to continue, the body corporate may give a notice regarding remedying the contravention. Failure to comply is an offence with a maximum penalty of 20 penalty units (currently \$2,200).

**Clause 97.                      Exclusive use by-laws**

This clause defines the meaning of ***exclusive use by-law***. It is a by-law that gives special rights to an owner or occupier over common property or body corporate assets. The special rights may be given by the by-law or allocated by a person entitled to do so under the by-law.

A subsequent scheme statement may only create or omit an exclusive use by-law if there is a unanimous resolution (one without dissent) and either the owner of the affected unit agrees or it is ordered by the Court.

A subsequent scheme statement must be lodged within a month of the resolution and either the owners agreement or the Court order.

An allocated right may be revoked under the terms of the by-law.

The appropriate regulation module may also deal with various aspects of the application of exclusive rights by-laws.

**Clause 98.                      Review of exclusive use by-laws**

This clause deals with the situation where a unit subject to an exclusive use by-law is owned or occupied by a body corporate manager, service contractor or letting agent. If the owner or occupier ceases to be the body corporate manager, service contractor or letting agent, and the unit owner refuses to agree to the registration of new scheme statement to

omit the by-law, the body corporate can apply to the Local Court for the registration of the new scheme statement.

In granting such an order, the Court may order the payment of compensation to the owner or occupier of the unit.



**Chapter 4                    Administrative matters**

**Part 4.1                    Supervision of schemes**

**Clause 99.                    Appointment of schemes supervisor**

This clause provides for the appointment of a statutory unit titles schemes supervisor. The functions and powers of the schemes supervisor are set out in clauses 100 and 101. See also clause 14(4) (role in termination of schemes by the Local Court) and clause 67(2) (security deposits).

**Clause 100.                    Functions of schemes supervisor**

The functions of the Schemes Supervisor are those that may be given under this Act or another law. See clauses 99, 14 and 67.

**Clause 101.                    Powers of schemes supervisor**

The Schemes Supervisor has the necessary powers to carry out his or her functions and any other powers that may be given under the Bill or other legislation.

**Clause 102.                    Delegation of schemes supervisor**

This clause gives the Schemes Supervisor the power to delegate his or her powers and functions under the legislation.

**Part 4.2                    Other administrative matters**

**Clause 103.                Approved form**

This clause provides that the Registrar-General may approve forms for the purposes of the Bill and must publish them.

**Clause 104.                Jurisdiction conferred on Local Court**

Subject to sub-clause 85(4) (which allows for the Court to exercise its jurisdiction under the *Small Claims Act* in resolving disputes between unit owners and bodies corporate) the Local Court has jurisdiction to deal with all applications made under the legislation.

**Clause 105.                Persons acting for Territory as unit owner**

This clause provides that, if the Territory is the unit owner of all units of a scheme, the relevant Minister (being the Minister acting for the Territory in relation to the units under a law of the Territory) or a person appointed by that Minister may affix the seal of the body corporate.

**Clause 106.                Rates**

This clause provides that units are rated separately but that bodies corporate are not liable for rates except in the case of the Darwin Waterfront Precinct where legislation already provides that common property is ratable (see section 15(6) *Darwin Waterfront Corporation Act*) .

**Clause 107.                Fees**

Fees for the purposes of this legislation are set under the *Registration Act* and may also be prescribed by regulation made under this Act.

**Clause 108.                Regulations**

This clause sets out that regulations may be made for the purposes of the Act. Included in the list of matters that regulations can provide for are transitional provisions to address the issue of unit developments already in progress.

**Part 4.3                    Transitional matters for *Unit Titles Schemes Act 2008***

**Clause 109.                Definitions**

This clause defines ***building development plan, commencement, corporation*** and ***units plan*** for the purposes of Part 4.3:

**Clause 110. Application**

This clause provides that the new Act is to apply to all land covered by a development permit issued on an application covered by (proposed) section 201 of the *Planning Act* (see clause 123). It will also apply to any land subdivided under the *Unit Titles Act* that may in the future be converted to scheme land, and land currently being developed under the current requirements of the *Unit Titles Act* and *Planning Act* but which the developer might elect to subdivide under this legislation upon the completion of the development.

**Clause 111. Conversion of units plan or building development plan into scheme**

This clause allows a corporation of a units plan to lodge a scheme statement for the conversion of the units plan into a scheme.

**Clause 112. Formation of scheme from pre-commencement development**

This clause provides that a scheme may, as prescribed, be formed from the subdivision of land –

- (a) for which a development permit or building permit prescribed by regulation was issued before the commencement; and
- (b) that has not been subdivided for the *Unit Titles Act*; and
- (c) in relation to which requirements prescribed by regulations are met.

The intent of this provision is to allow regulations to be made to prescribe requirements for any developer who:

- has already started a unit development;
- cannot meet the requirements of this legislation, and in particular the requirement to have an approved subdivision plan for something that currently requires no approval; and
- wishes to register a scheme statement to bring the development under this legislation

**Clause 113. Rights and obligations under *Unit Titles Act***

The conversion of a units plan to a scheme will not affect any rights and obligations incurred under the *Unit Titles Act*. This principle operates subject to anything specific in Part 4.3.

**Part 4.4 Consequential amendments**

**Division 1 Amendment of *Land Title Act***

**Clause 114. Act amended**

This clause provides that this Division amends the *Land Title Act*.

**Clause 115. Amendment of section 4 (Definitions)**

This clause inserts into the *Land Title Act* definitions necessary for the application of that Act to this Act.

**Clause 116. Amendment of section 51 (Plan of subdivision and plan of consolidation)**

This clause amends section 51 of the *Land Title Act* (Subdivision of lot by registering plan of subdivision) to make it applicable to the subdivision and consolidation of scheme land or land intended to be scheme land.

**Clause 117. New Part 4, Division 4**

This clause inserts a new Division 4 (Unit titles schemes) comprising sections 54A-54E) into Part 4 of the *Land Title Act*.

**Section 54A (Plan of subdivision and plan of consolidation)** makes it a precondition to the registration of a plan of subdivision for the formation of a scheme that a scheme statement be registered at the same time, and prohibits the registration of a plan of subdivision or consolidation that is inconsistent with a scheme statement.

**Section 54B (Registration of scheme statement)** sets out a list of requirements for the registration of a scheme statement and provides for the issue of titles and the allocation of a scheme number for the scheme and body corporate by the Registrar-General upon the registration of a scheme statement .

**Section 54C (Reservation of scheme name and body corporate name)** makes provision for people to apply to the Registrar-General for the reservation of a scheme name and body corporate name. This is similar to the ability of people to reserve company names in advance of setting up a company. A developer who does not reserve a name faces the risk of the scheme statement being rejected because the name is not available or is considered to be offensive (see proposed section 54B(1)(c)(iii)).

**Section 54D (Registration of statement reflecting approved reinstatement process)** governs the registration of a subsequent scheme statement reflecting an approved reinstatement process (after scheme land has been damaged – see clause 58).

**Section 54E (Registration of documents required for termination of scheme)** sets out the registration requirements for the termination of a scheme and the Registrar-General's duties in respect of the registration of such documents.

**Section 54F (Registration and cancellation of disclosure statement)** sets out the Registrar-General may only register a disclosure statement if it complies with section 45 of the Unit Titles Schemes Act and is signed by the seller. The disclosure statement must be cancelled if a replacement discloser statement is registered.

Disclosure statements expire when the discloser ceases to be the owner of the land in respect of which the document has been registered.

**Clause 118.            New Part 14**

This clause adds to the *Land Title Act* a new Part 14 (Transitional matters for *Unit Titles Schemes Act 2008*).

The section added by this new Part, **section 220 (Application)**, makes the amendments to the *Land Titles Act* effected by clauses 115, 116 and 117, applicable to plans of subdivision and consolidation that are lodged with the Registrar-General after commencement.

**Division 2            Amendment of *Planning Act***

**Clause 119.            Act amended**

Division 2 amends the *Planning Act*.

**Clause 120.            Amendment of section 3 (Interpretation)**

This clause adds definitions to the *Planning Act* to aid in its application to the *Unit Titles Schemes Act 2008*.

**Clause 121.            Amendment of section 46 (Development applications)**

Section 46 of the *Planning Act* is amended so that the proposed scheme statement is provided as part of the subdivision application.

**Clause 122.            Amendment of section 200 (Application)**

This clause amends a provision that will be added to the *Planning Act* when the *Land Title and Related Legislation Amendment Act 2008* commences, to exclude the application of these provisions to developments that are already in progress upon commencement.

It also allows for Regulations to be made to cover any further transition issues that might arise.

**Clause 123.            New Part 14**

This clause inserts transitional provisions into the *Planning Act*.

A new section, **section 201 (Application for development Permit)**, is added by this new Part 14. This section applies the amendments made to the *Planning Act* to applications made after the commencement date, or if an application has been made but no permit issued and the applicant amends the application to meet the requirements of proposed section 41(3)(l).

**Division 3            Amendment of *Real Property (Unit Titles) Act***

**Clause 124. Act amended**

This Division amends the *Real Property (Unit Titles) Act*.

**Clause 125. Amendment of long title**

This clause amends the long title for the *Real Property (Unit Titles) Act* so that it provides for the registration of unit titles “... and other instruments under the *Unit Titles Act*...”.

**Clause 126. Section 3 (Interpretation)**

This clause sets out the relationship of the *Real Property (Unit Titles) Act* with the *Unit Titles Schemes Act 2008* making it clear that the *Real Property (Unit Titles) Act* has no application to instruments made for the purposes of the *Unit Titles Schemes Act 2008*.

**Clause 127. Amendment of section 24 (Application)**

This clause amends section 24 of the *Real Property (Unit Titles) Act* so that so as to clarify the operation of transitional arrangements made by the *Land Title and Related Legislation Amendments Act 2008*. It is proposed that that Act commence operation immediately prior to the *Unit Titles Schemes Act 2008*.

**Division 4 Unit Titles Act**

**Clause 128. Act amended**

This Division amends the *Unit Titles Act*.

**Clause 129. Amendment of section 112 (Application)**

This clause amends section 112 by inserting new subsections (5A), (5B), (5C) and (5D).

Subsection (5A) excludes the application of the amendment made to the section 16 of the *Unit Titles Act* (requiring a development permit for the subdivision effected by a units plan) by the *Land Title and Related Legislation Amendment Act 2008*, to developments that are already in progress at the commencement date.

Subsections (5B), (5C) and (5D) allow further transitional regulations to be made for the purposes of the *Land Title and Related Legislation Amendment Act 2008*.

This clause also adds a new Part XII (Transitional matters for the *Unit Titles Schemes Act 2008*). One clause is added (**113 Application of Act**) which states that the *Unit Titles Act* does not apply to land that is or which is proposed to be scheme land for the purposes of the *Unit Titles Scheme Act 2008*.

**Division 5 Expiry of Part**

**Clause 130. Expiry**

This clause provides that Part 4.4 (Consequential amendments) expires the day after the amendments take effect.

### **Schedule 1 – Codes of Conduct**

This Schedule contains the various codes of conduct that might apply by virtue of clauses 77, 92 and 93. To the extent that there is any inconsistency between the provisions of these codes and the provisions of the terms of engagement or authorisation, the provisions of the codes apply.

Part 1 sets out the code of conduct for committee members. Their basic obligations are to comply with the legislation, avoid conflicts of interest, act fairly and honestly, not to disclose confidential information about a unit owner or unit occupier, and to avoid conduct that would unreasonably interfere with another person's enjoyment of the scheme land.

Part 2 sets out the code of conduct for body corporate managers and caretaking service contractors, and Part 3 sets out the code of conduct for letting agents. All these codes require services to be provided to schemes at competitive prices.

### **Schedule 2 – By-laws**

This Schedule contains the default by-laws that apply to a scheme if the body corporate does not adopt its own by-laws