

*ENFORCEMENT OF ARTICLES AND  
BY-LAWS UNDER THE  
UNIT TITLES ACT AND THE  
UNIT TITLE SCHEMES ACT AND  
OTHER ISSUES*

*DISCUSSION PAPER*

February 2013



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# 1 INTRODUCTION

There is concern that the *Unit Titles Act* and the *Unit Titles Schemes Act* do not provide bodies corporate with adequate powers to enforce articles and by-laws, despite this being a significant part of their function. There is also concern that the *Unit Titles Act* and the *Unit Title Schemes Act* may not be meeting community expectations in a number of other different areas including in providing effective regulation of body corporate management agreements, insurance, and overcrowding of units.

## 1.1 Purpose of discussion paper

This discussion paper has been prepared to seek contributions from the community on issues related to the enforcement of articles under the *Unit Titles Act* and by-laws under the *Unit Title Schemes Act*, with a view to reform both Acts. In addition, this discussion paper also seeks submissions on a range of other issues concerning the current *Unit Titles Act* and the *Unit Title Schemes Act* including the regulation of body corporate management agreements, insurance, and overcrowding of units.

## 1.2 Process

The Attorney-General and Minister for Justice, the Hon John Elferink MLA, is calling for submissions on the issues raised in this paper.

Policy options and recommendations for change may be further developed by the Department of the Attorney-General and Justice from the submissions received. It is intended that a report on these issues will be provided to Government. Further consultations (either broad or targeted) may be necessary, depending on the level of complexity or the scope of any proposed changes to the Acts.

It is proposed that this paper be one of a number of papers dealing with issues arising out of the operation of the Acts. A discussion paper was released in December 2012 concerning the cancellation of units plans and schemes under the Acts.

## 1.3 How to make a submission

Anyone can make a submission. It can be as short or informal as a letter or email, or it can be a more substantial document. A submission does not have to address all of the issues identified in the paper, and it does not have to be confined to the issues identified in the paper. Electronic copies of submissions should also be sent whenever possible.

**Submissions should be sent to:**

Director, Legal Policy  
Department of the Attorney-General and Justice  
GPO Box 1722  
DARWIN NT 0801

Or by email to [Policy.AGD@nt.gov.au](mailto:Policy.AGD@nt.gov.au)

**Closing date for submissions is 30 April 2013.**

Any submission, feedback or comment received by the Department of the Attorney-General and Justice will be treated as a public document unless clearly marked as “confidential”. In the absence of a clear indication that a submission, feedback or comment is intended to be confidential, the Department of the Attorney-General and Justice will treat the submission, feedback or comment as non-confidential.

Non-confidential submissions, feedback or comments may be made publicly available and published on the Department of the Attorney-General and Justice website. The Department of the Attorney-General and Justice may draw upon the contents of such and quote from them or refer to them in reports, which may be made publicly available.

Any requests made to the Department of the Attorney-General and Justice for access to a confidential submission, feedback or comment will be determined in accordance with the Information Act (NT).

Note: Although every care has been taken in the preparation of the Discussion Paper to ensure accuracy, it has been produced for the general guidance only of persons wishing to make submissions to the review. The contents of the paper do not constitute legal advice or legal information and they do not constitute Government policy documents.

## 2 BACKGROUND

The *Unit Titles Act* and the *Unit Title Schemes Act* provide for group titles – that is, there is shared ownership of land, buildings and facilities. Each title comprises individual freehold units and common property. The common property is owned by a body corporate established when titles are first issued. The members of the body corporate are the freehold unit owners.

Default articles and by-laws are provided for in the *Unit Titles Act* (Schedule 1) and the *Unit Title Schemes Act* (Schedule 2), respectively, and the body corporate may make amendments or additions to these rules. The purpose of these rules is to regulate and facilitate the administration and enjoyment of community living.

There is concern that the *Unit Titles Act* and the *Unit Title Schemes Act* do not give the bodies corporate with the power or means to enforce articles or by-laws, despite this being a significant part of the legislation's purpose (see for example section 34 (a) of the *Unit Titles Act*). Parts 3-8 of this discussion paper deals with issues relating to articles and by-laws.

The *Unit Titles Act* and the *Unit Title Schemes Act* are also meant to provide for a complete scheme of regulation for group title developments. The legislation is meant to deliver an effective system of rules at each stage in a development's life-cycle. However, despite these aims, there is concern that the *Unit Titles Act* and the *Unit Title Schemes Act* may not be meeting community expectations in a number of other different areas including the regulation of body corporate management agreements, insurance, and overcrowding of units. Part 9 of this discussion paper lists other issues for which comments are sought.

### 3 ARTICLES AND BY-LAWS

#### **What are ‘articles’ for the purposes of the *Unit Titles Act*?**

Articles are rules under the *Unit Titles Act* that apply for the purpose of the control, management, administration, health and safety, use or enjoyment of the common property or of a lot.

The body corporate and each of the members of the corporation (the freehold unit owners) are bound by, and have rights conferred by, the articles to the same extent as if the corporation and each member had agreed under seal with each other and each other member to be bound by the articles. Each member of the corporation is to observe and obey all the provisions of the articles (section 77). Furthermore, unless the articles of the corporation otherwise provide, an occupier of a unit, not being a proprietor of the unit, is bound by the articles of the corporation as if they were a proprietor of the unit.

The articles are set out in Schedule 1 of the *Unit Titles Act* and apply to a units plan (including condominium and estate developments though not a building development plan). The articles apply to a corporation, as defined by section 27 of the Act, and may be modified through amendment or rescission, or addition (sections 76 and 78).<sup>1</sup> A corporation committee (if authorised by a corporation) is able to make decisions on the amendment, rescission, or addition of articles by special resolution and any decisions by the corporation to enforce the articles are able to be made by ordinary resolution (sections 7, 32 and 78 and Unit Titles (Management Modules) Regulations). A corporation committee member is able to attend committee meetings by teleconference (telephone or via computer) but a meeting is not able to be held simply through emails.

Articles do not exist under the *Unit Title Schemes Act*.

#### **What are ‘by-laws’ for the purposes of the *Unit Titles Act*?**

Under the *Unit Titles Act* estate or building developments are able to make by-laws relating to obligations and rights of unit owners and occupiers and the use of common property. An estate or building management corporation may make by-laws by special resolution (sections 26ZD and 26ZZA respectively.) In some circumstances the Minister may have made by-laws for a development before the first meeting of the management corporation, but the management corporation is able to change these by-laws at a later date if necessary (sections 26ZE and 26ZZB). By-laws may prescribe penalties for breaches (not exceeding 100 penalty units) and in addition can apply penalties of up to 1 penalty unit for every day breaches continue (1 penalty unit = \$141) (sections 26ZD(2) and 26ZZ(3)).

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<sup>1</sup> Note: Under the *Unit Titles Act* a body corporate for a unit title development does not have the authority to make by-laws. However under sections 26ZD and 26ZZA, an estate or building management corporation, respectively, may, by special resolution make by-laws.

## **By-laws subject to ministerial oversight**

By-laws are subject to section 63 of the *Interpretation Act*. By-laws must be approved by the relevant Minister and then tabled in the Legislative Assembly. Parliament has the power to disallow the by-laws. Before the relevant Minister causes the by-laws to be notified in the Gazette, they may be returned to the body corporate with recommended amendments.

## **What are the current processes for enforcing articles and by-laws under the *Unit Titles Act*?**

Under section 106 of the *Unit Titles Act* an application may be made to the Local Court if, amongst other matters, the corporation claims that a breach of the *Unit Titles Act*, articles, or by-laws of the corporation has occurred.

An application shall be made to the Court and dealt with by the Court within its small claims jurisdiction. The Court has broad powers, in respect of an application under section 106, and may, for example, do one or more of the following:

1. attempt to settle the dispute through mediation or arbitration;
2. require a party to provide a report to the Court about the dispute;
3. order that a party take such action that is, in the opinion of the Court, necessary to remedy a breach or default, or to resolve a dispute;
4. order that a person refrain from taking an action;
5. alter the articles of a corporation if the Court is satisfied of certain matters;
6. give judgment on a monetary claim; and / or
7. make such incidental or ancillary orders as it thinks fit.

Although costs may be awarded against either party to the proceedings this can only occur if more than \$5,000.00 is claimed and if the Court considers it is fair and reasonable to award costs (section 106(2); also refer section 29 of the *Small Claims Act*).

## **What are ‘by-laws’ for the purposes of the *Unit Title Schemes Act*?**

Under the *Unit Title Schemes Act* by-laws may specify the obligations and rights of the body corporate, unit owners and the unit occupiers relating to the use and control of common property and amenities. By-laws prescribed in Schedule 2 of the *Unit Title Schemes Act*, and those made by the body corporate, are a set of rules for a unit title scheme for the purpose of controlling and managing the use or enjoyment of common property and the lot. These by-laws regulate a variety of matters including the body corporate assets, improper conduct, the keeping of animals, noise and parking on common property (section 95).

By-laws, with the exception of those concerning exclusive use of common property by a unit owner, may be modified by amending a body corporate’s scheme statement which

generally needs to be approved by the body corporate (or committee if authorised to do so) by special resolution (sections 21 and 95 and Unit Title Schemes (Management Modules) Regulations).

Any decisions by the body corporate to enforce the by-laws are able to be made by ordinary resolution of the body corporate (or committee if authorised to do so). A committee member is able to attend committee meetings by teleconference (telephone or via computer) but a meeting is not able to be held simply through emails.

### **By-laws subject to ministerial oversight**

As discussed above in relation to the *Unit Titles Act*, by-laws under the *Unit Titles Schemes Act* are subject to ministerial oversight under section 63 of the *Interpretation Act*.

### **What are the current processes for enforcing by-laws under the *Unit Title Schemes Act*?**

Section 96 of the *Unit Title Schemes Act* provides the body corporate with the power to issue a contravention notice if a by-law has been contravened. If the body corporate reasonably believes a unit owner or occupier is contravening or has contravened a by-law, a written notice may be issued requiring the person to stop the contravention or remedy the contravention as specified in the notice. Failure to comply is an offence with a maximum penalty of 20 penalty units (1 penalty unit = \$141).

The body corporate has the right to make an application to the Local Court for the adjudication of a dispute if there is, or has been, a contravention of the *Unit Title Schemes Act* by a person in relation to the scheme (section 84). The Court exercises its power under the *Small Claims Act* and the *Local Court Act* to resolve the dispute. The Court has broad powers when it comes to adjudicating the dispute and may, for example:

1. settle the dispute through mediation or arbitration;
2. require someone to give a report to the Court about the dispute;
3. give judgment on a monetary claim;
4. order that a person refrain from or take an action;
5. order a change to be made to the by-laws if satisfied of certain matters; and / or
6. make any other order for the resolution of the dispute as the Court considers appropriate.

The Supreme Court has jurisdiction to hear and decide an application made to it under this Act (section 104).

If the application is made under the *Small Claims Act* then costs may be awarded against the unsuccessful party to the proceedings if more than \$5,000.00 is claimed (which is unlikely in these types of disputes) and if the Court considers it is fair and reasonable to award costs (section 106(2) and section 29 of the

*Small Claims Act*). However, if an application is made under the *Local Court Act* costs may be awarded against the unsuccessful party at the discretion of the Local Court (section 85(4)(b) and section 31 of the *Local Court Act* and Part 38 of the *Local Court Rules*). The Local Court may also require that a party bringing proceedings pay a “bond” if there is reason to believe they will be unable to pay costs in the event they are unsuccessful.

## **What are the problems that bodies corporate face enforcing a breach of an article or by-law in the Northern Territory?**

### *Articles*

The current standard (default) articles are designed around small scale flats-style 1970s’ developments. They are difficult to amend so as to maintain relevance for large scale developments. They are also not particularly useful for very small 2 or 3 unit developments.

### *Difficulty amending by-laws*

By-laws must be relevant in order for them to be followed and enforced and therefore bodies corporate must have the power to amend by-laws where necessary. However, a body corporate manager has highlighted the fact that by-laws are difficult for bodies corporate to amend. Under the *Unit Titles Act* ministerial approval is required for any amendments to by-laws and under the *Unit Titles Schemes Act* a change to the scheme statement of a development is also required. To overcome these issues, it is argued that there should be a simpler process for the making of by-laws (ie less government oversight).

### *Unenforceable and ineffective*

A major developer has complained that the legislation does not give a body corporate the power or means to enforce articles and by-laws. The current system may be seen as time consuming, costly, ineffective and unenforceable. It is argued that schemes should be given express power to be self-governing and to be able to police their own rules without relying on court processes.

### *Inefficient and expensive*

Despite the *Unit Titles Act* and *Unit Title Schemes Act* providing the mechanism for resolving disputes in the Local Court, the process can take considerable time and energy and can also result in costs for the body corporate by way of professional services such as legal expenses, strata manager attendances and disbursement costs.

Rather than relying on a court order to settle a dispute, for example, through mediation, the *Unit Titles Act* and *Unit Title Schemes Act* could prescribe this intermediate step in the dispute resolution process. In other jurisdictions, such as Queensland, the adjudication of a dispute does not progress to the courts or relevant tribunal until mediation has been attempted.

### *Limited ability to recover court costs*

There is only limited power for the Local Court to award costs against the unsuccessful party to a dispute that concerns less than \$5,000 and in most circumstances these costs have to be met by the body corporate. Therefore, there is the opportunity for the *Unit Titles Act* and *Unit Titles Schemes Act* to be amended to provide for the Local Court to award costs for all disputes and increase the Court's power to make parties pay a bond for costs when they initiate proceedings.

### *Consistency of enforcement*

As mentioned above, under the *Unit Title Schemes Act*, a body corporate can issue a contravention notice for the breach of a by-law (this power does not exist under the *Unit Titles Act* and a body corporate has to apply directly to the Local Court to enforce a by-law). However if this power is exercised in an unjust, oppressive or unreasonable manner, an application may be made to the Local Court, by the unit owner or occupier who has allegedly committed the breach, to adjudicate the dispute. This means that a body corporate can not 'pick and choose' which by-laws it enforces and needs to be consistent when issuing contravention notices. Otherwise, even when exercising its statutory right, the body corporate may be subject to litigation if an owner or occupier claims that a decision of the body corporate (ie the issuing of a contravention notice) is unreasonable or unjust. This implies that a body corporate would need to take equal action against all persons in the scheme breaching the same by-law, such as parking in the wrong place.

### *Subjectivity of breach*

One of the challenges of community living is the different perception of breaches. While some breaches like parking on common property are relatively clear other issues like noise and improper conduct are more subjective. Noise, for example, may be exacerbated by poor building acoustics. In many instances, people accept some noise from their neighbours and accept it as part of community living. The subjective nature of a breach may create difficulties for the body corporate: should it aim to enforce all by-laws and/or articles equally, regardless of the degree or nature of the breach or only those that are determined to be serious enough?

The enforcement of all by-laws and articles would be an onerous and arguably unrealistic task for a body corporate. If the onus is on the body corporate to enforce all by-laws and articles it may lead to less emphasis on getting along with one another and an increased attitude of enforcing one's rights.

### *Recoverable Fines – enforcing penalties*

Regardless of whether penalties or fines are issued by individual schemes or the courts, the penalties needs to be recoverable to be effective. One of the problems with the current system is that some people choose to ignore the contravention notice issued by the body corporate and then the body corporate needs to decide whether or not to pursue the matter in the courts. If no action is taken the penalty cannot otherwise be enforced.

Furthermore, if the articles or by-laws of the corporation provide for penalties to be issued, it remains the responsibility of the body corporate to enforce that debt.

#### *Unavailability of the person in breach of the by-law and short term accommodation rentals*

Attracting a transient population, including backpackers, it may often be the case in the Northern Territory that the person in breach of the by-law is not an owner or occupier of the unit title scheme. If, for example, a backpacker van is abandoned on the common property it can be difficult for a body corporate to remove the property. The process can take a significant amount of time and it may even be the case that it is not possible for a tow-truck to enter the common property to remove the vehicle due to physical dimensions of the car park.

Furthermore, short term rental accommodation is available in unit title schemes in the Northern Territory. A breach of a by-law or article may be difficult and time consuming to enforce on short-term guests, unless the unit owner was to be held liable. However it is important to note that, if common property was damaged, the Criminal Code may apply.<sup>2</sup>

#### *Knowing how to manage relationships*

While there is a formal process for dealing with a breach of a by-law, there may be occasions where a less formal approach will be more appropriate. A minor breach may often be easily dealt with by simply drawing the person's attention to the breach. Approaching the person to discuss the problem can at times be more productive than a heavy-handed approach, and often will resolve the concern. A heavy-handed approach may cause resentment at being formally served with a contravention notice and the person may then become hostile. The heavy-handed approach for minor breaches from the outset can have an adverse effect on ongoing relationships and lead to future disputes.

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<sup>2</sup> Section 241 of the Criminal Code – Damage to property:

(1) A person is guilty of a crime if the person causes damage to property belonging to another person.

Fault elements:

The person:

(a) intentionally causes damage to property belonging to that other person or someone else; or

(b) is reckless as to causing damage to property belonging to that other person or someone else.

Maximum penalty: Imprisonment for 14 years.

## 4 OVERVIEW OF OTHER JURISDICTIONS

### What are the current processes for enforcing by-laws in other jurisdictions?

#### *New South Wales*

Under the *Strata Schemes Management Act 1996* (NSW), a two step process is generally used to enforce a breach of a by-law. Firstly, either the executive committee or owners' corporation/community association must meet and agree to serve a notice on the offending party requiring them to comply with that by-law. Often this power is delegated to the strata managing agent.

If the breach continues, an application for an order can be made to the Consumer, Trader and Tenancy Tribunal (the Tribunal) for a fine of up to \$550. The Registrar processes the application and must refuse to deal with a matter if satisfied that mediation was appropriate and was not attempted.

If the application is accepted, the parties are required to attend a hearing. Generally, the penalty is payable to New South Wales Fair Trading, however the Tribunal can order that part or all be paid to the scheme as damages. The Tribunal has power to require a person to pay a pecuniary penalty for a contravention of an order made by an Adjudicator or the Tribunal or for a contravention of a notice served on the person by an owners' corporation requiring the person to comply with a particular by-law that the person has previously contravened. The involvement of the Tribunal ensures a fair hearing is provided by an independent third party before any penalty is imposed. A similar system operates in Queensland and Victoria. An appeal may be made to the Tribunal against an order of an Adjudicator and an appeal may be made to the District Court against an order of the Tribunal.

Furthermore, the *Strata Schemes Management Act 1996* (NSW) gives power to Adjudicators and the Tribunal to make orders to settle disputes about certain matters relating to the operation and management of a strata scheme with respect to the *Strata Schemes (Leasehold Development) Act 1986* and *Strata Schemes (Freehold Development) Act 1973*.<sup>3</sup>

#### *Victoria*

The two Victorian Acts (the *Subdivision Act 1988* and the *Owners Corporations Act 2006*) set out a process to help owners corporations deal with grievances. Under the *Owners Corporations Act*, the owners' corporations<sup>4</sup> must have an internal grievance

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<sup>3</sup> According to s 3, the objectives of the *Strata Schemes Management Act 1996* (NSW) are: '(a) to provide for the management of strata schemes created under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and (b) to provide for the resolution of disputes arising in connection with the management of strata schemes.'

<sup>4</sup> Under the *Owners Corporations Act* "owners corporation" is a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision. An owners' corporation has perpetual succession and a common seal and is capable of suing and being sued in its own name. Subject to the Act, the owners' corporation has the power to make a

procedure to handle complaints about breaches of the rules and other disputes. This must be used before going to Consumer Affairs Victoria for conciliation or the Victorian Civil and Administrative Tribunal (VCAT).

Under the *Owners Corporations Act 2006*, a lot owner, occupier or manager can make a complaint to the owners' corporation about an alleged breach of the Rules, Act or *Owners Corporations Regulations 2007* or it may otherwise come to the attention of the owners' corporation that a breach has occurred.

If the owners' corporation decides to take action, it must issue a Notice to Rectify Breach in the approved form. If the breach has not been rectified within 28 days, the owners' corporation can decide to give the person more time to comply, issue a Final Notice to Rectify Breach or not proceed with further action.

If after serving a Final Notice to Rectify Breach and complying with the dispute resolution procedure specified in the Owners Corporation Rules, the owners' corporation can decide to apply to VCAT for an order requiring the rectification of the breach.

The owners' corporation must give notice of its decision to the person(s) who made the complaint and the person(s) to whom the notice was given. VCAT can impose penalties for breaches of rules and make a wide range of other orders including:

- 1 ordering someone to do something;
- 2 imposing a penalty of \$250 for breaches of rules that will be paid into the Victorian Property Fund; and / or
- 3 requiring the payment of money owed, as damages or restitution.

VCAT may refer a dispute to the County Court, on its own motion or on the application of a party, if the Tribunal is satisfied that it ought to be so referred having regard to:

1. the fact that the dispute or other matter raises a question of general importance; and
2. the Act and the Regulations; and
3. the complexity of the matter; and
4. the amount, if any, in dispute.

Under section 34A of the *Subdivision Act 1988*, an owners' corporation may apply to VCAT for an order determining the dispute or matter. VCAT may make any order it thinks fit on an application under this section.

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rule must be for the purpose of the control, management, administration, use or enjoyment of the common property or of a lot.

### *Queensland*

The Queensland *Body Corporate and the Community Management Act 1997* establishes the Office of Commissioner for Body Corporate and Community Management. The Commissioner is responsible for providing a dispute resolution service as well as an education and information service for the public and persons who have rights and responsibilities under the *Body Corporate and the Community Management Act* (see sections 230 and 232). The Commissioner does not have the power to make or review orders.

The body corporate is responsible for enforcing its by-laws. Enforcement action usually commences with the issue of mandatory notices.<sup>5</sup> The body corporate may give a contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. The decision to serve a contravention notice can be made by the committee or by the body corporate in a general meeting.

If an owner or an occupier fails to comply with a contravention notice, the body corporate can decide to commence enforcement action in the Magistrates Court (see section 182). The Court has the power to impose a financial penalty for failure to comply with the notice.

Alternatively, an application can be lodged with the Commissioner for mediation and if necessary conciliation and/or adjudication (see sections 184 and 238). The applicant needs to have made reasonable attempts to resolve the dispute by internal dispute procedures before making an application. An adjudicator's order can be enforced through the Magistrates Court or, if unsatisfactory, appealed to the Queensland Civil and Administrative Tribunal on a question of law (see section 289).

More complex body corporate and community management scheme disputes may be heard by the Queensland Civil and Administrative Tribunal.

### *Western Australia*

Before an application to resolve a dispute is made to the State Administrative Tribunal, the *Strata Titles Act 1985* (WA) states that the applicant must have complied with any dispute resolution procedure which may be contained in the strata company's by-laws.

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<sup>5</sup> There are, however, limited circumstances in which the service of a notice is not required (ie if it is a safety emergency).

The *State Administrative Tribunal Act 2004* provides for the State Administrative Tribunal to assist in the resolution of disputes. As a matter of policy, the use of the State Administrative Tribunal is seen as a last resort. This process does not necessarily resolve the dispute, and further court action may be required to enforce the orders. The State Administrative Tribunal may make an order for the settlement of a dispute or the rectification of a complaint with respect to the exercise or performance of, or the failure to exercise or perform, a duty or function conferred or imposed by a by-law.

The strata company may impose by-laws that contain a provision for a fine (section 42A) to be imposed for a breach of any particular by-law. The amount of the fine for any one breach may not exceed \$500. The State Administrative Tribunal may make an order for the payment of a penalty for a breach of a by-law.

To enforce a State Administrative Tribunal order, it is necessary to go to a court of competent jurisdiction (monetary order) or the Supreme Court (other than a monetary order) to enforce the order (refer sections 85 and 86 of the *State Administrative Tribunal Act 2004*).

### *South Australia*

Corporations in South Australia created before 1996 are subject to the *Strata Titles Act 1988* and corporations created after 1996 are subject to the *Community Titles Act 1996*. The *Statutes Amendment (Community and Strata Titles) Act 2012* has made amendments to the *Strata Titles Act* which now provides for a penalty to be imposed on a person for contravention of, or failure to comply with, articles.

The articles, which form part of the *Strata Titles Act*, are the rules and regulations that define the powers and obligations of the strata corporation and owners. A strata corporation has the power to enforce its articles (section 25). If a dispute can not be resolved, the Magistrates Court has wide powers to determine disputes between unit holders and a corporation.

The *Community Titles Act* provides for the community corporation, which comprises the registered owners of the lots in the community scheme. The community corporation's role is to administer and enforce the by-laws and manage the common property and any fixtures erected on it (section 75). The by-laws are a compulsory document for all schemes. By-laws set out the obligations of the corporation in administering the scheme and are the rules by which the scheme is to be run.

The recent amendments allow both strata corporations and community corporations to impose a penalty of up to \$500 for breaches of a by-law, which must be paid to the corporation. These fines may be imposed on members of the corporation or any other person, including visitors or outsiders. After a fine is issued to a person in breach of a by-law, that person has a right of appeal to the Magistrates Court if they wish to contest the matter. This shifts the onus back on to the offender to take the next step. The breach must be proved by the corporation, on the balance of probabilities.

There is no government agency to oversee the management of strata and community titles or to resolve disputes. If a dispute cannot be resolved by negotiation or through a community mediation service, an application may have to be made to the Magistrates Court to decide the matter (sections 141 and 142).

### *Australian Capital Territory*

The Australian Capital Territory *Unit Titles (Management) Act 2011* gives the owners' corporation the power to issue a rule infringement notice for a breach of the rules. It may be issued to an owner or an occupier and only if the circumstances of the contravention make it likely that the contravention will continue or be repeated. The rule infringement notice requires the person to remedy the contravention.

If the person does not comply with the notice then that person commits an offence and the owners' corporation may, without further notice, apply to the ACT Civil and Administrative Tribunal for an order in relation to the failure to comply with the notice (penalty maximum 5 penalty units).

### *Singapore*

The relevant parts of the *Land Titles (Strata) Act 1999* and the entire *Buildings and Common Property (Maintenance and Management) Act* have been combined into a single Act known as the *Building Maintenance and Strata Management Act*.

The *Building Maintenance and Strata Management Act* provides that the by-laws prescribed in the regulations and those made by the management corporation are for the purpose of controlling and managing the use or enjoyment of common property and the lot in a development. Owners and occupiers of strata lots are obliged to comply with these by-laws (section 32).

The management corporation, owner or resident may apply to the court for an order to stop someone from disobeying the by-laws and to recover damages (see section 32). However, as a matter of policy, it is recommended that the party in breach of a by-law be approached and made aware of the problem and given the opportunity to rectify the situation. If this is unsuccessful, the next step is to proceed to mediation by the Strata Titles Board. This is generally more time and cost effective than if the dispute is heard in court.

If mediation is unsuccessful, the dispute can proceed to a hearing before the Strata Titles Board for arbitration (see section 92). The Board will make an order based on the evidence and merits of the case and the decisions of the Strata Titles Board are final. An appeal can only be made to the High Court on a point of law (see section 98). By leave of the District Court, an order of the Strata Titles Board may be enforced and judgment may be entered in terms of that order. For matters that are outside the jurisdiction of the Strata Titles Board, the disputing parties can seek resolution from the courts.

### *New Zealand*

The New Zealand *Unit Titles Act* provides for a fully integrated dispute resolution service for unit title disputes. As with other jurisdictions, it is recommended that the first step with any dispute is to address the breach of the by-law with the offending party, as the breach may be a simple misunderstanding or mistake.

If assistance is required to reach an agreement or if an external party is needed to make a decision, the body corporate can make an application to the Tenancy Tribunal for dispute resolution. As a matter of policy, the Department of Building and Housing receives these applications on behalf of the Tenancy Tribunal and identifies the most appropriate way to assist resolving the dispute, that is, whether to pursue mediation or advance to a hearing.

Mediation with the parties is facilitated where possible. If the dispute is not resolved by mediation, or if the type of dispute is more suitable for adjudication, then the matter is referred to the Tenancy Tribunal for a hearing. The Adjudicator of the Tenancy Tribunal will make a final decision for all parties. However it is more likely that a dispute regarding a breach of body corporate rules will be dealt with by mediation.

The Tribunal has jurisdiction to make orders requiring any person or body corporate to pay any sum, or to do any work to a value, or otherwise incur expenditure, up to \$50,000. If a claim exceeds \$50,000, one of the parties may choose to abandon some of it, in order to bring the claim within the jurisdiction of the Tribunal. If the claim is reduced to fit within the \$50,000 limit a later claim cannot be made to recuperate the difference.

Disputes that exceed this amount will be transferred by the Tribunal to either the District Court or the High Court, depending on which jurisdiction the dispute falls into. Where a dispute falls outside the jurisdiction of the Tenancy Tribunal it can be taken to the appropriate court.

Note: This applies only to disputes occurring or continuing after the Unit Titles Act 2010 came into force on 20 June 2011.

## 5 REFORM OPTIONS

### *Option 1 (to be implemented in conjunction with other reform suggestions)*

The Government to launch an educational campaign informing bodies corporate, unit owners, unit occupiers and real estate and letting agents of their rights and responsibilities regarding articles and by-laws that regulate unit title schemes. Although owners and occupiers should be aware of the articles and by-laws that regulate the scheme they own or live in, many are not aware of their rights and responsibilities under the articles or by-laws (ie an owner should ensure that a tenant has a copy of the by-laws). An educational campaign may assist in raising awareness of rights and responsibilities for community living with the possibility of reducing the number of breaches that occur in unit title schemes.

### *Option 2*

Encourage bodies corporate to invest in infrastructure that will minimise the ability to breach a by-law. For example, boom gate security access (or equivalent) to enter a car park.

### *Option 3*

Amend the *Unit Titles Act* and *Unit Title Schemes Act* to allow for bodies corporate (and their committees) to meet via email in order to make it easier and more convenient for them to amend and enforce by-laws and articles.

### *Option 4*

Amend the law to simplify the process for changing by-laws.

### *Option 5*

Amend the *Unit Titles Act* and *Unit Title Schemes Act* to prescribe mandatory internal grievance procedures to be set out in the articles or by-laws. A genuine attempt at mediation should be exhausted before an application can be made to the Local Court for adjudication of the dispute.

### *Option 6*

Amend the *Unit Titles Act* and *Unit Title Schemes Act* to provide for the Local Court to award costs for all disputes (no matter their value) and increase the Court's power to make parties pay a bond for costs when they take proceedings.

### *Option 7*

Amend the *Unit Titles Act* and *Unit Titles Schemes Act* to provide a body corporate express authority to impose fines for breach of by-laws.

Allowing schemes to issue their own fines is seen by some to be a swifter, less costly, more effective and enforceable process than the current court-based system. However,

such processes could be abused with certain individuals or groups targeted ie tenants or those who have had a falling out with the committee.

One option could be to limit the ability to issue fines only to managing agents.

#### *Option 8 Recovery*

If the articles and by-laws of a corporation allow the body corporate to issue their own fines, any unpaid amounts:

- could be added to the levies of owners and owners could be given the power, in turn, to recover the amount from tenants including through forfeiting the tenants' bond held under the *Residential Tenancies Act*;
- owners could be made vicariously liable for breaches committed by their tenants. It may not, however, be fair or reasonable to make landlords responsible for the actions of their tenants which are outside of their control. Allowing the landlord to recover from the tenant may be an option; however this will add additional administrative and possible court processes;
- amend the *Fines and Penalties (Recovery) Act* (and Regulations) to allow outstanding fines to be referred to the Fines Recovery Unit. The Fines Recovery Unit would be able to take appropriate enforcement measures. Appropriate avenues would need to be available if the fine was disputed;
- if the breach continues and the fine is not paid, an application could be made to the Local Court (or an appropriate tribunal) to hear the dispute. The involvement of the court or tribunal would ensure a fair hearing by an independent third party before the penalty is imposed. Similar to New South Wales, Victoria and Queensland, the penalty (or portion of the penalty) could be paid to the scheme as damages.

#### *Option 9*

This reform option refers specifically to breach of parking by-laws and was debated by Parliament in both 2005 and 2007 in the Unit Titles Amendment Bill (serial 31 and 96).

If a car is unlawfully parked in a common area within the body corporate managed area, the body corporate currently has the capacity to request that the owner refrain from doing so. If the unlawful parking continues, the body corporate should be empowered to obtain the contact details of the registered owner of the vehicle from the Motor Vehicle Registry and issue a penalty notice (for example, for 1 penalty unit). As the law currently stands, a body corporate is not entitled to obtain this information from the Motor Vehicle Registry. The body corporate could issue a penalty notice for each day the car is in breach of the by-law.

A further enforcement measure would be to allow the body corporate to issue a seven-day notice to the registered owner of the vehicle stating that the vehicle will be removed from the premises. Finally, the body corporate would be able to recover from the registered owner all the associated costs including the penalty for the breach of the by-law and the cost of removing the unlawfully parked vehicle.

Once the vehicle has been removed from the premises, the vehicle will be a matter to be decided by general law. Neither police nor local council should be involved in the imposition of the penalty notice or removal of the vehicle.

This option empowers bodies corporate to enforce their by-laws. However, this option permits the body corporate to impose penalties without any weight or consideration being given to the rights of the vehicle owner, even if the owner believed that they were not wrongfully parked. As the penalties imposed will have the status of debts, collection of the debt will occur via the small claims jurisdiction of the Local Court. It is arguable that not all bodies corporate may be equipped with the resources or skills necessary to fairly manage an infringement notice scheme and the enforcement processes. This reform option has the capacity to be abused by the body corporate by the arbitrary imposition of penalties and improper use of the information obtained from the Motor Vehicle Registry.

#### *Option 10*

Amend the *Agents Licensing Act* so that one of the purposes for which monies of the Fidelity Fund established under that Act can be spent is that of establishing a dispute and advice service along the lines in place in Queensland. Such a service could be operated by either a government agency or by a professional association.

## **6 UNIT TITLES ACT (NT) – PROVISIONS CONCERNING ARTICLES**

### **34 General duties**

A corporation shall, subject to this Act and the Regulations:

- (a) be responsible for the enforcement of its articles and the control, management and administration of the common property;
- (b) keep in a state of good repair and properly maintain the common property and all chattels in its possession, custody or control; and
- (c) maintain in good repair and proper order and, if renewal is reasonably necessary, renew, all pipes, wires, cables, ducts, and apparatus and equipment of any kind used, or intended, adapted or designed for use, in the provision of services in respect of which easements are created by section 25.

### **106 Resolution of disputes, &c.**

- (1) An application may be made under this section:
  - (a) if a corporation, a mortgagee of a unit or a member claims that a breach of this Act or of the articles of the corporation has occurred;
  - (b) if a member claims to have been prejudiced, as occupier of a unit, by the wrongful act or default of the corporation, the committee or another member;
  - (c) if a member claims that a decision of the corporation or the committee is unreasonable, oppressive or unjust; or
  - (d) if a dispute arises:
    - (i) between a corporation or the committee and a member; or
    - (ii) between 2 or more members, in relation to any aspect of the occupation or use of a unit or the common property.
- (2) Subject to this section, an application shall be made to the Court and dealt with by the Court within its small claims jurisdiction as if the proceedings were proceedings under the *Small Claims Act*, and the *Local Court Act* and the *Small Claims Act* and the Rules made under those Acts shall apply accordingly.
- (3) A member appointed by a corporation may represent the corporation in proceedings under this section.
- (4) The Court may, in respect of an application under this section, do one or more of the following:

- (a) attempt to settle the proceedings between the parties by the processes of mediation and arbitration;
  - (b) require a party to provide reports or other information for the purposes of the proceedings;
  - (c) order that a party take such action as, in the opinion of the Court, is necessary to remedy a breach or default, or to resolve a dispute, and is specified in the order;
  - (d) order that a party refrain from a further action of a kind specified in the order;
  - (e) subject to subsection (5), alter the articles of a corporation;
  - (f) confirm, vary or reverse a decision of the corporation or the committee;
  - (g) give judgment on a monetary claim;
  - (h) order that a corporation refund to a member money paid to the corporation by the member;
  - (j) make such incidental or ancillary orders as it thinks fit.
- (5) The Court shall not make an order to alter the articles of a corporation unless:
- (a) the corporation is a party to the proceedings or the Court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings;
  - (b) if it appears to the Court that the alteration could adversely affect a member who is not a party to the proceedings, the Court is satisfied that the member has been notified of the possibility that such an order could be made and given a reasonable opportunity to make submissions to the Court in relation to the matter; and
  - (c) in any event, the Court is satisfied that the order is essential to achieve a fair and equitable resolution of the matter in dispute.
- (6) Where the Court makes an order altering the articles of a corporation, the Court shall forward a copy of the order to the Registrar-General.
- (7) Where an application is made under this section and the Court is satisfied that an interim order is justified by the urgency of the case, the Court may make an interim order to preserve the status quo between the parties to the proceedings pending the final resolution of the proceedings.
- (8) An interim order under subsection (7):
- (a) has effect for such period as the Court may determine and specifies in the order, and may be renewed by the Court from time to time;

- (b) may be made or renewed whether or not notice of the application has been given to a respondent; and
  - (c) unless sooner revoked or the order expires, ceases to have effect on the determination or resolution of the application under this section.
- (9) The Court may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court.
- (10) This section does not limit or derogate from any civil remedy at law or in equity.
- (11) In this section, **member**, in relation to a corporation, includes a person who is, by section 77, bound by the articles of the corporation.

### **107 Jurisdiction conferred on court**

The Court has jurisdiction in all applications made to it under this Act.

## 7 UNIT TITLE SCHEMES ACT (NT) –PROVISIONS CONCERNING BY-LAWS

### Part 3.3 Dispute resolution

#### 84 What is a dispute

- (1) There is a **dispute** relating to a scheme in any of the following circumstances:
  - (a) the body corporate, or a unit owner, unit occupier or mortgagee of a unit, claims there is, or has been, a contravention of this Act by a person in relation to the scheme;
  - (b) a unit owner claims to have been wrongfully treated by the body corporate, the committee, another unit owner or a unit occupier;
  - (c) a unit owner claims a decision of the body corporate or committee is unreasonable, oppressive or unjust;
  - (d) a dispute relating to a unit or the common property has arisen:
    - (i) between a unit owner and the body corporate or committee; or
    - (ii) between 2 or more unit owners;
  - (e) other circumstances prescribed by regulation.
- (2) However, a reference in subsection (1)(c) to a decision of the body corporate does not include a reference to a decision of the body corporate to terminate the scheme under section 15(b).

#### 85 Application for adjudication of dispute

- (1) A person (the **applicant**) mentioned in section 84 may apply to the Local Court for the adjudication of a dispute between the applicant and another person (the **respondent**) mentioned in that section in relation to the dispute.
- (2) Except as otherwise directed by the Local Court, the applicant and respondent are parties to the proceedings for the application.
- (3) If the body corporate is a party to the proceedings, the body corporate may appoint the body corporate manager or a unit owner to be its representative in the proceedings.
- (4) The Local Court:
  - (a) must not deal with the application if it considers another person or body should adjudicate the dispute; and
  - (b) may exercise its jurisdiction under the *Small Claims Act* and *Local Court Act* in dealing with the application.

- (5) This Part does not affect any other remedy a person may have in relation to the dispute.

### **86 Powers of Court**

- (1) Without limiting the Local Court's powers, it may, for adjudicating the dispute, do 1 or more of the following:
- (a) make an interim order in relation to the application;
  - (b) require someone to give a report or specified information to the Court about the dispute;
  - (c) settle the dispute through mediation or arbitration;
  - (d) give judgment on a monetary claim;
  - (e) order a person to refrain from or take an action;
  - (f) confirm or change a decision of the body corporate or committee;
  - (g) order a change to be made to a by-law;
  - (h) make any other order for the resolution of the dispute as the Court considers appropriate.

### **96 Contravention notice**

- (1) The body corporate of a scheme that reasonably believes a person who is a unit owner or unit occupier is contravening or has contravened a by-law may, by written notice given to the person, require the person:
- (a) to stop, or not to repeat, the contravention; and
  - (b) to remedy the contravention as specified in the notice.
- (2) The person must comply with the notice.

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

## 8 JURISDICTIONAL OVERVIEW

<b>Jurisdictional Analysis of Enforcement provisions and issues of contention</b>			
	Express power for body corporate to impose penalty for breach of article/by-law for unit plan	Operate under government's infringement notice scheme/ Involvement of government bodies	Prescription of Mediation Provisions
<b>Northern Territory</b>			
<i>Unit Titles Act (UTA)</i>  <i>Unit Title Schemes Act 2010 (UTSA)</i>	No	No. <i>Fines and Penalties (Recovery) Act</i> and Regulations do not apply.  An application can be made to the Local Court for dispute resolution.	No
<b>New South Wales</b>			
<i>Strata Schemes Management Act 1996</i>  <i>Strata Schemes (Leasehold Development) Act 1986</i>  <i>Strata Schemes (Freehold Development) Act 1973</i>	No	An application can be made to CTT Tribunal for a fine up to \$550 to be imposed for a breach of a by-law.  Penalty imposed by the CTT Tribunal is generally payable to Fair Trading; however an order can be made that part or all be paid to the scheme.  CTT Tribunal does not have the power to enforce its own orders.	Yes and application can be made for meditation.  The Registrar must reject a CTT Tribunal application if mediation was appropriate though not attempted.

<b>Victoria</b>			
<p><i>Subdivision Act 1988</i></p> <p><i>Owners Corporation Act 2006</i></p>	<p>No</p>	<p>An application to VCAT is required to seek an order to rectify the breach. The owners' corporation can only make an application if it believes on reasonable grounds that the person has committed the alleged breach.</p> <p>VCAT is also the dispute resolution body for disputes arising under the <i>Subdivision Act</i>.</p>	<p>Owners' corporations must have internal grievance procedures to handle complaints about breaches of the rules and other disputes.</p> <p>These processes must be exhausted before making an application to VCAT.</p>
<b>Queensland</b>			
<p><i>Body Corporate and Community Management Act 1997</i></p>	<p>No</p>	<p>Contravention notice must be issued by the body corporate before an application can be made under Chapter 6 for resolution of the dispute.</p> <p>An application can be made to the Commissioner for conciliation or adjudication.</p> <p>An Adjudicator's order can be enforced through the Magistrate's Court. Penalty provisions may be enforced by a Magistrates Court.</p>	<p>Yes. Internal dispute resolution mechanisms should be exhausted before progressing to conciliation.</p> <p>The body corporate can apply to the Commissioner for conciliation if the dispute cannot be resolved by the parties themselves. If parties fail to reach a conciliation agreement, the applicant may make an adjudication application.</p>

<b>Western Australia</b>			
<i>Strata Titles Act 1985</i>	Yes. By-laws may provide for penalties, not exceeding the prescribed amount, for a breach of any specified provisions of the by-laws.	Penalty can not be imposed under a by-law except by order of the State Administrative Tribunal. Breach needs to be wilful and persistent.  An SAT order can be enforced by the appropriate court.	By-laws may provide for internal dispute resolution procedures. These procedures, as far as possible, must be complied with before an application is made to SAT.
<b>South Australia</b>			
<i>Community Titles Act 1996</i>  <i>Strata Titles Act 1988</i>	Yes and can be imposed on visitors or members of the general public as well as owners and occupiers.	The penalty payable under the notice is recoverable by the community corporation as a debt and, in the case of a notice served on the owner of a community lot, may be recovered by the community corporation as if it were a contribution payable to the community corporation.  If penalty challenged in Magistrates Court then the onus is on the body corporate to prove the breach of the by-law or article.  An application can be made to the Magistrates Court to resolve a dispute.	No. Mediation is however recommended.
<b>ACT</b>			
<i>Unit Titles (Management Act) 2011</i>	No	An application can be made to ACAT for an order in relation to the failure to comply with the notice.	No

<b>Singapore</b>			
<i>Land Titles (Strata) Act 1999</i>	No	An order of the Strata Title Board may, by leave of the court, be enforced.  The management corporation may apply to the court for an order to enforce the performance of or restrain the breach of any by-law.	Yes. Strata Title Board will endeavour to resolve dispute by way of mediation before proceeding to arbitration.
<b>New Zealand</b>			
<i>Unit Titles Act 2010</i>	No	The Tenancy Tribunal can make orders however it is more likely that a dispute regarding a breach of the rules will be dealt with by mediation.	Yes. Department of Building and Housing receives applications for mediation on behalf of the Tenancy Tribunal.

## 9 UNIT TITLES ACT AND UNIT TITLE SCHEMES ACT - OTHER ISSUES

The 2012 NSW discussion paper (*Making NSW No 1 Again – Shaping Future Communities*) regarding strata titles raised the following issues – which are or could become significant issues in the Northern Territory.

Your comments are sought on these and any other issues concerning the current *Unit Titles Act* and the *Unit Title Schemes Act*:

### *Overcrowding and short-term rentals*

Which of the following would help address overcrowding and short-term rentals in unit title developments?

- enabling bodies corporate to make and enforce by-laws to deal with the issue
- giving the Local Court the power to prohibit certain letting arrangements for a unit where there is a proven pattern of anti-social behaviour
- introducing a law setting the maximum number of persons per bedroom
- giving local councils more powers to deal with such matters

Do you have any other suggestions for how the issues surrounding overcrowding and short-term rentals could be addressed?

### *Regulatory approach*

Do the current laws work for all unit title developments or does the law need to provide more tailored regulation according to the size, use, type of construction or other distinguishing features of a development? If so how?

Should the current *Unit Titles Act* and the *Unit Title Schemes Act* be combined into one piece of legislation?

What examples of unnecessary red tape do you believe should be removed from current laws?

Are reforms needed to address the competing interests of stakeholders (ie developers, investor owners, resident owners, and tenants)? If so what should they be?

What terms or provisions in the current law do you believe should be rewritten in plain English?

### *Governance*

Do you think that there is enough awareness about the rights and responsibilities of stakeholders in unit title developments? If not, which of the following would help improve awareness?

- more information resources (ie fact sheets, targeted brochures, template forms, sample documents and an email newsletter)
- compulsory training for committee members of all schemes / large schemes
- having new committee members sign a statement setting out their obligations and responsibilities
- requiring body corporate managers and letting agents to supply new owners and tenants with an up to date set of by-laws and new owners with an up to date set of articles within a specified timeframe (ie 14 days)
- making it a requirement that schemes review their by-laws / articles at regular intervals (ie every 5 years)

Do you have any other suggestions for how awareness of rights and responsibilities could be improved?

Is the law that allows unit owners or prospective buyers to request and inspect records held by a body corporate working? If not, why and how might this be improved?

Which of the following would help to improve participation in the running of schemes?

- restricting the number of proxy votes an individual is able to exercise at any one time in order to encourage more active participation by a greater number of owners?
- making it compulsory for owners to vote with fines imposed if they do not
- providing the option of secret ballot voting on certain sensitive issues so that all owners feel comfortable participating
- enabling some form of tenant representation in schemes
- calling for committee nominations in advance of AGMs
- providing for payments to committee members for attending meetings
- providing for committee members to have the same statutory protection from liability against actions taken in good faith under the *Unit Titles Act* as they do under the *Unit Title Schemes Act*
- reducing the restrictions on quorum requirements or removing the need for quorums altogether
- allowing committees to meet via email

Do you have any other suggestions on how participation in schemes could be improved or owner apathy addressed?

### *Communications and Transparency*

Which of the following would help to improve communications and transparency?

- making it clear when owners' contact details can be given to executive committees and other owners / residents
- providing set time-frames within which correspondence sent to the body corporate, committee, or body corporate manager has to be answered unless the correspondence is vexatious
- making notice requirements for AGMs more easily understood by changing the requirement that 14 or 21 working days advance notice be given to 14 or 21 calendar days
- requiring any person with a conflict of interest to not only declare that conflict of interest (as required under current law) but also not to participate in any discussion or voting on the matter?
- restricting the ability of certain persons from being elected to committees such as non-owners (except where owner is a company), managing agents, more than one co-owner
- limiting the period of time any individual can continually hold the same office (ie Chairperson, Secretary, or Treasurer)
- requiring greater clarity around how agendas for body corporate and committee meetings are to be compiled including who decides what is to be on the agenda and what detail is required for each agenda item
- prohibiting body corporate managers from receiving commissions from service providers
- imposing restrictions on the length of time contracts entered into by bodies corporate or committees are valid (ie contracts with body corporate managers)
- streamlining the levels of consent required to make decisions (ordinary resolution, special resolution, resolution without dissent, and unanimous resolution)
- requiring all schemes to have accounts audited
- giving owners a right to request and receive copies of any documents relating to expenditure such as quotes and invoices

Do you have any other suggestions for how participation in schemes could be improved or owner apathy addressed?

### *Accountability*

Which of the following would help to improve accountability?

- more clearly defining the roles of body corporate manager and committee members
- providing for a limit on the term of engagement of a body corporate manager (perhaps to 1 year) and / or making it easier for schemes to terminate the services of managing
- making the appointment of professional body corporate managers compulsory for large schemes
- provide power for the Local Court to appoint a compulsory administrator to take over from the body corporate or committee under the *Unit Titles Schemes Act* if the scheme becomes dysfunctional
- requiring committee members to prepare brief annual reports

Do you have any other suggestions for how to improve accountability?

### *Maintenance, Repairs, Renovations, and Redevelopment and Termination*

Should the meaning of common property / unit property be changed so that it is easier to identify? If so, which approach do you favour?

Should the obligation on the body corporate to maintain common property in a state of good repair under the *Unit Titles Act* be removed so the body corporate itself can decide the appropriate level of property maintenance?

Under the *Unit Titles Schemes Act* should owners or occupants be responsible for any damage to common property they cause and / or should unit owners be responsible for repairs to common property that solely benefit their unit?

Should the process for owners wanting to renovate or make changes to their unit be simplified and / or clarified?

Should easy-to-read guidelines be produced giving information to owners on what they can and cannot alter / renovate? What would the content of these guidelines be?

Do you think that a maintenance schedule prepared by the developer would be useful?

Should building defects be a compulsory agenda item for discussion at the first AGM?

Should the law set clear rules for voting on action regarding building defects?

Should any other changes be made to the unit titles laws to more adequately deal with building defects?

Should land be able to be added to an estate development scheme under the *Unit Title Act* as only common property or should it also be able to be added as a separate lot?

### *Managing Money and Insurance*

Should the procedure for revising unit entitlements for developments under the *Unit Titles Schemes Act* be expanded to developments under the *Unit Titles Act*?

Should more flexibility be given to schemes to determine levies other than on the basis of unit entitlements?

Should notices for AGM's contain more details about proposed levy increases? If yes, what additional information do you suggest?

Should the law require periodic issuing of levy notices that advise how much owners are to pay the body corporate?

Is more regulation over the setting of levies and incurring expenses by developers during the developer control period required under the *Unit Titles Schemes Act* and should developers be liable for budget shortfalls in the initial period?

Should the penalty interest rate on outstanding levies be set at the Supreme Court Rate or at a flat rate that is easy to calculate (ie 10%) or should bodies corporate be able to set their own penalty interest rate (up to a maximum)?

Should the law require the body corporate to take recovery action for unpaid levies within a certain time? If so, what should the timeframe be?

What hardship provisions for unpaid levies (if any) should be introduced?

Should the recovery of expenses for outstanding levies be allowable or should this be built into the penalty interest rate?

Should owners who owe levies continue to not have voting rights? Do you support any other practical punishments or deterrents and if so what?

Should a minimum period of arrears (ie two levy payments) be required before loss of voting rights or other punishments are imposed?

Should schemes be able to seek orders that tenants pay rent to them to cover debts owed by investor owners?

Should the law require all schemes to establish and maintain a sinking fund for capital works, such as painting the common property and replacing carpets, to be undertaken in the year and in future years?

Should the requirements for valuations every 5 years be introduced to ensure that common property is being insured for replacement value under the *Unit Titles Act*?

Should insurance details be on the notice sent to unit owners for each AGM?

Should unit title developments be encouraged or required to have a higher insurance excess?

Should the cost of insurance be shared on the basis of unit entitlements or should it be shared on the basis of the use of the unit?

Is there a need to increase the minimum public liability cover for schemes? If so, what should be the amount?

Should bodies corporate be able to obtain loans for insurance (ie premium funding) by ordinary resolution as opposed to resolutions without dissent for developments regulated under the *Unit Titles Act*?